ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
April 12, 2007
3:37 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Charlie Huggins, Vice Chair
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 104
"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."
HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 104
SHORT TITLE: NATURAL GAS PIPELINE PROJECT
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/05/07	(S)	READ THE FIRST TIME - REFERRALS
03/05/07	(S)	RES, JUD, FIN
03/14/07	(S)	RES AT 3:30 PM BUTROVICH 205
03/14/07	(S)	Heard & Held
03/14/07	(S)	MINUTE(RES)
03/16/07	(S)	RES AT 3:30 PM BUTROVICH 205
03/16/07	(S)	Heard & Held
03/16/07	(S)	MINUTE(RES)
03/19/07	(S)	RES AT 3:30 PM BUTROVICH 205
03/19/07	(S)	Heard & Held
03/19/07	(S)	MINUTE(RES)
03/21/07	(S)	RES AT 3:30 PM SENATE FINANCE 532
03/21/07	(S)	Heard & Held
03/21/07	(S)	MINUTE(RES)

03/21/07	(S)	RES AT 5:30 PM SENATE FINANCE 532
03/21/07	(S)	Heard & Held
03/21/07	(S)	MINUTE(RES)
03/22/07	(S)	RES AT 4:15 PM FAHRENKAMP 203
03/22/07	(S)	Heard & Held
03/22/07	(S)	MINUTE(RES)
03/23/07	(S)	RES AT 1:30 PM BUTROVICH 205
03/23/07	(S)	Heard & Held
03/23/07	(S)	MINUTE(RES)
03/24/07	(S)	RES AT 1:00 PM SENATE FINANCE 532
03/24/07	(S)	Heard & Held
03/24/07	(S)	MINUTE(RES)
03/24/07	(S)	RES AT 3:00 PM SENATE FINANCE 532
03/24/07	(S)	Heard & Held
03/24/07	(S)	MINUTE(RES)
03/26/07	(S)	RES AT 3:30 PM BUTROVICH 205
03/26/07	(S)	Heard & Held
03/26/07	(S)	MINUTE(RES)
03/27/07	(S)	RES AT 3:00 PM BUTROVICH 205
03/27/07	(S)	Heard & Held
03/27/07	(S)	MINUTE(RES)
03/28/07	(S)	RES AT 3:30 PM BUTROVICH 205
03/28/07	(S)	Heard & Held
03/28/07	(S)	MINUTE(RES)
03/29/07	(S)	RES AT 5:00 PM BUTROVICH 205
03/29/07	(S)	Heard & Held
03/29/07	(S)	MINUTE(RES)
03/30/07	(S)	RES AT 1:30 PM BUTROVICH 205
03/30/07	(S)	Heard & Held
03/30/07	(S)	MINUTE(RES)
03/31/07	(S)	RES AT 12:00 AM BUTROVICH 205
03/31/07	(S)	Heard & Held
03/31/07	(S)	MINUTE(RES)
04/01/07	(S)	RES AT 11:00 AM BUTROVICH 205
04/01/07	(S)	Moved CSSB 104(RES) Out of Committee
04/01/07	(S)	MINUTE(RES)
04/02/07	(S)	RES RPT CS 6AM SAME TITLE
04/02/07	(S)	AM: HUGGINS, GREEN, STEVENS, STEDMAN, WIELECHOWSKI, WAGONER
04/02/07	(S)	RES AT 3:30 PM BUTROVICH 205
04/02/07	(S)	Moved Out of Committee 4/1/07
04/02/07	(S)	MINUTE(RES)
04/04/07	(S)	JUD AT 2:45 PM BELTZ 211
04/04/07	(S)	Heard & Held
04/04/07	(S)	MINUTE(JUD)
04/11/07	(S)	JUD AT 1:30 PM BUTROVICH 205
04/11/07	(S)	Heard & Held

04/11/07	(S)	MINUTE(JUD)
04/11/07	(S)	JUD AT 5:30 PM BUTROVICH 205
04/11/07	(S)	Heard & Held
04/11/07	(S)	MINUTE(JUD)
04/12/07	(S)	JUD AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

Larry Ostrovsky, Chief Assistant Attorney General
Oil, Gas & Mining Section
Department of Law (DOL)
Anchorage, AK
POSITION STATEMENT: Provided information related to SB 104

Marty Rutherford, Deputy Commissioner
Department of Natural Resources
Juneau, AK
POSITION STATEMENT: Provided information related to SB 104

Marcia Davis, Deputy Commissioner
Department of Revenue
Juneau, AK
POSITION STATEMENT: Provided information related to SB 104

Bonnie Harris, Senior Assistant Attorney General
Civil Division
Oil, Gas & Mining Section
Department of Law
Anchorage, AK
POSITION STATEMENT: Provided information related to SB 104

Paul Kendall
Anchorage, AK
POSITION STATEMENT: Supported SB 104

Paul Laird, General Manager
Alaska Support Industry Alliance
Anchorage, AK
POSITION STATEMENT: Supported SB 104

Jerry McCutchen
Anchorage, AK
POSITION STATEMENT: Offered suggestions on SB 104

Merrick Pierce
North Pole, AK
POSITION STATEMENT: Offered an amendment to SB 104

Joey Merrick, Business Manager
Alaska Laborers Local 341
Eagle River, AK
POSITION STATEMENT: Supported SB 104 with a project labor agreement

Pat Falon, Marketing Representative
Alaska Laborers Local 341
Anchorage, AK
POSITION STATEMENT: Supported SB 104 with a project labor agreement

Tammie Wilson
Fairbanks, AK
POSITION STATEMENT: Supported SB 104 with a project labor agreement

Michael Friborg, Business Agent
Local IUOE 302
Fairbanks, AK
POSITION STATEMENT: Supported SB 104 with a project labor agreement

Jon Brown
Local IUOE 302
Fairbanks, AK
POSITION STATEMENT: Supported SB 104 with a project labor agreement

Barbara Huff Tuckness, Lobbyist
Director of Legislative and Governmental Affairs
Teamsters Local 959
Anchorage, AK
POSITION STATEMENT: Supported SB 104

Jim Laiti, Manager
Plumbers and Steamfitters Local 375
Fairbanks, AK
POSITION STATEMENT: Supported SB 104 with a project labor agreement and apprenticeship programs

Tim Sharp, Business Manager
Alaska District Council of Laborers
Fairbanks, AK
POSITION STATEMENT: Supported SB 104 with a project labor agreement

Travis Tolman, Apprentice
Laborers Local 341
Anchorage, AK
POSITION STATEMENT: Supported SB 104 with a project labor agreement

Dennis Knebel, Business Development Coordinator
IBEW Local 1547
Anchorage, AK
POSITION STATEMENT: Supported SB 104 with a project labor agreement

Vince Beltrami, President
Alaska AFL-CIO
Anchorage, AK
POSITION STATEMENT: Supported SB 104 with a project labor agreement

David Gottstein, Co-Chair
Backbone
Anchorage, AK
POSITION STATEMENT: Supported AGIA - SB 104

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 3:37:29 PM. Present at the call to order were Senator Huggins, Senator Wielechowski, and Chair French. Senator Therriault and Senator McGuire arrived shortly thereafter.

SB 104-NATURAL GAS PIPELINE PROJECT

CHAIR FRENCH announced the committee will continue the consideration of SB 104. Recapping yesterday's discussion he asked if the administration has a perspective on whether the gas pipeline coordinator has a term of office or if the person serves at the pleasure of the governor.

3:38:10 PM
MARTY RUTHERFORD, Deputy Commissioner, Department of Natural Resources, stated the preference that the person serve at the pleasure of the governor. Furthermore she prefers that the office reside within the Department of Natural Resources to accommodate coordination with the other joint pipeline office.

CHAIR FRENCH stated that where the office is placed is an executive decision, but he did have several conceptual amendments to suggest with regard to the coordinator position. On page 20, line 3, insert "position" at end of sentence to clarify that this is a position rather than a person. He also suggested adding language to make it clear that the inducement act coordinator serves at the pleasure of the governor. Ultimately the governor is the chief executive so if the coordinator starts making poor decisions, the governor should have the authority to remove that person.

CHAIR FRENCH noted the timeframe between the appointment and confirmation by the legislature, and questioned whether there is a legal distinction between the coordinator's powers and authority before confirmation. In the event that the governor has to remove one coordinator and appoint another, there shouldn't be an inability to move forward simply because the legislature hasn't been assembled for the confirmation, he stated.

3:41:39 PM
MR. OSTROVSKY, Chief Assistant Attorney General, Oil, Gas & Mining Section, Department of Law (DOL), acknowledged that this is a unique position and he isn't sure whether it would be treated the same as a state commissioner or not. However, the legislature would remove any ambiguity by describing it that way.

CHAIR FRENCH suggested that the same concept should apply to the commissioners to clarify that they have the full authority granted in the bill to keep the project moving forward on the day they are appointed.

MR. OSTROVSKY said he believes commissioners have that authority.

CHAIR FRENCH said there's no need to change it if it's existing law, but the committee would make it explicit with regard to the inducement act coordinator since that is a new position.

3:42:53 PM
Senator McGuire joined the committee.

CHAIR FRENCH, finding no further questions about the position or powers of the inducement coordinator, asked Ms. Harris to address expedited judicial review.

BONNIE HARRIS, Senior Assistant Attorney General, Civil Division, Oil, Gas & Mining Section, Department of Law, Anchorage, said she's organized her thoughts on expedited judicial review into three broad areas. The first is what the review is under the current Senate CS. For the most part that would be appellate action, she said. Next is how an original action might occur and which laws would apply. She opined that an original action would most likely be raised as a declaratory judgment action. Finally there's the question of which court would review an appeal or declaratory judgment action on the license or on the bill.

MS. HARRIS explained in that in the current committee substitute [25-GS1060\K], Sections 43.90.190 and 43.90.200 refer respectively to the appeal process for decisions to issue no license and a decision by the commissioners to issue a license. Under Section 43.90.190(b) and (c), the commissioners are required to make a written finding if they decide that no applicant should be issued a license.

CHAIR FRENCH asked her to review what it means to act jointly and how the commissioners to come to a decision using the legal terminology "jointly."

MS. HARRIS explained that the decisions would have to come jointly from their authority.

CHAIR FRENCH asked what happens from a layman's perspective if the commissioners have a difference of opinion with respect to making a decision.

MS. HARRIS replied it would be much the same as with the discussion yesterday where the pipeline coordinator might want to take a different position than the commissioners. "I imagine it would be resolved administratively with a decision by the governor," she said.

CHAIR FRENCH asked if there's a legal definition for "acting jointly" or if it's meant in the common English sense.

MR. OSTROVSKY said he believes it's meant in the common English sense, which is that both commissioners would sign off on any decisions that need to be made. If a decision requires joint action and the commissioners aren't able to agree, then it's not a decision.

MS. HARRIS agreed; her understanding is that one commissioner could not take an action where joint action is required. Use of the term commissioners in the plural is defined as the two acting jointly. The provision that allows the commissioners to make regulations to implement the act states authority for the commissioners jointly to implement the act. It also expresses authority for the commissioners independently to adopt regulations. The authority for the commissioner of natural resources is under Title 38 and the authority for the commissioner of revenue is under Title 43.

3:46:42 PM
Senator Therriault joined the committee.

MS. HARRIS explained that after the commissioners have reviewed the applications and made a best interest sort of finding, they give public notice and send notice to the legislature of the intent to issue a license. If the commissioners decide that no application sufficiently meets the requirements to warrant a license, then they will issue a written best interest finding determination that no license will be issued. A decision to issue no license is a final agency action that is subject to appeal to superior court within 30 days of the date that the final agency action is made public. The timeframe is provided under the court rules and the Administrative Procedures Act. On the other hand, a notice of intent to issue a license that goes to the legislature does not become a final agency action until the commissioners issue a license, which under Section 43.90.200 would not occur until the legislature approves the license by resolution. So the notice of intent to issue a license is subject to appeal and the finding behind it is subject to appeal when the license is issued. Challenges on either would more than likely be challenges to the administrative record. Definitely it would be a challenge to the administrative record if it was a decision to issue no license because that decision goes straight from the agency to the court. Because a decision to issue a license has a stop at the legislature, it would probably be an appeal on the administrative record, but conceivably anyone who appealed would also bring in the legislative history of the act or the legislative approval of the resolution.

3:49:30 PM
SENATOR WIELECHOWSKI asked if her assumption is that an appeal would be on the written record and that the court would uphold the decision if there was substantial evidence supporting the agency decision.

MS. HARRIS said she believes it's "substantial evidence where the factual findings of the agency on a rational basis for the determination on the application of the law."

SENATOR WIELECHOWSKI asked if there's any danger that the court would allow a trial de novo type of situation.

MS. HARRIS said in her experience a trial de novo in that circumstance would be unlikely. The courts are reluctant to step into a whole new proceeding or an expanded review of the administrative record. However the court does have statutory discretion to do that, she stated.

SENATOR WIELECHOWSKI asked if there's any way to change this such that it is not a final agency action, because that gives such tremendous rights to appeal. If it's an act by the legislature, on the other hand, the only way it can be challenged is on constitutional issues.

MR. OSTROVSKY noted that the bill has evolved somewhat. As originally introduced the license would become effective if the legislature did not disapprove. At that point it becomes a final agency action. A party could make an administrative appeal—unless there were some external issues—that would be based on the record and would include briefing. As currently written the bill is based on legislative approval, which provides an intermediate step between the commissioners' decision and issuance of the license. DOL's view is that would take it out of the realm of administrative appeal because the commissioners' decision would have been superseded by the legislature's determination. Once the legislature has acted, probably the only avenue for challenge would be on constitutional issues.

SENATOR WIELECHOWSKI asked if Section 43.90.190(c) needs to be cleared up then because it says that the commissioners' determination under (b) is a final agency action for purposes of appeal.

MS. HARRIS explained that what was formerly Section 43.90.190(a) says that it's a final agency action after the legislature has acted to approve the license. The decision to issue no license is final when it's issued. "If you wanted to change that you would change…190 and a…housekeeping change to 200 would also probably have to be done."

SENATOR WIELECHOWSKI reminded members that Senator Ted Stevens cautioned the legislature to make this as bullet-proof as

possible. He agrees because getting mired in appeals could potentially cost years. This committee needs to focus on avoiding letting parties make endless appeals. I'd like to work with the administration to try to figure out ways to do that," he stated.

CHAIR FRENCH asked Ms. Harris to continue.

3:54:29 PM
MS. HARRIS recapped that she had gone through the appeal procedures as she reads them in the SRES committee substitute. She continued to explain that another way for a party to challenge is to bring an original action to court asking it to declare how the AGIA law affects their interest. For the most part people think that the tax exemption provision under AGIA is what will be challenged on constitutional grounds, she observed. In that regard she said there's a body of law in Alaska—most recently, Anchorage Chrysler v. Daimler Chrysler in 2006—on what the parameters of a declaratory judgment action are. The legislature by statute vested the superior court with the power to render declaratory judgments, she stated. The standard in law is that "in the case of actual controversy…, the superior court, …may declare the rights and legal relations of an interested party…, whether or not further relief is or could be sought." Thus a court has the discretion, on the filing of an action for declaratory judgment, to take that up. She added that one of the cases included a statement that "a court may grant declaratory relief, in its discretion, when to do so serves a useful purpose in clarifying and settling the rights of parties or when it will terminate and relieve uncertainty giving rise to the preceding." Also, under Alaska law there's a series of tests for the court to determine whether or not to grant declaratory judgment. She explained that the declaratory part simply means to declare what that particular party's rights are in the context of this law.

3:56:55 PM
CHAIR FRENCH asked for a more concrete example so that the committee and the public could follow what sort of instances might bring these declaratory judgment actions.

MS. HARRIS said Anchorage Chrysler v. Daimler Chrysler was a breach of contract action. In that case Daimler Chrysler claimed that the contract required Anchorage Chrysler to remodel their building and Anchorage Chrysler disagreed. "The court…found that there was a controversy in the way the contract read—that the court would decide before the breach happened." [Declaratory judgments are appropriate to resolve pre-breach disputes over

contractual language, giving useful guidance for the parties or others contemplating a contingent course of action.13 Anchorage Chrysler Center, Inc. v. DaimlerChrysler Corporation (02/24/2006) sp-5993, 129 P3d 905]

CHAIR FRENCH said what he's trying to get at is who might go to court seeking declaratory judgment of their rights under AGIA.

MS. HARRIS said when the legislature passes the bill and AGIA is enacted, anybody could bring a claim that it's unconstitutional.

CHAIR FRENCH agreed that's the clearest and most obvious example.

MS. HARRIS said another example would be when a license is issued. A disgruntled applicant or perhaps anyone with citizen/taxpayer standing could bring the action saying it violates the constitution. Another clear example would be potential shippers before the first open season. A potential shipper could ask for a declaratory judgment before they had to bid in the open season to determine what affect the tax exemption would have. The question would be would it be sustained or would it be something that the legislature could change after the shipper has committed to firm transportation.

CHAIR FRENCH asked if it's almost always an interested party. In this case someone that's involved in the process who wants clarification about their rights and duties under the AGIA bill.

MS. HARRIS said it would almost always be an interested person, but it could be a taxpayer who is interested in the broader sense of the public fisc. "But a person whose rights are affected more directly would be more likely to succeed in asking a court to take a declaratory judgment action." A potential shipper would fit that description, she stated.

CHAIR FRENCH said part of the reason for addressing expedited judicial review is to ask if anything in the bill says the court has to get going and hear an AGIA claim. Senator Wielechowski has highlighted the concern that many Alaskans have, which is that this not get tied up in court endlessly.

MS. HARRIS advised that nothing specifically directs the court to get going, but there's the 90-day period for raising constitutional challenges and then there are the 30-day appeal periods that are inherent in the administrative action.

CHAIR FRENCH said those are directed at the interested parties and the citizens, but once the claim is filed in superior court we would have to trust the court system to move swiftly. With that in mind he suggested that now is the time to talk about the pros and cons of trying to direct the court system to treat these claims in an expedited manner. He asked if she has something prepared to address that.

MS. HARRIS advised that the constitution does give the legislature the authority to decide the jurisdiction of the supreme court and the superior court. Article IV, Section 1 says there is a supreme court and it is a court of final appellate jurisdiction. It doesn't say that the supreme court can't hear other kinds of cases such as an original action that doesn't come up as an appeal from a lower court or from an administrative action. Right now the Declaratory Judgment Act and the Administrative Procedures Act have all appeals going to superior court. According to her research it appears that the legislature would have authority to direct the supreme court to take a matter as an original action. She noted that the supreme court already has that authority with its discretion. However, she would caution that there is a specter of separation of powers issue between the legislature and the judiciary so the legislature should take care in exercising the authority as it exists.

CHAIR FRENCH remarked that original jurisdiction in the supreme court has come up before and he's been leery of that idea. You can put original jurisdiction in the supreme court, but the first thing the court will do is appoint a master to hear the facts. More than likely the master will be a superior court judge and the fact-finding mission the master engages in will look very much like a trial. "It seems to me that you're simply recreating…the current system as it stands," he stated. That doesn't necessarily address the real concern, which is trying to get a quick judgment out of the supreme court. He said he's thinking about an amendment along the lines that the court shall hear claims relating to the particular title and chapter in a most expeditious manner that comports with the boundaries of justice. He isn't sure that the legislature can tell the court to do this on a six-month timetable, but that is the most concrete way to deal with the concern that Senator Stevens and Senator Wielechowski have expressed. "I…need to articulate that here because that's the easiest thing to do. Just write a rule that says they have to do it in six-months, but I think most of us are aware that that would…be a flagrant separation of powers violation." The court can't be commanded to do its work in a

certain length of time, but it is possible to ask the court to act as fast as possible consistent with the principles of equal protection and efficient use of its time, he stated.

MS. HARRIS opined that it would be possible to ask the court to take the action within a certain amount of time. She added that the comments about the master are correct. The DOL appellate division has said that appointing a master might be faster, but others have expressed the view that it would not be faster.

SENATOR WIELECHOWSKI pointed out that if the supreme court was given original jurisdiction in this case you'd bypass the superior court and the appellate division, which would probably result in a significant time savings. He asked if she had an idea about how much time it would save.

MS. HARRIS said an administrative appeal would probably take a couple of years to get through court.

SENATOR WIELECHOWSKI said that's opposed to a supreme court original jurisdiction, which would take a few months.

MS. HARRIS agree it could be that short, but it could be longer. She outlined the process in which a master would be appointed and given a reference of what matters to decide. The master would potentially examine the evidence and then report to the supreme court on findings of fact and conclusions of law. Then the parties would have the opportunity to take exception to provisions in the master's report. She noted that the DOL appellate division has said that parties are generally very cautious about what they take exception to because that is argued to the supreme court. The supreme court may or may not concur with master, but that report is the supreme court's sort of trial court.

CHAIR FRENCH suggested it's time to think about the practical applications of this scenario.

MR. OSTROVSKY added that if there's an appeal of the administrative decision, the superior court orders the record prepared in 40 days then the court schedules briefing, which is 30-days for each side. Then the court hears oral argument and renders a decision within 180-days. When there's no intermediate appeal, it goes right to the supreme court. DOL doesn't believe that original jurisdiction speeds the process up substantially, he said. What happens is it'd go to supreme court and a factual record would be developed or there would be a factual hearing on

the record. The court would probably appoint a master who would order the record to be assembled and hear oral arguments and issue a decision. He isn't sure if it would be subject to the same 180-days, but he would note that the supreme court is subject to the 180-days only with respect to circulating an opinion. His experience is that administrative appeals tend to get through superior court within two years, but it can be faster than that if the parties request expedited review. Once it gets to the supreme court there's already a record developed and there's a decision so the court just gives it a fresh look. He reiterated, "When we've looked at this issue in the past with respect to litigation, we haven't seen a significant advantage that wouldn't be gained by asking the court for expedited review."

SENATOR WIELECHOWSKI noted that in redistricting cases and campaign related cases the supreme court issues decisions within days. "I realize this is more complex, but I kind of like the idea of the supreme court as original action." The supreme court could probably handle an appeal in a few months in the same way that the complex redistricting cases are done.

MR. OSTROVSKY said in election matters there's a 10-day statute for bringing an appeal after a decision. Court Rule 90.8 says that the matter will be given priority over other court matters and the legislature might consider that. he noted that it takes a two-thirds vote of the legislature to amend court rules.

CHAIR FRENCH said we'll see if we can get the two-thirds support for identifying AGIA related claims as priority. He then asked if the only instance under which the administrative record gets a full review is when no license has been issued. "It's the 190(c) route."

MS. HARRIS said yes; when no license has been issued the matter goes from the administration to court without legislative involvement.

CHAIR FRENCH commented that that is where there can be a two-year review of the administrative record.

MR. OSTROVSKY agreed.

CHAIR FRENCH said in that instance the reality is that we're not standing in the way of a project; we're checking to see that we didn't miss a good opportunity.

MS. OSTROVSKY agreed.

CHAIR FRENCH observed that that leads into the next topic, which is the point at which a legal challenge can be brought. Noting that the bill repeatedly references determinations made by the commissioners, he asked if there's any legal significance to "determination."

MR. OSTROVSKY explained that the significant language is that the commissioners' determination becomes a final agency action for appeal purposes.

CHAIR FRENCH asked if a determination is challengeable.

MR. OSTROVSKY said yes.

MS. HARRIS elaborated that under DNR and DOR regulations a party that doesn't like a decision or determination generally has an administrative avenue of appeal until there's a final determination on the issue. She cautioned that she'd need to review the bill to check the context in which it's currently used.

CHAIR FRENCH referenced Section 43.90.150 on page 9, lines 26 and 27 and said that seems to be the first place where the commissioners make a determination. You're saying a person can only appeal that determination administratively and ask for reconsideration. O they could do the smart thing and fix their application. In either event they can't get to court on that decision.

MR. OSTROVSKY agreed because there isn't a final agency determination. Generally the courts won't consider things when they're going through the administrative process.

CHAIR FRENCH said that holds true for all the determinations down to the final agency determination in Section 43.90.190(a)(1).

MR. OSTROVSKY added that at that point someone would appropriately come in and say that the process was flawed along the way.

SENATOR WIELECHOWSKI questioned whether it isn't a final determination for a party that submits an application which is deemed inadequate. But it isn't a final determination for the state or the other parties.

MS. HARRIS said it's an issue that could come up and there is an argument that it's a final determination in Section 43.90.150. The person could appeal to the agency for review and after going through the agency level reviews, they could take the final agency action on the question of whether or not their application was complete to court. She added that it is possible for the commissioners jointly to have authority and to have regulations to determine what will and will not be a final agency action. The idea isn't to limit anyone's right to administrative or judicial recourse; rather the idea is to funnel it into a more administratively efficient channel saying that at a certain point it will be a final agency action and then you may take it on to court. She's familiar with some tax regulations in DOR that are like that.

CHAIR FRENCH said for the record, are we back to where we're equivocating a bit? He thought it was clear that a rejected applicant wasn't going to get a court review of the commissioners' decision. Is that not correct?

MS. HARRIS responded there are two lawyers and you got two answers, but they aren't completely inconsistent because it isn't absolutely clear—although to Mr. Ostrovsky it is clearer. There are arguments that you have to wait until there's a final agency action as provided under Sections 43.90.190 and 43.90.200, she stated.

CHAIR FRENCH imagined a rejected applicant saying that their due process rights have been trampled and that they want their day in court. Their argument would be that they didn't get a full and complete hearing on whether or not their application was incomplete or that it didn't meet the terms. He asked what happens in that event.

MR. OSTROVSKY said he believes that DOL would argue that the statute looks at two possibilities. One is that the commissioners reject all applications and that is a final agency decision. Or the commissioners accept an application and it goes through legislative approval. At that time someone who believes that they have been denied due process can challenge either decision saying there were procedural irregularities. The court would remand it back to the agency at the time that the application was filed on the issue of completeness. Generally courts want agencies to complete their decision making process, he said.

4:19:47 PM
MS. DAVIS advised that the current House committee substitute incorporated a provision in the application requirements which says the applicant shall, "waive the right to appeal the award to another applicant or the determination under AS 43.90.180(b) that no application merits the issuance of a license." She noted that 43.90.180(b) is the determination to issue a license to no one. The idea is to cut off the avenue for appeals for someone who is aggrieved by not having their application selected. She said she would defer to the attorney general's group, but it would remove some of the administrative hassle.

SENATOR THERRIAULT advised that Senator Wagoner has developed language to that effect.

SENATOR WIELECHOWSKI said he likes the idea and believes it's worth discussion. He asked Ms. Harris for her thoughts on legally prohibiting a person from bringing a lawsuit if they feel they've been discriminated against.

MS. HARRIS said she believes it's possible to structure a provision that wouldn't be discriminatory to designate when the actions are final. It would say something such as "no action taken under this chapter is a final agency action until…" Then move it into Section 43.90.190 or Section 43.90.200 whenever you think it's appropriate for the claims to be brought on any action that goes on during the application process, she said.

4:22:08 PM
SENATOR HUGGINS advised that Senator Wagoner didn't offer the amendment because he didn't know whether it would meet the legal test.

MR. OSTROVSKY explained that the state as a sovereign decides when where and how it can be sued so this would be the exercise of that power. The state would be restricting a participant's ability to sue and the issue this raises is due process.

CHAIR FRENCH stated that the focus is on Section 43.90.190 and he believes that legislative approval and the issuance of the license is the meat and potatoes of the decision making process. He noted that on page 13, lines 2 and 3, there is reference to a final agency action and on lines 13 and 14 there is reference to a final administrative action. It strikes him that the two words should be same, and he asked which one he would pick.

MR. OSTROVSKY said he believes final agency action is the way it's usually described in statute.

CHAIR FRENCH said he'd put it in the amendment file to change the word "administrative" on page 13, line 13, to "agency."

MR. OSTROVSKY said he'd double check after the meeting

CHAIR FRENCH asked what would be included in the determination of who gets the license.

MR. OSTROVSKY said he expects it would be analogous to a best interest finding where the commissioners would describe their review of the applications. They'd go through the criteria and give a lengthy discussion of their rationale for the decisions. He added that agency decisions have to be reviewable by courts meaning that courts have to understand the reasoning behind the decisions.

CHAIR FRENCH asked if the standard of review for the decision would be the reasonable basis test.

MR. OSTROVSKY said he believes so because this is a question that involves agency expertise as a mixed question of policy and reason.

CHAIR FRENCH said the superior court would ask itself if the commissioners had a reasonable basis for awarding the license to the particular successful applicant.

MR. OSTROVSKY said he believes that would be the standard.

CHAIR FRENCH said once the decision is made to award the license the process comes to the legislature in the form of a resolution or a bill asking it to ratify the commissioners' decision. Then the question is what an aggrieved party can really attack once the legislature has passed a bill ratifying the license.

MR. OSTROVSKY opined that if the bill remains with legislative approval the likely challenge would be on a constitutional basis. There wouldn't be much point in challenging the agency determination because the findings of the commissioners would be less relevant due to the subsequent legislative process.

CHAIR FRENCH summarized that the unsuccessful applicant loses the ability to challenge the decision of the commissioners as

having no rational basis because the legislature has superseded its judgment in place of the judgment of the commissioners.

MR. OSTROVSKY said that is his opinion.

4:28:11 PM
SENATOR THERRIAULT said he'd like some discussion on the legislature interjecting itself into what is generally an executive function. He questioned the advisability of stepping back into that unknown. The administration must have considered that in the original bill and the Chair just brought up the question of whether the commissioners' decision is superseded by the legislature by passing a bill. He noted that the AGIA bill calls for a resolution and not a bill. He asked if there's a difference between a bill and a resolution.

CHAIR FRENCH replied the short answer is yes and the committee would discuss that in the future.

SENATOR THERRIAULT reminded the committee of the solid week of discussion from last year about whether the legislature can demand ratification.

MR. OSTROVSKY commented that he agrees with the statement Mr. Bullock made yesterday that there are separation of powers issues related to the legislature essentially doing executive branch functions such as entering into or approving contracts. This situation is somewhat analogous to the 1998 consideration of the Stranded Gas Act because it too called for legislative approval. And so the attorney general did an opinion, he said. In both bills the separation of powers issue is a little unclear because to some degree they both involve the taxing power of the state, which is a legislative function. The separation of powers issue has come up a number of times before and the way it's generally been resolved in Alaska is though the doctrine of comity. That is the governor has agreed, as a matter of comity, to the legislative action. The AGIA bill is a similar case because the governor introduced a bill that initially called for legislative disapproval. "So I think as a matter of comity the governor has acceded to a legislative role in here."

MR. OSTROVSKY summarized that he believes there is an underlying separation of powers issue related to the AGIA bill, but that issue will always be there if the legislature wants to take a role in what is arguably an executive branch function. In the past it's been resolved with the executive branch recognizing a colorable claim of separation of powers but agreeing to a

legislative role as a matter of comity. “I think that’s reflected in the bill,” he stated.

SENATOR THERRIAULT noted that the Stranded Gas Act was problematic in that it spanned many governors and asked if this “agreement” would survive the next administration.

MR. OSTROVSKY said no, it’s particular to an individual governor to say that or not. If this isn’t a license in four or five years another governor could say that the legislature has no role. This governor has not expressed intent to do that in this bill, he said.

4:32:35 PM
CHAIR FRENCH said his perspective is that it’s a bit of a tradeoff or political bargain between the two branches of government. The governor is giving the legislature a grant of authority because that was the pattern of the Stranded Gas Act and the legislature is happy to have the ability to not disapprove or to approve the applicant before granting this enormous contract that deals with a huge piece of the state’s resources.

MR. OSTROVSKY said he wants to clarify that the separation of powers issue is always out there but it is not clear that this bill is a violation of that. The attorney general looked at the Stranded Gas Act because it involved the state’s fiscal system and that’s a legislative branch function. One way to look at it is that the legislature gave away part of its authority to the executive subject to legislative approval. Clearly the separation of powers issue is always out there but it isn’t clear that this violates it.

SENATOR THERRIAULT reminded members that last fall when the legislature sued the governor to prevent him from potentially signing a contract it argued that to the court. Because the legislature sort of loaned out its power it would most likely prevail. The superior court judge agreed and ruled that the governor was barred from signing a contract. He isn’t sure that AGIA is the same because the legislature is passing judgment on what it is willing to do with the taxing authority right now. We’re not loaning our authority out saying negotiate and then we’ll ratify it after the fact.

MR. OSTROVSKY agreed that the facts are different here.

CHAIR FRENCH said it's worth pointing out that three or four days was spent on the issue last year in part because many citizens were concerned about their ability to study the record upon which the commissioners would make a decision. He noted that the Stranded Gas Act called for a high degree of secrecy and AGIA takes a different approach. AGIA says that an applicant's record is open for public inspection the day the application is put forward unless it's a trade secret. That would be addressed subsequently under a different subject, he said.

CHAIR FRENCH stressed that the committee must acknowledge that the applicants surrender a significant of their due process rights through the legislature inserting itself to approve the license. He continued to say that:

> The fact is if an unsuccessful applicant who's unhappy with the decision of the commissioners can only attack that decision…during that 60-day legislative process when we're about to grant the license to somebody else, that's their opportunity…to have their day in court. They…come here and make the case that the commissioners made a bad decision…that they're going in the wrong direction…that something has to be done before we go down the wrong track. That's in essence their trial. Just as much as it's an affirmation of the decision made by the commissioners to grant the license in this direction, it's the unsuccessful applicants opportunity to have their hearing…on the nature of their grievance. That's the way I read it.

SENATOR THERRIAULT requested some discussion about the difference between a resolution and a bill.

MR. OSTROVSKY said his understanding of the difference is that a resolution has to do with the sense of the body and conduct within the body and a bill has external affects. A bill sets obligations and rights of parties outside. Under the current committee substitute there is approval by resolution. In a way it turns a resolution into a bill because it has an affect. He didn't know if that's a problem. He believes they effectively become the same but he would suggest the committee ask the legislative drafters.

4:38:02 PM
SENATOR McGUIRE said in this instance the governor clearly has approved a project through the commissioners so the meaningful

affect would only be there if a governor had a different viewpoint. In this case a resolution and a statute would have similar affects, she stated.

MR. OSTROVSKY added particularly if there's the issue of comity.

CHAIR FRENCH stated his belief that Mr. Bullock will say it makes a big difference and that it should be a bill rather than a resolution. "I guess I'm not hearing any fierce opposition from the Department of Law with respect to that point," he said.

SENATOR WIELECHOWSKI expressed the view that it makes a huge difference for two reasons. First, Article IX, Section 4, talks about exemptions of a different kind granted by general law so it is helpful in terms of the surrender clause and taxation. Second, it helps in terms of appeal rights. As previously mentioned the rights of appeal are lower when it's a legislative decision as opposed to an agency decision.

MR. OSTROVSKY said that might be correct, but he would point out that the legislature is considering the bill right now.

SENATOR McGUIRE said she wants to hear the legal arguments in this committee but she also thinks it's important to be practical. In that regard she noted that sometimes it's difficult to get 61 people to make a decision on something. Senator Wielechowski's argument is good but she'd like to hear some practical parts interjected. The idea is to end up with a gas line contract but at the same time ensure: that the process tracks the constitution; that it's done appropriately; and that the rights of appeal are reserved. There's a balance there somewhere, she said.

CHAIR FRENCH said he's had the same thought. "There's a tipping point in there between what's constitutional and what gets a gas line and…it's worthy of keeping in mind."

CHAIR FRENCH asked if there are more questions about the point at which a legal challenge can be brought.

SENATOR WIELECHOWSKI stated that this is a very worthwhile discussion to have because the issue is to protect the state from being stuck in litigation for years to come.

CHAIR FRENCH suggested the committee spend a bit of time on the legislative role in approving the license versus disapproving

the decision to issue a license. He asked Mr. Ostrovsky to give his view of whether there is a difference and if so, what it is.

MR. OSTROVSKY said the original bill called for legislative disapproval in part to give people the right to challenge in court the administrative record. Any challenge would be on the commissioners' decision and if the legislature had disapproved the decision there wouldn't be anything to challenge, he said. By changing it to approval the legislature inserted itself and that probably takes out the opportunity for an administrative challenge. Essentially the legislature becomes the citizens' input in lieu of the court.

CHAIR FRENCH questioned what the administration had in mind to present to the legislature in terms of a resolution or bill when it initially proposed the AGIA bill.

MR. OSTROVSKY explained that under Section 43.90.200 of the original bill the commissioners were to forward a notice of intent to issue a license.

MS. HARRIS added that the commissioners were to forward letter of intent to issue the license and the finding that had been made public. She didn't know what the document itself would have looked like, but it would probably have been an advice to the legislature. The legislature could take action if it disapproved.

CHAIR FRENCH referenced page 10 of the original bill, which says that unless the notice of intent is disapproved by joint resolution the license would go into effect. Suppose the legislature considered the commissioners' decision for 30-days and then went home without disapproving it and without passing a joint resolution. He questioned what the state would have argued in court if an unsuccessful applicant asked for a full rehash of the agency decision in superior court, looking at every finding to see if it had a reasonable basis. Would the state argue that by not disapproving it, the legislature was in essence approving it or would the state waive that argument and let that long process take place?

MR. OSTROVSKY said he doesn't believe the state would waive that right, but he does think that under this statute it was a final agency action that is subject to appeal. You can't read much into the legislature's approval or disapproval; you'd have to review the agency record and see if the decision was made correctly.

CHAIR FRENCH summarized saying you believe that there's a greater likelihood of a full reasonable basis examination of the commissioners' decision under the disapproval scenario than under the approval scenario. Under approval it's clear that the challenge is wiped out, but it may survive under the disapproval scenario.

MR. OSTROVSKY clarified that he believes it does survive under the disapproval scenario.

SENATOR WIELECHOWSKI said that goes back to the issue of it being a resolution or a bill. As a resolution it's a final agency determination and the losing party has the right to go to court. If it's a bill that right does not exist. The only right at that point is to attack the constitutionality. "That's why I think it's critical that we figure out a way to make this into a bill instead of a resolution," he stated.

CHAIR FRENCH asked if there is more discussion on this point.

4:47:46 PM
SENATOR THERRIAULT mentioned the House language that cuts out a disgruntled applicant and questioned whether they would be the only potential challengers of an agency determination.

CHAIR FRENCH said not necessarily, but it's hard to imagine other entities that would have the financial interest and wherewithal to bring a challenge. But there could be citizens that are aggrieved by the decision and want a review, he said.

SENATOR THERRIAULT wondered if the House language really cuts that out because they've waived that right.

CHAIR FRENCH said in this case it wouldn't be an applicant. A more efficient way to address it might be to box out all the commercial players from attacking one another subsequent to a commissioners' decision. But it's not possible to ever really get away from the disgruntled citizen who doesn't like a particular company, he said.

MR. OSTROVSKY advised that Mr. Bullock made the House version a bill rather than a resolution.

CHAIR FRENCH announced that the committee would look carefully at the work from the other body and take it up as a possible amendment at the appropriate time in the proceedings.

SENATOR McGUIRE asked for additional discussion on approval versus disapproval because she believes it might have been better as originally drafted. She reiterated that getting 60 people to move in one direction is very difficult and she's a bit worried about the legislature supplanting the court process.

MR. OSTROVSKY stated that disapproval was in the original bill in part for a clean administrative decision. It's really a policy call for a fulsome avenue for judicial appeal or a political avenue with legislative approval.

4:51:51 PM
SENATOR WIELECHOWSKI opined that it's a balancing test: the original bill had legislative disapproval; if the legislature takes no action then the decision to issue a license is automatically approved; if the legislature takes no action it gives up the right to potentially head off numerous lengthy appeals; if the legislature is to approve there will be tremendous pressure on all sides for some sort of action; the risk of delay translates to billions of dollars every year. "So it is a balancing test in my opinion," he stated.

MR. OSTROVSKY explained that the original bill had disapproval in part because of the administrative record, but also because the administration believes that it makes for a quicker process. The commissioners make a determination and the legislature has the ability to act on it. That moves the process forward quickly and gives citizens the right to challenge the decision. The administration has full confidence that the commissioners will make a good decision and with a very defensible record.

SENATOR McGUIRE said she still isn't pleased with the change. Stating that she trusts this administration, she described the AGIA process as more transparent than the previous process. Also it provides an opportunity to evaluate and it has a track record for appeals and process that's clear. Thus she's concerned about adding 30 days and interjecting a political body into such an important process. My goal is similar to Senator Wielechowski's, she said, but my approach is the opposite.

MR. OSTROVSKY pointed out that picking an applicant is really more an executive function while a piece of legislation gives the executive branch direction on how to do something. Doing that thing is what the executive branch does, so the legislature will have a different kind of debate under the approval scenario because it will have to do with picking a particular applicant.

"That's another reason that we felt that this…feels like more an executive branch function and ought to be subject to the type of review executive branch functions are subject to," he stated.

SENATOR THERRIAULT said he agrees, which gets back to the issue of the legislative interjecting itself. Under the Stranded Gas Act the legislature was loaning its power, but that's not the case here. "Personally, I wouldn't require any legislative involvement," he stated. The legislature could dictate what it wants in the law and the executive could carry out its executive function.

4:56:15 PM
CHAIR FRENCH suggested the committee reserve judgment until the public and interested parties have had the opportunity to express their view on the matter.

CHAIR FRENCH recessed the meeting at 4:56:41 PM.

CHAIR FRENCH reconvened the meeting at 5:40:36 PM and opened public testimony on SB 104. He advised that each person would be given about five minutes to state their general concerns. Supplementary information could be sent to his office in written form and it would become part of the record.

PAUL KENDALL, Anchorage resident, said the legislature is defining the way Alaska determines value and manages its assets in an open and public manner. He sees a gathering of elected men and women with respect for differences to discover a way to make a better life for our children. He said he's still concerned about not seeing the faces of the testifiers. This large bet-on-the-come gas pipeline undertaking is insignificant to him but it is not inconsequential. The consequences will be huge for the Alaskan people. If indeed the time has come he believes that Alaska will have the Alaska sovereign line, the Canadian Highway line, and a hydrogen fuel-based economy. If he's right, Alaska may be the place where mankind breaches a new society. Some may find that statement suspect, but all things have a time to come and Alaska has paid heavily. He thanks the governor, her team, and the elected officials who mean to do the right thing. To this point the accomplishments have been admirable. The Alaska gas pipeline day of reckoning is close at hand and on that day everyone will see the true intentions of all parties that have come to share the spoils. He said he'd like to see two things: 1) a review of the volumetric space in the pipe sphere and 2) a review of the projected $3 mcf at the wellhead for the consumer.

In conclusion he asked the committee to please not underestimate the applications of hydrogen gas fuel because its time has come.

5:46:44 PM
PAUL LAIRD, General Manager, Alaska Support Industry Alliance, said this 400 member company generates more than 30,000 jobs for Alaskans. The alliance believes that if Alaska wants the North Slope producers to make firm commitments, then upstream fiscal issues need to be resolved first. AGIA puts too much emphasis on mitigating the short-term financial risks of pipeline builders and not enough to address the longer term risks of the shippers. He can't tell what fixes are needed to provide prospective shippers with fiscal confidence to make commitments exceeding $100 billion over the next 30 years, while still complying with Alaska's constitution. He urged the committee to determine what terms aren't constitutional and find a mutually beneficial solution that is. The alliance urges the legislature to craft a bill that acknowledges the interests of Alaskans, the developer, the transporter, and North Slope producers and shippers.

5:48:39 PM
JERRY McCUTCHEN, Anchorage resident, articulated the view that Econ One's work is garbage and the legislature should get its money back. Also he was not impressed with MidAmerican's statement that the 35 tcf would last for 22 years. The state's estimate that the decline would begin in about 13 years is about right. You're really suffering from lack of gas, he said. You need 60 tcf and you've only got 29 tcf according to Alaska Oil and Gas Conservation Commission.(AOGCC). Now Pt. Thomson is missing so now you have a third of the necessary gas. You're banking on the governor giving Pt. Thomson back, but its value isn't what it was 30 years ago as unexplored land. Now the market value is $70 billion. Can the state afford to give that asset back and how long is the litigation going to last? He believes it will last the entire Palin administration. He questioned how it's possible to design a gas line without Pt. Thomson.

5:51:42 PM technical difficulties.

MERRICK PIERCE, North Pole resident, said he is pleased there is not exclusionary language in AGIA that would limit competition among licensed applicants. He advised that he would focus on "Section 43.90.180-Application evaluation and ranking." There is a lot of good criteria including subsection (b)(1) regarding how quickly the applicant proposes to commence. He suggested adding language to paragraph (5). After "state." Replace the period

with a comma and insert: “and factors found by the commissioners to improve the health, safety, and welfare of Alaskans.” There are some entities that will build the project sooner rather than later and a project built sooner would have very positive impacts on the Fairbanks area. When Tom Irwin worked for Golden Valley Electric Association, he worked with an energy taskforce on energy matters for the Interior. The taskforce found that this area of only 82,000 people pays about $50 million every year for petroleum for electric generation and another $130 million for petroleum to heat homes and businesses. This staggering outlay of money will be reduced when there is a gas pipeline, he said. Also, his community has four coal-fired power plants for electric generation and steam heat that emit contaminants like lead, mercury and radio active material. Those emissions are obviously toxic. The Environmental Protection Association (EPA) has established that there is no safe lead exposure level for children. Also, high doses of mercury cause mental retardation and neurological disorders in infants. He encouraged members to look at the EPA publication, *America's Children and the Environment*. He said another concern is cancer. The typical coal-fired power plant emits more radiation than a nuclear power plant. That’s because strontium, thorium, uranium, and plutonium and trace amounts of all their radioactive isotopes are found in coal. He noted that uranium level in Healy coal is about 1 ppm and those radioactive isotopes contribute to lung cancer. In Fairbanks the lung cancer rate is about 25 per 100,000 people so years of delay means more people in Fairbanks will die of lung cancer and leukemia, more children will have lower IQs due to lead exposure, and more infants will be born mentally retarded as a result of mercury exposure. In conclusion he said there’s more riding on this gas pipeline than just the tremendous economic benefits; there’s a lot riding on getting the air cleaned up in the Fairbanks area. He urged the committee to include language that allows the commissioners to consider the health, safety, and welfare of Alaskans when they evaluate the different applications.

5:57:58 PM
SENATOR THERRIAULT asked him to restate the suggested language.

MR. PIERCE restated the following: On page 11, line 25 following “state.” replace the period with a comma and insert “and factors found by the commissioners to improve the health, safety, and welfare of Alaskans.”

CHAIR FRENCH said he too made note of the language.

JOEY MERRICK, Business Manager, Alaska Laborers Local 341, Eagle River, said this union, representing over 2,100 members in Southcentral, supports the gasline project because it's vital to Alaska's future. There are many aspects to AGIA, but the laborers union and its members believe that the most important issue is a project labor agreement to ensure that Alaskan workers are dispatched through Alaskan hiring halls. Also, Alaskan apprentices will be able to learn their craft and keep their money in the state to help maintain the economy. A project labor agreement will make sure that Alaska Native hire will take place, which will help with the unemployment rate in rural villages. Make sure the project labor agreement stays in the AGIA so that Alaskan workers can help develop the gas, he emphasized.

6:00:32 PM
PAT FALON, Marketing Representative, Alaska Laborers Local 341, said the gas pipeline is desperately needed, but Alaskans should not have to surrender to anything that does not include a project labor agreement. This agreement will retain young apprentices in the state by offering them good healthcare and a retirement plan. The project is all about Alaska so it makes complete sense to include a project labor agreement to ensure preferred Alaska hire It is Alaska's gas and Alaskans should be the primary labor force. Consider how important this is to Alaska's economy and make sure the AGIA includes a project labor agreement, he stated.

6:01:48 PM
TAMMIE WILSON, wife of a millwright and mother of a Local 302 apprentice, Fairbanks, said those outside the state do not trust Alaskans so let them know that Alaskans believe in giving Alaskans priority through project labor agreements. Our well-trained and intelligent workers are invested in our communities and deserve to be at the front of the line. Please put a project labor agreement in the AGIA, she said.

6:02:49 PM
MICHAEL FRIBORG, Business Agent, Local IUOE 302, said he agrees with Mr. Merrick. The union work has been good to him and his family and he'd like it to go on for local people and people in the rural villages. The project labor agreement is the only way to ensure local hire, he said. He has worked with Bechtel under a project labor agreement for five years and the training has been very powerful. We can make this project many times as powerful as that, he stated.

6:04:30 PM
JON BROWN, Local IUOE 302, Fairbanks, said Alaska's natural gas has the potential to secure Alaska's future. We have one chance to get it right, he said. The state wasn't ready for TAPS, but there's lead-time now so a better job can be done in training the workforce. He listened to Don Bullock who said that whatever Alaska wants in the pipeline should be put into the bill and he agrees. We need a low tariff to ensure the state gets fair compensation for its resource and so that independent companies can afford to ship their gas in the pipeline, he said. One way to get a low tariff is to include a project labor agreement to ensure a predictable cost and supply of labor. Also we can ensure labor stability with no strike or lockout provisions. The workforce will be competent and trained in standardized programs that have class-time and on-the-job training. The cost of labor will be known because wages and benefits will be agreed to before work starts. The use of instate hiring halls will give Alaskans the best opportunity to get jobs that are associated with the gas pipeline. He urged the committee to include a project labor agreement in the bill.

6:06:58 PM
BARBARA HUFF TUCKNESS, Director of Legislative and Governmental Affairs, Teamsters Local 959, said this union represents about 5,000 active and retired members throughout the state. Many members worked during construction of the oil pipeline and a number still work on the North Slope or in indirect jobs. However, that's nowhere close to the 25,000 members who worked on TAPS at the peak of construction. For over 30 years there's been talk about construction of a gas pipeline here and some who worked on the oil pipeline thought they would move directly on to the gas related jobs. Today all have given up on that idea, she said. The Murkowski Administration negotiated a deal with the oil producers and that effort failed miserably. Now the Palin Administration has introduced SB 104 or AGIA, and Local 959 believes that this may be the needed framework for constructing a gas pipeline in Alaska. Some say AGIA is a huge risk, some say it favors the pipeline builders rather than the gas owners, and some say the state should not tell bidders what to bid. But those who represent workers believe AGIA may well be the vehicle needed to move the gas pipeline project toward reality. Our members view AGIA as a tool for the governor to use just as our members need their tools to perform their jobs every day, she stated. The governor has presented an aggressive schedule that contains quantifiable results. The previous committee and the governor should be applauded for including a commitment to negotiate a project labor agreement, she stated.

No company would say this agreement isn't justified on a project of this magnitude. With a project labor agreement in place it will be possible to define training needs, legally require local hire through local halls, and to define wages, benefits, and working hours. The committee should remember that the gas pipeline is vital to the future economic wellbeing of the state. There's a window of opportunity to move forward this legislative session; give the governor the tools to perform her job and support passage of SB 104, she stated.

6:11:11 PM
JIM LAITI, Manager, Plumbers and Steamfitters Local 375, Fairbanks, thanked the legislature and the Palin Administration for their efforts in promoting a project. Right now the signs are encouraging he said. In late 1969 he was an apprentice and was fortunate to be in the middle of the construction boom in the 1970s. The best way to prepare Alaskans for this project is to utilize the programs, facilities, and instructors that are currently in place. His apprenticeship program, which is representative of many others, requires nearly 2,000 hours of shop and classroom training and 8,000 hours of on-the-job mentoring under the supervision of qualified craftsmen. He emphasized that training will not create an effective workforce without on-the-job experience as well. The proven track record of joint apprenticeship training committees (JATC) in training and placing Alaskans into construction jobs is without comparison, he said. According to 2004 statistics, labor management JATCs in Alaska accounted for 84 percent of the active registered apprentices. The apprentices benefit from the culture developed in Alaska's oil industry in recent years in terms of having a safe work place, a productive workforce, and producing a quality product that considers the environment. We've come a long way since TAPS so let's make the most of our experience. Maintain language for a project labor agreement and ensure use of the proven apprentice programs, he stated.

6:14:27 PM
TIM SHARP, Business Manager, Alaska District Council of Laborers, said the 5,000 members strongly support project labor agreements. Since his last testimony project labor agreement language has been added to AGIA and doing so takes care of a good part of the remaining concerns the union had. All they ask now is to tighten it up to take out any ambiguity. He wants to hammer home the tenets that will make or break a successful project and make sure the results of developing Alaska's resources will maximize benefits to Alaskans. With the certainty of training and a project labor agreement there will be a

definable goal to train towards. We look forward to turning on the training schools full bore, he said. We can do that because we know we have a deal coming online. If we'd had definable goals and needed verbage to maximize Alaskan hire and training back in the 1970s, we would still be talking about what a successful project that was. Union and nonunion Alaskan contractors could bid and multinational corporations and contractors—union and nonunion—participated. Everybody got a chance to bid and Alaskans got a chance to work, but we weren't ready. This time we can be ready and we can make sure that the overall project assures benefits and dollars for Alaskans.

6:17:37 PM
TRAVIS TOLMAN, Apprentice for Laborers Local 341, said he supports the pipeline, which will help him provide for his family. The more he has learned the more he has became convinced that AGIA must include a project labor agreement because it will ensure Alaskan hire on the single most important project the state has ever seen. It will keep the economy strong and young apprentices in the state with the security of decent wages and benefits during a time when benefits are hard to come by.

6:19:03 PM
DENNIS KNEBEL, Business Development Coordinator, with IBEW Local 1547, said he is also a journeyman electrician. He listed projects he worked on that had project labor agreements and said all were good projects that maximized local hire with good wages and good benefits.

6:20:02 PM
VINCE BELTRAMI, President, Alaska AFL-CIO, thanked Governor Palin for sticking to her guns and seeing AGIA through because this approach serves all Alaskans. If it fails it won't be due to a lack of effort by those seeking to ensure that Alaskans get the best possible deal for their resource. Including project labor agreement language is the only legal means that preferential Alaska hire can be achieved and it assures a relationship with union apprenticeship programs. Unions represent a large majority of workers who do the heavy and highway construction, which are the skills needed for this project. He cautioned legislators to be leery of those who have made claims to the contrary because he has not seen any nonunion apprenticeship programs that are doing training in the heavy construction arena. Not having a collective bargaining agreement with unions through a bona fide project labor agreement invites risk that AGIA seeks to avoid. Project labor agreements that have been negotiated with Alaska building trades councils have

successfully built the largest and most complex projects in the history of the state. Large multinational and sometimes nonunion construction contractors have successfully bid on and worked under the terms of project labor agreements throughout the state. The critics of project labor agreements don't represent employees or pipeline building contractors, he stated.

6:22:30 PM
SENATOR WIELECHOWSKI asked what percentage of the federally registered apprentices in Alaska belong to union programs.

MR. BELTRAMI said about 2,000 apprentices are federally registered under the Bureau of Apprenticeship and Training and 85 percent are enrolled in union apprenticeship programs that include 1,000 hours of classroom instruction as well as supervised on-the-job training.

SENATOR WIELECHOWSKI asked what percentage of the heavy and highway construction workers are union members in Alaska.

MR. BELTRAMI said it's about the same. Roughly 85 percent have the experience to do the type work that will be needed to construct a gas pipeline.

SENATOR WIELECHOWSKI asked what percentage of the employees hired through the project labor agreement for the missile defense site were Alaska hire.

MR. BELTRAMI said he understands that there was approximately 90 percent Alaska hire. That included 12 percent Native Alaskan hire, 5 percent veteran hire and 5 percent female hire.

SENATOR WIELECHOWSKI asked if Bechtel and Fluor are typically union shops.

MR. BELTRAMI said not usually, but they don't mind working under project labor agreements.

SENATOR WIELECHOWSKI asked if he'd gotten any feedback from Fluor and Bechtel regarding the experience they had using the project labor agreement.

MR. BELTRAMI advised that he was a prime negotiator on the missile defense project labor agreement when he was the president of the building trades for Anchorage. Both companies sent letters expressing pleasure with the professionalism of the craftsmen they were associated with on the job. Things were

ahead of schedule and under budget and safety was top notch. They attributed it to the relationship with the unions. There really weren't any substantive issues at all and over 1,000 people worked on the project.

6:25:29 PM
SENATOR WIELECHOWSKI asked if his experience is that project labor agreements have been successful in Alaska.

MR. BELTRAMI said he isn't aware of even one that hasn't been successful. Seven or eight such projects have been done in Juneau and CBJ has made using project labor agreements a policy. Right now the new high school and the hospital expansion are being done under project labor agreements.

6:26:41 PM
DAVID GOTTSTEIN, Co-Chair of Backbone, Anchorage, said AGIA may not be in perfect shape but it is a good platform to work from. It provides for a competitive and fair process for bidders and the more vibrant the bidding pool the more the winning bidder will be able to offer. Some say that the producers are arguing that it is exclusive and that a competitive process results in one winner. In the first case, most competitive processes pressure participants to submit their best offer thereby achieving better results. Second, the inducement will reduce the risk of the project and attract more bidders that will offer more in economic terms. Third, contrary to what the producers say, they are not the only companies that are qualified to build the pipeline. In other places gas lines are built and owned by independent pipeline companies and not producers. For example, Warren Buffet and MidAmerican are one of several investors that are ready to offer billions of dollars in equity to start the project. Fourth, once the project is chosen, the producers are required under their leases to commit their gas or risk forfeiture. Exxon wants everyone to believe that only they can decide when to market our gas, but they are legally required to sell our gas when the market is ready to purchase it. It's a game of chicken and the producers hope we take the bait and veer from the path of maximum opportunity for the state. Don't be afraid to offer Pt Thomson gas because there's a high chance that the supreme court will affirm the administrative decision canceling the leases. Holding back offering the gas to a market allows the producers to win, but sound business judgment dictates taking the probable course and mitigating the small chance of failure. In the worst case, sufficient gas will be made available for a smaller project that is economic, which we're told might be only 1 bcf/day. More than likely the

producers will fall in line so as to not be left behind. Holding back would further risk their leases and generate the wrath of Congress and the American people. If the court strikes down the lease cancellations then the break-up fee could be paid to the winning bidder as a consolation. But the benefits of proceeding and the likelihood of success far out weigh the likelihood of failure and the associated costs. "Let's not be chicken." Getting our gas to market to benefit all Alaskans is what AGIA is all about.

CHAIR FRENCH thanked the public for taking time to testify and announced he would hold SB 104 in committee.

There being no further business to come before the committee, Chair French adjourned the meeting at 6:31:05 PM.