

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 18, 2007

5:53 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
 04/12/07 (S) Public Testimony 5:30 pm to 7:00 pm
 04/13/07 (S) JUD AT 1:30 PM BUTROVICH 205
 04/13/07 (S) Heard & Held
 04/13/07 (S) MINUTE(JUD)
 04/13/07 (S) JUD AT 5:30 PM BUTROVICH 205
 04/13/07 (S) Heard & Held
 04/13/07 (S) MINUTE(JUD)
 04/14/07 (S) JUD AT 10:00 AM BUTROVICH 205
 04/14/07 (S) Heard & Held
 04/14/07 (S) MINUTE(JUD)
 04/15/07 (S) JUD AT 11:00 AM BUTROVICH 205
 04/15/07 (S) -- MEETING CANCELED --
 04/16/07 (S) JUD AT 1:30 PM BUTROVICH 205
 04/16/07 (S) Heard & Held
 04/16/07 (S) MINUTE(JUD)
 04/17/07 (S) JUD AT 3:30 PM FAHRENKAMP 203
 04/17/07 (S) <Teleconference Listen Only>
 04/18/07 (S) JUD AT 1:45 PM BUTROVICH 205
 04/18/07 (S) JUD AT 5:30 PM BUTROVICH 205

WITNESS REGISTER

DON BULLOCK, Attorney
 Alaska Legal and Research Services Division
 Legislative Affairs Agency
 Alaska State Capitol
 Juneau, AK 99801-1182

POSITION STATEMENT: Outlined changes in Version 0 CS for SB 104

PATRICK GALVIN, Commissioner
 Department of Revenue
 Juneau, AK

POSITION STATEMENT: Responded to questions related to SB 104

MARCIA DAVIS, Deputy Commissioner
 Department of Revenue
 Juneau, AK

POSITION STATEMENT: Responded to questions related to SB 104

ACTION NARRATIVE

CHAIR HOLLIS FRENCH reconvened the Senate Judiciary Standing Committee meeting at [5:53:33 PM](#). All members were present.

SB 104-NATURAL GAS PIPELINE PROJECT

CHAIR FRENCH announced the committee is continuing to work its way through an overview of the Judiciary committee substitute (CS) for SB 104 and Version O has been adopted.

DAN BULLOCK said he was going to back up from where he stopped this afternoon.

Page 21, line 27, and page 22, line 26, have similar provisions. The Senate resources version had language that said if the Federal Energy Regulatory Commission doesn't have a rebuttable presumption in effect, rolled-in rate treatment applies to the cost of the expansion of the project and the person receiving the inducement could participate in the hearing before FERC. That language is deleted from Version O for both the royalty inducement and the tax inducement. Effectively, the provision dealt with who could argue before FERC; it didn't affect the FERC decision.

[5:54:56 PM](#)

Page 24, line 5, adds the clarifying language "issued under this chapter" following the word "license".

Page 24, lines 6-7, have language to require a constitutional challenge to this chapter, in the court of the state of competent jurisdiction so it directs the challenge to superior court. He explained that in the 1960s K & L Distributors investment credits case, the court said even though the legislature put in language saying the decision was final and not subject to appeal, the court would still consider the appeal on a due process challenge.

CHAIR FRENCH recapped saying a person's due process rights can only be restricted so far before the court steps in and overrides the attempted restriction.

MR. BULLOCK continued to highlight changes in Version O.

Page 24, lines 24-28, relate to the commitment of the state not to give the same benefits to a competing pipeline project that are given to the license in this Act. The assurance applies to giving inducements to producers that might use the other line as well as benefits to the competing gas pipeline. There's still a

treble damage, but in Version O they are three times the amount of the expenditures incurred and paid by the licensee that are qualified under 43.90.110. Basically, it's a narrower group of expenses that are tripled.

Page 25, lines 5-11, state that preferential royalty or tax treatment doesn't include specific things outlined in subparagraphs (A), (B), and (C). This is so the normal administration of tax and royalty programs and applying the law isn't considered a preferential royalty or tax treatment even if it might happen to benefit a competing line.

SENATOR THERRIAULT asked if that means that the agency could continue doing things such as the Oooguruk royalty modification.

MR. BULLOCK said probably, but it could be arguable if the purpose of the adjustment was to benefit the particular line. Generally, if a law passes that the tax structure is changed, that isn't prevented here.

5:58:47 PM

Subparagraph (B) talks about statutory change or changes in regulations. Subparagraph (C) on line 10 of page 25, says "the benefits of a large project permit coordinator authorized by a law in effect on the effective date of this section." DNR has large project permit coordinators that aren't clearly authorized by a particular statute like the gas line coordinator created in the AGIA bill even though they do have general authority to manage how permits are considered. That's why the reference is a bit vague, he said.

Page 25, lines 13-16, relate to the assignment of all or part of a license, including rights and obligations. It requires the commissioners to publish notice of a proposed assignment including giving the legislature notice and providing at least 30 days for public review and comment.

Page 25, line 31, through page 26, line 4, relate to the assignment of the voucher under 43.90.330. He suggested the committee ask the administration to clarify whether the transfer of the voucher is specifically between two utilities or if it could be between a utility and the gas producer.

PATRICK GALVIN, Commissioner, Department of Revenue, explained that the voucher could be transferred between two utilities, but it wouldn't be of any value until it's transferred to a producer who would use it for the royalty provisions. It has to be

somebody that will be paying the production tax, he said. The voucher may be transferred between non-producer entities but ultimately, the purpose of the voucher is to allow a non-lessee to be able to participate in the inducement.

6:04:39 PM

CHAIR FRENCH posed a hypothetical situation. Calpine commits to ship 1 bcf/day in the pipeline and receives a voucher that's good for royalty in kind and a tax freeze that apply to 1 bcf/day. Calpine takes that voucher to BP and ConocoPhillips and asks to buy .5 bcf/day from each. Now the voucher is split with regard to those two producers so each producer has a royalty in kind and royalty in value switching deal and a tax freeze deal good for .5 bcf/day. He asked if, in this hypothetical, subsection (d) on page 25, which talks about "a person receiving a voucher" would be referring to Calpine.

MARCIA DAVIS, Deputy Commissioner, Department of Revenue, said subsection (d) was intended to address only the gas purchaser. In the hypothetical, Calpine's voucher can only be assigned if Calpine transfers the complete contract rights it has in the pipeline to someone else or if Calpine is sold to another legal entity. The provision was only intended to address the assignment by the originator of the pipeline capacity acquisition in the initial pipeline. It's non-transferable amongst the producers and the duration is limited.

6:07:01 PM

CHAIR FRENCH asked if Calpine could sell the voucher to Shell Oil.

MS. DAVIS said yes; Calpine could transfer the voucher to Shell Oil or anyone as long as it transfers the entire capacity it acquired at the initial binding open season. It can't be split. "We didn't want to end up with people carving out pieces, so just as a producer can only transfer the royalty and tax benefits in connection with the sale of their entire North Slope interest or the company sale itself, we wanted to have a similar very large rope around this piece so that we didn't end up with a huge administration problem of tracking it," she stated.

MR. BULLOCK raised the question of one gas buyer transferring the voucher to another gas buyer.

MS. DAVIS explained that a lot of the detailed language in the voucher section is being deferred until the bill is considered in the next committee. "The only way a buyer of gas is going to

be able to transfer this to another buyer of gas is if they actually transfer their entire capacity in the pipeline to another buyer," she stated.

MR. BULLOCK said he was wondering if a utility in Fairbanks could transfer the voucher to a utility in Anchorage or if this simply addresses a transfer from a buyer to a gas producer.

MS. DAVIS explained that the state would only be focused on Calpine. As part of the regulatory process, any time a Calpine buys X volume of gas from Arco for a particular duration, that information flows back to DNR and DOR so both agencies will know who is entitled to the tax and royalty, in what amount and for how long.

CHAIR FRENCH suggested a flow chart would be helpful.

[6:10:54 PM](#)

MR. BULLOCK continued to highlight changes in Version O.

Page 26, lines 8-11, is the provision for developing a program for employment training related to the project. There is no change, it's simply in a different location. The severability provision was here originally and it's been moved to the uncodified law.

Page 28, lines 5-6, relate to an exclusion from the procurement code for certain contracts. The only change is to remove the reference to abandonment to be consistent with the abandonment section, which only focuses on whether or not something is uneconomic.

Page 30, lines 9-27, are the three uncodified sections.

Section 5 says that as soon as practicable requests for applications will be issued. It says the legislature has the intent for it to happen within 90 days.

Section 6 is an intent section that asks the court to expedite cases that are related to the project that would be licensed under this Act.

Section 7 is the severability section that was formerly located in codified law.

Recess from [6:13:19 PM](#) to [6:15:18 PM](#).

CHAIR FRENCH reconvened the meeting and recapped the issues for the committee to consider. The first is whether or not to affirmatively include a sentence that says that if the bill is not approved, the license may not be issued. He noted that Senator Wielechowski has a concern about whether the phrase "final administrative action" should be included in the bill or not. There are some policy issues related to that being in or out, he added.

CHAIR FRENCH asked Senator Wielechowski to state the idea of the AOGCC.

6:16:10 PM

SENATOR WIELECHOWSKI said the suggested amendment stems from the hearings yesterday regarding AOGCC. Everyone assumes there will be enough gas offtake available, but it isn't a certainty. The following is a contingency to provide a safety valve for all parties, he stated.

Page 15, line 15, following "net present value of the project":

Insert "are necessary as a result of AOGCC rulings"

Page 15, line 19, following "and":

Insert "except for changes required as a result of AOGCC rulings"

SENATOR HUGGINS asked what the administration thinks.

6:17:30 PM

MS. DAVIS said we're comfortable that 4.3 bcf/day to 4.5 bcf/day is a reasonable design criteria for a pipeline off the North Slope, but we all know that there's an uncertainty as to what the gas offtake rate will be on the Slope over time. Inserting the suggested language might make applicants more willing to step up to the plate and commit to projects.

SENATOR HUGGINS said he wants to make sure this doesn't allow a modification that would ultimately be of questionable value to the state.

MS. DAVIS said there's still the requirement for approval by the commissioners and there's also the economic backstop of whether a project is uneconomic. We do have to have some comfort that a company isn't going to spend millions of dollars on something they think is not economic, she stated.

SENATOR HUGGINS mentioned the maximum benefit factor and said he wants to make sure we can live with our measuring stick.

MS. DAVIS said the ultimate limiter is how much gas can come off the North Slope and everyone will have to deal with that as a commercial reality.

SENATOR HUGGINS said, "Or additional exploration."

MS. DAVIS agreed and said that would modify all projects.

MR. BULLOCK said his reading is that if the economics are headed south, the first thing is to see if the project can continue with a reasonable return to the state. If not, you'd look at whether the project has become uneconomic, and after that you'd go to the section on abandonment. "This gives you a chance to stop and look at it and see where you are, see whether it can be salvaged or successfully modified, and then you can continue with the project."

[6:22:31 PM](#)

CHAIR FRENCH said the next item he's identified as a potential amendment is on page 17. The question is whether to use the national roster for all arbitrators that are being selected.

SENATOR WIELECHOWSKI relayed that there are probably very few arbitrators that can do these kinds of cases and in his opinion the entire national roster should be open. We pick an arbitrator from the entire roster, the other side picks an arbitrator from the entire roster, and then those two get together and pick the third arbitrator from the entire roster. "I don't think we have that right now so we would want to add some language that clarifies that," he said.

CHAIR FRENCH said he's had the same general idea in mind from the beginning.

CHAIR FRENCH highlighted the concern that any two arbitrators that agree that the project is uneconomic, could put an end to it. Although that might be the right decision, there should to be a specific avenue of appeal if the arbitrators have abused their discretion. "We need to at least have some guideline to our court should they take up the question of whether that was the correct decision." He said he'd prepare an amendment along those lines.

[6:24:58 PM](#)

MR. BULLOCK said this would be similar to an appeal of an administrative decision. The court would look at the decisions that can be made within the discretion of the arbitration board and the commissioners when they're going through all the applications. They'll look at the decision that was made by the panel and they'll look at the record to see if the evidence supports the decision that was made. If there wasn't a reasonable decision based on the evidence before them, that's an abuse of discretion. "In other words, the court avoids second-guessing a fact-finding decision unless they look at the record that was made and say it's just so far out of line that it's inconsistent with the evidence."

CHAIR FRENCH summarized that the arbitrators are held to the same standard of review that the commissioners are held to when they make their decisions.

MR. BULLOCK agreed.

SENATOR WIELECHOWSKI said he might disagree with Mr. Bullock just a bit. Drawing on his own experience he advised that it's virtually impossible to overturn an arbitration decision. He suggested the committee might want to consider having it be a substantial evidence decision so as to give the court some leeway. He opined that if nothing is done, the courts will administer this under an abuse of discretion, which is nearly impossible to overturn. Maybe we want that, he said. Also, he isn't sure that's actually the standard for commissioners. He believes it's more a substantial evidence standard where they look and ask what the substantial evidence is to support the decision. We may want to give the court that right of appeal, he said.

[6:27:06 PM](#)

SENATOR McGUIRE spoke in support of keeping the abuse of discretion standard because it's a commercial contract and it's a commercial situation. She expressed the view that parties will be more comfortable to apply for a license if they know the method by which the economic determinations will be made. Changing that well-recognized standard might make parties leery. Also, there needs to be some finality so that the arbitration process means something, she stated.

CHAIR FRENCH described it as a tough policy call because it could be either party that wants out. He said he agrees that there does have to be finality.

MR. BULLOCK said Senator Wielechowski brings up a good point because the court is flexible in this area. Sometimes it looks like it's abuse of discretion and it's kind of like substantial evidence so they use a combination. Normally the court reserves the right to decide questions of law that don't require expertise, but sometimes it's surprising what they consider agency expertise and then defer to it compared to an issue on which they would exercise their independent judgment.

[6:29:03 PM](#)

CHAIR FRENCH said the last item is the issue of whether the legislature has the constitutional authority to require legislative confirmation of the AGIA coordinator when it's not the sort of post that requires legislative confirmation. He asked Senator Therriault if he'd decided to offer an amendment.

SENATOR THERRIAULT said he would. "We could set up legislative confirmation of lots of governor appointments and we don't and nor should we," he stated.

SENATOR MCGUIRE said she doesn't disagree but it's splitting hairs. As a matter of correcting the record she advised that Drue Pearce was appointed by the president and confirmed by Congress.

[6:30:37 PM](#)

CHAIR FRENCH summarized that the committee has identified five issues. He said he'd prepare written amendments on items 1 and 4; he'd ask Senator Wielechowski to prepare written amendments on issues 2 and 3; and he'd ask Senator Therriault to prepare a written amendment on item 5. He asked members to have the amendments in his office by 10:00 am to make an orderly exit strategy possible.

[6:31:19 PM](#)

SENATOR WIELECHOWSKI mentioned that in an earlier hearing he had requested a definition of a competing natural gas pipeline project. He directed attention to the definition on page 25, lines 2-4, and said he's still not satisfied. His worry relates to precluding the potential for other projects for in-state gas. He advised that he'd work on a definition.

SENATOR MCGUIRE said she's equally troubled by the definition of treble damages. She recently heard a presentation for an in-state line to potentially take gas to her constituents. Who knows whether that will be a reality, she said, but it can be

clearly envisioned and you certainly wouldn't want the state to have to pay treble damages over something like that. Responding to a question, she confirmed that it's the ENSTAR proposal.

CHAIR FRENCH acknowledged that Senator McGuire would be working on an amendment.

SENATOR HUGGINS asked Chair French if he'd received clarification on the question of "any project" versus "the project" relating to the pipeline coordinator functions.

CHAIR FRENCH asked Mr. Bullock if he had received his memo on that subject.

MR. BULLOCK said no.

CHAIR FRENCH recapped the question is whether there are constitutional problems associated with having a pipeline coordinator working on a single project. He asked him to compare and contrast that to the federal coordinator who can work on any project. I want to make sure there aren't any constitutional impediments associated with assigning a state pipeline coordinator to work on a single project, he said.

CHAIR FRENCH asked if there were other concerns or issues.

SENATOR THERRIAULT said he's likely to bring up the issue of the length of the legislative approval process.

[6:34:38 PM](#)

SENATOR MCGUIRE questioned whether she's the only member who had concerns about treble damages and then she asked Ms. Davis to explain why that amount was selected.

MS. DAVIS explained that the purpose was to pique the attention of the applicants to let them know the state is serious. "In the totality of it, we just felt 300 percent had the zing and had the oomph that we needed to make sure that independents came forward."

SENATOR MCGUIRE asked if she believes that the ENSTAR project would be deemed a non-competing project.

MS. DAVIS explained that the definition for a competing natural gas pipeline project on page 25, lines 2-4, was developed with the understanding that in-state gas usage would be perhaps 400 mcf over the next 20 years. It was designed to capture pipeline

pieces that truly wouldn't be competitive with a 3.5 to 4.5 bcf/day project so bullet lines and spur lines coming off a main pipeline were reviewed. Without the qualifier, competing pipeline projects were envisioned to be ones that actually started in the same location and ended in the same location. Because we have a comfort level that the major projects are looking to go out of state, we don't see spurs or bullet lines being competitive and affecting the economic considerations of the big projects, she said. Acknowledging that she isn't familiar with the SEMCO proposal, she asked what the forecast is for volume carriage.

SENATOR WIELECHOWSKI recalled it was a "b."

MS. DAVIS asked if it envisions going to Valdez or if there's any export aspect.

CHAIR FRENCH said there is to the LNG plant.

SENATOR WIELECHOWSKI clarified it's the LNG plant in Kenai.

MS. DAVIS said that's not actually in-state; it's in-state plus an export component. "Once you go there I think it is problematic to say that a project that is proposing to take gas that is one 'b' now could be two 'b' after compression isn't a competitive project." Carving out in-state usage is okay, but going beyond that damages the concept of what is a competitive pipeline.

CHAIR FRENCH suggested adding "an in-state" before "market" on page 25, line 4.

MS. DAVIS said sure.

SENATOR WIELECHOWSKI said he doesn't see how that project really competes. Potentially that project will ship gas to Asia whereas all the projections here show shipping gas to western Canada or western United States.

MS. DAVIS agreed. If one entity does a pipeline and another entity wants to do a spur line and take it to Kenai and ship LNG out, the only way that would be a competing pipeline project is if the state selects a project that is taking its gas to Valdez for LNG shipment. But if the state selects a project that moves gas from the North Slope to Alberta and then Chicago, a project taking gas to Kenai for LNG export to Asia wouldn't be competitive because it doesn't lay in the same trough and it's

not taking gas to the same markets. Originally a competing natural gas project was envisioned to ask if it's taking gas to the same markets and the answer for LNG was no compared to Alberta or Chicago. Then moving gas from the North Slope to Fairbanks or Anchorage with off-take points was considered and that's basically shipping gas in the same trough to the same destinations. We don't want that to be considered competing, she said, so the 500 mcf/day escape clause was inserted.

SENATOR HUGGINS commented that when you look at the unit of measure by volume it doesn't matter where it goes. "If you need Y volume and they're taking Y minus 2, then you run into the same problem," he said.

MS. DAVIS agreed and said that's why the suggestion of making it in-state mediates it to an extent. There isn't going to be a 3.5 bcf/day or 4 bcf/day pipeline project proposed for in-state, she said. It'll be an out of state proposal so the spur line delivering in-state gas will be excepted by this provision.

CHAIR FRENCH said he would assign that definition to himself.

There being no further business to come before the committee, Chair French adjourned the meeting at [6:42:36 PM](#).