

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

March 19, 2007

3:36 p.m.

MEMBERS PRESENT

Senator Charlie Huggins, Chair
Senator Bert Stedman, Vice Chair
Senator Lyda Green
Senator Gary Stevens
Senator Lesil McGuire
Senator Bill Wielechowski
Senator Thomas Wagoner

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

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|----------|-----|---------------------------------|
| 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 |

WITNESS REGISTER

PAT GALVIN, Commissioner
Department of Revenue (DOR)
Juneau, Alaska
POSITION STATEMENT: Commented on SB 104.

TOM IRWIN, Commissioner
Department of Natural Resources (DNR)
Juneau, Alaska
POSITION STATEMENT: Commented on SB 104.

MARCIA DAVIS, Deputy Commissioner
Department of Revenue
Juneau, Alaska
POSITION STATEMENT: Commented on SB 104.

ANTONY SCOTT
Division of Oil and Gas
Department of Natural Resources
Anchorage, Alaska
POSITION STATEMENT: Commented on SB 104.

ACTION NARRATIVE

CHAIR CHARLIE HUGGINS called the Senate Resources Standing Committee meeting to order at [3:36:48 PM](#). All members were present at the call to order.

SB 104-NATURAL GAS PIPELINE PROJECT

CHAIR HUGGINS announced SB 104 to be up for consideration.

PAT GALVIN, Commissioner, Department of Revenue (DOR), made introductory remarks and turned the discussion over to Commissioner Tom Irwin.

TOM IRWIN, Commissioner, Department of Natural Resources (DNR), said he really supports AGIA because he is pleased to see the state stand up and frame what it wants. He said the state has hoped, wished, and watched for a long time but it is at the point where it can make something happen. "We can take this issue into the state's hands." He has heard comments about the state giving away \$500 million, but that is as far from the truth as possible. It is appropriate for Alaska to invest in its assets, he said. Some will say the state doesn't need to do that, but it clearly is making [the gasline] an economic project. He said if that's taken away, then Alaska slips back into watching or hoping for things to happen. "We clearly want

to be a driver, and the investment...[is] not a giveaway and it's not a one-time shot of money." It will be matched dollar for dollar, "and we're not trying to help a weak sister out...we're driving the process." He said the state is making an investment in resources that need to get to the market.

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COMMISSIONER IRWIN said many geologists say that there is more than the 35-36 tcf [trillion cubic feet of gas]. "We have hundreds of tcf—certainly in the 250-260, and then with offshore and looking for gas in gas-prone areas and finding gas in oil areas—we've got to provide that line...as accessible to all parties." This neither favors nor disfavors any one company. He wants it to be fair and for people to have access, he said. If Alaska is going to get people to explore—"you are not going to put risk into exploration if you can't monetize that. If you can't take the risk and when you find it if you can't get it to market, you just got to go elsewhere."

COMMISSIONER IRWIN said Alaska needs access from expansion and fair tariffs to go along with it. It gives companies an incentive to explore and lowers their costs. This bill goes toward lower tariffs. "I don't want this to be a looking back, but a looking forward." He said all have learned from the past. "I think you all know my opinion of the previous contract."

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COMMISSIONER IRWIN said there were 23 reasons "why we didn't like it." Regarding the old contract, "We weren't ready to accept all the issues of upstream lines and managing different take points and managing volumes through multitudes—hundreds of lines and then the gas line. We weren't ready...as a state to take all our gas in kind [and] compete in the open market and sell it when we had no valves or wells to control our flow in times of high output or low output. Too many risks." He stated that it was very intertwined and "not tweakable." He said AGIA is an opportunity to make something happen. If it is passed during this session, there will be an extremely qualified applicant within a year—whether it is a producer or someone else.

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COMMISSIONER GALVIN discussed the topic of what happens after getting the FERC certification and "that junction where if we have the credit support, you get one year. If you don't, you get five years." He said the question came up of the timeframe to get to that point. The AGIA bill gets to the point of application, and there was a question about the timeframe for

getting the FERC certificate. He noted a memo from consultant Don Shepler stating that FERC will evaluate the application to make sure it is complete, "and then the clock starts." There is one year to complete the draft environmental impact statement (EIS), another six months to finalize it, and then there are 60 days to issue the final order. It is a relatively rapid process. "So we're looking at something less than two years."

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COMMISSIONER GALVIN said the next issue was how the state could get damages or enforce the license provisions, and what happens if the licensee accuses the state of violating the deal.

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MARCIA DAVIS, Deputy Commissioner, Department of Revenue (DOR), said Section 240 attempts to solidify the state's expectations for performance, "and there would be no avenue for not being able to redress the state's harm." It allows the commissioners to determine whether a licensee has violated the following items: 1) use of state money for purposes other than as allowed under the statute, 2) a departure from the specifications that are set out in the application, 3) a violation of this statute or any other law material to the license, and 4) a violation of the license itself. A dispute gets 90 days for an informal resolution, she explained. During that time the state has the right to suspend its granting of money until the issue is resolved. If it's not resolved it becomes a written determination of violation, which could be appealed. The state can discontinue the state match, recoup state money if appropriate, seek license revocation, or any other remedies provided by law or inequity. She explained that the inequity was added in case there was a situation where the state desired a specific performance and it was allowable under equitable principles. The other area regards what a licensee can do to ensure that the state honors its deal.

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SENATOR WIELECHOWSKI asked if a license is revoked, can it be transferred or would the process start all over again.

MS. DAVIS said it would start over if the license were revoked.

COMMISSIONER GALVIN added that there would be an opportunity to recover the work product up to that point.

MS. DAVIS said it depends on how far the project has gone as to whether there will be applicants to take the project forward from that point.

CHAIR HUGGINS asked them to put that in context.

COMMISSIONER GALVIN suggested that one juncture would be where an applicant has a license and has moved to an initial open season. With an unsuccessful open season the applicant has an obligation to move forward, and if it violates the terms of the license by not moving forward, that would be one potential place to renege. The abandonment provisions allow a party to "give it up" if it determines it is uneconomic.

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CHAIR HUGGINS offered: "When you do the revocation and you have the...license back in your hands...you said the process would start over again...then you interjected something..."

COMMISSIONER GALVIN said, "That we could get the work product. In other words, there would be engineering and other design work that would go into the make-up of that initial open season, for example, if that's the point where we're at." That preliminary work to get to the initial open season, which is estimated to be worth \$25 million to \$200 million, would be available to the state. If the state continues under AGIA, the next applicant could use those products. It would have to be reassessed, he said. If the state goes ahead with an applicant that all parties trust and then it bails, "then I don't think it would be incumbent upon the administration to just go off and pick somebody else...without having a more public process." That process would be similar to the initiation of the license but with the recognition that some of the work is done.

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SENATOR WAGONER asked if company A gets to a place where it has spent \$225,000 and it was matched by the state, and then the company stops the work, and the state owns the work product, then "do we take that 275 up to 500 again or do we just use the 275 plus the work product?"

CHAIR HUGGINS said the amount is in millions, not thousands.

COMMISSIONER GALVIN said that eventuality would need to be clarified. His approach would be to not redouble that money, but offer the balance to advance the project forward. The legislature could be asked for an authorization change, he said.

CHAIR HUGGINS said, "That's why some of us asked Commissioner Galvin to look at an escrow account out past that so that we wouldn't have jeopardized our money."

COMMISSIONER IRWIN gave the scenario of having spent \$200 million--\$100 million from the state and \$100 million from the company. If the company leaves, the state keeps the full value. He said he can't say that something would require the state to provide more, but balanced against the company already donating \$100 million, "I think we would be on pretty safe ground to continue on, unless it was something exceptional, because we're taking their value and their product with us."

SENATOR WIELECHOWSKI asked if provision 240 would keep the state from pursuing other legal avenues if a licensee were negligent and violated the terms. Would we be able to seek other legal avenues?

MS. DAVIS said absolutely. That is the purpose of (4) which reserves any other remedies provided by law or in equity.

CHAIR HUGGINS asked if this is where we pay three times...

MS. DAVIS said yes. How the licensee is protected relative to the state not honoring its side of the bargain is contained on Page 18, Section 440. This is to ensure that a licensee that does honor its obligation to expend the funds to get to a FERC certificate does not find that the state diverts support to a competing natural gas pipeline. The state's consequence is three times the cost incurred by that licensee as of the date that the state first extended the support to the competing project.

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SENATOR WIELECHOWSKI said the state has been giving money to ANGDA, and asked if that is a violation of this section.

MS. DAVIS replied that the state has not issued a license to anyone yet. No one's expectations have been dashed. ANGDA requested funding to develop a study for a pure instate pipeline. The answer would be different after the license is issued.

MS. DAVIS said the cutoff date is the date the state first extends preferential treatment to the competing pipeline. Upon payment by the state of the triple costs, the state is assigned all of the project data, engineering designs, contracts and

permits, so the state still ends up with the product. Obviously the state would take into account this cost prior to throwing financial support behind a competing project, she said.

CHAIR HUGGINS asked why the payment would be three times the cost.

MS. DAVIS replied that it is high enough to be a disincentive.

COMMISSIONER GALVIN said it is intended to be a disincentive for the state. It is the mirror image of the fiscal certainty on the upstream tax. It's the fiscal certainty on the pipeline side.

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SENATOR STEDMAN brought up the definition of inducement and the gas tax. If that is modified, does that preclude some other entity to come forward and do a competing line and access that particular tax structure that is offered in AGIA? He noted that AGIA provides fiscal certainty for ten years. He said the progressivity in the PPT [profit-based petroleum production tax of 2006] is problematic with the ten-year fiscal certainty in AGIA. "Assuming we work out some of these details as we go forward, then am I to assume that this definition that would be included in the definition of inducement, and anybody that was to go forward with any other project, none of those modifications would be available?"

COMMISSIONER GALVIN said the intent is to link the tax credit--the tax freeze--to the initial open season for the licensed project. If a similar tax certainty provision were provided for an alternative pipeline project, then that could be considered to be the type of action that would trigger the damages associated with the financial assurance. "You'd be providing a favorable tax treatment that would be available or provide a competitive benefit to an alternative competing project." He said that for the life of the license, if the state provides added value to a competing pipeline, the damages would kick in.

MS. DAVIS said she didn't think this language would prohibit an across-the-board modification to Alaska's tax rate as it applies to gas or oil. It prohibits a preferential change designed to help a specific competing project. If the legislature determined that the tax on gas was inappropriate, it could modify it across the board because that wouldn't be seen as preferential.

SENATOR STEDMAN asked if it would be a stretch to assume that somebody may want to build another pipeline.

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COMMISSIONER GALVIN said the idea is if there is a third party pipeline and the producers are controlling the gas. After considerable work and expense, if the producers came to the state and asked for a deal in order to build a faster pipeline, the state will have to pay damages in order to do that.

SENATOR WIELECHOWSKI said this provision worries him, especially the four words: competing natural gas pipeline. What if the state gets a pipeline and it is shipping gas through Canada, and then the state finds 20 bcf of natural gas in Cook Inlet and decides to market it to Japan through the LNG plant? An incentive could not be provided due to this provision.

MS. DAVIS said it would not be a competing pipeline, it wouldn't be flowing the same population of shipper gas to the same market. The routes would be exclusive to one another.

SENATOR WIELECHOWSKI asked about a highway route that Alaska wanted spur lines on or an LNG route to Valdez.

MS. DAVIS said a spur line would be a stand-alone project and not considered in competition.

COMMISSIONER GALVIN said this could be clarified because it was not intended to be applicable for the life of the project. It is intended to get the project flowing.

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SENATOR MCGUIRE said the section ties the hands of the legislature. She wants to ensure that every hypothetical is considered. She surmised that lowering the PPT rate for everybody may fall within that provision.

COMMISSIONER GALVIN said he will try to clarify the language to meet the intent. The administration is not trying to preclude that change in the state's policy. It is for the case of targeting a particular project.

SENATOR MCGUIRE asked about the licensee being locked into a higher rate.

SENATOR WAGONER said it was difficult establishing a different rate in the PPT for the contract. He said tax rates should be figured out later, and maybe the PPT could be amended later on.

"I don't think we want to get into establishing a tax rate specific to this bill."

CHAIR HUGGINS said there is a division of opinion on that.

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MS. DAVIS started a sectional analysis of the bill. Article 1 describes the act and that it is designed to ensure the development of North Slope gas, promote exploration and development of oil and gas on the North Slope, maximize benefits to Alaskans, and encourage the commitment of natural gas shipment from the North Slope. Article 2 describes the AGIA license, which is awarded by the commissioners. Those awarded the license are entitled to the inducements listed in Section 43.90.110. The first inducement is matching contributions of up to \$500 million over a five-year period until the open season. Thereafter the match will be specified in the application, but not to be greater than 80 percent matched by the state.

MS. DAVIS said the statute defines qualified expenditures, and they must be directly and reasonably related to obtaining the FERC certificate. They don't include overhead, litigation, pre-dated assets, or civil penalties or fines. The second inducement is the benefit of the AGIA coordinator with duties specified in the act. The third benefit that the pipeline licensee receives is the benefits of a state program to provide training for employment for construction-related jobs.

MS. DAVIS said Section 43.90.120 describes the "out clause."

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CHAIR HUGGINS asked why go past three years after a successful open season.

MS. DAVIS said it depends on what the application is, because that's part of the competitive nature of the process. There is a direct match, 50/50, up until open season, and the estimates are that it would cost from \$50 million to \$200 million, so the state's share would be from \$25 million to \$100 million. "Thereafter, we've asked the applicants...to break out their proposal for state match in the eventuality that they have a successful open season versus an unsuccessful open season." She added that the expectation is that an intelligent applicant is going to look at the eventuality a successful open season as one where it would not want to propose a too-high use of the state's money in order to stay competitive with other applicants.

COMMISSIONER GALVIN said the applicants can reflect back to the state what they see as the appropriate risk-sharing after the open season, depending on what they consider to be success or nonsuccess. Part of that is a reflection that open seasons are cookie cutter. "They'll establish the terms of that open season." The word "binding" is in the eye of the beholder, he said. There are still potential risks associated with getting from that to the actual certificate and ultimately building the project. "Within the context of AGIA we are trying to provide a certain framework with a certain amount of restriction on the nature of the proposals, but there is a wide variety of potential proposals that could come back including the nature of that open season. And so what we're trying to allow is for the competitive world to come back to us with not only a description of what they would ask for in that open season. How far they're willing to go...and how certain they're going to be in what they're going to state as part of that initial open season and how binding that's going to be. But also depending upon how much commitment they get, what is the outcome from that. And they could say that from that point forward we may consider it to be a very low risk project, in which case we would have the state not have to pay anymore. And that would be part of their application and part of our evaluation of its value." He said one of the big drivers is the value to the state, and if the state gets to drop out of those payments, it will have a big impact on what the state sees as valuable. He added that it would be presumptuous to provide for no state commitment after a successful open season because of how to define it.

CHAIR HUGGINS said, "My concern, based on what you said, if I'm over here looking at the tariff meter, how I'm able to interpret what that's going to mean in relationship to all the different variables you were talking about in somebody's application. About longer, shorter, won't need the money, maybe, and how we know that their contract-part of it is the effect on tariff. How we figure out that this tariff meter's registration is calibrated correctly, based on the variables in all these different contracts."

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COMMISSIONER GALVIN said that is a significant driver in the evaluation.

CHAIR HUGGINS said he doesn't want to go chasing after tariffs. His concern is how valid the commissioners' conclusion can be when all the variables start floating around.

COMMISSIONER GALVIN said he recognizes the need for providing more information on how the evaluation criteria will operate. He will provide some examples and it can be discussed further. "The whole point of this is to avoid somebody manipulating the system so that they get a license and then end up with something that we didn't anticipate."

CHAIR HUGGINS asked, "On tariffs, what validity rate on percentage do you see in these variables in the contract that you will have true faith and allegiance to, when it comes down to this is accurate within what percentage, for tariff?"

COMMISSIONER GALVIN said he will be developing those examples for the committee in the next couple of days.

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SENATOR STEDMAN asked if this is just a superficial walk through the bill and if the committee will come back and go through it in more detail.

CHAIR HUGGINS said, "We're wading through it now at the level of detail we decide."

SENATOR STEDMAN asked about the \$500 million. "If we have...the midstream guys, the pipeline builders...and we have the upstream guys—the guys with gas, or we could possibly have some consortium coming together...to put forth a proposal...how do we justify [the \$500 million] if the major producers come forward and have the winning proposal with the strength of their balance sheets and tax flows and their gas resources on the North Slope?" He asked how the state can justify writing them a check for \$500 million.

MS. DAVIS said having the \$500 million makes a viable opportunity for the independents to bid and compete for this project, and otherwise the three might not have come with a proposal to build the project. "That's the challenge. We have to level the playing field." By having the maximum competition, the state optimizes the opportunity to have a viable bid from the producers, she added.

COMMISSIONER GALVIN said if the producers submit an application and say they don't need the money, "we get the terms...that we need in order to provide value to the state." If the \$500 million brings the producers to the table to accept the state's terms and build the pipeline, then that's what it took.

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SENATOR STEDMAN said, "I don't know their corporate attitude but just looking at how impacts on oil leaks, I'd be very surprise if they don't lay claim to a proposal of \$500 million in cash on the table." He asked what "mid-line folks" have requested the \$500 million, because the two he has talked to haven't asked for it. "And the issue of changing the level of risk between today and the successful open season seems to be substantially different from the successful open season and into the future. So how do we work on that? And I also want to talk a little bit about the 50/50 going to 80/20, and how that was put together and some of the drawbacks or benefits of that."

COMMISSIONER IRWIN said if Alaska doesn't put money on the table it will sit and wait until someone is ready under their company's priorities. The state wants to start developing the resource, and no one is moving forward. By having good economic tariffs and expandability in the line... "This state needs to start thinking about maybe lines both directions. Lines down south or lines to the port and then the other following." He said he is not making a predetermination of what comes first, but "we need to get gas to the Alaska world." He added that the initial gas will need to pay for a line somewhere. It is the expansion gas that will provide opportunities through other sources, whether it's a line for Alaskan's use as an off-take from expansions or whether it's an add-on line to the lower 48 or LNG. Alaska is driving the process and can't sit back and wait, he stated.

COMMISSIONER GALVIN said the state has had conversations with a number of potential applicants, from the producers to pipeline companies. He has talked to MidAmerica, TransCanada, Enbridge, and the Port Authority. Each one of them wanted to see the state put money into the project in order to feel the state's commitment. They can clarify that in testimony in front of the committee, he stated.

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MS. DAVIS said this is all about competition, so anything that someone might do to eliminate competitors is to their advantage. So it is not wise to eliminate something that one entity thinks is superfluous if it narrows down the number of applicants.

COMMISSIONER GALVIN spoke to the question about the difference between going from an open season to FERC certification, and why the state is putting money into that. The assumption is that there is a significant difference in the project's success rate

between an initial open season where there is up to \$200 million invested, to the "upwards of a billion dollars that you spend to get to the level of specificity with the project that's necessary to get to that FERC certificate." He said the level of certainty in the project that is gained getting from the initial open season to the certificate is so substantial that it is worth it to the state "given the situation that we find ourselves in now, where the producers have claimed that the reason for their lack of participation thus far is that level of uncertainty. ...In order to eliminate that, we need to get, likely, from an initial open season to that FERC certificate, because there is a...remaining uncertainty that will exist at the time of that initial open season that simple won't exist once we get to that FERC certificate." He said cost overrun risk was focused on, and he would like to talk about when that risk actually exists. Most people think it is when the ground is going to be dug, but most cost overruns come during the design phase, he stated. Getting to the level of certainty associated with the certificate is what is going to tell the state what kind of project there is and tell the producers what kind of risk they will have to participate in and how the risk will be shared among the parties.

SENATOR FRENCH arrived.

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SENATOR STEDMAN said the reward for the \$500 million is securing a gasline, and we benefit from a lower tariff. He asked for a breakdown of that value. "I'm looking at the effect of the royalty gas and the benefit that the state gets on that. And the rest of the gas--and I assume it should add up to 100 percent of the volume, to look at where those benefits actually fall on the tariff structure. And I recognize that as the tariff goes down, wellhead value goes up, and everybody wins except for maybe the...but clearly we win."

COMMISSIONER GALVIN said he showed models in his first presentation, and he asked where he should go from those models to fully answer that question. The models had the change-in, the tariff structure as a result of the actual \$500 million, and the change that results from the 70/30 equity ratio. "Is there another aspect to it that you're looking for in order to flush out the picture?"

SENATOR STEDMAN said he is looking for more detailed numbers, recognizing the hypothetical 48-inch pipe.

COMMISSIONER GALVIN said he can provide the modelers to the committee to be used in a real exchange.

CHAIR HUGGINS said that will work.

SENATOR STEDMAN said the state will be putting tens of millions into the capital projects over the next several years building up infrastructure. He said it has already started several years ago. It is a "hard concept" to say the state isn't a serious player. He said the state is already upgrading roads and infrastructure—well before the open season. He asked if the \$500 million inducement is the best structure, "or should we look at modifying that structure and possibly taking equity interest or some other form of remuneration back to the state versus just the reduction in tariffs, and/or should we take this \$500 million or some other number and target it more for the in-state development?" He said that the only way to get jobs is through the petrochemical industry.

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COMMISSIONER IRWIN said Alaskans have to face the fact that many companies no longer trust the state. They are concerned about baiting and switching, he stated. Some large, good companies are concerned that Alaska will treat them as stocking horses, "and we're not that kind of state." The issue comes down to fairness, and this is a good way to do it because it is an investment in the "real asset." There are other things the state could do, "but we're talking about moving the gasline forward...and we're 'incenting' our own asset." When AGIA passes, the state is immediately investing in the immediacy of starting to work on the gasline. "It's an excellent way to proceed," he opined.

SENATOR STEDMAN said the TAPS capital structure has been problematic for the state. There are issues with FERC, right now, regarding inappropriate tariffs due to the age and cost of the pipe, he said. If the state were to do the oil line over again, it would have a little different capital structure. "The state would want a seat at the table so we could have a look at the books. Why wouldn't we want to have a seat at the table to look at the books on a gasline that could be in place for 50 to 100 years?"

COMMISSIONER IRWIN said he is not certain how much of the previous deal has been made public. He stated:

But in the LLC language that was, frankly, never completed on the previous contract proposal; those

internal with business information were not allowed to share or present that to others who manage the state business, whether it is permitting or taxes or budgeting. It became its own business world. And...if I were the companies I'd be loathe to share all my internal business workings with the government, and in turn, I think government is pretty poor at managing businesses.

He said AGIA attempts to create incentives, move Alaska's assets forward, and let the real business world compete. The businesses can compete in moving the gas to market. He said every company he has talked to, except for three of them, express excitement on coming to Alaska to compete. There are huge gas opportunities and it is connected to the United States market and close to the Asian market. They see that their employees won't get shot at, he said. The companies prefer Alaska, but they don't want access problems, but just a fair system where everyone has a chance to compete. All parties made a lot of money from TAPS, and a lot was learned. But government should do what it does best.

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SENATOR STEDMAN said his question didn't have to do with the LLC agreement or the gas in-kind issue. He was comparing TAPS and tariff rulings. "The tariff could be double today what is ruled in the end." He asked how Alaska protects itself going into the next big pipeline that is going to last longer. He doesn't want the state in a position where it can't see internally "as much as absolutely possible, and we don't get ourselves in a pickle in the future, where the tariff on gas is substantially higher than what we feel is warranted."

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COMMISSIONER GALVIN replied that he shares that concern, and the heart of what they are trying to do is to "protect the state from repeating what happened with TAPS." He said Alaska protects itself by "putting out enough of an inducement to get somebody to accept our deal, and with that deal comes the protection on the tariff associated with the debt-to-equity ratio, the expansion provisions, and those other drivers that do end up being the protection from having us replicate the tariff structure that we see on TAPS."

COMMISSIONER GALVIN addressed the question of having a better use for the \$500 million saying:

In the end what we kept coming back to was two things: that we should put our money into getting the project started...and the second part was we should put most of our money into the pipe.

He said doing that lowers the tariff and affects everybody upstream and the explorers. It also helps the state and the pipeline company. He said that was the message the state got from the explorers and pipeline companies. It seemed the most effective way to invest in the project, he said. Regarding the state getting an ownership position, the pro side is the prospect of having additional influence over pipeline management from its conception through operation. Through the LLC process, the state recognized that the commercial partners were adamant that the state wasn't going to have a lot of say in the actual decision-making of the operations. Those commercial partners were extremely concerned about information-sharing from the state as an owner and the state as an overseer. Such barriers led to the destruction of the value in taking an ownership position. He then said that there is "still recognition that having the state own a piece has value just intrinsically on the part of the other participants" who may feel that having the state on their side gives them an advantage. That was weighed against the mechanics of how "do we actually establish an ownership position and the parameters around that."

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COMMISSIONER GALVIN said that taking an ownership position demands endless implementation details. That has practical problems given the AGIA structure "in that we we're going to have negotiations."

"We're going to be sitting down working over the details of some side agreement. AGIA was intended to be a fairly blunt information exchange between the state and the commercial players," he said.

Proposals come and the state either accepts or rejects them. No further negotiations are done on the inner workings of the deal. The state tried to figure out the state ownership as a bid variable or as a requirement, and because of the variety of perspective projects, it became difficult to pre-imagine the terms of ownership, he explained. The team ultimately decided that Alaska can get 90 percent of the positives of ownership through the restrictions put on the money: basically the tariff structure, expansion, and other provisions. Alaska's return on the investment would come through the lower tariff structure and

the acceleration of the project. He said the state can get most of the value of ownership through a simple structure and it won't get bogged down in negotiations.

COMMISSIONER IRWIN said nothing in AGIA eliminates Alaska's ability to protest current tariffs or the tariffs that would be on a gasline. The state is still protected, he stated. Disputes about TAPS have nothing to do with lack of information. We know what we need to know on TAPS, he said, we just disagree on how to count the beans. Being on the inside would not change that disagreement. There would be the same dispute resolution. The state is protected but "we all need to stay on top of that one."

5:02:23 PM

COMMISSIONER GALVIN noted that the state requires representatives to be with the decision-making body and have internal documents available for monitoring decisions.

5:03:09 PM

SENATOR WIELECHOWSKI asked if an entity would be bound by the terms of AGIA if it doesn't take the state's money.

COMMISSIONER GALVIN said the entity would also have to turn down the permit streamlining, the permit coordinator, the training program, and the upstream inducements that are tied to the open season. "And I think it's unlikely that they're going to turn down all of that. So I think the state is putting something on the table even if they turn down the \$500 million."

SENATOR WIELECHOWSKI said "this is being done because we've been waiting for 30 years for someone to build a gasline." A constituent asked why the state is interfering with the free market. If the project is economic, wouldn't someone build it?

COMMISSIONER GALVIN replied that there is not an efficient market. There are three entities with control over the success of the project, "because they have to make a decision whether to put the gas into the line. And because of that inefficiency in the market, the state has to participate with this money in order to get more competition and create the opportunity for the project to move forward."

5:05:51 PM

CHAIR HUGGINS said his constituents noted that "dairy farms, grain elevators, fish processing plants—which were all good ideas from somebody that worked for the state...didn't work."

[5:06:21 PM](#)

MS. DAVIS said Section 120 deals with abandonment of the project. It allows a licensee and/or the commissioners to determine if the project is uneconomic. If they agree then the \$500 million would cease to be disbursed. Without agreement an impartial third party will make a final determination. "We've also tied the issue of ensuring that if there is the three times the payment of cost if the state essentially abandons the project...this same provision will apply, so it makes clear that the license does terminate."

SENATOR WIELECHOWSKI asked what criteria would be used to determine if the project were uneconomic.

MS. DAVIS said that needs to be defined in the bill because what is economic to one party might be vastly different to another party. It needs to be objective and without reference to internal indicia. Uneconomic will be project specific, not applicant specific.

SENATOR WIELECHOWSKI asked if the third party finds that the project is economic, what mechanism forces the builder to continue the project.

MS. DAVIS replied they would be in violation for failing to proceed without excuse. Abandonment is the excuse for performance, she stated.

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SENATOR MCGUIRE suggested spelling out the provision on line 31, subsection (d). She noted a situation where the commissioners disagree, and they have to establish regulations for the third party. There is a potential for an impasse, she said. She wants more detail on the impartial third party process.

CHAIR HUGGINS asked if the third party can tell the state that the project is economic and force it to use its matching funds.

MS. DAVIS replied yes, but the state could negotiate a resolution to exit.

CHAIR HUGGINS suggested it is a bad deal for the state because the third party can force Alaska to continue to feed money to the project. We're setting up a system that causes the state to spend money over its own objections.

MS. DAVIS said if the applicant takes the same risk, "it's kind of hard for us to say we're not willing to take the risk." That's why the bill has an impartial third party. "Our hope is that truth prevails."

[5:12:39 PM](#)

SENATOR WIELECHOWSKI asked about the right to appeal the decision.

MS. DAVIS said it is not stated as a binding process, but that is the intent. "Typical arbitration review requires there to be ... and in this case, we're presuming that that would be the standard to insure there's some certainty to the termination."

SENATOR MCGUIRE said the more detail, the better. If both commissioners disagree then that's it. She assumed a third party is used if one commissioner believes it is uneconomical.

MS. DAVIS said the commissioners are treated as one block.

[5:13:59 PM](#)

SENATOR MCGUIRE requested more information on who the third party would be and if it will be an arbitration.

CHAIR HUGGINS asked if the commissioners have equal status.

MS. DAVIS replied yes, and unanimity is required.

CHAIR HUGGINS asked if someone should be in the lead.

COMMISSIONER IRWIN suggested that there be two equal voices to be able to protect the state. The two already disagree at times, and they sort things out. "That's the way it ought a be."

CHAIR HUGGINS said players can change, changing the knowledge base.

[5:15:15 PM](#)

SENATOR WIELECHOWSKI asked if the commissioners make decisions in a quasi-judicial manner.

COMMISSIONER GALVIN said the two commissioners will have their own staff and their own modeling. If a difference arises, they have to come together. The governor is the ultimate decider.

MS. DAVIS said the third party process would be the semi-judicial process in determining if the project is uneconomic.

SENATOR WIELECHOWSKI asked if the ex post facto rules apply and if discussions are limited to formal testimony.

MS. DAVIS said, "You do have to control the ex-party communications or anything else that's outside of that record." She explained Section 130 as requiring the commissioner to begin the request for application within three months of the passage of AGIA. To provide for acceleration, AGIA exempts the use of contractors that are outside of the state procurement code. She hopes that it will be faster than three months.

5:18:42 PM

SENATOR STEDMAN suggested using softer language than the "commissioner shall" in order to provide more flexibility, "seeing as we're writing the rules." He asked what happens if the commissioners don't meet their obligations.

MS. DAVIS said, "I guess we were willing to take the heat from the standpoint that we feel that strongly that this process cannot be delayed."

COMMISSIONER GALVIN said they won't object if the legislature wants to give the commissioners more flexibility. However, he said:

We wanted to make that commitment to you...and we already told you about our view in terms of the imperative to move this project forward, we've kind a put...urging in the legislature to get this thing done quickly. We wanted to...reflect that back that we're also seeing the same obligation to move the project ahead. That was just what we felt you probably expect of us.

5:20:00 PM

MS. DAVIS said Section 140 lists the application requirements, including an application deadline, a detailed description of the pipeline, economic and technical analysis, timeline, budget, and a description of how the applicant will comply with all regulations and permitting requirements. If the applicant will be regulated under FERC, the bill requires a date-certain for the binding open season, which cannot be later than 36 months after the date the license is issued. A FERC applicant must use the pre-filing procedures set forth under FERC's rules. If the project is governed under the Regulatory of Alaska Commission (RCA), there will be similar requirements. She said the

applicant must assess the pipeline capacity after the binding open season every two years through a nonbinding solicitation. The applicant must commit to expand the project based on reasonable engineering increments and on commercially reasonable terms, which are defined in the bill. The applicant must agree to expand the pipeline through rolled-in rates that don't exceed 15 percent of the initial tariff rate set forth. It can't enter into negotiated rate agreements, which could bypass the rolled-in rate protections.

MS. DAVIS continued to explain Section 140. The applicant will need to propose the percentage for the state-matching contribution. The applicant's debt structure as presented in the tariff applications will reflect no less than 70 percent debt. Cost overrun management will need to be described. The applicant must commit to five delivery points of natural gas in the state and offer distance-sensitive rates in the state. The applicant must establish local headquarters and commit to hire Alaskans.

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SENATOR STEDMAN said the last proposal had four potential off-take points, and three were identified. He asked why there's five off-take points in AGIA.

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COMMISSIONER GALVIN said the number of off-take points isn't the driver of in-state use, but the rates are. The market will probably decide how many points there will be, he said. Designating five is to ensure a variety of locations to supply Alaska. The distance-sensitive tariffs and expansion provisions will be the primary protections. There are no magic numbers or must-have locations. Once the project moves forward he expects a flurry of activity to have the in-state demand ready for the initial open season, but it will likely not all be ready, so the five off-take points are intended to look toward the future and future expansion of the line.

CHAIR HUGGINS asked about the robustness of the open season and how it may cause a variation in the diameter of the pipe. He asked how many open seasons are expected before the first gas.

COMMISSIONER GALVIN said he doesn't know, but the contract requires one initially.

CHAIR HUGGINS surmised that there had to be one every two years.

MS. DAVIS said that is a non-binding review to determine the need for expansion.

CHAIR HUGGINS said, "But potentially based on that, then you could have a need to redesign...that's the worst threshold to have to bump up against because that is the highest risk of project delay—if you had to expand the size of the pipe at the design piece."

COMMISSIONER GALVIN said he doesn't see that as a delay issue, but an opportunity to meet the full demand either with the initial design, "or you could actually design the expansion while you're beginning to build the line."

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ANTHONY SCOTT, Division of Oil and Gas, Department of Natural Resources, suggested looking at the definition of reasonable engineering increments. He said there will be informal solicitations of demand. There is no requirement that a pipeline company do anything based on that result, unless the demand is sufficient to support an expansion consistent with the base-load design. Specifically, the definition of reasonable engineering increments would exclude an expansion that would require a change in the diameter of the pipeline. The most likely possibility would be the need for in-fill compression, he said, which would be additional compressor stations along the pipeline or possibly the addition of more compression turbines within the existing stations. But the bill doesn't require a particular performance in terms of the timing of that. With the commercially viable requirement, one could expect multiple opportunities for new explorers or existing producers who find gas during the process between the initial binding open season and first gas. Shortly after the initial open season, it is very straight forward to accommodate that extra gas, but the further it goes "things do tighten down somewhat, but again we're looking at in-fill compressor stations and the scheduling of those." He said he doesn't see big delays associated with starting the project; the project will get reconfigured as it moves forward, "but there are no enormously problematic issues involved in adding compressor stations down the road."

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CHAIR HUGGINS asked about an unsuccessful open season and deciding on a reduced pipe followed by new discoveries of gas. "What I don't want us to do is to have two gas pipelines running side by side."

MR. SCOTT said the definition of reasonable engineering increments wouldn't require a redesign of a pipeline from 36 inches to 42 inches, for example. There will be increased in-fill compression, and when those opportunities are exhausted "the definitions involve looping the facility."

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SENATOR STEDMAN addressed rolled-in rates versus incremental. He noted language that said expansion won't impact tariffs by more than 15 percent. "Rolled-in rates basically is the preferred method and everybody will come forward and support rolled-in rates, is that correct?"

COMMISSIONER GALVIN said he doubts that. The rolled-in rate that FERC proposed is currently being appealed by the producers.

MR. SCOTT said FERC adopted a rebuttable presumption in favor of rolled-in rates. That aspect of the order is not under appeal. "Rolled-in rates will be attractive for any party that has an interest in exploring, so long as that party does not also own the pipe." He said that means two potential entities might not appreciate rolled-in rate treatment for expansions.

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MR. SCOTT said, "Either you're not interested in exploring or you plan to own the pipe and so you plan to pay yourself and so the rate treatment really doesn't affect you if you're paying an incremental rate, because you're paying it to yourself."

SENATOR STEDMAN asked why 15 percent and who has control over which method is used.

MR. SCOTT said he and others studied how costs change for different levels of expansion. The working presumption is that in-fill compression was cheap so the pipeline would be able to expand to accommodate new gas up to the point where the compression couldn't be reasonably added. What was found was that at higher commodity prices, "rolled-in rate treatment doesn't necessarily result in rates declining for all shippers for the full in-fill compression case." Modeling is showing that to get to full in-fill compression with current commodity prices, rolled-in treatment is required.

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MR. SCOTT said by looking at various sensitivities, "it looks like, in many circumstances, a 15 percent cap will get us through full in-fill compression and perhaps also through the

first looping of the pipeline, but at the same time we're interested in trying to strike a balance because, of course, there are competing interests and there are some companies that may have an interest in...only monetizing the reserves that they currently have proved." He said, "We're interested in striking a balance and somewhat shielding them from potentially unbounded rate increases." The state wanted the pipeline terms to ensure healthy and vigorous exploration, he added.

SENATOR STEDMAN said what we are talking about here is basin control and getting the basin open for more exploration. "Find more gas; find more oil, and have a competitive shipping mechanism in the tariff to facilitate that." To some folks, rolled-in rates may be viewed as a subsidy to a competitor. He asked how FERC deals with that.

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MR. SCOTT said he thinks the subsidy word gets thrown around and is clouding this issue. It is not an issue of subsidy. As demand changes, prices of final goods and services go up or down. If demand changes and prices rise, it doesn't mean that a new entrant is subsidized. The definition of a subsidy is tied to the cost of providing service. The cost of the service of moving gas from the North Slope to the market is what it is, and the issue is how that cost is divided by all the customers. If an entity has a property right to a rate and then the rate goes up, it is not a subsidy, it is theft. It is important because normally when demand changes, prices change. It is unusual for someone to enjoy a property right to a particular price for goods and services for an exceptionally long time, like 20 or 30 years, he stated.

[5:43:42 PM](#)

MR. SCOTT said there are issues of equity. It may seem fair that if a company makes an initial commitment of its gas in the ground, to not be exposed to unreasonable increases. That is an issue of equity—not subsidy.

SENATOR STEDMAN asked if FERC took a somewhat unprecedented position when it supported rolled-in rates for the arctic oil and gas basin to stimulate competition in that basin.

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MR. SCOTT said that is correct; FERC departed from its current expansion rate policy in the lower 48. It is a little strong to say it was unprecedented. The previous policy for expansions had a rebuttable presumption in favor of rolled-in rates, so long as

rates for existing shippers didn't rise above five percent. In Canada, the policy of the National Energy Board is strongly in favor of rolled-in rate treatment regardless of the impacts on existing shippers.

SENATOR STEDMAN said it appears it will be a struggle to get the in-state use of gas to a meaningful level, where Alaska can be a player at open season, "and clearly dealing with a potential petrochemical industry coming where we get the jobs." He asked if rolled-in rates and the 15 percent cap will put the state at a disadvantage in the future "when we want our cut of the gas."

[5:47:12 PM](#)

MR. SCOTT said if earlier expansions had occurred in the first ten years such that rate treatment on subsequent expansions for a petrochemical industry would raise rates above that 15 percent threshold, the protections within AGIA for rolled-in rates to encourage that development would have expired.

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MS. DAVIS noted that only a small fraction of the state's 12.5 percent gas supply will be used for current demands. She doesn't know what additional volumes would be required to support an industry, but that 12.5 percent supply "would be already in the capacity built-in in the original pipeline structure."

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SENATOR STEDMAN said the public may think the state is getting a large amount of the gas, but Alaska will take very little.

MS. DAVIS said Alaska may need 400 mcf per day maximum in addition to gas from Cook Inlet. The Alaska Natural Gas Development Authority (ANGDA) group has done public outreach on in-state volume needs. ANGDA's focus has been on a main project, whether it is an in-state LNG or a major project going through Canada, whereby the cost for Alaskans would be substantially reduced. The other part of the public communication is that Alaska's ability to obtain low-cost gas will depend on the success of a larger pipeline structure.

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COMMISSIONER IRWIN said it is critical that entities like the Alaska Power Association (APA), who could be a big consumer of Alaska natural gas, keep moving forward and are prepared for an open season. He said Mr. Scott talked to APA about FERC issues, and it is critical APA keeps moving forward—"that they're prepared and look at this for an open season, both at the first

open season and then certainly in the expansion modes. That is a real opportunity for Alaskans." Regarding petrochemical industries, "we can't lose sight of the real potential of some excellent jobs in Alaska just for the exploration phase."

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SENATOR WAGONER said, "What we're looking at is 12.5 percent of the liquids...that's where your propanes and ethanes come in." "We should qualify in here that we do reserve the right to use our liquids if, in fact, we had somebody offer to buy those liquids at a market price." He said it is important to look at an incentive to be able to have that person qualify and buy some additional liquids from one of the other shippers to make it feasible to do a 40,000 or 80,000 barrel unit, "because if you don't get up to that size then you aren't going to have anything economical to do anyway."

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SENATOR WIELECHOWSKI noted that one goal is to get low-cost gas to residents. At the first open season there won't be much talk about spur lines, he surmised. He noted that Alaskans will pay higher rates for gas if incremental rates are used when a local utility puts in a bid for gas.

MS. DAVIS said that would increase the cost to consumers, yes.

SENATOR WIELECHOWSKI noted that it will be good for the state, its residents, and its businesses to use rolled-in rates, and he asked if there were any negatives to using rolled-in rates.

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MR. SCOTT said an issue has been raised that it is possible that an expansion could occur by gas from the outer continental shelf (OCS), where the state has no royalty or severance tax interest. In that case, the state could see a reduction in royalty and production tax value. But, in general, modeling has shown that expansions much more benefit the state from a royalty and tax perspective "and we cannot predict which expansion OCS gas may flow into. The OCS gas may flow into a very early expansion and use up all of the cheap expansion capacity, and if that were the case, how else can we promote exploration of gas on state lands other than through rolled-in rate treatment. So then on balance, I think the answer is no."

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CHAIR HUGGINS said the producers would probably object to the people who held out for a "follow-on," because they would be subsidizing people who waited for a later date.

MR. SCOTT said modeling shows that the scenario of a party holding out until a later day is very unlikely. Once there is certainty in the process, "I think what you'll see is companies rushing to explore and prove up gas as soon as they possibly can." The 15 percent threshold could be reached very quickly so the incentive is to monetize one's lands position as soon as one can, he added.

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CHAIR HUGGINS said those that come to an initial open season could take the position that they are subsidizing the later ones.

MR. SCOTT said someone may say that, but the issue is not an economic subsidy; the question is if it is unfair not to have rate certainty. It is an issue of fairness.

MS. DAVIS said that is why the royalty and the tax inducements for shippers are applied to the initial first season. Section 150 reflects the requirements for the commissioners in reviewing the applications. Once submitted, the applications are determined to either meet or not meet the requirements of the statute. Any that do not meet the statutory requirements will be rejected. For the others, if there is information that is missing that would be helpful in the evaluation, the commissioners can request that information. She said it is not known what kind of applications the state will receive. The commissioners might reject the applicants who refuse to supply the additional information. The intent is to evaluate fairly.

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MS. DAVIS said Section 160 deals with proprietary information and trade secrets. The application should demonstrate that information is proprietary prior to being withheld from the public. Section 170 lists the application evaluation criteria, which include the timing, management of cost overruns, transportation rates, design capacity, percentage of Alaska's matching contribution after open season, feasibility, financial resources, and record of integrity. The criteria are consistent with the federal acquisition regulations and the state procurement code, so there are references to give guidance on integrity and business ethics, she explained.

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SENATOR WIELECHOWSKI noted that the number of criteria in Section 140 is more than in Section 170.

MS. DAVIS said Section 140 is the elements that must be in an application in order to qualify. "We used 140 to essentially set up our requirements for project structure—the minimums that the project would have to have, without ordaining what type of project it was, it had to have these codes. So in order for an application to be evaluated...we must be able to check the box under 140 for the application to ensure that each of those items, as listed in 140, appear in that application. So that those are a given and [are] met. Then once we drive into the evaluation criteria in 170, then we evaluate the total package and how all the factors interact and result in the project."

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SENATOR WIELECHOWSKI said it seems the state would want some of the items that are in 140 but not in 170.

MR. SCOTT said the drafters spent much time on the evaluation criteria. In talking to others, they were advised about "what makes a successful RFA process and when RFP processes fail." If there are too many criteria, the bidders wouldn't know what the state cared about. There are seven items listed, "but they really only go to two areas." The first five relate to the net-present value of the project. The last two relate to the likelihood of success for pulling off what is promised. The first five shouldn't be scored relative to one another, he said. The latter two involve a critical and careful assessment. "Do we think you can do what you say you are going to do?"

[6:04:15 PM](#)

MR. SCOTT said the net-back can look great but the credibility and feasibility have to be there. The first five factors are transparent.

The committee took an at-ease from [6:05:04 PM](#) to [6:34:12 PM](#).

MS. DAVIS said Section 180 deals with notice, review, and comment proceedings. Once the commissioners have complete applications, they go out for a 60-day public comment period.

[6:35:04 PM](#)

CHAIR HUGGINS asked what the public comment process is.

MS. DAVIS said the internet will be used because of the volume of material. Paper copies would be expensive, but the idea is to make it available for review at all the key locations in the state. She said "respond" is not in the statute because of the timeframe, "but we're looking at having at least another 30 days after that or more for the commissioners to reconcile and review the comments that have come in."

COMMISSIONER GALVIN said there will be a summary of public input with some response as part of the finding itself. "Clearly we have an obligation...to be responsive to the comments and indicate how they shaped or influenced the decision." It will be part of the ultimate finding, he stated.

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MS. DAVIS said Section 190 is the actual description of the commissioners' decision-making procedure. The decision will be forwarded to the legislature and is considered a final agency action for purposes of appeal. Section 200 addresses the legislative response.

CHAIR HUGGINS asked if there could be three findings.

COMMISSIONER GALVIN said there would be a single finding explaining why a particular project was chosen, and within that finding there would be a comparison of the proposals with regard to the evaluation criteria.

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CHAIR HUGGINS asked if it will say why one wasn't chosen.

COMMISSIONER GALVIN said the nature of the decision is meeting the criteria and comparing them against the others. It would be a single finding.

COMMISSIONER GALVIN said the applicants will get information on the project values, the likelihood of success, and the ability to deliver. The evaluation will point out if the plans are strong enough to deal with eventualities, or if there are some contingencies that can't be overcome. Those aspects would be compared against each other, he said. Greater value but less certainty may diminish the attractiveness of one application. The strength of an applicant may mean the project plan has a greater likelihood of success, he said.

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CHAIR HUGGINS asked if there will be a summary sheet.

COMMISSIONER GALVIN said there is no particular form, but an executive summary would be a valuable tool.

CHAIR HUGGINS asked about an order of merit.

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MS. DAVIS said a ranking is probably appropriate.

SENATOR GREEN asked if there is anything to prohibit more than one entity to apply together.

MS. DAVIS said no. It is expected.

CHAIR HUGGINS said a group with all the qualities that the state is looking for--gas pipeline expertise--would have a leg up.

MS. DAVIS said technical expertise, access to resources, track record, and personnel will be in the evaluation.

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COMMISSIONER GALVIN said the process will try to identify the best project, and not the prettiest application with the best diagrams, but based on the actually project itself.

MS. DAVIS said Section 200 describes the legislative response to the notice of intent. The decision is considered a final agency decision if it is not disapproved by joint resolution of the legislature within 30 days. Thirty days was chosen because that is the limit of a special session.

CHAIR HUGGINS asked if it needs a two-thirds vote.

[6:45:20 PM](#)

COMMISSIONER GALVIN surmised that it would take that to call a special session. He said he wanted an action that would simply require a majority and that went through a standard hearing process. If that is wrong, it should be addressed.

SENATOR STEVENS said the resolution would be for disapproval; "if you can't get half, then you are in deep trouble anyway."

COMMISSIONER GALVIN said, "I guess the question is, would you need more than half the legislature to want to disapprove." He added, "If more than half of the legislature thinks the commissioners made a wrong decision then we don't want to go there." This provision is intended to be a safety valve if the commissioners go off track. It is not intended to be a secondary

review for the legislature to have a full airing of the issue and make another decision on the merits. If the legislature likes the decision, it would not have to take formal action.

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SENATOR WIELECHOWSKI said it could be awarded to anyone, "and I don't know that they would necessarily have a right to appeal, and I'm wondering if we really need [sub]section (c)."

MS. DAVIS said it was intended to make it the "fix point...this is when the license is actually effective, because there are a couple things that pivot off of a date certain." The wording may be less precise than it needs to be, but it also is the appealable point at which time the statute of limitation kicks in. That is the point the 90 days runs from, she explained.

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SENATOR WIELECHOWSKI asked if there could just be a legislative decision without a right to appeal.

MS. DAVIS said it harkens back to Senator Wielechowski's request that the administration look at the procedural mechanisms to see if the bill is designed in a way that speeds the process through the necessary legal review processes.

COMMISSIONER GALVIN said there is no answer from the Department of Law on precluding judicial review simply because the administration has chosen an application and the legislature has chosen not to overturn it.

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MS. DAVIS said Section 210 addresses obligations on a licensee to proceed and have its organization sanction the project upon issuance of a certificate from FERC or the RCA. Subsection (a) is "designed to ensure that they shall accept the certificate." She said subsection (b) addresses the situation where a licensee has the credit support necessary for the construction of the project once it has the certificate, and this requires it to sanction within one year of that date. If it doesn't have the credit support, it gets five years after the effective date of the certificate to commence and sanction the project.

SENATOR STEDMAN said a concern is getting the gas before the general fund runs into a bind and the state begins to look at some form of revenue enhancement, like a tax. "How does this fit in with the financial timeline that the state is looking at?"

[6:51:07 PM](#)

COMMISSIONER GALVIN said everyone recognizes the need to get the gasline in. We need to get it in sooner rather than later, and that is what AGIA is designed to do. Getting to the point of having the FERC certificate in hand, "we're trying to recognize that there are two different worlds that we could be living in at that particular time." One is where the licensee has the transportation commitments necessary to get the financing or it has alternative financing. That licensee would get one year to get going or turn it all over to the state. The other world is where there is a certificate but not the transportation commitments. "We're trying to give an applicant, today, a sense of what their risk is if they find themselves at that point as well." The state wants to provide a reasonable amount of time in order to put that credit package together. It may involve having subsequent open seasons, adjusting the risk sharing between the shippers and the pipeline company, or finding government support.

COMMISSIONER GALVIN said the state may decide to participate. No one knows what the project or the economics will be, "but we want to give them the opportunity to be able to put the package together so we don't have to start all over again." The state came up with five years as a reasonable time to get the various pieces in place. It is subject to debate, he offered. "For us...five years seemed to be a reasonable amount of time recognizing throughout that time that the state could choose...the abandonment provisions and find that the project is uneconomic and get out." The five years is a commitment by the state to give the applicant time to get its stuff together, he stated.

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SENATOR STEDMAN said that is a good answer for the DNR commissioner, but the DOR commissioner would be expected to give a different answer. He asked for some revenue analyses. It is a short window of opportunity.

COMMISSIONER GALVIN said his obligation is to get a pipeline project as soon as possible, and that includes the entire package that is on the table. It is a matter of whether a five-year window is enough to provide for maximum participation in what is hoped to be a fairly competitive process. The question of how to keep the state from falling off an economic cliff is separate from how much time an applicant gets. The administration is trying to get a project as quickly as possible in a competitive process. The applicants need some sort of reasonable commercial position to make sure they are not hung

over a barrel when they get a FERC certificate. He suggested that the producers may refuse to supply the gas until the time is up for the licensee to get what it needs. It is an attempt to not expose someone to a leverage game, he said.

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CHAIR HUGGINS asked for a timeline review.

MR. SCOTT said the FERC process will almost certainly require two field seasons, so the soonest an application could be submitted is about 2.5 to 3 years, and that is when the complete application could be dropped on the FERC. The [federal Alaska Natural Gas Pipeline Act] requires that FERC have an expedited process, which is about 20 months if everything goes right.

CHAIR HUGGINS surmised then that the latest date the application will be submitted is in year number five. "OK, so we're at someplace five to seven years...and then the five years kick in." He asked what year would there be "first gas."

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COMMISSIONER GALVIN said if it takes the entire five years to get the financing and it takes two years for construction; it would be two years after that.

SENATOR GREEN said that would be years 2019 or 2020.

COMMISSIONER GALVIN said getting gas flowing before 2017 is the "window we're trying to hit, and what we don't know is what we're going to get in terms of applications and ultimately how successful they're going to be in getting that gas."

MS. DAVIS continued, "The consequence of having failed to sanction the project or accept the certificate is the requirement to abandon and transfer the certificate to the state or its designee, assign all project data, engineering designs, contracts, permits et cetera. And this will be done at no cost to the state." If the licensee doesn't have the financial support it will be at the licensee's net cost.

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MS. DAVIS said Section 220 sets up the criteria that must be met before the project plan can be amended.

CHAIR HUGGINS asked for potential scenarios under that section.

MR. SCOTT said there may be unforeseen situations.

COMMISSIONER IRWIN hypothesized that a major earthquake fault would be beyond anybody's prediction and may require a redesign.

SENATOR WIELECHOWSKI said the provision of changed circumstances is ripe for litigation and should be tightened up.

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MS. DAVIS said the intent is to make sure that an applicant couldn't subvert the process by submitting a gold-plated application and then downgrading it. "We are very tightfisted in the manner in which we approach the changes that would be allowed."

CHAIR HUGGINS asked about FERC and the state's designee.

MR. SCOTT said two transactions are required. If an entity obtains a FERC certificate and does not wish to build under it or wants to sell it, the entity must apply to FERC to abandon the certificate. A commercial transaction might take place with another entity, he said, but it is contingent upon regulations. The other entity must receive approval from FERC.

CHAIR HUGGINS asked if that is the default mode for FERC.

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MR. SCOTT said abandonment and transfer proceedings are regular occurrences. He said he didn't know how much time it takes.

MS. DAVIS said Section 230 is the audit control to track the \$500 million inducement. It includes the requirement that a commissioner representative be at all meetings of the licensee's governing body and meetings that equity holders would attend.

CHAIR HUGGINS asked if that is important.

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MS. DAVIS said, "We believe it is from the standpoint that it does build trust in the phase where the state's moneys are being expended." The funds will be reflected in those meetings in the manner of which they are being used. She surmised that Alaskans would like to know that the money is not being gamed.

CHAIR HUGGINS said there is a five-year window, but that could be extended. He asked how long it could be.

COMMISSIONER GALVIN said the provision covers the entire time until commercial operations.

MS. DAVIS said the expenditures cover five years but can be extended. The provision will provide monitoring of the performance of the license provision, she added. Subsection 240 relates to license violations and damages.

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MS. DAVIS said Article 3 relates to the resource inducements and the coordinator. Section 300 sets up the qualification for both resource inducements, which is the criteria that a person must commit to acquire firm transportation capacity in the first binding open season. Section 310 describes the royalty inducement piece and it is intended to be contractual in nature and incorporated in the lease. She said it is implemented in regulations that are adopted by the commissioner of DNR to establish the monthly value of the state's royalty share of gas and to address the manner in which the state switches between taking its royalty in value or royalty in kind for gas.

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MS. DAVIS said [sub]section (b) outlines the legislature's mandate to DNR of the standards by which these regulations [indec.], that there is a benefit to these shippers as a result of having the state make these concessions. There is also an obligation on DNR to make sure they are continuing to deliver the benefit. It is important for identifying the market price indices, which may change over time. The recipient of the royalty benefits will agree not to protest the rolled-in expansion requirements set forth for the pipeline company. Section 320 outlines the gas production tax exemption and provides for the annual exemption measured by an amount equal to the difference between the person's gas production tax obligation calculated in the tax year in question as compared to the tax obligation that would arise using the tax structure in place at the time of the first binding open season. The benefit is available in the first 10 years following commencement of commercial operations.

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COMMISSIONER GALVIN said he received the letter on the PPT and will work on it. Most places have different tax rates for oil and gas. He has not reached a conclusion on whether or not the tax rate is too high. He wants to look at it more closely.

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MS. DAVIS said Section 330 has a pipeline coordinator and is one of the inducements to the pipeline builder. It is modeled after the federal pipeline act coordinator. The person serves until one year after commencement of commercial operations. The job is to ensure that all state agencies comply with AGIA and to coordinate with the federal pipeline coordinator.

MS. DAVIS said the position serves at pleasure of the governor, so that person might change.

CHAIR HUGGINS said he wants to talk about the reconfirmation process at some point.

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MS. DAVIS said Section 340 requires any state agency review must be expedited, consistent with the need to complete the necessary approvals. Only requirements required by law can be imposed on the project, and the coordinator will arbitrate them.

SENATOR WIELECHOWSKI expressed concern about giving one individual tremendous authority to overrule any project in the state.

MS. DAVIS said it is still confined by statutory law. The pipeline coordinator cannot force another agency to take an unlawful action. The provision came almost verbatim from the federal act, but it might not necessarily fit, she stated.

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SENATOR WIELECHOWSKI noted that no state agency may add to, amend, or abrogate any certificate or right-of-way permit if the coordinator thinks it would impair the expeditious construction operation or expansion. "That, to me, is giving a tremendous, tremendous amount of authority to that person."

MS. DAVIS said it does, but it says "unless required by law."

COMMISSIONER GALVIN said the intent is to ensure there is justification for "any condition that is placed on this project that it actually tie right back to a requirement under law."

SENATOR STEVENS asked if there is an assumption in the federal program that there would be a state coordinator.

MS. DAVIS said the state created it. It was not mandated.

CHAIR HUGGINS said he agrees with Senator Wielechowski. The state is modeling a position that it has zero experience with.

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MS. DAVIS said Article 4 lists the miscellaneous provisions relating to AGIA. It sets up the procedural mechanism for a setting aside of the matching fund.

CHAIR HUGGINS asked if a non-licensee pursues a project, would it get the same benefit.

MS. DAVIS said no, not outside the AGIA process. She spoke of not taking away the impetus to participate in the AGIA process by making a benefit available outside of that process.

COMMISSIONER GALVIN said the drafters of AGIA wanted to stay true to the inducement for the project so the coordinator won't work on all pipelines. The position can be made independent of AGIA, but if so, make sure it is consistent with the provision that the state not provide help to any other similar pipeline project—the triple the damages provision.

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CHAIR HUGGINS said it is a two-edge sword. There are some very bright organizations with deep pockets and a lot of drive, "and I just hate to see us spring load to the default that 'no we're not going to do that,' when it may be a stroke of brilliance."

COMMISSIONER GALVIN said it is open for discussion.

COMMISSIONER IRWIN said there are companies with that brilliance, but why would they turn down all the opportunities of AGIA?

CHAIR HUGGINS said he likes to look at all the eventualities.

SENATOR WIELECHOWSKI asked if the inducement fund will be a dedicated fund.

MS. DAVIS said the language has passed muster with the legal advisors. She said Section 410 is the enabling statute to adopt regulations to implement AGIA. Section 420 relates to the statute of limitations provision, and it provides that an action must be commenced within 90 days of the license being issued in order to bring an action challenging the constitutionality of the act. Section 430 describes interest owed to the state. Section 440 relates to project assurance.

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MS. DAVIS said the license might be transferred. Any transfer must be approved in advance by the commissioners and it can't reduce the value to the state. The state did not want to create a secondary market, so the tax exemption or royalty provisions are only assignable in connection with the assignment of the underlying North Slope asset. That would include the purchase of the company or of their North Slope asset base. Article 5 relates to definitions. She listed the items defined in AGIA. Section 990 has the short title. The other sections are the conforming legislation that must be amended to conform to the new statute.

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SENATOR WIELECHOWSKI asked about Section 4 where something is being added that withholds information from the public.

MS. DAVIS said it the Freedom from Public Disclosure Act and it lists the types of information that aren't disclosed to the public.

SENATOR WIELECHOWSKI asked if the applications will be withheld from the public.

MS. DAVIS said it is the pieces of information that are demonstrated to be trade secrets or proprietary information.

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COMMISSIONER GALVIN said there will be some gap in time when the commissioners receive the applications and when they are made public. It is while information is being exchanged to clarify the applications. He doesn't want to be forced to disclose confidential applications until all the information is received by all the parties.

SENATOR WIELECHOWSKI said the public will be able to weigh in, and they will need the information for the comment period.

COMMISSIONER GALVIN said the reference is to subsection 180, which is when all the information is made public. He added that that is intended to be a short period of time.

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SENATOR STEVENS asked if we are giving Canada some control of who the project is awarded to.

COMMISSIONER GALVIN said no, that language allows for the commissioners to get the applicants complete plan for all the authorizations that they need. It would include the authorizations from the Canadian authorities, which relates to the likelihood of success. It is an obligation on the part of the applicant to provide that information.

SENATOR STEVENS asked if the plans for going through Canada are all going to look the same.

COMMISSIONER GALVIN said TransCanada claims to have a leg up on the Canadian rights of way, and another company may disagree and the commissioners will have to make that call.

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CHAIR HUGGINS asked about town hall meetings on AGIA.

COMMISSIONER GALVIN said there have been meetings in Fairbanks, Anchorage, and Wasilla. There may be others, but the focus is getting the information to the legislature.

MS. DAVIS said there have been presentations to different entities, like chambers of commerce and utilities.

CHAIR HUGGINS asked about the feedback so far.

COMMISSIONER GALVIN said there is a strong interest in in-state gas use and Alaska hire. Another issue is why the state is offering \$500 million to huge corporations, and how Alaska gets that money back.

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MS. DAVIS said project labor agreements are an issue. She has also heard extreme exasperation directed at the producers that they have been controlling the pace and the outcome, and the state has been the passive recipient of that waiting. The people have been supportive of the proposal.

COMMISSIONER GALVIN said the public likes the idea of an all-Alaska pipeline, and discussions include the possibility of more value to Alaska by going through Canada.

COMMISSIONER IRWIN said he heard anger and stress in Fairbanks of why gas isn't going to market.

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CHAIR HUGGINS said people are excited with high expectations. He reminded the panel that the legislature wants to work jointly with the administration. He then adjourned the meeting at [7:42:20 PM](#).