ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE
March 31, 2007
12:36 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Lesil McGuire

OTHER LEGISLATORS PRESENT

Representative John Coghill

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

WITNESS REGISTER

MARCIA DAVIS, Deputy Commissioner
Department of Revenue (DOR)
Juneau AK
POSITION STATEMENT: Commented on SB 104.

DON BULLOCK, Attorney
Alaska Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Commented on SB 104.

CLICK BISHOP, Commissioner
Department of Labor and Workforce Development (DOLWD)
Juneau AK
POSITION STATEMENT: Commented on project labor agreements in SB 104.

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

ANTONY SCOTT
Commercial Section
Division of Oil and Gas
Department of Natural Resources
POSITION STATEMENT: Commented on SB 104.

KEVIN BANKS, Acting Director
Division of Oil and Gas
Department of Natural Resources (DNR)
POSITION STATEMENT: Commented on SB 104.

DONALD SHEPLER
Greenberg Traurig, LLP
Representing the Administration
Washington, D.C.
POSITION STATEMENT: Commented on SB 104.

ACTION NARRATIVE

CHAIR CHARLIE HUGGINS called the Senate Resources Standing Committee meeting to order at 12:36:46 PM. Present at the call to order were Senators Wielechowski, Wagoner, Stedman, Green and Huggins. Senator Stevens arrived a minute later.

SB 104-NATURAL GAS PIPELINE PROJECT

12:38:26 PM
CHAIR HUGGINS announced SB 104 to be up for consideration. He said the committee has two committee substitutes before it, version C and version E. He said that version C was underlined and therefore easier to work with so they would be working on that version, but they would be adopting version E. He said

their task today is to march through version E, discuss it, and tomorrow they would revisit it and along with amendments.

SENATOR STEVENS joined the committee.

SENATOR STEDMAN moved to adopt version E as the working draft. There were no objections and it was so ordered.

SENATOR WIELECHOWSKI asked if the only difference between version C and version E is some underlining.

CHAIR HUGGINS replied that he couldn't guarantee that, but generally speaking it was.

MARCIA DAVIS, Deputy Commissioner, Department of Revenue (DOR), added that the only other difference is that version C has a couple of instances where underlined sections reside in different locations within the same section in version E. She would try to point those out.

DONALD BULLOCK, Drafting Attorney, Legislative Affairs, began pointing out the differences in versions C and E. He said the first one was on page 8, lines 25 - 27, of version C. It changes the 43.90.110 (1) and (2) on line 27 to (1) (A) and (B) and the specifics in the license language was moved to the end of the sentence.

The next change was deleting lines 12 and 13 on page 11. Also on page 11, language was inserted into subsection (b) on line 3 saying when the commissioners are considering the net present value of the cash flow they will use at a minimum discount rates of zero, six and eight percent. This language came from subsection (d) on page 12 of version C.

12:42:44 PM
MR. BULLOCK said that there are changes in version E that aren't represented in version C. On page 13, AS 43.90.200 refers to legislative approval and said that it was sent to the specific standing committees of natural resources. Version E says the legislature shall introduce a resolution. However, resolutions need to have sponsors, so there is a drafting issue here. A time limitation was also inserted on page 13, line 12.

12:43:20 PM
He said the next change is to the inducement section starting on page 18, line 23. Language is added after AS 43.91.140(7) that says if the Federal Energy Regulatory Commission (FERC) does not

have a rebuttable presumption in effect, that rolled in rate treatment applies to the cost of expansion. A similar change is on page 19, line 24.

12:45:00 PM
MS. DAVIS went through all the changes referring to version C. She said there were no changes of substance to AS 43.90.010 on page 1. Page 2, section AS 43.90.100 added a new subsection saying "(b) Nothing in this section precludes a person's pursuing a gas pipeline independently from this chapter." This addition came from the legislative side in an abundance of caution to make it very clear this was not the exclusive means of acquiring a right to build a natural gas pipeline in the state. FERC law also says it is illegal for the state to preclude another natural gas pipeline project.

She said that subsection (1) (A) in Section 43.90.110 (version C) makes a change that deals with the 50/50 state match with the licensee to get to open season. That requirement was removed and the bid is now variable so that the applicant is to specify in the application what percent match it desires in a prior season. The bid is completely variable and could be zero percent both prior to and after the open season.

CHAIR HUGGINS noted that the administration supports the provision.

MR. BULLOCK reminded them that this is reflected in the requirements when entities are responding to the request for applications (RFP) as well.

12:47:58 PM
MS. DAVIS said subsection (3) in Section 43.90.110 on page 3 was deleted. It dealt with the job program the state would provide as an inducement for the AGIA license. It was moved to the back of the bill into a separate article that makes it clear the state will be doing this program, but it is not an inducement that is tied only to the AGIA pipeline. "It is available for any pipeline."

She said Section 43.90.120 on page 3 of version C relates to the abandonment of a project. Concerns were expressed about tightening up language regarding the process for a third-party arbiter. The revision authorizes both the state and the applicant to select an arbiter and that they would choose a chairman of a three-person arbitration panel pursuant to the

American Arbitration Association (AAA) commercial arbitration rules.

SENATOR WIELECHOWSKI asked her to mention areas the administration does not support or does not have a position on as she goes through the substantive sections.

MS. DAVIS acknowledged that request and went on. She said (b)(2) was added to 43.90.120 on page 3 that clarifies what happens when one party thinks the project is deemed uneconomic and the other party doesn't - after an arbitration.

12:50:14 PM
She said page 3 of version C adds Section 43.90.120 (c) that clarifies abandonment of the project and clarifies that in the event that the arbitration panel determines the project is uneconomic or the licensee and the state agree that the project is uneconomic that the state has a right to receive an assignment of all the project data, engineering designs and the license.

Section 43.90.130 on page 4 was originally suggested by the administration and it incorporated, by reference, the language of the Procurement Code specifically dealing with appeals of the award process and the appeals of the actual award. Mr. Bullock made some revisions to make this section comport with concerns that that the procurement code language didn't exactly fit this situation like a glove and the administration supports it. Now the commissioners are directed to adopt, by regulation, their own appeal provisions that are going to be substantially similar to the procurement provisions.

MR. BULLOCK expanded that the reworded language makes references to the commissioners of the Department of Transportation and Public Facilities and the Department of Administration and accomplishes the same thing as far as rights and procedures in the Procurement Code.

12:51:54 PM
MS. DAVIS said Section 43.90.140 on page 5 of version C deals with application requirements and is often called the "must have" section. The first change is under section (2)(B) which eliminates instate delivery points because the size/volume/design capacity of those points would be difficult to know at the time of the application.

12:53:12 PM

MS. DAVIS said subsection (2) (D) was also amended to address information linked to Canadian portions of the project and the liquid natural gas project. Additional information was inserted into both of these sections asking for specific detailed information that wouldn't necessarily be applicable to a generic all-Alaska line. Some of this information has come from the administration, some of it from the legislature, and she was comfortable with the language.

12:54:08 PM
She said the next substantive change was in the application criteria section (6) (A) on page 7 of version C. The change came from the industry side and reflects its concerns about what costs of expansion can be included. It was clarified that the state anticipated increased fuel costs associated with expansion and a reasonable return rate authorized by the regulatory body.

CHAIR HUGGINS asked if the producers communicated this concern to her or to the administration.

MS. DAVIS replied that it was to her and there was no formal written document on it at this point. The administration concurs.

12:55:17 PM
She went to subsection (6) (B) that was inserted to clarify what is meant by requiring expansions based on reasonable engineering increments. This reflects compression of pipe additions and a concern that it be a certain scope of compressor and pipe change.

CHAIR HUGGINS asked the reasoning behind this modification.

MS. DAVIS replied that the only reason for the change was that logically first expansions are usually compression changes; the second expansions are pipe changes and those terms were sort of mixed up in the bill.

12:56:10 PM
SENATOR WIELECHOWSKI asked for the rationale behind the added language.

MS. DAVIS replied these words are not added, but rather put in a different order than in the original bill.

CHAIR HUGGINS explained that for consistency industry prefers to start with compression expansion and then go to pipe size.

12:56:58 PM
MS. DAVIS said the next substantive change was in the application criteria on page 8 where section (8) and reflects the desire by the legislature to see more detail concerning the gas treatment plant. The administration inserted the first clause which required the applicant to propose how it was going to deal with the North Slope gas treatment plant regardless of whether it was part of the proposal or not. She explained that an applicant is not required to have a gas treatment plant as part of its application. But in the instance it would not, there was concern about the viability of that project if it didn't address how the gas would be treated. So, this requires them to provide information about that.

MS. DAVIS said the second half of the paragraph on page 8, line 20, described the gas treatment plant including its design, engineering and construction. The legislature recommended these details and the administration was comfortable with eliciting it.

CHAIR HUGGINS thought he found a typo on page 14 – "that that".

MR. BULLOCK responded that drafting style doesn't allow for using "such that" and the second "that" refers to a specific plant.

12:59:41 PM
REPRESENTATIVE COGHILL joined the committee.

1:00:07 PM
MR. BULLOCK said that this is the point at which there is a difference between versions C and E. Paragraph 9 on page 8 is reworded thus: "(9) propose a percentage and total dollar amount for the state's matching contribution under AS 43.90.110(1)(A) and (B) to be specified in the license." The change was not substantive, however.

1:00:18 PM
MS. DAVIS went to page 9, line 17, and said that (16) was added to the "Must Haves" in response to considerable public testimony to see the state commit to negotiate a project labor agreement to insure expedited construction and labor stability for the project by qualified residents of the state before construction,.

1:01:13 PM

CLICK BISHOP, Commissioner, Department of Labor and Workforce Development (DOLWD), based him comments on a slide show called "Jobs are Alaska's Future" to address project labor agreements (PLA). He said, "A project labor agreement is a comprehensive collective bargaining agreement that sets the terms and conditions of employment on a project, for that project only." The next chart showed the bargaining process between the licensee and the appropriate entity that would do the negotiation and how it would result in a collective bargaining agreement that would be agreed on by both parties. Then the contractors and the subcontractors would work under the terms and conditions of that agreement.

He said PLAs were first used in the 1930s and are currently used widely in both the private and the public sectors. Some private sector examples are the Trans Alaska Pipeline (TAPS), the Bristol Meyers Squibb project in New Brunswick, the Goldman Sachs Office Towers in Jersey City, Red Oak Power Plant, Toyota and Walt Disney.

He related that a PLA U.S. Supreme Court case set a precedent in 1993 and the Alaska Supreme Court had the Laborer's Local 942 v. Lambkin 1998. PLAs prevailed in both those cases. He said some PLA-based public and private project examples are the Grand Coolie Dam, Hoover Dam, TAPS, San Francisco's BART, and Puget Sound Transit, a large number of power plants in California, Seattle Airport, and Seattle Sound Transit.

The reasons to use PLAs are to have a stable work force, to insure no strikes or lockouts, to meet project scheduling challenges, eliminate the need to negotiate numerous separate contracts with individual contractors, insure consistent terms and conditions for all contractors; it's a good vehicle for Alaska hire including rural Alaskans, women and other groups, and it's an excellent apprenticeship opportunity vehicle.

1:05:45 PM

MS. DAVIS noted that Mr. Bishop was missing his daughter's birthday today and that he also missed her birth because he was making TAPS a reality. He hasn't missed a birthday since so she hoped this linkage with TAPS boded well for AGIA.

CHAIR HUGGINS asked if he thought this issue had "been put to bed."

1:07:51 PM

MR. BULLOCK commented that the issue of whether a government can require a PLA is not clear. Some cases have said government can impose the condition when government money is being spent, but it's not clear that it can be a requirement for a private project. Under AGIA, the project is licensed, but it is private. The issue is somewhat mitigated in the bill because a person must agree to it before submitting an application.

1:08:51 PM
MS. DAVIS said subsection (17) on page 9, line 20, was added to the application criteria to insure that the applicant doesn't use the state's $500 million in its rate base and that it is used as a credit against the cost of service. "We wanted to insure that upon receipt of any portion of the $500 million that it would accrue to the benefit of the state as contemplated in lowering the tariff."

1:09:33 PM
Subsection 43.90.160 on page 10, line 10, deals with proprietary information and trade secrets. The administration has proposed quite a few language changes because of comments from the public, industry and the legislative body. Subsection (a) keeps certain information confidential until a successful licensee is determined. The concern was that a successful applicant must have the application fully out there for the public to see in its entirety.

CHAIR HUGGINS asked when the information would actually become public.

1:11:11 PM
MS. DAVIS replied that happens after a license is awarded. She said subsection (b) provides the ability for the applicant upon submitting information to the commissioners and learning their determination as to whether the information may be earmarked as proprietary or trade secret or not, if it's not considered such the commissioners will immediately communicate that back to the applicant who will have the opportunity to decide to leave it in knowing it will become public or pull it back out because it is sensitive material.

1:11:36 PM
Subsection (c) provides that an applicant who challenges the award of a license or the process is deemed to consent to the disclosures of confidential information. The concern here was that an applicant who is challenging a successful licensee not

be able to "ambush from the bushes." It was difficult to parse out what would be appropriate for the public to see.

1:12:28 PM
MS. DAVIS said subsection (d) clarifies a little more what is "proprietary" by identifying information that would adversely affect the competitive position of the applicant or materially diminish the value of that information to the applicant that they consider to be confidential. Section 43.90.170 on page 10 has a lot of changes, she said, and deals with application evaluation and ranking.

1:14:33 PM
She went to Version E that had subsection (b) on page 11, lines 2 - 4, that didn't appear in version C until subsection (d). Added language would now require the commissioners when evaluating the net present value of the anticipated cash flow to the state, to utilize, at a minimum, discount rates of 0, 6 and 8 percent.

SENATOR WIELECHOWSKI asked the rationale behind using 0 and 6 percent as opposed to 5 percent.

MS. DAVIS replied this change came from the legislative body and provides a range of percentages for the commissioners to consider so that the legislature and the public could look at the evaluation and understand that there had been no effort on the part of the commissioners to select a specific rate of return that would optimize any particular application. The administration has a little concern about lease-specific selected percentage rates and she wanted Mr. Scott to address that issue.

1:17:09 PM
ANTONY SCOTT, Division of Oil and Gas, Department of Natural Resources (DNR), added that it makes sense to have a range of discount rates so no one rate is chosen to gain a result. He explained that a discount rate of zero is not a discount rate, and does not provide particularly useful information when evaluating different comparative streams of cash flow. He recommended picking a number other than zero for a low discount rate to mimic a rate of inflation, for instance. He suggested using 2 percent.

MR. SCOTT said he didn't know the motivation behind using 6 percent, but studies by august economists have suggested that a

more appropriate discount rate for the state to use is more on the order of 5 percent.

CHAIR HUGGINS asked if 8 percent is an upper range.

MR. SCOTT replied that 8 percent makes some sense if you look at the long term averaged over 10 years returns to the Permanent Fund.

CHAIR HUGGINS asked if he thought a range of increments was useful.

MR. SCOTT replied yes.

MS. DAVIS said the next change (version C) was on page 11, line 6 - (b) (2) and reflects what the administration calls "netback value" which consists of capturing the value of the state cash flow by taking the revenues minus the expected costs. It was previous referred to as "wellhead value." She explained that the administration felt there were advantages to using netback value and Mr. Banks would describe those.

1:21:23 PM
KEVIN BANKS, Acting Director, Division of Oil and Gas, Department of Natural Resources (DNR), said using "netback" instead of "wellhead" makes the arithmetic more explicit in the calculation. He said that "wellhead flags" might be the right word to use because there are further deductions that may be made for some of the gas that is committed to the pipeline and that arises from allowable deductions for the gas treatment plant and field costs, which are identified in the 1980 field cost agreement, which is referenced in Article 3 of the bill.

CHAIR HUGGINS asked if they could resolve that by tomorrow.

MR. BANKS replied yes.

1:22:50 PM
MR. BULLOCK reflected that the PPT discussions considered gross value at the point of production from which to take deductions for production of oil and gas. Perhaps "gross value at the point of production" might be an option. Because the definition of "gross value at the point of production for gas" also speaks to the gas treatment plant and which ends of the plant that valuation is determined.

MR. SCOTT said they are just trying to get to what the state's revenue is going to be.

CHAIR HUGGINS said for planning purposes if for some reason this hasn't been resolved by tomorrow it's not a crisis. There is still some time to go and they want to get it right.

1:23:45 PM

MS. DAVIS went to page 11, line 12, for the next substantive change that deletes (5) which related to the matching contribution. The matching contribution is considered a "fairly insignificant cost element" to the overall project's cash flow to the state and she felt it was picked up by other elements making it redundant as well.

MS. DAVIS explained that these were the administration's key elements to tighten up the evaluation criteria.

CHAIR HUGGINS noted there were no questions.

1:25:06 PM

MR. BULLOCK emphasized that the structure of this section is that for the valuation purposes, it first of all establishes that the money is there on paper and has to do with the tariff. The second part in subsection (c) presumes it looks great, but asked the question if it is going to happen. These are the criteria that the commissioner is going to use. You don't want to be too specific, but you want to be able to identify the most important things to the state from a policy standpoint. He emphasized that as they think about this bill, this is one of its most important parts.

1:26:19 PM

MS. DAVIS pointed out that an addition was made by Mr. Bullock to both the net present value listing and the likelihood of success factors in version E on page 11, line 13, that read: "(5) other factors found by the commissioners to be relevant to the evaluation of the net present value of the anticipated cash flow to the state."

She continued down to line 31 (page 11, version E) that inserted "(6) other evidence and factors found by the commissioners to be relevant to the evaluation of the project's likelihood of success." This provision provides the flexibility to insert additional provisions as they become important.

1:27:37 PM

CHAIR HUGGINS went to (version E, page 11) line 31 and asked if the commissioners have to address relevant likelihood of success both positively and negatively.

MS. DAVIS replied:

> We don't believe there is. It isn't that we have to prove the negative - in other words, that we have found no other factors that are relevant, but to the extent a factor is considered, it will have to be evident in the findings and it will have to be something that is applied uniformly to the applications.

MR. BULLOCK added that the extra provisions give the commissioners flexibility. He explained further:

> If the award is challenged, the standard of review as far as the commissioner's decision is whether they have abused their discretion. So, they have considerable discretion in identifying the most successful applicant. Their first review, when they are considering the factors in (b) and (c) both, they first of all are considering them among the applicants themselves - how they compare amongst themselves. Then secondly, they would apply these factors to what appears to be the most favored application and then we'll be more directly related to things like the performance of that applicant. So, not only is it better than the others, but it's good enough that we expect that the project will actually happen.

1:29:12 PM
SENATOR STEVENS said this is a crucial issue because integrity and good business ethics are hard to weigh. He asked if the bill could be more specific about how the factors are weighted.

MR. BULLOCK explained that the commissioners have regulatory authority so they can further define terms that are used in the bill, but ultimately even the regulations will be subjective in that regard. He explained:

> How do you decide good business ethics? Do you take into consideration the number of indictments or do they just don't look good? It is subjective. There is no way about it. But to the extent that you can

identify some source that you can at least start from to say whether it's good or bad. I mean....

SENATOR STEVENS said it has to be defensible, too.

MR. BULLOCK agreed and added:

> It's abuse of discretion - as long as there is a reasonable basis for making the conclusion that they did and the conclusion is that this is the best applicant. So the evaluation might be a little weak as far as what integrity and good business ethics constitute. But overall if it's subject to appeal, the court is going to look at was this the right applicant? Did they consider enough facts that a reasonable person could agree with the commissioners' decision? And that's the real issue. And that that's the issue that's overriding all this as opposed to the different elements that are identified. And to the extent that additional elements can be identified - they should be put in the bill.

CHAIR HUGGINS asked if he thought Alaskans would have confidence in the mechanisms.

MR. BULLOCK replied that it's a risky project and these items address that. This language gives a good basis for the commissioners to make their decision.

1:33:02 PM
SENATOR WIELECHOWSKI said because the legislature now has the authority to approve the decision, it's not really the standard agency review. He asked if that didn't ultimately take it out of any sort of agency abusive-discretion review and put it in the hands of the legislature, at which point there would be very little review.

MR. BULLOCK replied that the legislative review will be its own determination as to whether a decision is in the best interests of the state. As this bill is written, the legislature probably won't rewrite whatever the agreement is. It will say an applicant meets the qualifications or not. The bill is written with a final administrative decision after the legislature approves the license. That would be subject to appeal at that point and is located in version C on page 13, lines 3 - 5. The review would consider the actual record of the commissioners' decision-making in determining the best applicant.

1:35:09 PM

SENATOR WIELECHOWSKI said he wants to make this bill as bullet proof as possible and he views this as essentially a legislative action, so there is really very little right to an appeal.

MS. DAVIS responded that they had also listened to Senator Ted Stevens when he spoke to the body and gave them the admonition: "Make it unappealable!" So, they have inserted language in the application Must Haves that says "as a condition to filing an application, you hereby agree not to appeal, challenge, or legally attack the award of the thing." The Attorney General's analysis indicated that language was legal and constitutional.

MR. BULLOCK went on to explain that two issues were raised that have to do with separation of powers and approval of the contract by the legislature is one. The other issue is the legislative confirmation of the AGIA coordinator. There are constitutional limitations on nominations so the legislature has the power to approve. There is also a constitutional issue as to whether this form of a contract is an executive power and whether the legislature can actually kill it if the executive believes it should go forward. This issue may affect the ultimate approval.

He said this bill provides for legislative disapproval rather than affirmative approval. This section now requires legislative action and affirmative approval. He wasn't sure how the other issues would be resolved. Once they are identified, the second question becomes who will bring it up.

1:38:59 PM

MS. DAVIS went back to section AS 43.90.180 of version C on page 12, line 5, relating to the notice, review and comment period. It provides for the commissioners, once they have determined applications are complete, to publish notice that the applications are complete and put them out for a public review and comment for 60 days. The addition or change that the administration made to this section is in subsection (b) - where there is proprietary or confidential information being withheld from public review, the applicant is required to generate the summary of that information, which if the commissioners find that's an adequate summary, that will be what is put out for public review.

1:40:12 PM

MR. BULLOCK had a structural suggestion to consider moving this section above the criteria and add a provision in the criteria that allows the commissioners to take the public comments into consideration as part of their decision-making process.

MS. DAVIS said the administration is comfortable with that change.

SENATOR WIELECHOWSKI said he thought that was an excellent idea.

MR. BULLOCK said the way it is written now the public will be looking at all applications by virtue of where the public comment section was placed.

CHAIR HUGGINS said one of the scenarios he has heard is that the legislature will do further airing of the selected application so Alaskans understand why that application was considered to be the winning one.

MR. BULLOCK looked ahead at the alternative of legislative approval by resolution or bill. If it is introduced as a bill, then it's subject to the committee process, the three readings and the other requirements that relate to bills.

1:42:28 PM

MS. DAVIS said there are no substantive changes to section 43.90.190 - the notice to legislature of intent to issue license on page 12 of version C. However, section 43.90.200 on page 13 has a substantial revision suggested by the legislature.

MR. BULLOCK explained that version C says the commissioners determine the most likely applicant to receive the state's license and "send it to the House standing committee and the Senate standing committee having jurisdiction over natural resources." The reason a specific committee was not named is because standing committees are a matter of rule and not of statute. In version E, jurisdictional language for the House standing committee and the Senate standing committee isn't there and it now says "the legislature shall introduce a resolution...." He said it would be helpful to identify a sponsor and he suggested identifying a committee or the speaker or the president, to make that request through the Rules Committee.

1:44:26 PM

The second change relative to version C on page 13, line 12, is that version E adds "within 100 calendar days" after the receipt

of the determination. This raises an issue similar to the first one that said the 30th legislative day.

1:45:00 PM
SENATOR WAGONER said this changes the whole timeline on the process that was set up. The legislature does not have the authority to make contractual changes so he didn't know why it would take longer than 30 days to review a contract. One hundred days is way too long and he wanted to hear from the administration on that.

1:45:49 PM
COMMISSIONER PATRICK GALVIN, Department of Revenue (DOR), shared Senator Wagoner's concern that 100 days would take them beyond the 2008 field season, but he felt that it was needed in the bill as a stop gap measure in case there the commissioners' decision.

SENATOR WAGONER said his biggest concern is the cost of the project and how delays will affect it.

1:47:19 PM
MR. BULLOCK said the legislative approval raises a number of issues. For example, the way bills carry over from the first regular session to the next regular session. If it was considered in a special session, the special session runs out of time and you know that the resolution didn't pass and that it wasn't approved. If this 100 calendar days happened when 20 days were left in the first regular session, the session would run out, but the bill wouldn't necessarily have failed, because it could be carried over to the next general session. But within 100 days could still be 80 days after the session ends. So that requires that the legislature be in session and be able to consider and take action. He didn't know a best way to resolve it.

1:48:23 PM
COMMISSIONER GALVIN added that they recognize the existence of a number of parliamentary questions associated within the various options for approval.

1:49:33 PM
SENATOR STEDMAN said they all recognize Senator Wagoner's point about delays and rising costs of materials. He expected that the legislature would be very focused on making sure the state gets the best project possible and he was comfortable with the 100 calendar days for approval.

SENATOR WAGONER reflected that they hadn't gotten through AGIA yet and the PPT took 190 days to pass last year. The best laid plans can go awry. He really felt that 100 days was out of the question.

CHAIR HUGGINS said he agreed, but he also made the case for having 100 days - because of how long it took to get the PPT.

SENATOR WAGONER responded that they aren't taking action on the contract. It's an up or down vote.

CHAIR HUGGINS asked Commissioner Galvin when the legislature is scheduled to receive the contract.

COMMISSIONER GALVIN replied around mid-December to the end of January depending on how complex the issue is. He projected that the commissioners' decision and notice to the legislature would happen at the end of January.

1:55:01 PM
CHAIR HUGGINS reminded them that the legislature will last for 90 days next year and that it's undetermined about when it will start. They might not be in session when the commissioners decide.

1:57:49 PM
COMMISSIONER GALVIN responded that the timeline is a balance between wanting public confidence and legislative approval.

1:59:13 PM
MR. BULLOCK commented that they need to consider how much time the legislature as a practical matter will need to do this and if it will be in session at the time - while the clock is running.

SENATOR STEDMAN said he couldn't imagine that the legislature wouldn't take prompt action on the biggest project facing any generation that's alive today. The legislature could call itself in.

2:00:46 PM
SENATOR WAGONER said he has heard those statements before and getting the number of people to vote to call them back into session is not that easy - even facing a gasline and he thought they were stepping into a quagmire.

CHAIR HUGGINS said he thought it was fair to say that the average Alaskan wants lawmakers to get this done and he has full confidence that they will do that. He said they went with 100 days because that is what it took to get this bill to move to the next committee by next Monday.

2:02:00 PM
MS. DAVIS went to version C, Section 43.90.210 on page 13, line 19. The administration recommended changing subsection (a) to insure that because a licensee is being directed to accept the certificate from FERC or the RCA, recognizing that there could be onerous conditions or conditions that they find inappropriate, it wanted to provide time for them to be able to appeal and challenge those before they were required to accept the certificate. So language was inserted at the end that provides that they must accept "when all rights of appeal relating to the certificate have expired."

SENATOR WIELECHOWSKI asked how long an appeal can last.

MS. DAVIS said that additional language needs to be inserted that makes it clear it's the administration's position they are talking about an administrative appeal as opposed to further judicial and court appeals.

2:03:29 PM
DON SHEPLER, Attorney, Greenberg and Traurig, representing the Administration, answered that the FERC has a process known as "rehearing" and once a certificate order is issued, it could have conditions with it. The party that receives that certificate has 30 days by law in which it can request a rehearing of that order. Once rehearing has been sought, there is no deadline for the commission itself to act on that rehearing application. It's an open-ended process at the FERC.

To the extent that this language talks about court appeals, once the FERC is through with the proceeding and has issued its final order on rehearing, that order can be appealed to the Court of Appeals for the District of Columbia circuit within 90 days. Under a 2004 federal statute, the court is charged with expediting any appeals coming out under the 2004 federal legislation. That being said, he pointed out that they are still waiting for a decision from the same Court Of Appeals on FERC's order in 2005. He elaborated:

> It all depends as to how long the regulatory process can take. The regulatory process, itself, is open-

ended in that while the certificate holder has a time period within which it has to act, there's no drop dead date for the commission and certainly while there is an obligation on the certificate holder, a deadline within which it has to file an appeal, there is no deadline by which the court has to act.

2:06:11 PM
SENATOR WIELECHOWSKI asked if this was industry standard. "Why do we have to have that when all rights of appeal have expired? Could we essentially force them to accept the certificate after they've been awarded the certificate?"

MR. SHEPLER replied that would be an option available to the state. However, the thinking on the administration's part is that the applicant should have the ability to make its case for changes to the conditions. But their thinking is also that at the end of the day when all appeals are over and done with, what you have is a finding, potentially affirmed by the Court of Appeals, that this package of certificate and conditions is required by the public convenience and necessity. Their thinking was that at that point, the findings had been made and it was incumbent upon the applicant to accept that certificate on the basis that the federal government had found that this was the public convenience and necessity required.

SENATOR WIELECHOWSKI asked if this is standard language - to have the certificate issue after all rights have expired and if it would be bad public policy to force it before their rights of appeal have expired? He was worried about this getting strung out for years.

2:08:11 PM
MR. SHEPLER replied that was a fair question. The difficulty as a matter of public policy is when you say it should go forward. You could say it's after the FERC axe, because then the applicant would potentially be deprived of their right under the Natural Gas Act to seek judicial review.

He explained that pipeline companies and entities that are regulated by FERC routinely engage in what are called settlement agreements to resolve typically rate cases, certificate cases, and whatever else comes before the commission. It is not uncommon for the provisions to require certain actions to be taken, but only when there is a final non-appealable order from the commission. "So, waiting until the final shoe has dropped, so to speak, is somewhat conventional in the industry."

2:09:23 PM
CHAIR HUGGINS asked the origin of this amendment.

MS. DAVIS replied that it came from industry concerns that the certificate would be onerous and they wanted an opportunity to fine-tune the certificate for purposes of making the commercial project the best they thought it needed to be.

She thought the language "all rights of appeal" was fairly broad and included both administrative appeals and judicial court appeals. She suggested one option for the legislature would be to limit it to the administrative appeal, for instance. But that would require industry having to forego the judicial review - unless there's an opportunity to accept the certificate after it has been finally appealed to the FERC with the condition that they could continue to fight issues at a court level.

2:10:58 PM
MR. BULLOCK looked at the reasons a certificate might be appealed. Under the abandonment provision in AS 43.90.120, the state could review whether the project was becoming uneconomic after a while and whether it should be abandoned or not so the state could try for another project. In that section, "uneconomic" has not been defined as to whether it's from the standpoint of the project or the state or both. If the appeal goes on too long, a point could be reached where the project is no longer economic for anybody.

CHAIR HUGGINS asked Mr. Shepler what he recommended.

MR. SHEPLER agreed with MS. DAVIS that the state should allow the applicant to go to the FERC, but it would have to abide by what the FERC decided. That would certainly be a shorter process than waiting until the end of a court appeal. If the legislature's interest was in timing and speed, then cutting this off at mid-stream would be their answer.

CHAIR HUGGINS wondered what would happen if they cut it off at administrative appeal and it affects other people.

2:13:21 PM
MR. SHEPLER pointed out that other provisions in the bill provide that the licensee can tender back the accepted certificate to the state or its designee by going through whatever process is necessary at the FERC to have somebody else step up to the plate and take over the certificate. But then he

argued that perhaps it would be best to allow things to go through the judicial process as well, even though that would clearly add delay.

CHAIR HUGGINS asked him to come up with reasonable fixes for this issue before tomorrow.

SENATOR WIELECHOWSKI said as a matter of public policy, this section has the potential of setting the project back for years and costing the state billions of dollars.

CHAIR HUGGINS asked if Drue Pearce might have a role at this time.

2:15:37 PM
MR. SHEPLER replied that he thought this would be outside her jurisdiction because two federal entities are involved- the FERC and the Pipeline Coordinator's Office which is in charge of insuring that all of the other federal entities do expeditiously what they are required to expeditiously.

2:16:43 PM
CHAIR HUGGINS recognized a Marine who just stepped into the room, Mr. Josh Tipple.

2:16:55 PM
MS. DAVIS pointed out that when they say that all rights of appeal relating to the certificate have expired, they have not restricted it to appeals by the applicant. It might be the state's appeal or a shipper's appeal or environmental issues relating to environmental permits or requirements.

CHAIR HUGGINS said he thought that an environmental challenge would put interested parties in a dilemma and that would drag things out. They know this happens quite often.

MR. BULLOCK added that any process like this has environmental provisions in a tariff that would be addressed like dissembling the pipeline at the end of a project. "The risk is there."

2:18:26 PM
MS. DAVIS went to page 14, line 17, of version C that inserts similar language in (f) that defines the date by which the requirement for sanction either within one year or five years is benchmarked off of and making the effective date of the certificate of public convenience and necessity issued by the

FERC or RCA to be the date when all rights of appeal relating to the certificate have expired.

She said a somewhat substantive change is in Section 43.90.220 on page 14, line 21, where the administration recommends an additional criterion for balancing whether a modification should be allowed and that is whether it affects the project's likelihood of success; before it just related to the value of the project.

She said Section 43.90.230 on page 14 - 15 relates to the reports, records, conditions and audit requirements and has been changed in subsection (b) to clarify the intent that the ability of commissioners to audit relate only to those of an entity that has received the state money or has made expenditures with it. The industry was concerned this could be used as an opportunity to springboard into many of their corporate records that might not relate to the state funding requirements. Subsection (c) attempted to do the same thing by inserting language that tied it to the rights to conduct hearings and investigative enquiries, compel attendance, and production of documents with respect to information relating to the project. Again, it ties it back to the project. Mr. Bullock performed his magic on reworking the diction which explains some of the differences in the CS recommendations.

2:20:51 PM
SENATOR WIELECHOWSKI asked if there was a substantive change in (b).

MS. DAVIS replied the only change was switching "licensee" it to "the entity receiving the state money or making expenditures." That was because "licensee" is defined in the bill as including all of its affiliates. "Affiliates" are defined as any entity in which it owns a 10 percent interest which casts a very broad net from the industry's perspective. She said:

> This section didn't get changed with respect to the scope of searching out where the state monies were spent or covering it - because this section is targeted toward the use of the state matching monies. Section (c) opens it up more broadly for the more general review of records and documents that relate to the license in general.

SENATOR WIELECHOWSKI said that was his concern. The state still has the ability to compel that information if it feels the entity is dragging its feet.

MS. DAVIS said that was correct.

2:22:47 PM
MS. DAVIS said the next substantive change was in section 43.90.240 which begins on page 15, line 20,. The key change recommended by the administration is a piece that was missing from a list of the remedies available to the commissioners which was the ability to require the assignment of the engineering data, contracts, permits, etc. It has the license revocation provision, but not one for the state to get back its matching funds.

She said Article 3 contains a section on resource inducements.

2:23:43 PM
SENATOR WIELECHOWSKI asked regarding page 16, line 19, section (4) if a catch all phrase should be added - "and any other information pertinent to the project" or something of that nature.

MS. DAVIS agreed and said that is consistent with the administration's intent. She went on to say section 300 sets up the qualification to receive resource inducements which are the tax and royalty benefits. There have been language additions to this section as well as 310 and 320 that relate to the administration's desire to tighten up the underpinning of these inducements as contract rights. Again, the effort is to insure that the state is supporting the constitutionality provisions in insuring they will be durable and withstand any sort of judicial challenges. So, the last line on page 16 of version C states specifically "The inducements set out in section 310 and 320 are contractual."

She explained the reason for this is because the courts are not going to presume a contract. They need to see an express legislative statement of intent that a right that has been created is in fact intended to be a contractual right.

MS. DAVIS said the other change in these three sections is where "lessee" has a following clause added that says "or other qualified person". The reason the administration recommended this change is because it became aware in talking to people in the industry, that particularly people who are going to buy gas

from producers, that there is a likelihood or a possibility that they would buy gas on the North Slope and be responsible themselves both as the purchaser to take care of the shipment of that gas. Previously, the tax and the royalty benefits flowed to a lessee and the concern is that the lessee in that case would not be acquiring capacity to ship that gas. They instead would be having someone else buy it and then the person buying it would not receive the benefit of those resource inducements. "This opens that up so that if the purchaser acquires the capacity to ship gas which enhancers our ability to have a pipeline, the tax and royalty benefits will flow through to the gas that they have purchased and the lessee that holds it will be able to pass that benefit on to the purchaser of that gas as they currently pass on the burden of those elements."

2:26:36 PM
CHAIR HUGGINS said he didn't think any parties would object to that and "it's a net gainer for the state in flexibility."

MS. DAVIS said she's been told they might want to add a definition of "other qualified persons".

CHAIR HUGGINS said lets do that.

SENATOR WIELECHOWSKI pointed out a spelling error on page 18, line 14 where "amend" should be "amends".

2:28:00 PM
MS. DAVIS said the other key change to this section was the addition language from the legislature saying that attempts to modify the existing language which requires a contractual commitment by the entity receiving the resource benefits that they not protest the rolled-in rates that are required to be proposed and supported by the pipeline company. As it exists under the bill, those obligations are identical for the pipeline company as well as for the holder of the resource inducements.

> The suggested change from the legislative body is that the obligation on the part of the resource holder be different and that they not have that obligation to support a 15 percent on top of a maximum recourse rate unless the existing rebuttable presumption with FERC goes away. This achieves the obligation on the part of a resource holder to undertake the potential for this future obligation if FERC changes its current rules. So, it's a contingent obligation and it only comes

into play if FERC moves away from its rebuttable presumption in favor of rolled-in tariff rates.

2:29:30 PM
MR. SHEPLER stated that AGIA was drafted symmetrically. In exchange for the license the entity had to commit to file for rolled-in rates for expansions up to the 15 percent limit. The symmetry was achieved in tying the resource inducements, the royalty and tax benefit certainties, to the commitment by those entities receiving those benefits from the state that they would not in turn litigate the rates the state is demanding that the pipeline company file for at the FERC.

This amendment delinks that symmetry and implicates whether or not the state is really going to get or must have rolled in pricing for expansions up to some ceiling. The thinking was that in large part, the resource inducements, the royalty and the production tax certainty, would go to parties that would be the shippers on the pipeline. Now with the fact that the pipeline had to file for rolled-in rates combined with the fact that those entities agreed not to protest the rolled-in pricing as required by for the pipeline, the state has some degree of certainty that expansions are going to be priced on a rolled-in basis. I say some degree of certainty because the FERC is at the end of the day going to make the decision. And what the pipeline proposes may or may not be what the FERC disposes of and resolves.

But if the pipeline line proposes and the shippers do not oppose before the commission rolled-in pricing and so long as the commission itself has a rebuttable presumption in favor of rolled-in pricing, the state has a high degree of confidence that rolled-in pricing at the end of the day is going to be the rule for pipeline expansions. Now, I think Antony can discuss with you some of the implications of whether you have that certainty or not, because I think it's very critical to the future of the state.

2:32:54 PM
MR. SCOTT explained that the bill contemplates certainty for three different parties, some of whom may all be the same parties - the initial shippers only, the mid-stream entity that receives the license (the damage provisions insure that "the

state dances with whom we brung," so it doesn't abandon potential pipeline applicant if another party comes forward with what it thinks is a sweeter deal). The certainty created around rolled-in rates is very important for potential explorers. The proposed change to the bill would create some significant uncertainty as to the ultimate pricing and the value of prospects where having rate structure is very important. "So the administration's view is that it is appropriate to maintain the symmetry that Mr. Shepler referred to earlier in the bill."

2:35:06 PM
CHAIR HUGGINS asked him to continue looking at these provisions and advise the committee.

The committee took an at-ease from 2:36:08 PM to 3:02:13 PM.

3:02:13 PM
MS. DAVIS went to page 19, line 5 that is the gas production tax exemption. The language change is to emphasize the contractual nature of the commitment. In addition in version E, page 19, line 25, the same language that relates to changing the requirement that the resource shipper commit to accept the rolled-in rate provisions of the pipeline company have been modified here as well at line 25. It is the exact language that was inserting in the previous royalty provision.

SENATOR WIELECHOWSKI went up to line 13 and remarked that the whole contract has been using both commissioners and then all of sudden it switches to the commissioner of the Department of Revenue. He asked if that was intentional.

3:03:56 PM
MS. DAVIS replied that in the royalty provision which precedes this section 310, there is a form for commitment to this contractual provision and that is entered into just between the commissioner of the Department of Natural Resources and the resource holder for the benefit; so it is a contract just between the two. In this instance, because it's the tax provision, the contract is being entered by the commissioner of the Department of Revenue (DOR) and the resource shipper because royalty is within the jurisdiction of resource and the tax provisions would be under jurisdiction of the Department of Revenue.

MR. BULLOCK added that he was commenting on the tax exemption and that Article 9, Section 1, of the constitution prohibits contracting away or suspending the state's taxation power. To

the extent that this is interpreted to lock in a tax rate and prevent a future legislative adjustment to it, it is unconstitutional. There is an exception to Article 9, Section 1, and Article 9, Section 4, which provides for exemptions. Exemptions may be enacted and it specifically requires that they be enacted by general law that would be subject to review by a future legislature.

> Making this a contractual provision not only violates Article 9, Section 1, but it brings in, like Ms. Davis said, Article 1, Section 15, that prohibits the legislature from passing a law that impairs the obligation of a contract. By making it a contract, you violate both the Article 9 provision and present an Article 1, Section 15, issue to a future legislature.

3:06:06 PM
CHAIR HUGGINS asked for the solution.

MR. BULLOCK replied that the solution is to back up and look at what they are dealing with. The state has two interests in the oil and gas resources; it's an owner and it's the taxing authority. As an owner, it can negotiate leases with contracts. There is no provision in the constitution that prevents adjusting the leases.

> As a matter of fact, what the royalty inducement offers is a basis for amending existing contracts. Those regulations will come up with an alternative for the determination of the state's royalty share. And as an owner, you could negotiate on the amount of royalty. So there is flexibility there.
>
> The Article 9, Section 4, is an exception, the only exception in Article 9 which is the financial part of the constitution - provides for exemptions. And if you took the language strictly there, you could arguably create an exemption for say 10 percent of the throughput of a producer through the capacity that they identify during the first binding open season. But, again that would be a general law and subject to review - if you started off, say with 10 percent. And it turned that was giving the effect you wanted, well then, you would be free to raise it [indisc.]. If the state had another earthquake or a flood, and the state needed revenue, which historically has happened, you could reduce the 10 to 5, but the flexibility is

> there, because it's not locked in the contract and the power to tax has not been suspended.
>
> Historically, TAPS was delayed. In October 1973 there was a special session of the legislature that enacted a tax on the oil and gas production property and in 1975 TAPS was still delayed - the legislature enacted a reserves tax. By locking it into contract, you not only are inviting litigation, [indisc.] buy you're also tying the hands of future legislators that would have to deal with the Article 1, Section 15, as to whether they are impairing a contract.

3:08:37 PM
MS. DAVIS reflected that it is the department's intent to created fiscal certainty around the tax relief or the tax benefit this section creates and to do it in the most constitutionally defensible manner possible. They have been working on it and continue to improve it. She has heard different view expressed by different learned people regarding the interpretation of Article 1 and Article 9 and whether the legislature can bind future legislatures and exemptions. They will whatever is necessary to make this language work.

3:10:39 PM
CHAIR HUGGINS asked Mr. Bullock if he said "exemption" may be more palatable.

MR. BULLOCK responded that was more likely than not to be acceptable, because the constitution says it can be an exemption and that it has to be enacted by general law.

CHAIR HUGGINS said it is an important provision and they will continue to work on it.

MR. BULLOCK noted that ultimately the Alaska Supreme Court will decide whether something is constitutional or not, but the legislature has the opportunity to decide how much risk it wants to take.

SENATOR WIELECHOWSKI said he thought there were ways to do it - legislatures bind future legislatures all the time - on things like leases.

MR. BULLOCK reflected that he review state contracts that the legislature enters into and they always have a provision that even in a long-term lease, that the lease is subject to

appropriation by future legislatures; so they are not binding on future legislatures. This is important for long-term leases in the context that it has become a debt obligation to the state.

3:13:07 PM
MS. DAVIS went on to Article 4, which contains the AGIA coordinator section of 43.90.400 at the bottom of page 19 of version C. The only change that the administration wanted to make was to change the wording to make it clear that the position will terminate, not the person.

MR. BULLOCK said the legislative confirmation issue in the section raises a separation of powers issue. The constitution recognizes that heads of agencies and quasi-judicial agencies are subject to confirmation by the legislature and it's been quite narrowly construed. It's an executive versus legislative branch issue.

MS. DAVIS said Section 43.90.410 on expedited review has no substantive changes. The following section is new, 43.90.420 and it is a restatement of what used to appear at the beginning of the bill under the listing of inducements for an AGIA pipeline builder. So, the job development program is no longer linked to just the AGIA license project, but it is now a stand-alone program that would be focused on any pipeline, not just this specific project.

3:15:31 PM
SENATOR STEVENS said he assumes it says elsewhere that the person who receives a contract will utilize this.

MS. DAVIS replied absolutely. There is a requirement to commit to use the workforce in the must have section. She went on to Article 5 which contains the miscellaneous provisions and there are no substantive changes to 43.90.500,.510,.520 .

SENATOR WIELECHOWSKI said the original version of the bill had a section on statute of limitations and asked where those reside in the new version.

MR. BULLOCK remarked that the AGIA coordinator and the expedited review by state agencies were moved out of Article 3 into Article 4, because they were more applicable generally than just to the inducements and those sections had to be renumbered.

3:17:29 PM

MS. DAVIS said the next substantive change was on page 22, line 3, of version C, section 43.90.540. The change was recommended by the administration and deals with the commitment by the state that it will honor and stand behind the licensee that is selected under AGIA and that it won't back another project financially or through tax or royalty preferences. It clarifies that the commitment by state only endures prior to the commitment of a commercial operation of a project. The other piece that is changed is at the end of the section there is an added sentence that says "In this section, a competing natural gas pipeline project means a project designed to accommodate throughput of more than 500 Mmcf/day of North Slope gas." The intent is not disable the state's ability to provide support, monetary, royalty tax support for a project that would essentially be either the spur line off of a main line or the bullet line from the North Slope to Fairbanks. She mentioned a typo of having to insert a large "M".

SENATOR WIELECHOWSKI asked if a project delivers gas to Canada would the ANGDA proposal be considered as competition.

MS. DAVIS replied if the ANGDA proposal is a pipeline that carries a 1.5 bcf/d from the North Slope all the way to Valdez for the purpose of an LNG project that would exceed 500 miles and would be a competing project if another pipeline had been licensed for that route. If the licensed project is designed to go from the North Slope to Alberta or Chicago and the ANGDA group comes forward and seeks to have an instate tie to that line, that would then go down to Valdez, that spur technically would not be a competing line - notwithstanding the fact it might be longer than 500 miles- because no portion of that route is the same route as the licensed pipeline project.

3:20:52 PM
SENATOR WIELECHOWSKI said he thought that definition was extremely broad and presented potential problems for spur lines and bullet lines.

MR. BULLOCK added that right now the limitation is how much goes through and that it originates on the North Slope and more could be done in terms of allowing differing routes.

MS. DAVIS said they would work to further refine the definition so that it doesn't exclude things they don't intend to or include things they don't intend to include.

She went to 43.90.550 on assignments that had no substantive changes. That a transfer would not impair the likelihood of success of the project in addition to not impairing the value was added to (a)(2). Section 43.90.560 on conflicting laws on page 23 of version C had no changes. Section 43.90.570 added a section entitle "severability". The purpose of this section is to shore up the act in the eventuality that a section was deemed unconstitutional. "Again, the intent here is to reflect the fact that under the tax and royalty provisions, whether something is deemed constitutional is not a risk that's being taken by the state, but rather we would expect the bill to march forward regardless of an ultimate determination on those provisions.

Article 6 on general provisions, Section 43.90.900 on definitions had a substantive change on page 24, line 17 where it adds a definition for North Slope. Section 43.90.990 has not change. Section 2 on page 25, line 5, of version C had a small amendment to change from a third party arbiter to arbitration panel to conform to the other changes regarding the arbitration.

3:24:02 PM
MS. DAVIS said there are no more technical changes. Section 4 previously had a provision that dealt with insuring under the public records act, the state was exempting from disclosure records that were proprietary or trade secret or pending the confirmation that applications have been received and actions taken such that they become disclosed either because they are the successful applicant or there's a challenge. To conform with legislative drafting requirements, Mr. Bullock had incorporated the entire section into which this change is inserted. It's more of a format presentation difference.

CHAIR HUGGINS went back to page 23, section 43.90.900 where "other qualified person" was defined.

MS. DAVIS said she had already noted that definition was going to be added.

CHAIR HUGGINS asked if there were any more comments.

3:26:08 PM
MR. BULLOCK wanted to comment on some things that might help the amendments move more easily with the committee. The best way to get what they want is to start off with the version of the bill that is being amended and write what they want on the page.

The committee took an at-ease from 3:27:42 PM to 3:35:04 PM.

CHAIR HUGGINS said the parties would get together with Mr. Bullock so they could have a CS by tomorrow. There being no further business to come before the committee, he adjourned the meeting at 3:36:03 PM.