

**ALASKA STATE LEGISLATURE**  
**HOUSE SPECIAL COMMITTEE ON ENERGY**

April 16, 2009  
7:34 a.m.

**MEMBERS PRESENT**

Representative Bryce Edgmon, Co-Chair  
Representative Charisse Millett, Co-Chair  
Representative Nancy Dahlstrom  
Representative Kyle Johansen  
Representative Jay Ramras  
Representative Pete Petersen  
Representative Chris Tuck

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 164

"An Act relating to noncompetitive leases of state land and for rights-of-way for oil or natural gas pipelines that originate and terminate within the state and to the regulation and certification of those pipelines; relating to conditional certification for certain new natural gas pipelines; relating to definitions of "common carrier" and "firm transportation service" in the Pipeline Act."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 164

SHORT TITLE: IN-STATE PIPELINES: LEASES; CERTIFICATION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/02/09	(H)	READ THE FIRST TIME - REFERRALS
03/02/09	(H)	ENE, RES, FIN
03/28/09	(H)	ENE AT 10:00 AM BARNES 124
03/28/09	(H)	Heard & Held
03/28/09	(H)	MINUTE(ENE)
04/16/09	(H)	ENE AT 7:30 AM BARNES 124

**WITNESS REGISTER**

JOE BALASH, Special Staff Assistant for Energy and Natural  
Resource Issues  
Office of the Governor  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the hearing on HB 164.

DON BULLOCK, Attorney  
Legislative Legal and Research Services  
Legislative Affairs Agency (LLA)  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the hearing on HB 164.

### **ACTION NARRATIVE**

[7:34:21 AM](#)

**CO-CHAIR BRYCE EDGMON** called the House Special Committee on Energy meeting to order at 7:34 a.m. Representatives Johansen, Dahlstrom, Ramras, Millett, and Edgmon were present at the call to order. Representatives Petersen and Tuck arrived as the meeting was in progress.

#### HB 164-IN-STATE PIPELINES: LEASES; CERTIFICATION

CO-CHAIR EDGMON announced that the only order of business would be HOUSE BILL NO. 164, "An Act relating to noncompetitive leases of state land and for rights-of-way for oil or natural gas pipelines that originate and terminate within the state and to the regulation and certification of those pipelines; relating to conditional certification for certain new natural gas pipelines; relating to definitions of "common carrier" and "firm transportation service" in the Pipeline Act."

[7:35:15 AM](#)

JOE BALASH, Special Staff Assistant for Energy and Natural Resource Issues, Office of the Governor, reviewed the provisions in HB 164.

[7:36:21 AM](#)

REPRESENTATIVE RAMRAS mentioned his past debt to Mr. Balash; nevertheless, he stated his reservations about the bill. He then asked whether those who did not vote for the Alaska Gasline Inducement Act (AGIA) should support HB 164 when the bill has so many provisions that are similar to those in AGIA.

[7:38:01 AM](#)

MR. BALASH pointed out that three members of the committee did not vote on AGIA. Furthermore, the AGIA vote was on whether to award the license, not to decide the underlying law.

[7:39:02 AM](#)

REPRESENTATIVE RAMRAS continued to explain that one of the significant impediments to AGIA, in the opinion of those who voted against it, is the roster of "must-haves". These must-haves are now manifested in HB 164.

[7:39:31 AM](#)

MR. BALASH reminded the committee that members of the committee who were members of the 25<sup>th</sup> legislature voted for the must-haves that are part of the underlying law of AGIA.

[7:39:58 AM](#)

CO-CHAIR EDGMON requested a review of the bill.

REPRESENTATIVE RAMRAS further asked whether deletion of the must-haves would weaken HB 164.

MR. BALASH said yes. He informed the committee that the administration's concern regarding the change in "common carrier privilege and access" is not an insignificant one, and must be balanced against the way that contract carriage is implemented and the opportunities for expansion. Common carrier service is the gold standard of an open access pipeline; in fact, the restriction of service and opportunities for expansion must be balanced with regular solicitations, and the kinds of features seen in the list of must-haves that are embedded in Title 38, Sec. 3, of the bill.

REPRESENTATIVE RAMRAS asked which must-haves are essential to HB 164, and which are nonessential.

[7:42:29 AM](#)

MR. BALASH opined none are nonessential. He then noted that the first two sections make additional references to other statutes that reference Sec. 120 and Sec. 121; furthermore, Sec. 3 creates a new section in AS 38.35, the Right-of-Way Leasing Act. The new section, Sec. 121, begins on begins on page 2, line 18,

and adds additional covenants that are required in leases for natural gas pipelines that originate and terminate within the state. He said, "... originating and terminating within the state means we're talking about an inter-state pipeline, not an intra-state pipeline, so we're not using the state right-of-way leasing act to try and affect an inter-state pipeline that's regulated by [the Federal Energy Regulatory Commission (FERC)]. This is a pipeline that would be regulated by the [Regulatory Commission of Alaska (RCA)]." Mr. Balash continued to explain that the first new covenant addresses the level of expansion opportunity. In fact, every two years the pipeline will assess the demand for additional capacity in the pipeline.

[7:44:19 AM](#)

REPRESENTATIVE RAMRAS listed the various sources of natural gas. He asked whether it was legally possible to expand the pipeline if the gas is coming from the North Slope at the rate of 500 million cubic feet per day (MCF/d).

MR. BALASH clarified that assuming Representative Ramras' reference is to the project assurances clause in the AGIA license, and that the project is funded by a grant of state cash, or preferential tax or royalty treatment, the treble damages clause is applicable; however, the Palin administration is assuming the project is economic at the outset and will be funded by the private sector. Then there is no concern about exceeding the 500 MCF/d limit.

REPRESENTATIVE RAMRAS asked about the tax ramifications. For example, HB 44 authorized \$250 million that may be part of a subsidy towards an in-state pipeline. Additionally, the pipeline coordinator wants to use Alaska Natural Gas Development Authority (ANGDA) to coordinate state permits. He surmised there will be state involvement.

MR. BALASH expressed his understanding that soliciting the market or assessing the capacity of the pipeline would not result in a violation of the AGIA license. He related that the work of firming up the major permits, and identifying customers and the suppliers of gas, will be reimbursed to the state. Thus there is no cash grant award involved; furthermore, \$250 million will not build a pipeline from the North Slope to Southcentral Alaska.

REPRESENTATIVE RAMRAS will confirm if HB 164 needs a referral to the House Judiciary Standing Committee (HJUD) for legal consideration.

[7:48:31 AM](#)

REPRESENTATIVE JOHANSEN expressed his concern over whether this pipeline will be FERC or RCA regulated.

REPRESENTATIVE RAMRAS said that he had talked with FERC and suggested that the deletion of Sec. 3 would remove his concerns about legality.

MR. BALASH called attention to page 3, line 30, regarding the terms of service, and noted that [paragraph] (2) specifies that the pipeline company would not require disparate treatment of a perspective shipper, put a commercial burden on them, or otherwise subvert the commitment made on open season and expansion opportunities.

REPRESENTATIVE RAMRAS asked whether Mr. Balash skipped [sub paragraphs] (C), (D), (E), & (F).

MR. BALASH said yes.

REPRESENTATIVE RAMRAS, in response to Co-Chair Edgmon, expressed his decision to "root in" on this bill and its provisions.

CO-CHAIR EDGMON expressed his intent to have a full hearing and then to take action on the bill.

CO-CHAIR MILLETT suggested a review of pages 3-7 to talk about the importance of the must-haves.

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MR. BALASH, in response to Co-Chair Edgmon, said he would summarize for clarification. On page 2, line 25, he read:

(1) ... commit that [after] the first binding open season, the lessee will assess the market demand [for additional pipeline capacity at least] every two years through public nonbinding solicitations;

MR. BALASH stressed that a nonbinding assessment determines whether an open season needs to take place. In order for

potential shippers to understand what the opportunity is, they need to know the timing of the assessment, which is covered in [sub paragraph] (A). Furthermore, [sub paragraph] (B) provides that there will be at least 30 days' prior public notice for each solicitation and [sub paragraph] (C) sets out the next reasonable engineering increment of capacity such as compression stations and looping.

REPRESENTATIVE RAMRAS presumed that the pipeline is not economic if it is transporting less than 500 MCF/d. Therefore, he questioned whether there was any language that speaks to the following: the size of the pipe, whether ANGDA is used for permitting, or the source of the supply of gas. He concluded this language is illegal and covers situations for a pipeline that is already out of compliance.

MR. BALASH opined the use of the word illegal is founded on a false presumption. Any concern with the threshold the 500 MCF/d represents must be based on the presumption that the pipeline is not economic and requires a subsidy by the state. However, if the current estimates that the demand for gas will be 740 MCF/d, there will be no need for state subsidies.

REPRESENTATIVE RAMRAS re-stated his point that the state is presently giving \$9.5 million to ANGDA for permitting. Illegal is the appropriate word and there is a lack of language in HB 164 to frame this.

MR. BALASH turned to page 3, line 6, that requires a good faith effort on the part of the lessee to estimate the cost of regulated tariff rates. On page 3, lines 9-10 require a good faith estimate of how long it will take to provide the service. On page 3, lines 11-21, identify the kinds of requirements expected of shippers. On page 3, lines 22-29, require a commitment to promptly and diligently pursue a binding open season for expansions and to respond to nonbinding solicitations. [Paragraph] (2), beginning on page 3, line 30, requires the open season to be nondiscriminatory and conducted without additional requirements to prospective shippers. On page 4, line 5, [paragraph] (3) requires that after open season, the pipeline company promptly and diligently pursue regulatory approvals, permits, and RCA orders in order to accomplish an expansion. [Paragraph] (4), lines 17-21, require the pipeline company to file as part of the overall tariff, the pipeline's determination of the next reasonable engineering increment. [Paragraph] (5), lines 22-24, require not only expansion of the

pipe, but that expansion is done in a manner that encourages exploration and development in the state.

REPRESENTATIVE RAMRAS asked what "commercially reasonable terms mean in the context of an in-state gas pipeline."

MR. BALASH stated that the definition is provided on page 6, line 31. He answered:

Commercially reasonable terms mean that revenue from the transportation contracts cover the cost of the expansion, including increased fuel costs and a reasonable return on capital.

REPRESENTATIVE RAMRAS clarified "in the context of" and "in-state pipeline."

MR. BALASH, responding to Representative Ramras' request for further clarification, stated that a commercially reasonable term of service on the pipe is one that allows the pipeline to earn a rate of return that satisfies the needs of the investor without unduly burdening the shipper of the gas, or the customer that buys the gas.

[8:03:18 AM](#)

REPRESENTATIVE RAMRAS re-stated his request for a real example of an event in Alaska that would trigger an expansion.

MR. BALASH referred to page 2, line 25, that requires an assessment of market demand. In further response, he offered the examples of the depletion of the gas supply in Cook Inlet, and the increased use of natural gas vehicles.

CO-CHAIR EDGMON mentioned the shortage of time for discussion.

REPRESENTATIVE RAMRAS pointed out that the language is premature and superfluous to the present situation. There is nothing on the "near-term horizon that requires us to have all of this burdensome language ... that is going to do nothing but scare off a private sector entity.... Arguably, HB 164 is not material to what we are doing."

CO-CHAIR EDGMON encouraged Representative Ramras and other members to produce amendments for the full airing of their views.

REPRESENTATIVE RAMRAS expressed his support of some of the steps taken by the administration, but not HB 164 or HB 163. In response to Co-Chair Edgmon, he said at the appropriate time he will move to strike Sec. 3.

CO-CHAIR MILLETT agreed with Representative Ramras and said that Sec. 3 also gives her pause because putting "sideboards" on a project is a detriment to the private sector.

CO-CHAIR EDGMON encouraged full committee discussion.

REPRESENTATIVE JOHANSEN observed he has time today for review of the bill and encouraged the committee to take the time necessary for further discussion. Additionally, he expressed his concern about generating the market sufficient to fill the pipeline.

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MR. BALASH acknowledged that natural gas needed for cars might be many years away; however, if a right-of-way for a natural gas pipeline is arranged with the private sector it is a contract that must be honored. For contracts to work for the life of the pipeline, they must be broad and flexible.

REPRESENTATIVE RAMRAS encouraged the committee to review other sections of the bill and return to Sec. 3 afterward.

[8:15:33 AM](#)

CO-CHAIR EDGMON stated his intention to extend the hearing in order to review the bill "line by line".

MR. BALASH reminded members that the administration has had discussions surrounding the "bullet line project" with private sector entities who have not had the opportunity to testify on the bill. He turned to page 4, line 25, [paragraph] (6), and said that this paragraph requires that the lessee will propose and support the recovery of capacity expansion costs by a rolled-in basis. He explained that a pipeline can be expanded through the addition of compression stations, or by the addition of pipe segments, called looping. Adding compression stations is usually cheaper until a certain threshold pressure is reached. At that point, it must be determined who will pay the incremental increased cost to operate the expanded pipeline. The two choices are: incremental pricing that is paid by the new shipper; or rolled-in pricing that is divided and paid for by all of the pipeline customers evenly. In the example of an

800-mile pipeline with two or three compression stations, the addition of more compression stations is most likely, thus the cost of the additional compression stations is spread among all of the units of gas. Assuming the amount of gas is increased from 450 MCF/d to 650 MCF/d, the incremental cost of the additional compression stations is spread out, the overall tariff goes down, every shipper benefits, and nobody complains. But if the cost increases the tariff, there are disputes. Historically, pipeline companies in the U.S. inter-state gas market preferred rolled-in pricing; however, after the 1980s, the federal regulatory body moved toward incremental pricing as a means of stimulating competition between companies. Competition was desired because there was a glut of gas and consequently, pipeline companies became regulated monopolies.

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MR. BALASH noted that Canada continues to remain largely committed to rolled-in rates. As Alaska has not developed a pipeline system to move gas, the administration believes the rolled-in pricing system is the best way to achieve a network of pipelines.

CO-CHAIR MILLETT asked for an example of a combination of rolled-in and incremental rates.

MR. BALASH responded that the use of rolled-in rates is necessary for the development of pipeline networks and natural gas transportation systems in Alaska. On the other hand, the potential risk to an initial shipper is that rolled-in rates will increase until the cost exceeds the rates the shipper agreed to originally. Therefore, there should be a "cap" on the exposure risk to the shipper. On page 4, line 26, [sub paragraph] (A) states that the pipeline will offer expansion capacity on a rolled-in basis; however, for the initial shippers there will be a cap of 115 percent of "day-one rates". For example, if the day-one rate is \$2, the rate to the shipper will not exceed \$2.30. Mr. Balash further explained that if the overall cost of the pipeline cannot be recovered at the \$2.30 rate, then the newest expansion shippers will pay the incremental cost above \$2.30. Thus the pipeline is offering both rolled-in rates and incremental rates.

CO-CHAIR MILLETT asked whether distance-sensitive rates are a third possibility when a shipper only needs expansion for a short distance.

MR. BALASH said, "The vagaries of rate-making are extraordinarily dry." He gave the example of an original pipeline with Anadarko Petroleum Corporation (Anadarko) shipping gas from the Gubik oil field (Gubik) to Anchorage. In, in 2021, Doyon, Limited (Doyon) wants to ship to Fairbanks or Nenana, there would not be a need for additional compression, but Anadarko would still be using the service from Gubik to Fairbanks and it would be paying the cost. The expansion from Nenana to Anchorage would require additional expansion; if that additional cost reached above the 115 percent cap, that segment of the pipeline would also have a distance-sensitive rate for Doyon. The illustrative numbers would be a \$2 tariff with \$1 from Gubik to Fairbanks, and \$1 from Fairbanks to Anchorage with the distance rate added on.

REPRESENTATIVE RAMRAS observed that this sounds very burdensome for a company wanting to build a small diameter, in-state gas pipeline a short distance. Looking at the whole state of Alaska, he expressed his interest in a single pipe and some small ships that could double the gross domestic product (GDP) in Dillingham and have a single rate for the customer base in Southcentral. Further, he opined that a pipe from Southcentral to Fairbanks would have a tariff of \$27 and Fairbanks customers would continue to pay "the highest rates in North America for natural gas." Representative Ramras then remarked:

The only way this works is in for a dime, in for a dollar. Everybody pays the same. And that's why I think a lot of this language is superfluous and premature ... at the appropriate time I going to move to strike Sec. 3.

[8:37:55 AM](#)

MR. BALASH continued to note that on page 4, line 28, [paragraph] (6), subparagraphs (B) and (C), identify the manner in which rolled-in pricing will occur. More specifically, (B) identifies the manner in which the day-one shippers are protected by the cap against an unreasonably high rolled-in rate. On page 5, lines 23-28, subparagraph (C) identifies "how you would roll-in partially" for the expansion capacity cost. He re-stated that if the 115 percent threshold for the day-one shipper is exceeded, the day-two shipper is going to benefit from rolled-in rates up to the 115 percent cap, and then it will pay incremental costs for the portion above 115 percent. Page 5, line 29, subparagraph (D), indicates that once the 115 percent rate is reached, the pipeline can offer shippers

incremental service. On page 6, lines 2-10, subparagraphs (E) and (F) address how the pipeline company will conduct its business with other commercial parties before the RCA.

8:42:01 AM

CO-CHAIR MILLETT observed that the RCA would regulate an in-state pipeline; however, she asked whether RCA regulation would be affected when the state begins exporting gas and FERC "takes over".

MR. BALASH clarified that this bill governs a state right-of-way lease for a pipeline that originates and terminates in the state of Alaska. Regarding the possible regulation of this pipeline by FERC, the question arises only if the gas is going to be exported to another state. If the gas is exported to another country, the liquefied natural gas (LNG) facility will be regulated, but not the pipeline. Thus, if the pipeline is engaged in inter-state commerce, a different body of law and regulations will apply. The state's right-of-way leasing act cannot undermine or reverse federal law.

CO-CHAIR MILLETT relayed that a representative of FERC indicated that FERC could exert jurisdiction over the pipe. She said, "I see Sec. 3 as just putting the cart before the horse ... someone coming and wanting to engage in building something and they look at this bill and look at this body of law and throw their hands up."

MR. BALASH assured the members that the opportunity to contractually bind a lessee to terms is at the time of the right-of-way lease.

REPRESENTATIVE JOHANSEN pointed out the value of the administration's review of the bill before members have further discussions with FERC.

MR. BALASH called attention to page 6, line 11, that is an item that is part of the body of protections in the bill that will protect the interests of the users, and the customers, of the pipeline. Returning to the example of a pipeline from Gubik to Anchorage via the Richardson Highway, with Nenana gas coming in through Fairbanks and going to Southcentral, and with Nenana gas exported by a LNG project, the distance-sensitive nature of the shipping arrangement on the pipeline raises the question of who should pay for that service. He asked whether the Yukon River villagers should pay for the cost of shipping Nenana gas to

Anchorage in order to export it to an outside market. If, however, gas from Nenana results in rolled-in rates and the overall tariff between Fairbanks and Anchorage is reduced, the shippers from Gubik should benefit from spreading the cost. A distance-sensitive rate would ultimately benefit the shippers at Gubik and the consumers at the south end of the pipe. Moreover, a distance-sensitive rate would avoid the commercial "finger pointing" that takes place when two or more parties are involved with the shipping arrangements and there are two or more locations along the pipeline. Mr. Balash concluded that this is policy "that helps prevent some of the commercial fights or hurdles that ... might prevent parties from taking an interest in moving their gas."

[8:51:05 AM](#)

### ***Adjournment***

The House Special Committee on Energy meeting was recessed at 8:51 a.m. to a call of the chair.

CO-CHAIR EDGMON called the meeting back to order at 5:04 p.m. Present at the call back to order were Representatives Peterson, Tuck, Dahlstrom, Ramras, Johansen, Millett, and Edgmon. Co-Chair Edgmon then invited Mr. Balash to continue his testimony.

[5:04:43 PM](#)

MR. BALASH returned to HB 164 and indicated page 6, line 13, [paragraph] (8) refers to Alaska hire, Alaska business, and Alaska jobs. [Paragraph] (8) requires a commitment by the lessee to hire qualified residents for pipe planning, construction, and operation; to contract with local businesses; to establish hiring facilities within the state; to use job centers located within the Department of Labor and Workforce Development (DL&WD); and to negotiate a project labor agreement (PLA) before construction. Line 28, [paragraph] (10), requires the lessee to commit to regulation by the RCA. This concluded the review of Sec. 3.

[5:07:13 PM](#)

CO-CHAIR EDGMON asked Mr. Balash to continue to Sec 4.

[5:07:25 PM](#)

MR. BALASH said that Sec. 4 contains defined terms for the right-of-way leasing act such as "commercially reasonable terms" and "reasonable engineering increment". He also noted that the body of state law that is the pipeline act is addressed in Sec. 5. The aforementioned body of law, AS 42.06, is used by the RCA to regulate natural gas and oil transit pipelines in Alaska. Furthermore, this section of statute would apply to a North Slope natural gas pipeline that connects with a LNG facility. Mr. Balash advised that the new language ensures that the existing law applies, unless there is something in the proposed section that provides otherwise.

REPRESENTATIVE TUCK asked for information regarding Certificates of Public Convenience and Necessity (CPCNs).

[5:09:31 PM](#)

MR. BALASH explained that a CPCN is required for any pipeline before it can be constructed and operated. The RCA issues the certificate after it has determined that a project is in the public interest, is needed, and is efficient economically. Because pipelines are monopolies, they are regulated in this way.

[5:10:25 PM](#)

REPRESENTATIVE TUCK then asked how the issuance of a CPCN differs from the "assessment of market demand" called for in the bill.

MR. BALASH clarified that the items in the bill are the kinds of activities the pipeline company must engage in and undertake after the pipeline is constructed. He then turned to page 9, line 11, and noted that Sec. 6 allows for the RCA to provide a conditional CPCN. For example, ANGDA obtained a conditional right-of-way (ROW) across the Glenn Highway from Palmer to Glennallen. This meant that once the conditions of the conditional ROW are satisfied, the ROW can be issued. The state makes allowances for conditional ROW(s) on state land, but there is not a provision for a conditional CPCN. He advised the committee that a conditional CPCN will allow an entity to satisfy all of the other conditions of a CPCN, before financing or gas commitments are in place.

[5:13:43 PM](#)

REPRESENTATIVE DAHLSTROM asked whether there have been discussions within the administration about increasing the staff at the RCA.

MR. BALASH expressed his understanding that applicants pay fees for the work done at the RCA. He added that this bill has a zero fiscal note from the RCA.

REPRESENTATIVE DAHLSTROM surmised that the RCA would be able to hire additional staff with the fees paid by the regulated community. However, she has been told there is a long wait for a response from the RCA due to the lack of staff, even though the staff is working long hours.

[5:16:09 PM](#)

MR. BALASH agreed that the commission is challenged with staffing issues; in fact, the commission is undergoing a classification study and a review of its revenue.

MR. BALASH, in further response to Representative Dahlstrom, explained that the five commissioners at the RCA are nominated by the governor and confirmed by the legislature. Once confirmed, statute allows for the removal of a commissioner only for cause, in order to keep the commission independent of political influence. However, the commission is accountable through the budget process, although some tasks are assigned through state law and an unfunded mandate exists.

[5:19:09 PM](#)

REPRESENTATIVE DAHLSTROM re-stated the need for additional staffing, including an executive director.

CO-CHAIR MILLETT asked Mr. Balash to provide an example of "sanctioning".

MR. BALASH advised that the reference to sanctioning has to do with the work plan and the schedule that calls for major permits to be acquired and customers and suppliers of gas identified by mid-2011. At that point, a sanctioned decision will be made. In further response to Co-Chair Millett, he explained that the law has to be written generally and not for a specific entity. The proposed law states that an "applicant" can apply to the RCA for a conditional CPCN. The RCA does not sanction the project, but issues the certificate that identifies the route, the size of the pipe, and other details; however, if the applicant has

not obtained or committed financing, or does not have firm commitments for the transportation of gas, a conditional certificate may be issued. The intent is to allow an entity to obtain permits, sanction the project after it has obtained financing, and begin ordering materials and labor. After all of the conditions are met, the RCA would issue the final CPCN. In further response, he gave the example of a pipeline to the Kenai Peninsula. He surmised that Armstrong Oil and Gas, Inc., (Armstrong) which has a discovery there, could get a conditional certificate under the proposed statute, even though it is not going to build the pipeline.

[5:25:06 PM](#)

CO-CHAIR MILLETT asked what the process would be without the new statute.

MR. BALASH expressed his understanding that a company must meet the standard of fit, willing, and able to apply for a CPCN from the commission. If, in the example, Armstrong wanted to have a pipeline built to transport its gas, it would have to demonstrate that it could build the pipeline.

CO-CHAIR MILLETT then asked why there is a need for a conditional certificate when there is already a procedure in place for the RCA to authorize this specific pipeline project.

MR. BALASH stressed that the language in the proposed legislation is for any pipeline, not just the bullet line. Issuance of a conditional certificate allows an applicant to get a head start on the RCA process without financing and firm transportation commitments.

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CO-CHAIR MILLETT opined that this is the administration's version of FERC pre-filing.

MR. BALASH said no. Pre-filing to FERC includes the greater responsibilities of all of the federal environmental permitting for an inter-state gas pipeline.

CO-CHAIR MILLETT reviewed the similarities in the processes of obtaining the conditional certificate and pre-filing.

MR. BALASH acknowledged the processes are not dissimilar, but different.

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REPRESENTATIVE DAHLSTROM asked for the definition of "sanction".

MR. BALASH said sanction is a term commonly used to indicate that a project has obtained whatever approvals are necessary from the entity that will build it.

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MR. BALASH, in further response to Representative Dahlstrom, restated his understanding that the determination of whether a company is fit, willing, and able is made by the RCA as directed by state law.

[5:31:46 PM](#)

REPRESENTATIVE DAHLSTROM gave an example of a company such as Armstrong, applying to the RCA and being determined to be fit, willing, and able. She then asked whether this legislation was needed.

[5:32:16 PM](#)

MR. BALASH expressed his belief that there is no pre-filing type of step that can be taken to the RCA at this time. In the example of Armstrong building a pipeline to the Kenai Peninsula, that project would be a shorter, smaller, pipeline and a less complicated endeavor. To satisfy the commission's standards for the Kenai project is a different question than building a multi-billion dollar pipeline that would travel 800 miles over two mountain ranges. He opined that the bullet line is called small, but is not.

[5:35:12 PM](#)

MR. BALASH, in response to Representative Dahlstrom, pointed out that the need for the proposed legislation is based on the "profile" of the applicant; for example, the applicant's capabilities and its demonstrated ability to build and deliver a project on time and on schedule, and a proven management record.

[5:35:16 PM](#)

CO-CHAIR MILLETT asked whether two competing pipelines could be issued conditional certificates for the same route.

MR. BALASH advised that the proposed statute does not make a certificate exclusive. However, a company that has the ability to finance the project, but has not made the commitment for financing, cannot be considered fit, willing, and able by the RCA. The proposed legislation would allow an entity to apply for the conditional certificate without the commitment to finance the project.

MR. BALASH, in further response to Co-Chair Millett, said, "I'm not aware of anything that would prohibit the commission from issuing two conditional certificates."

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REPRESENTATIVE RAMRAS observed that the emerging discussion supports his opinion that HB 164 is perhaps completely superfluous to the process of building an in-state gas pipeline and that he will vote against it. He stated his intent to offer two amendments after public testimony is heard. The first amendment will be to delete language from line 25, page 2, through line 27, page 6, and renumber accordingly. He then called attention to Sec. 2 of the bill, beginning on page 2, line 6, and remarked:

In place of the covenant established under AS 38.35, and it refers to the commissioner, and if you look at the sectional analysis ... it's from the commissioner of DNR ... it says the commissioner shall require the lessee to agree that it will not transfer, assign, pledge, or dispose of in any manner, directly or indirectly, its interest in a conditional right-of-way lease or a pipeline subject to the conditional lease, unless the commissioner, after considering the public interest and issuing written findings to substantiate a decision to allow the transfer-that would be the transfer from the lessee-authorizes the transfer. And what we're checking on with leg legal right now is whether it's possible to transfer that authority from the commissioner of DNR ... to the legislature, so that the legislature may weigh-in on who is going to have the opportunity to build a gas pipeline.

REPRESENTATIVE RAMRAS then asked for Mr. Balash's point of view on whether HB 164 creates a separation of powers issue, and whether [the new section] is a conforming amendment.

MR. BALASH responded that the conforming amendment occurs on page 2, lines 4 and 5, and 38.35.121 is applicable. The new section, 38.35.121, is the new section in Sec. 3 being added to the Right-of-Way Leasing Act. Furthermore, if the amendment to delete this section is successful, the language in Sec. 2 and in Sec. 1 will not be necessary.

REPRESENTATIVE RAMRAS pointed out that the proposed amendment leaves lines 18-24 and paragraph (10), page 6, intact. He then asked:

If Sec. 3 stays intact, and it's greatly reduced to just .121 and number 10-which would be renumbered-and if that keeps intact the conforming language on line 4 and 5, and then why not, down here in [line] 8, 9, 10, and 11, 12, can the legislature not participate in the transfer. Why do we cede over all authority to the commissioner of DNR?

[5:42:55 PM](#)

MR. BALASH reminded committee members that the statute that granted powers to the commissioner to manage the state's lands was first adopted in 1972, and amended in 1973 and 1987. He opined the commissioner already has the authority.

REPRESENTATIVE RAMRAS re-stated his particular interest in page 2, line 12, where the bill states that the commissioner "authorizes the transfer". He suggested this question of the separation of powers issue and "policy call" should be further addressed at the appropriate time.

MR. BALASH stated his interest in the response from Legislative Legal and Research Services.

REPRESENTATIVE PETERSEN returned attention to the subject of the conditional certificate and asked whether a company that does not have committed financing or firm transportation commitments, but that holds a conditional certificate, would have an advantage to get financing and shipping commitments.

MR. BALASH advised that holding a conditional certificate would eliminate some of the regulatory uncertainty that a company might face when trying to attract financing, shipping commitments, and investors. He agreed with Representative Peterson that the intent is to lower the risk.

CO-CHAIR EDGMON asked for a summary of the bill's purpose.

MR. BALASH informed the members he will summarize the purpose of the bill at the end of his testimony. He then said that Sec. 7 addresses the power of the RCA to enforce the provisions in the Right-of-Way Leasing Act; for example, the RCA has the authority to enforce a contract term between the state and the pipeline company if the executive branch of the state does not enforce said contract term. Sections 8 and 9 address the question of "common carrier versus contract carrier." He explained that common carrier is the gold standard of open access; thus any company that tenders product at the entry point of the pipeline can have access, whether the pipeline is full or not. In fact, if the pipeline is full, the space is prorated between tenders to make room. The reason for this policy is to eliminate hurdles to the development of the state's oil and gas resources, and the possibility that a pipeline can be used to restrict access to markets. When the administration discussed this project with commercial parties one of the parties, Anadarko Petroleum Corporation (Anadarko), expressed concern that if its gas were prorated it would not be able to deliver a set quantity of gas for a specific period of time. He informed the committee that the administration solicited interested parties to ask what was needed within the regulatory framework to advance the project. Mr. Balash relayed that the bill gets to the heart of the commercial issues and allows for reconciliation between the common carrier obligations of the pipeline and the Right-of-Way Leasing Act, and the necessity of firm transportation commitments and contracts for shippers.

CO-CHAIR EDGMON asked for a summary.

[5:52:00 PM](#)

MR. BALASH concluded that there is a conflict between the Right-of-Way Leasing Act, and the pipeline act, that needs to be reconciled in order for private parties to enter into the commercial contracts necessary to facilitate a project like this.

[5:52:25 PM](#)

REPRESENTATIVE RAMRAS thanked the presenter and asked for him to be available for rebuttal comments when the amendments are offered.

CO-CHAIR EDGMON called for public testimony. Hearing none, public testimony was closed.

REPRESENTATIVE RAMRAS relayed an opinion from Don Bullock, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), that there is a precedent for the transfer of authority from a commissioner to the legislature. As this may affect the bill, Mr. Bullock suggested that a conceptual amendment should be offered.

The committee took an at-ease from 5:55 p.m. to 6:00 p.m.

6:00:38 PM

REPRESENTATIVE RAMRAS moved Conceptual Amendment 1.

CO-CHAIR EDGMON objected for discussion purposes.

REPRESENTATIVE RAMRAS said Conceptual Amendment 1 is the deletion within Sec. 3 from page 2, line 25, through page 6, line 27, and renumbering accordingly.

MR. BALASH observed that the items that are proposed for deletion, particularly from page 2, line 25, paragraph (1) and through page 4, line 25, paragraph (6), have to do with the protection of access to the pipeline in a "predictable and reasonable fashion." With the elimination of the conventional common carrier code and body of law, the state is losing the access provided a common carrier, and not replacing it with anything. With this change, the question is who will own the pipe and make decisions about when and how to expand the pipe. The state could rely on the public interest powers of the RCA, or the legislature could choose to "describe the yardsticks that the RCA will use to make those decisions."

6:03:53 PM

REPRESENTATIVE RAMRAS opined that the legislation, "as it would be constructed by putting a greater burden on the RCA ... is better than putting this burden, which might be perceived as an impediment for a private sector entity, in the meantime, to be attracted to this project."

CO-CHAIR EDGMON asked for the administration's view of the amendment's impact to the legislation.

MR. BALASH lamented that the two parties interested in this project are not present to comment. However, a fair characterization is to say that Anadarko is similarly concerned with preserving access and expansion capabilities; moreover, as Anadarko is potentially an anchor participant of the project, this is "a big deal to them." How the state will, or will not, protect access to a pipeline could weigh heavily on Anadarko's drilling decisions about the winter drilling season.

[6:06:12 PM](#)

REPRESENTATIVE DAHLSTROM asked whether Anadarko and ENSTAR Natural Gas Company (ENSTAR) were invited to testify.

CO-CHAIR MILLETT confirmed that invitations were extended and there was no response.

[6:06:49 PM](#)

CO-CHAIR EDGMON suggested the hearing "stand down" to wait for additional participation by the industry.

REPRESENTATIVE DAHLSTROM expressed her surprise that the parties are not present.

REPRESENTATIVE RAMRAS opined it is difficult for companies to come forward and stand in conflict with the administration and the legislature, especially this late in the session. He maintained his view that the amendment improves the posture of the bill and does not impose an impediment to Doyon or ConocoPhillips, Alaska (ConocoPhillips).

REPRESENTATIVE JOHANSEN observed that the companies were aware the bill is up and encouraged the committee to move forward with the amendment process.

MR. BALASH assured the members that the administration is not expecting HB 164 to pass both bodies this year; in fact, whether the amendment is adopted or not, these same issues will be discussed in the next committee of referral.

[6:10:32 PM](#)

REPRESENTATIVE TUCK asked whether Anadarko and ENSTAR participated in the crafting of HB 164.

[6:11:00 PM](#)

MR. BALASH affirmed that Anadarko and ENSTAR were approached by the administration about what was needed to be addressed in state law to advance projects under consideration. The parties agreed that common carrier versus contract carrier service is a critical component that must be addressed during the next year. He declined to say what other issues flowing from the change to contract carrier status are most important to the parties.

CO-CHAIR EDGMON understood that the progress of this bill will have an impact on drilling plans.

MR. BALASH confirmed that Anadarko had three wells this year and brought up a second rig to conduct exploration work this season. Anadarko's interest in pursuing a new plan next winter is partly motivated by the prospect of two options: a large project in the North American region and an in-state gas pipeline as well. Mr. Balash stated that Anadarko's reaction to the amendment to the bill is unknown to him, but he would be surprised if it were positive.

[6:14:10 PM](#)

REPRESENTATIVE RAMRAS disagreed and said that the bill would not have a meaningful impact on Anadarko's drilling plans. In fact, two different bills under discussion during interim allow for a more dynamic conversation.

REPRESENTATIVE TUCK expressed his desire to hear from the industry and noted that the committee schedule change may have not reached representatives of the interested parties.

CO-CHAIR MILLETT responded that representatives from the companies were in the building today and that they did not take the opportunity to testify. She agreed with Representative Ramras that decisions reached today would not affect drilling plans. She asked whether Mr. Balash knew of any third party pipeline companies that would build the pipeline and that are comfortable with the protections offered by HB 164.

MR. BALASH stated that ENSTAR was interested in being the pipeline builder. His understanding was ENSTAR left the state and Anadarko to work out these concerns.

REPRESENTATIVE JOHANSEN observed he has zero concerns about the effect of the bill on drilling plans.

[6:19:23 PM](#)

REPRESENTATIVE DAHLSTROM clarified that she was comfortable with moving the bill forward.

REPRESENTATIVE TUCK noted he was not part of the AGIA process; however, in the current statute common carrier provisions are very specific. He observed that contract carriers of gas are more typical than common carriers; in fact, common carriers do have protections for consumers and the administration is trying to come up with a method to set parameters for contract carriers that will benefit Alaskans. A contract carrier may have control over the line and, therefore, have control over the supply of gas and rates for the consumers. He then reviewed many of the provisions of the bill. He stressed the value of the PLA and local training and hiring provisions that require one-year Alaska residency. Representative Tuck then noted his opposition to Conceptual Amendment 1.

[6:24:47 PM](#)

REPRESENTATIVE RAMRAS stated his regret over his vote on AGIA.

CO-CHAIR EDGMON removed his objection to the motion.

REPRESENTATIVE TUCK objected.

A roll call vote was taken. Representatives Dahlstrom, Ramras, Johansen, and Millett voted in favor of Conceptual Amendment 1. Representatives Tuck, Petersen, and Edgmon voted against it. Therefore, Conceptual Amendment 1 was adopted by a vote of 4-3.

[6:26:39 PM](#)

REPRESENTATIVE RAMRAS moved Conceptual Amendment 2.

CO-CHAIR MILLETT objected for the purpose of discussion.

REPRESENTATIVE RAMRAS stated that the amendment "references AS 38.35.100". The language affected is on page 2, line 12, that read, "... authorizes the transfer" and conceptually substitutes, "so that the final authority for the decision to authorize the transfer would rest with the legislature." Additionally, on page 2, line 13, conforming language substitutes "commissioner" with "legislature". Representative Ramras explained that the intent of the amendment is that the commissioner would be empowered to make the best interest

finding and subsequently, the pipeline proposal would come back to the legislature for the legislature to affirm the transfer.

[6:28:37 PM](#)

CO-CHAIR EDGMON clarified that the amendment is in addition to page 2, lines 2-16.

REPRESENTATIVE RAMRAS agreed that the amendment integrates into Sec. 2, where applicable. He then re-stated the intent of the amendment.

REPRESENTATIVE TUCK asked Mr. Balash for an example of a commissioner making a transfer authorized by the existing statute.

MR. BALASH said he was not aware of an example, but would research the question. He pointed out that the provision applies only to a conditional lease; in fact, a regular lease would be in the hands of the commissioner.

[6:31:07 PM](#)

CO-CHAIR EDGMON asked about the possibility that the legislature is not in session to affirm the transfer in a timely manner.

MR. BALASH surmised the amendment is at odds with any attempt to speed up the processes.

[6:31:40 PM](#)

REPRESENTATIVE TUCK asked whether the sale of the Healy Clean Coal Plant (HCCP) was authorized through the legislature or by a commissioner.

REPRESENTATIVE RAMRAS said he was unsure.

REPRESENTATIVE TUCK offered an amendment to the amendment. [Representative Tuck's amendment to the amendment was tabled due to the arrival of Mr. Bullock.]

REPRESENTATIVE JOHANSEN asked Mr. Bullock to review the amendment.

[6:34:48 PM](#)

DON BULLOCK, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, informed the committee that this section is in the bill "solely for the reference to 121." He continued to explain that this section has to do with the granting of a conditional ROW that is subject to certain conditions, and that will be transferred.

REPRESENTATIVE RAMRAS pointed out that the previous amendment deleted a great deal of Sec. 3; in fact, all that is intact in Sec. 3 are page 2, lines 18-24 and page 6, lines 28-29.

MR. BULLOCK acknowledged the change and said, "... so Sec. 2, whatever is left of [38.35.121], it just added a reference in [AS 38.35.100(d)], which is in Sec. 2 of the bill, to include that in addition to the other covenants that were required under 120, which are already in the law." He expressed his understanding that the proposed amendment wants legislative approval, and asked whether the intent was that there is legislative approval for what [sub section] (d) addresses, which is for the lessee to agree that it will not transfer, assign, pledge, or dispose of in any manner, its interest in a conditional right-of-way lease, or whether the intent was for the granting of the lease itself to be subject to legislative approval.

REPRESENTATIVE RAMRAS responded that the amendment addresses "all of [Sec.] 2."

MR. BULLOCK pointed out that [AS 38.35.015], which is not in this bill, addresses the powers of the commissioner; in fact, the pipeline right-of-way act as it is grants the commissioner all of the powers necessary to implement the policy, purposes, and provisions of the chapter and to serve the public interest, convenience, and necessity. He concluded it is a broad grant of power to the commissioner and it is this section in the right-of-way act that the amendment should address.

[6:38:31 PM](#)

REPRESENTATIVE RAMRAS proposed "... that this conceptual amendment be broadened out to all of Sec. 2, Sec. 2, (A), (B), (C) and (D). It's the same basic notion." The intent is to have the legislature more involved in this process, not in gathering information, but in the disposition of the written findings.

[6:39:37 PM](#)

MR. BULLOCK compared the transfer to AGIA and other land transfers where the legislature gets involved in certain executive actions. He agreed that the proposed language raises the separation of powers issue; for example, in AGIA, the legislature approved the license and the governor consented. He then suggested that the governor may be interested in consenting to the approval in this bill.

[6:40:23 PM](#)

CO-CHAIR MILLETT asked whether legislative approval of the transfer is similar to University of Alaska, Alaska Railroad, and mental health land transfers.

MR. BULLOCK regretted that he could not say yes or no.

REPRESENTATIVE JOHANSEN observed that the legislature is involved in land transfers every year.

REPRESENTATIVE RAMRAS opined this is policy call, and legislators are policy makers; thus the amendment says that the legislature will be more involved in the process. Furthermore, adopting Conceptual Amendment 2 is consistent with engaging the legislature in significant matters and is good public policy.

[6:42:38 PM](#)

MR. BULLOCK, in response to Co-Chair Edgmon, re-stated that the right-of-way act gives the commissioner broad powers to implement and administer the act. It is necessary to amend the section so that the commissioner does not have the full authority in issuing the right-of-way lease. In addition, AS 38.35.100, subsection (b), directs that the commissioner can grant an application; therefore, it would have to be determined at what point the application comes to the legislature for approval. Mr. Bullock suggested that the commissioner could present an application to the legislature subsequent to his or her reporting favorable findings.

CO-CHAIR MILLETT clarified the need for conforming language.

MR. BULLOCK then pointed out the potential problem of "timing" since the legislature does not meet from May to January.

[6:45:14 PM](#)

REPRESENTATIVE TUCK expressed his understanding of the intent of the amendment; however, he opined it is undesirable to have legislative authority over the decision on an application, or whether the applicant is fit, willing, and able to perform. He pointed out that the amendment really involves the transfer of the lease, which takes place after the entities have met all of the conditions, and questioned the need for legislative oversight.

[6:46:35 PM](#)

REPRESENTATIVE RAMRAS stressed that the adoption of the conceptual amendment will allow the drafters to draft a committee substitute (CS) that provides for the expansion of powers, and that will allow the legislature to participate in the process of the in-state gas pipeline. He remarked:

I'm very happy to have a professional staff develop a best interest findings and make some of the other determinations, but I think that the co-equal branch of government, the legislative branch, should weigh-in on an issue of this magnitude at the right time. And I think that Conceptual Amendment 2, as it relates to [AS 38.35.100] ... is good public policy ...

CO-CHAIR MILLETT removed her objection and said the legislature's ability to deal with lease transfers is appropriate.

[6:49:23 PM](#)

REPRESENTATIVE JOHANSEN objected. He commented that [AS Sec. 38.35.100, subsection (a)] "[has] a lot rolled-in here that is all just going right to the commissioner of DNR." He asked Mr. Bullock whether he was comfortable drafting the conceptual amendment.

MR. BULLOCK acknowledged that although the concept is simple, the drafting may be complicated because the authority is spread throughout [AS 38.35], the right-of-way act. He called attention to [AS 38.35.017] which precludes the northern route for the pipeline. This is an example of a statute where the legislature has set the parameters for the approval of the ROW without raising the separation of powers issue; thereby the commissioner issues approval, but only within the parameters established by the legislature. Mr. Bullock advised that this alternative would be "less subject to challenge than the other."

[6:52:04 PM](#)

REPRESENTATIVE TUCK appreciated the point of the conceptual amendment; however, he questioned whether the legislature should be approving application processes and asked for clarification on the scope of the amendment.

REPRESENTATIVE RAMRAS acknowledged the complexity is in determining which part applies to the commissioner and which part applies to the legislature. Although there may be an alternative statute, the point of the amendment remains the legislative intent of involving the legislative branch. He expressed his understanding that the best interest findings fall to the commissioner of DNR.

REPRESENTATIVE PETERSEN observed that the existing laws allow for expediency in processing applications, reducing the influence of politics on the licensing decision, and ensuring that professionals are making these decisions. He recommended looking at the CS before gutting the bill.

[6:55:45 PM](#)

REPRESENTATIVE RAMRAS advised that the purpose of the committee is to change a bill to better express the wishes and the policy of the legislative branch. In fact, to do less is to shirk the responsibility of the legislature.

REPRESENTATIVE JOHANSEN pointed out that calling a special session to deal with important issues is simple. He then removed his objection.

Hearing no further objection, Conceptual Amendment 2 was adopted.

CO-CHAIR MILLETT asked Mr. Bullock for the difference between the conditional certificates proposed in the bill and the conditional certificates authorized by AS 38.35.100 that are subject to the applicant being fit, willing, and able to perform.

[6:59:24 PM](#)

MR. BULLOCK explained that the conditional lease mentioned in [AS 38.35.100 (c)] is not affected by this draft. Regarding the conditional lease described in the bill, he said the

administration "may be better able to fill you in on what their intent is."

[HB 164 was held over.]

[7:03:21 PM](#)

#### **ADJOURNMENT**

The House Special Committee on Energy meeting was recessed at 7:03 p.m. to a call of the chair. [The meeting was never reconvened.]