

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 6, 2009

1:01 p.m.

MEMBERS PRESENT

Representative Craig Johnson, Co-Chair
Representative Mark Neuman, Co-Chair
Representative Kurt Olson
Representative Paul Seaton
Representative Peggy Wilson
Representative David Guttenberg
Representative Scott Kawasaki
Representative Chris Tuck

MEMBERS ABSENT

Representative Bryce Edgmon

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 26

Urging the United States Congress to adequately fund land surveys in Alaska in order to issue patents to the State of Alaska and Alaska Native corporations.

- MOVED HJR 26 OUT OF COMMITTEE

HOUSE BILL NO. 120

"An Act authorizing the negotiation for the lease, sale, or other disposal of state land with a contract carrier that is engaged in the intrastate transportation of natural gas by pipeline; and relating to regulation of certain contract carriers."

- HEARD AND HELD

HOUSE CONCURRENT RESOLUTION NO. 12

Requesting that the governor and the attorney general review and reevaluate the license issued to TransCanada Alaska Company, LLC, and Foothills Pipe Lines Ltd., jointly as licensee, under the Alaska Gasline Inducement Act to determine whether the project proposed by the licensee sufficiently maximizes the benefits to the people of the state and merits continuing the license, taking into consideration economic changes affecting project financing, the availability of liquefied natural gas and

natural gas from nonconventional sources, the state's risk of paying treble damages associated with an in- state gas pipeline, and the expected budget deficit; and requesting that the governor and the attorney general report the outcome of the review and reevaluation within six months.

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HJR 26

SHORT TITLE: STATEHOOD/ANCSA LAND SURVEY FUNDING

SPONSOR(s): REPRESENTATIVE(s) FAIRCLOUGH

03/18/09 (H) READ THE FIRST TIME - REFERRALS
03/18/09 (H) RES
04/06/09 (H) RES AT 1:00 PM BARNES 124

BILL: HB 120

SHORT TITLE: PIPELINE CONTRACT CARRIERS

SPONSOR(s): REPRESENTATIVE(s) RAMRAS

02/06/09 (H) READ THE FIRST TIME - REFERRALS
02/06/09 (H) RES, FIN
04/06/09 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

CRYSTAL KOENEMAN, Staff
Representative Anna Fairclough
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HJR 26 on behalf of Representative Fairclough, sponsor.

REPRESENTATIVE JAY RAMRAS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of HB 120.

DONALD BULLOCK, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: As the drafter of HB 120, answered questions and provided information.

ACTION NARRATIVE

[1:00:53 PM](#)

CO-CHAIR CRAIG JOHNSON called the House Resources Standing Committee meeting to order at 1:01 p.m. Representatives Johnson, Olson, and Seaton were present at the call to order.

CO-CHAIR JOHNSON recessed the meeting to a call of the co-chair.

CO-CHAIR JOHNSON reconvened the House Resources Standing Committee at 1:02 p.m. Representatives Johnson, Neuman, Seaton, Olson, Wilson, and Tuck were present at the call to order.

HJR 26-STATEHOOD/ANCSA LAND SURVEY FUNDING

[1:03:04 PM](#)

CO-CHAIR JOHNSON announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 26, Urging the United States Congress to adequately fund land surveys in Alaska in order to issue patents to the State of Alaska and Alaska Native corporations.

CRYSTAL KOENEMAN, Staff, Representative Anna Fairclough, Alaska State Legislature, presented HJR 26 on behalf of Representative Fairclough, sponsor. She explained that HJR 26 urges the United States Congress to adequately fund land surveys in Alaska in order to issue patents to the State of Alaska and Alaska Native corporations. Currently, the U.S. Congress is not sufficiently budgeting funds to the U.S. Bureau of Land Management which is preventing the timely completion of land surveys for lands that were promised to Alaska Natives and the State of Alaska.

[1:04:08 PM](#)

CO-CHAIR NEUMAN noted that the R.S. 2477 issue is also important to the state and that he has talked to Representative Fairclough's aide about adding this issue to HJR 26.

CO-CHAIR JOHNSON explained that R.S. 2477 is the traditional right-of-ways to which, in theory, the state has access. However, there has been difficulty in proving what traditional is; thus, there has been an ongoing battle between the state and

the federal government. He agreed that it would be appropriate to include this issue in HJR 26.

CO-CHAIR JOHNSON closed public testimony after ascertaining that no one wished to testify, then opened committee discussion.

[1:05:37 PM](#)

REPRESENTATIVE SEATON inquired whether Co-Chair Johnson intended to put forth a conceptual amendment [regarding R.S. 2477].

CO-CHAIR JOHNSON answered that he does not intend to do so, but that Co-Chair Neuman might like to.

CO-CHAIR NEUMAN stated that he is confident the sponsor and her staff will do all they can to include R.S. 2477 as the resolution moves forward. He asked for Ms. Koeneman's suggestion in this regard.

MS. KOENEMAN replied that she will talk with Representative Fairclough about adding R.S. 2477 either in the House Rules Standing Committee or on the Senate side.

[1:06:49 PM](#)

REPRESENTATIVE SEATON pointed out that if a conceptual amendment is adopted by the committee now, it will be incorporated, but if this is not done there would have to be a hearing in the House Rules Standing Committee or an amendment on the floor. He asked whether it is important enough to the co-chair to have this incorporated now.

CO-CHAIR NEUMAN responded that he considers this to be a suggestion to the sponsor for inclusion further down the road; therefore he does not intend to offer a conceptual amendment right now. He said he is making the sponsor aware that R.S. 2477 is a critical issue that is very close to the land survey and patent issue.

CO-CHAIR NEUMAN moved to report HJR 26 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HJR 26 was reported from the House Resources Standing Committee.

The meeting was recessed at 1:08 p.m. to a call of the chair.

[2:14:03 PM](#)

CO-CHAIR JOHNSON called the meeting back to order at 2:14 p.m. Representatives Johnson, Neuman, Seaton, Olson, Tuck, and Kawasaki were present at the call to order. Representatives Wilson and Guttenberg arrived as the meeting was in progress.

HB 120-PIPELINE CONTRACT CARRIERS

[Contains discussion of HB 163.]

[2:14:19 PM](#)

CO-CHAIR JOHNSON announced that the next order of business would be, HOUSE BILL NO. 120, "An Act authorizing the negotiation for the lease, sale, or other disposal of state land with a contract carrier that is engaged in the intrastate transportation of natural gas by pipeline; and relating to regulation of certain contract carriers."

The committee took an at-ease from 2:14 p.m. to 2:15 p.m.

CO-CHAIR NEUMAN moved to adopt the proposed committee substitute (CS) for HB 120, Version 26-LS0523\E, Bullock, 4/3/09, as the work draft.

REPRESENTATIVE SEATON objected for discussion purposes.

REPRESENTATIVE KAWASAKI objected.

[2:15:22 PM](#)

REPRESENTATIVE JAY RAMRAS, Alaska State Legislature, sponsor, explained that his intent for today is to familiarize members with the CS and then come back to the committee again at a later date. He said HB 120 comes from his work with the governor's designee for coordinating an instate gas line, Harry Noah, Executive Director, Alaska Mental Health Trust Land Office, Office of the Commissioner, Department of Natural Resources. He also said HB 120 is very complimentary to the governor's objective of pursuing an instate gas line.

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REPRESENTATIVE RAMRAS spoke from the following prepared sponsor statement [original punctuation provided with some formatting changes]:

House Bill 120 sets the framework to define the project of an intrastate natural gas pipeline and to recognize the Governor's authority to designate a project manager, a position that has not yet been defined in statute. The bill further authorizes the Alaska Natural Gas Development Authority (ANGDA), under the direction of the Governor and her appointed project manager, to apply for a right-of-way lease of state land and to assist in the acquisition of federal and state permits and authorizations required by the designated project that are necessary to build a pipeline.

House Bill 120 also recognizes that the instate natural gas pipeline will originally be a contract carrier, this is necessary to protect the capital investments of those companies that initially delineate gas into the instate pipeline.

As House Bill 120 is written, the role of the Regulatory Commission of Alaska (RCA) is limited to authorizing a person to own or operate an intrastate natural gas pipeline as a contract carrier, issuing a certificate of public convenience and necessity, and issuing a conditional certificate to an applicant that has not yet obtained financing or possession of firm transportation commitments. However, it is the sponsor's belief that this portion of the bill can be amended at a later date when the composition of the pipeline is more clearly understood and defined.

House Bill 120 is an enhancement of the Governor's authority and a solidification of a more narrowly defined role for ANGDA as set forth by the Governor and her appointed project manager.

The language in HB 120 requires the Governor through her project manager to define the project, including the proposed route, determine the economic feasibility and probability of success of the project, identify permits and authorizations required for the project, determine whether there are likely to be necessary commitments, identify the person or persons who will design, construct, operate the project, and develop a project plan for design and construction of the pipeline, before designating the project.

As this bill moves through the committee process it is anticipated that enabling language in the form of an appropriations bill will be added by the Finance Committee. Additionally, HB 120 maintains the flexibility to add specific intent language to assist in the furtherance of defining the project, project manager, and the specific milestones to be met by June 2011.

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CO-CHAIR NEUMAN asked Representative Ramras to outline the difference between common carriers and contract carriers.

REPRESENTATIVE RAMRAS specified that the Trans-Alaska Pipeline System (TAPS) is capable of carrying 2 million barrels of oil per day, but is presently carrying 600,000-700,000 barrels a day. It is a common carrier line, so anyone can put oil into the pipeline by paying the tariff. The Cook Inlet transmission pipeline is also a common carrier and because of deliverability issues there is space for companies to nominate their gas into that pipeline.

REPRESENTATIVE RAMRAS said it is anticipated that once a supply is secured for a small diameter pipeline from the North Slope to Southcentral, any number of large producers could take all the capacity in that pipeline. The risk accrues to the person that first delineates a field to bring gas into this line, he explained, and this person should have the opportunity to recapture the capital investment. This is because it is a significant issue to find a supplier that has available gas that is not working on the pipeline under the Alaska Gasline Inducement Act (AGIA). He pointed out that this is not an essential part of HB 120 as the bill is largely about the function of ANGDA and the role that Harry Noah plays as the governor's appointed project manager. The issue of common carrier line versus contract carrier line can be fleshed out as the bill moves forward.

[2:24:41 PM](#)

CO-CHAIR NEUMAN stated that there is a significant difference as well as significant issues, but he is willing to listen and work things out along the way.

CO-CHAIR JOHNSON interpreted the bill to read common or contract carrier and that the bill provides the flexibility to not close

any doors but maybe open some. It will be up to Mr. Noah if this comes to fruition.

REPRESENTATIVE SEATON understood that by law all intrastate transmission lines are common carriers, although there has been some circumvention of this by the issuance of contracts. He inquired whether under current law the RCA only has the ability for intrastate lines to be a common carrier and would HB 120 expand the RCA's jurisdiction. In other words, is it a statutory change that needs to be made?

REPRESENTATIVE RAMRAS said he believes that that is correct. Presently the state only addresses common carrier lines and neither the state nor the RCA have ever addressed a contract carrier line because it has not been relevant to the state's practices. However, it is anticipated that it may be relevant with an instate gas pipeline.

REPRESENTATIVE SEATON presumed that the common carrier language is from statute and not the constitution.

REPRESENTATIVE RAMRAS understood this to be the case.

[2:27:15 PM](#)

REPRESENTATIVE OLSON inquired whether HB 120 addresses the 500 million cubic feet (MMCF) per day problem in AGIA.

REPRESENTATIVE RAMRAS explained that the 500 MMCF per day rule is in effect when the state provides resources for an instate gas pipeline, such as assistance from the Department of Natural Resources (DNR) and ANGDA. He said he has a problem with the administration's bill, HB 163, because it talks about expansion and compression and would talk in statute about breaking another statute. He said he does not think this should be done and therefore HB 120 conforms to AGIA.

[2:28:26 PM](#)

REPRESENTATIVE OLSON asked whether the cart is being put before the horse if the AGIA trigger is not addressed.

REPRESENTATIVE RAMRAS stated that he tried to draft a bill that is AGIA compliant because that is the law of the land, so HB 120 is presently AGIA compliant.

REPRESENTATIVE OLSON maintained that a 22-inch pipeline is not AGIA compliant because it will have the capability of more than 500 MMCF per day.

REPRESENTATIVE RAMRAS replied that although it would have the capacity to be a 1.2 billion cubic feet (BCF) per day line, the language in HB 120 calls for an AGIA compliant line of 500 MMCF per day. He said he does not think having a capacity beyond 500 MMCF per day is a violation of AGIA as long as no more than 500 MMCF per day is transported.

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REPRESENTATIVE OLSON requested Mr. Bullock to address the issue.

DONALD BULLOCK, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, first noted that he is the drafter assigned to HB 120 and that he also worked on AGIA. He said Representative Olson's question relates to AS 43.90.440, "which is the treble reimbursement for qualified expenditures if the state throws certain support behind a competing gas line." Under Section 13 of HB 120, the governor's office would be responsible for identifying an intrastate pipeline project and the risk of giving inducements to a pipeline that may be deemed a competing natural gas pipeline will be a consideration. He recounted that during consideration of AGIA, there was always a concern regarding at what point a gasline would go over 500 MMCF per day and it was never really resolved. Rather, it is "more of a yellow light to the state to be very careful before giving any inducements that would result in a gas pipeline becoming a competing gas pipeline for the purposes of that penalty provision."

[2:32:31 PM](#)

REPRESENTATIVE GUTTENBERG, in regard to AGIA compliance, noted that the wording in Section 5, page 8, line 12, Version E, is changed from "gas from the North Slope" to "gas produced in the state". Is there not a section in AGIA that deals specifically with North Slope gas, he asked.

MR. BULLOCK responded that AS 43.90.440 defines a competing natural gas pipeline project as a project designed to accommodate throughput of more than 500 MMCF per day of North Slope gas to market. The inducements were to do two things: ensure the economic viability of the licensed project and ensure that there would be enough gas to be put into the "over the

highway" pipeline. Representative Guttenberg is correct that the statute says "North Slope gas to market", he continued; thus, another production area of the state to market would not be within that competing natural gas pipeline project definition. North Slope is defined as that part of the state that lies north of 68 degrees north latitude, which is defined in AS 43.90.900 for AGIA purposes.

REPRESENTATIVE OLSON inquired whether the Gubik Field is North Slope gas.

MR. BULLOCK said he does not know without seeing a map.

[2:34:34 PM](#)

CO-CHAIR JOHNSON asked whether there has been discussion to define design versus capacity or design versus what is actually being carried.

MR. BULLOCK answered that he is not aware of any. He said he thinks that when AGIA was put together the administration did a study and estimated the instate gas needs from an instate pipeline and that estimate was somewhere below 500 MMCF [per day]. That figure was not based on what was anticipated to be a pipeline, but was to allow room for an instate gasline that would have a certain capacity to meet the anticipated demand. So, it was more market driven than a determination of what kind of expansion was anticipated once the gasline was built.

[2:36:15 PM](#)

REPRESENTATIVE SEATON understood that RCA can only regulate instate lines as common carriers. He inquired whether this is provided by statute or constitution.

MR. BULLOCK noted that HB 120 makes changes to AS 38.35, the "Alaska Pipeline Act" [Right-of-Way Leasing Act]. This statute requires that there be common carriers in current law and that RCA regulate pipelines as common carriers. A common carrier pipeline must be open to all people who wish to transport gas, so there is the risk that a certain capacity would be diminished to make room for a new player. He said the common carrier aspect is a policy decision and he believes part of the policy was to encourage the development of all of Alaska's gas under its leases. A contract pipeline, he continued, is akin to five people buying a warehouse and under contract each gets 20 percent of the warehouse regardless of whether or not they use

it. No one can come in and require the others to cut back their 20 percent. A contract carrier assures those people committing to a pipeline that they will have a place to put their gas and this is something they can consider when making their commitment.

[2:38:50 PM](#)

REPRESENTATIVE SEATON said he wants to make sure that the statute is not implementing a constitutional provision for common carrier.

MR. BULLOCK replied, "The changes in the bill are statutory, where it says common carriers we are doing that." He said he thinks that if there is a constitutional basis it would be a weak basis and might be related to the full development of Alaska's resources and whether there might be some gas that would not be able to be transported. On the other hand, he continued, since the pipe has a fixed capacity only so much gas can go through it, which kind of meters the amount of gas that would be transported.

[2:40:13 PM](#)

CO-CHAIR JOHNSON asked whether the equal protection clause of the constitution might come into play here.

MR. BULLOCK responded that there is little Alaska law experience in contract carriers and he has not found much law in contract carriers in general. However, he said he has not seen a difference between a contract carrier and any other joint business enterprise. It is just like that warehouse, he explained, where there is an industrial facility, a pipeline, that is going to be transporting gas and it is owned by one person who contracts with a certain number of people for the capacity.

[2:41:10 PM](#)

REPRESENTATIVE GUTTENBERG, in reference to the previous discussion about the Gubik Field located in the foothills of Prudhoe Bay, noted that Section 7 on page 9, lines 1-7, Version E, defines the "project" as extending from Prudhoe Bay. He inquired whether this wording would require a project to begin in Prudhoe Bay or could someone come in with a project that starts 100 miles south of Prudhoe Bay.

MR. BULLOCK answered no, Section 7 amends the Alaska Natural Gas Development Authority [AS 41.41.990(3)] and "project" is defined in the context of that authority to mean the un-underlined and the un-bold language [on page 9, lines 1-7]. [The underlined bold type] on page 9, lines 7-8, specifically excludes the governor's project that is recommended under AS 44.19.037 from meaning a project that ANGDA would otherwise be dealing with.

REPRESENTATIVE GUTTENBERG said he is not sure he is reading this the same way.

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CO-CHAIR JOHNSON asked whether this means that the project designated by the governor will not be under ANGDA.

MR. BULLOCK explained that HB 120 changes ANGDA's responsibilities by adding a new responsibility. Initially ANGDA had statutory responsibility for an ANGDA project which is North Slope to market, and ANGDA would take the lead on this project. However, HB 120 gives ANGDA a new responsibility to assist in the development of this project designated by the governor. Since the governor's project is from any production place in the state to market, it is not necessarily the same thing as the ANGDA project. Under HB 120, the governor designates this project, which is why that definition is changed to not mean an ANGDA project. Thus, when ANGDA assists in the governor's project, it is assisting the governor's project, not working on ANGDA's project. The definition in Section 7 generally refers to a project that is ANGDA's own project, so the definition excludes the governor's project from definitions in ANGDA statutes.

[2:45:04 PM](#)

CO-CHAIR JOHNSON inquired whether HB 120 would add the governor's project to ANGDA's original statutory responsibility or replace ANGDA's current responsibility with the governor's project.

MR. BULLOCK understood that HB 120 does not displace the ANGDA statutes that were enacted by initiative; ANGDA could continue to look for a North-Slope-gas-south project. The bill gives ANGDA additional responsibilities to assist in the development of the governor's designated project.

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REPRESENTATIVE SEATON surmised that ANGDA currently cannot participate in a project that is from the Copper River Basin or other field in the state to market, but that HB 120 would now allow ANGDA to participate if it is the governor's identified project.

MR. BULLOCK responded correct. He drew attention to Section 5, page 8, which he said amends AS 41.41.010(a) with new language that adds to ANGDA's responsibilities. Thus, ANGDA would have its ongoing responsibility as well as the new authority added by Section 5. He said this goes back to what Representative Guttenberg was talking about in Section 7, which is the definition of "project" and how the governor's project is treated differently than what is expected to be the project from ANGDA under current law.

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REPRESENTATIVE SEATON surmised that the change made by Section 5 on page 8, Version E, would allow ANGDA to be involved in more than one pipeline. He asked whether adding the word "and" on page 8, line 17, is a significant change or a grammatical change.

MR. BULLOCK answered that it is just a language correction and not a substantive change. He added that there is no substantive change until line 20.

[2:49:19 PM](#)

REPRESENTATIVE SEATON presumed that under the current language of HB 120, ANGDA could participate in a North Slope pipeline as well as another pipeline.

MR. BULLOCK replied that there will be a certain amount of common sense in deciding the number of pipelines - the size of the market and the availability of the gas. At some point a project will be identified that will take the gas available and deliver it to the market available. The economics will filter out whether there is room for one or two pipelines. So, he continued, the authority is there, but it is an economic judgment as to which project to pursue.

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REPRESENTATIVE SEATON gathered that this would allow ANGDA to participate in a contract carry transmission line from Cook Inlet gas wells to the distribution grid.

MR. BULLOCK responded that this picks up on the governor's bill [HB 163] that was intended to change some of the responsibilities of ANGDA from just a North Slope focus to gas generally produced in the state.

[2:51:29 PM](#)

REPRESENTATIVE WILSON assumed that HB 120 basically gives the governor the authority to do what she deems necessary to make that happen. She drew attention to page 12, lines 23-28, Version E.

MR. BULLOCK said AS 44.19 has to do with responsibilities of the governor and the governor would basically evaluate a proposed project and make all the determinations that are included in Section 13 of this bill. If it looks like a project is viable and should go forward, the governor would then designate the project and at that point ANGDA would come in to assist in the development of the governor's project.

[2:52:49 PM](#)

REPRESENTATIVE WILSON presumed that the governor can do whatever she finds necessary to determine the likelihood and success of a project and that once she makes that decision all she has to do is provide written notice to the chair of ANGDA's board of directors and then the authority goes ahead. She inquired whether the legislature is involved in this in any way.

MR. BULLOCK explained that in AGIA the state was providing money to assist in the development of the project. However, under HB 120 the state would not put out any money and would instead offer to have ANGDA apply for the right-of-ways and help with the other permits, but the project would be somebody else's commercial project. He said he expects that appropriations would be made to ANGDA for its assistance role and an appropriation might be required to the governor's office to make the determinations that are in Section 13. Other than the benefits of ANGDA's assistance, there is not a money benefit that goes to the person that is developing the pipeline.

[2:54:25 PM](#)

REPRESENTATIVE GUTTENBERG directed attention to page 10, lines 14-16, Version E, which state: "may authorize a person to own or operate an intrastate natural gas pipeline as a contract carrier, notwithstanding any other provision of law." He asked whether there is anything in this provision that would either prohibit or allow the state to be the owner.

MR. BULLOCK answered that these are responsibilities of the RCA. The RCA has traditionally regulated common carriers, and this section gives the RCA the authority to authorize a person to own and operate an intrastate pipeline as a contract carrier. It does not say anything about who the owner is, just that there is a new type of pipeline that RCA will take a look at.

[2:55:53 PM](#)

REPRESENTATIVE GUTTENBERG noted that Section 10, page 10, Version E, states, "The commission may issue a certificate of public convenience ... is in the best interest of the state." He inquired whether "best interest of the state" is defined anywhere.

MR. BULLOCK said no, it is a general concept that is used often in the statutes for what Alaska will get out of it and whether it is a good thing. Part of the consideration in getting that, particularly in an identifiable project like this, would be the consideration of whether there is a better way to do it and what the state's goals are and will this accomplish those.

[2:56:44 PM](#)

REPRESENTATIVE GUTTENBERG directed attention to Section 11, page 10, Version E, which allows the RCA to give a conditional certificate even if the applicant has not obtained financing or firm commitments for transportation. He asked whether this changes the RCA's authority or the range of reasons why the RCA would give a certificate.

MR. BULLOCK deferred to the governor's administration, saying that this provision is from the governor's "right-of-way" bill. He allowed that he does not completely understand how it would work, but that it is similar to some of the discussions that were had under AGIA where DNR would issue two conditional right-of-way permits for competing lines and then whoever actually built the line would be the one to get the actual right-of-way. He said he thinks this is something similar to that.

CO-CHAIR JOHNSON interjected that he expects the administration to weigh in on this at some point.

[2:58:18 PM](#)

CO-CHAIR JOHNSON, referenced page 10, lines 14-16, Version E, which state, "may authorize a person". He noted that the classic definition of a person is basically anything but a government body and inquired whether this provision precludes the state from taking any ownership of such a line.

MR. BULLOCK replied that this does not say anything about what person may come before the RCA. It just says that if a person comes before the RCA, whoever it is, the RCA can consider authorizing that person to operate as a contract carrier. This is merely within the duties; it does not have anything substantive to do with the power of the state to develop a pipeline.

CO-CHAIR JOHNSON asked whether Mr. Bullock is comfortable that the term "person" does not exclude the state from going before the RCA.

MR. BULLOCK said he would not go that far without looking at the statutes and looking at the general definition of person in Title 1.

CO-CHAIR JOHNSON remarked that therein lays his question and the committee will address it at a later date.

[2:59:36 PM](#)

REPRESENTATIVE WILSON assumed that the language on page 10, lines 27-31, Version E, is in reference to a failed open season.

MR. BULLOCK believed this to be correct. If it is found that the pipeline is a good idea but more time is needed to see if things will fall into place and they subsequently do, then page 11, lines 7-9, Version E, state that if the conditions are met the project can go ahead. It is a way to keep a project afloat that the RCA thinks is a good idea.

[3:00:51 PM](#)

CO-CHAIR NEUMAN, in reference to page 8, line 20, Version E, inquired what the governor's project is under AS 44.19.037.

MR. BULLOCK replied, "Section 13 of the bill introduces a new section into the powers of the governor that authorizes the governor to designate a project to go forward."

CO-CHAIR NEUMAN asked what project Mr. Bullock was referencing when he earlier talked about the governor's project.

MR. BULLOCK responded that the project he is referring to is the project that would be designated by the governor under Section 13 of the bill which is a new section, AS 44.19.037. It means the project that the governor has identified to go forward.

[3:02:25 PM](#)

CO-CHAIR NEUMAN referenced page 4, Section 4, Version E, regarding noncompetitive leases of lands. He inquired whether the state can generally enter into noncompetitive lease sales or is this done through best interest findings.

MR. BULLOCK explained that AS 38.35 is the chapter that is amended starting on page 4, line 18, Version E, and continuing for the next few sections. He said this chapter is the Right-of-Way Leasing Act which was enacted in 1973 to facilitate the development of the Trans-Alaska Pipeline. The act was designed to help the pipeline going forward by allowing noncompetitive leases with certain carriers that met the requirements in that section. It is applicable to the pipelines that are defined and described in Section 4 of the bill.

[3:03:56 PM](#)

CO-CHAIR NEUMAN asked whether a contract carrier line with possible exclusive right-of-way issues would be a fully open accessible pipeline.

MR. BULLOCK said he is not sure about openly accessible, but that is the issue between a contract carrier and a common carrier.

CO-CHAIR NEUMAN noted that openly accessible was a term used quite a bit last year. He asked whether a pipeline with five owners would have open access to another company that finds gas.

MR. BULLOCK stated that he thinks two different things are being talked about here. The "pipeline right-of-way act" [1973 Right-of-Way Leasing Act] gives a pipeline a lease or a contract to run across state land. The lease may be wide enough to allow

another line to go through or for other purposes, such as non-oil and gas purposes. It depends on how the lease is written and DNR could provide more information in this regard. As for the pipe itself, the issue is contract carrier versus common carrier. The common carrier would be open to new production and existing owners would have to have their capacity cut back unless there was expansion through compression or adding additional or larger pipe.

[3:06:18 PM](#)

CO-CHAIR NEUMAN, in reference to page 10, lines 23-24, Version E, which state "in the best interest of the state", inquired whether there are any best interest findings in statute or established in some way in the past.

MR. BULLOCK pointed out that AGIA had a significant number of commitments that were required of an applicant for the license. He said the legislature can put in the factors that it thinks would determine what the best interests of the state are.

CO-CHAIR NEUMAN asked whether that would be decided by the commission rather than the legislature under this proposal.

MR. BULLOCK said it is a separation of the branch issue. For example, the legislature can authorize the commissioner of DNR to do something and set the bounds of that, but the commissioner has discretion as a member of the executive branch to actually carry out the law that is enacted.

[3:07:54 PM](#)

REPRESENTATIVE SEATON asked whether anything in Section 1, Version E, prevents a "railroad-style" giveaway of state land to a contract carrier that is unrelated to the right-of-way. For example, could the state transfer 200,000 acres of land or some other state asset that could then act as a funding mechanism to pay for the project?

MR. BULLOCK suggested that members read the March 2008 Alaska Supreme Court case regarding University of Alaska lands in order to understand this. The case talks about what is considered state lands and the laws that are applicable to state lands, as well as the limitations of the Statehood Act as to what interests in lands the state could give up. He said that generally the approach is by leasing or by providing for the disposal of land under the Alaska National Interest Lands

Conservation Act (ANILCA). There are significant limitations on what the state can do as far as transferring land ownership and there are also dedicated fund issues if it is done wrong.

REPRESENTATIVE SEATON withdrew his objection to the adoption of Version E as the working document.

[Representative Kawasaki's objection was treated as withdrawn.]

CO-CHAIR JOHNSON, after ascertaining that there was no further objection, announced that Version E of HB 120 is adopted as the working document before the committee.

[3:10:24 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:10 p.m.