

HOUSE FINANCE COMMITTEE

April 4, 2011

1:32 p.m.

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CALL TO ORDER

Vice-chair Fairclough called the House Finance Committee meeting to order at 1:32 p.m.

MEMBERS PRESENT

Representative Bill Stoltze, Co-Chair  
Representative Bill Thomas Jr., Co-Chair  
Representative Anna Fairclough, Vice-Chair  
Representative Mia Costello  
Representative Mike Doogan  
Representative Bryce Edgmon  
Representative Les Gara  
Representative David Guttenberg  
Representative Mike Hawker (alternate)  
Representative Reggie Joule  
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Representative Alan Austerman; Representative Mike Chenault; Representative Eric Feige; Representative Kurt Olson; Tony Palmer, Vice President, Major Projects Development, TransCanada; Curtis Thayer, Deputy Commissioner, Commerce, Community and Economic Development; Susan K. Bell, Commissioner, Department of Commerce, Community and Economic Development; Wanetta Ayers, Division Director, Economic Development, Department of Commerce, Community and Economic Development; Rodger Painter, President, Alaska Shellfish Growers Association, Juneau; Rick Harris, Executive Vice President, Sealaska Corporation, Juneau; Paul Fuhs, PAC Alaska, Juneau; Joe Balash, Deputy Commissioner, Department of Natural Resources.

PRESENT VIA TELECONFERENCE

Ken L. Larson, Prince William Sound Charter Boat Association, Fairbanks; Patrick Bookey, Sr., Luck of the Irish Charters, North Pole; Mark Stearns, Alaskan Wood Moulding, Anchorage.

SUMMARY

HB 121 LOAN FUNDS: CHARTERS/MARICULTURE/MICROLOAN

CSHB 121(FIN) was REPORTED out of committee with a "do pass" recommendation and with three new fiscal notes by the Department of Commerce, Community, and Economic Development and one new fiscal note by the House Finance Committee for the Department of Commerce, Community, and Economic Development.

HB 142 PRESUMPTION AGIA PROJECT IS UNECONOMICAL

HB 142 was HEARD and HELD in committee for further consideration.

#hb142

HOUSE BILL NO. 142

"An Act relating to the creation of a rebuttable presumption that the project licensed under the Alaska Gasline Inducement Act is uneconomic because of insufficient firm transportation commitments during the first open season."

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TONY PALMER, VICE PRESIDENT, MAJOR PROJECTS DEVELOPMENT, TRANSCANADA, discussed that TransCanada did not support HB 142 and that he would provide a status report on TransCanada's project. He detailed that four years earlier the legislature had passed the Alaska Gasline Inducement Act (AGIA). In the fall of 2007 the legislature had issued a Request for Proposal (RFP) for companies to apply for a license to advance the pipeline project in Alaska. TransCanada had been selected to receive the license in the fall of 2008. He explained that TransCanada had provided a work plan and project schedule as required. The documents had outlined TransCanada's obligations, the commitments the

company would take on, and certain benefits provided to the company under the license. He relayed that questions had arisen regarding what information TransCanada had provided to the state. He explained that the company had provided a significant amount of information on a regular basis. The company had biweekly calls with the administration, monitors conducted onsite progress reviews with the project team on a monthly basis, and the administration published detailed semi-annual progress reports that were available to the public. He emphasized that a substantial amount of information about the project had been made public throughout the entire process.

Representative Doogan wondered whether "biweekly" meant twice a week or every two weeks. Mr. Palmer replied that the calls occurred every two weeks.

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Mr. Palmer addressed a PowerPoint presentation titled "Alaska Pipeline Project" [APP]. He read from Page 3 titled "Alaska Gasline Inducement Act":

The purpose of the chapter [AS 43.90.010] is to encourage expedited construction of a natural gas pipeline that:

- Facilitates commercialization of North Slope gas resources in the state
- Promotes exploration and development of oil and gas resources on the North Slope in the state
- Maximizes benefits to the people of the state from the development of oil and gas resources in the state
- Encourages oil and gas lessees and other persons to commit to ship natural gas from the North Slope to a gas pipeline system for transportation to markets in this state or elsewhere

Mr. Palmer discussed that AGIA required pre-construction work to proceed while commercial agreements were negotiated (Page 4). He elaborated that despite the company's open season the prior summer it would continue to advance towards filing with FERC [Federal Energy Regulatory

Commission] in the fall of 2012. The timeline meant that ongoing work was required prior to the conclusion of the open season. The alternative would have been to pace the construction in proportion to commercial progress, which would have meant a delay in the work and the schedule resulting in later revenues for the state; therefore, TransCanada had filed an aggressive schedule and had met the statutory target dates and was on track to meet its FERC application date in the fall of 2012. The company had contemplated having firm transportation commitments, project financing, and regulatory approval for the project in 2016. He addressed the "AGIA Commitments" that the company had undertaken (Page 5). He explained that ExxonMobil, the company's partner on the project, had a "distinct firewall" between the partnership with TransCanada, the advancement of the pipeline project, and its producer entity that would be the potential shipper on the project. He discussed that TransCanada had effective communication with the state AGIA team and had taken on opportunities for in-state gas access. The company was committed to indicating a number of "off-take" points on the project and had conducted an in-state gas study on the potential demand of gas in the state. TransCanada had received multiple bids when it held the first open season in the history of the North Slope.

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Mr. Palmer relayed that in recognition that world gas markets were becoming more competitive, TransCanada had improved its offer to customers by \$500 million per year for every year that the project was in service relative to the approved terms of the license. The company had lowered its rate of return and had deferred the recovery of certain components of its depreciation in order to make the project more competitive. TransCanada was working towards an October 2012 filing and had advanced initiatives to maximize the use of Alaskan businesses and workers. He communicated that to date the state had met its commitments to TransCanada and ExxonMobil. TransCanada believed that because of AGIA that an Alaskan gas pipeline project had advanced further than ever before and was positioned for ongoing progress.

Representative Gara wondered whether TransCanada had made a reduction to the profit margin that it could make on the transportation of natural gas set by FERC.

Mr. Palmer replied that the company had made a commitment to the State of Alaska that included a variable rate of return that would have been a 14 percent rate of return. He communicated that TransCanada had lowered the rate of return to 12 percent in its open season application, which required FERC approval.

Representative Gara thought that a reduced rate of return would decrease the tariff amount and would ultimately reduce the price of gas to consumers. Mr. Palmer responded that it would reduce tariffs and would improve economics for the customers.

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Vice-chair Fairclough wondered whether there had been more than two bids received in the first open season on the North Slope. Mr. Palmer responded in the affirmative.

Mr. Palmer relayed that TransCanada's license application had identified 2014 as the end of the project development phase, which provided up to six years for the acquisition of firm transportation commitments (Page 6). He noted that until a committee meeting earlier in the day that HB 142 had required TransCanada to have firm commitments by the upcoming summer. He detailed that the decision to proceed and final investment decision regarding the project was expected to be made at the end of the development phase. At that time the company would know whether it had regulatory approval, firm transportation commitments, and financing, all of which were required for a successful project. The project's scope, magnitude, and financial risk required multiple years to complete the work that was necessary for shippers to make the decision to commit \$100 billion in transportation commitments. He stressed that the legislature's approval of the license had ratified the timeline. He acknowledged that TransCanada had projects with shorter schedules; however, none of the other projects were as complex or challenging as the one at hand.

Mr. Palmer read from Page 7 titled: "HB 142 Appears to Violate AGIA License Agreement":

APP is opposed to HB 142:

- Effectively amends key provisions of AGIA License Agreement
- Raises uncertainty of the state's support for AGIA at a critical time
- Undercuts efforts to achieve alignment of all parties necessary for successful project

HB 142 unilaterally would change the contract between the state and the AGIA Licensee:

- AGIA presumes that the project is economic unless the Licensee agrees or arbitrators rule that it is not
  - HB 142 reverses that key presumption
- AGIA mandates a viable work plan and timeline for developing the project, but does not mandate a specific deadline for securing firm transportation commitments
  - HB 142 imposes an arbitrary and non-viable work plan and timeline by establishing a specific deadline for firm transportation commitments

Mr. Palmer explained that the company was in negotiation with potential customers and that the bill presented uncertainty that could harm the negotiations. He had heard earlier in the day that the firm transportation commitment requirement would be changed to require precedent agreements by the upcoming summer. The bill also required the company to have financing for the project; however, he did not believe that anyone would seek financing for the project three years in advance and that it was not possible to secure financing without firm transportation agreements.

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Mr. Palmer continued to read reasons that TransCanada was opposed to the legislation (Page 7):

- AGIA contains a defined process for joint State/Licensee determination of whether the Project is economic

- o HB 142 alters that process by directing commissioners to take action that is reserved to their discretion under AGIA

Representative Hawker disagreed with some of the remarks made by Mr. Palmer. He asked Mr. Palmer to point to a specific area in the bill in which commissioners were required to take action that was reserved to them under AGIA.

Mr. Palmer replied that HB 142 directed the commissioners to inform the legislature before August 1 whether they had been told by July 15, 2011 if transportation commitments had been disclosed and whether there were sufficient firm transportation agreements to support the development of the project. He relayed that the provision was not currently in the AGIA statute.

Representative Hawker wondered how the progress report that commissioners were to provide to the legislature would require commissioners to take action reserved to their discretion under AGIA. He wondered how the provision violated AGIA. Mr. Palmer replied that the bill stated that the project would be presumed uneconomic if TransCanada had not provided evidence of firm transportation commitments by July 15.

Representative Hawker wondered where the language mandated the administration to execute actions reserved to its discretion. He stressed that the rebuttable presumption created a hypothetical that the legislature wanted a response from the administration.

Mr. Palmer answered that to have the State of Alaska make a statement to the public that the project was uneconomic because TransCanada did not have firm transportation commitments three years prior to the beginning of the project was in contravention with the AGIA statute. He cited language in the bill that "nothing in this section precludes an agreement between the commissioners and the licensee that the project is uneconomic," and explained that it was never contemplated that the project was uneconomic unless a "high-bar test" was applied per the statute. He explained that the high-bar test was meant to hold TransCanada and the state to their obligations. He emphasized that that two and a half years after the company

received the license that there would be a rebuttable presumption that the project was uneconomic due to a lack of transportation commitments.

Representative Hawker wondered where a duty was imposed on TransCanada in the legislation to provide firm transportation commitments or a precedent agreement as was written on Page 7 of the presentation. He reiterated that the bill only established a dialogue between the legislature and the administration if the commitments had not occurred by July 15. He communicated that that there was nothing in the legislation that violated the terms of AGIA.

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Mr. Palmer responded that TransCanada had met its obligation to continue to advance the project under AGIA. He relayed that the company had never contemplated that the state would propose legislation that would deem the project uneconomic if firm transportation commitments had not been made by the summer of 2011. He stated that it had always been at the discretion of the commissioners and TransCanada to take the approach if either party believed the project was uneconomic. He believed that the bill appeared to provide guidance to commissioners that had never been discussed. He stated that if HB 142 passed and the legislature had a sense that the project was presumed uneconomic that it would be incumbent on the commissioners to consider the presumption. The commissioners would be required to walk through the terms of AGIA. He opined that any party interested in entering a contract with the legislature would look at the legislation as potentially impacting its future.

Representative Hawker wondered whether Mr. Palmer disagreed with legislative legal counsel that had testified to the opposite earlier in the day. He thought that TransCanada was offering an opinion and not a fact.

Mr. Palmer responded that he was not present to provide the company's legal opinion. He was present to discuss what he believed the bill would do from the perspective of a businessman. TransCanada would examine the law to determine its legal view if the legislation passed.

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Representative Gara asked whether the state would jeopardize its chance of finding another partner on the pipeline project if it breached the current contract with TransCanada. He discussed that the project would be the largest pipeline project in North American history. He believed that the new date of July 15 for firm transportation commitments changed the presumption that did not exist in the original law and breached the contract the state had signed. He recalled that legal counsel Don Bullock had initially said it was not a breach, but he had later said that it would be something for the courts to decide.

Mr. Palmer responded that any business person would look to the State of Alaska as the counter party to determine whether it had honored its contracts. He believed that any company that conducted due diligence on a counterparty would examine the certainty of the counterparty and would see whether that counterparty had changed the rules after signing a contract in the past. It was something that the company took very seriously and they were happy that the state had taken the component very seriously up to that point as well. He assured the committee that a change in the rules made by the state would impact all future gasline projects that involved working with a third party.

Representative Gara wondered whether the current timeline for the project and firm commitments was normal for a project of its size. He was concerned that the bill jeopardized current and future gasline projects.

Mr. Palmer replied that it was not in a company's best interest to have a longer than necessary development period and the company had carefully examined the timeline when it had submitted its application for the project. TransCanada believed that the 2014 timeline was realistic and in alignment with obtaining regulatory approval and financing for the project. The project was extremely complex, large, and challenging and the company had pursued it for more than thirty years as had the state. TransCanada would meet its obligations, but the success of the project relied on the advancement of components from other involved parties.

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Representative Wilson wondered whether TransCanada had ever changed the scope of a project based on the occurrence of new developments. She did not think that the conversation would have occurred if there an abundance of gas had not been discovered in the Lower 48. Mr. Palmer replied that the company had changed the scope of its projects based on marketplace events.

Representative Wilson wondered whether the legislature should not have concern about how the discovery of a significant amount of gas in the Lower 48 may impact the economic viability of the current project.

Mr. Palmer answered that TransCanada and its potential customers regularly examined the decision to continue forward with a project and it had the right to stop the project if it determined the project was uneconomic. The company was aware of what had occurred in the shale market and of the change in some gas price forecasts. Assuming TransCanada's transportation costs were accurate, the EIA [U.S. Energy Information Administration] had forecasted potential returns of \$2.00 in the first five years of service beginning in 2021. He explained that some forecasts were less and some were over \$3.00. He stated that it was up to the customers to determine whether prices were adequate. He had followed gas price forecasting for more than 25 years and there was a very strong correlation between the price forecast and the current price of gas. One important factor that producers and customers considered prior to committing gas to a project was what they believed the gas price would be. An important factor that did not involve TransCanada was related to how much of the price would go to the producers account and how much would go to the state's account. He believed that the state and the producers were aware that the issue needed resolution. Factors that needed resolution and that potential customers examined when determining whether to commit their gas were gas price, fiscal, Pt. Thompson ownership, and the project financing terms. The federal government had put forward legislation that proposed loan guarantees for the project; however, there were currently no interest rate or repayment plan regulations for the guarantee. The company remained hopeful that the state and producers would resolve the issues, the federal government would establish regulations and improve a federal loan guarantee, and that customers would believe that gas prices would be high enough to make the project a success. He

emphasized that AGIA stipulated that the project was economic and that TransCanada also believed in the project's economic viability.

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Representative Wilson wondered whether it was possible that the current issues may not be resolved and that the same discussion would still be taking place in four to five years. She was concerned that Alaska was the number one group that needed the gas and while the state was hoping to sell gas to the Lower 48 its residents were leaving because of their lack of access to gas. She clarified her understanding that TransCanada had not done anything wrong, but that the market place had changed and the Lower 48 may not have been as dependent on Alaska for gas.

Mr. Palmer replied it was possible that in two or three years the project would not succeed. He emphasized that the project would not succeed if it was stopped presently. He elaborated that unfortunately the future would always be uncertain until there were customers that had made firm transportation commitments, regulatory approval had been obtained, and financing was secured. He explained that the factors were always required for a project to succeed.

Representative Wilson remarked that she was hopeful that the Interior would always have access to diesel even if a large gasline was not successful. Mr. Palmer believed that any project, including an in-state gasline would face some of the same challenges that a big gasline had. He listed necessary factors for an instate gasline: fiscal resolution in order for producers to commit their gas; the third party hired to construct the line would need to have an arrangement with the state and to know that the state would to stick to the deal on a long-term basis; a 70 percent debt loan would require proof of instate customers in order to obtain financing; and, the state would need to convince the equity sponsors to commit their equity to the project.

Vice-chair Fairclough asked whether the company was still on schedule for the construction of the project in 2020. Mr. Palmer replied in the affirmative. He reiterated that there were a number of factors that needed to take place in order to achieve the current timeline.

Vice-chair Fairclough wondered whether precedent agreements had been in place for the project with the FERC agreement. Mr. Palmer asked Vice-chair Fairclough to clarify the question.

Vice-chair Fairclough asked why precedent agreements had not been reached on the pipeline in the FERC agreement.

Mr. Palmer responded that when TransCanada had made its open season filing it had specified that the open season would be held from the end of April through the end of July. The company then indicated that its goal was to complete the negotiation of the project conditions by the end of 2010. He relayed that TransCanada had not met the goal, but that it had not been a statutory obligation under AGIA. The company had not met the target date for a number of reasons including: customers had requested changes to the commercial arrangements, which the company was working on; and, customers had stipulated that there must be advancements in particular areas such as fiscal arrangements and Pt. Thompson ownership.

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Vice-chair Fairclough wondered whether the discussion regarding changes in Alaska's fiscal policy helped or hurt AGIA in firming up transportation commitments. She referred to Mr. Palmer's statement that one of the customers' requested changes could be related to Pt. Thompson. She shared that the House had passed legislation to reduce oil taxation policy. Mr. Palmer replied that customers on the gas side of the business were looking to know what the gas taxes would be for the gas they committed to the project. He relayed that the company was not privy to additional detail on the subject.

Representative Hawker wondered whether the company's responsibilities or the administration's responsibilities under AGIA were altered by the legislation. He communicated that he appreciated Mr. Palmer's willingness to discuss project economics; however, the bill was about the administration's accountability to the legislature. Mr. Palmer responded that from his perspective as a businessman that the passage of the bill would amend provisions of the license, would raise uncertainty of the state's support for AGIA at a critical time, and would undercut efforts to achieve the alignment of all parties that was necessary for

a successful project. He noted that he was not qualified to provide a legal opinion.

Representative Hawker wondered whether the bill legally altered the relationship between the state and the TransCanada/ExxonMobil project. He wondered whether the committee could get a legal opinion from the companies. Mr. Palmer responded that TransCanada was not in a position to provide their legal opinion on a piece of legislation. The company would deal with facts and not a hypothetical circumstance.

Representative Hawker believed that the bill was a fact and that it was important to hear from TransCanada on whether it believed its legal responsibilities would be altered as a result of the bill.

Vice-chair Fairclough noted that a press release had been issued by TransCanada on the subject.

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Mr. Palmer read from Page 8 titled "AGIA Reimbursement Process":

AGIA reimbursement process working as intended and funding qualified activities

Qualified activities:

- Pursuing firm transportation commitments
- Securing financing
- Obtaining a Certificate of Public Convenience and Necessity from FERC
- Satisfying a requirement of an agency with jurisdiction over the project

All expenditures submitted for reimbursement subject to a due diligence review and audit

State reimbursement:

- As of 3Q of 2010: \$50M reimbursed (additional assessments pending)
- Forecasted reimbursement FY 2011: \$125M
- Governor's proposed budget FY 2012: \$160M

AGIA funding supporting real work to advance an Alaska natural gas pipeline; TC [TransCanada] and EM [ExxonMobil] committing their own funds in combination with the state

Mr. Palmer clarified that the actual state reimbursement that the company had received as of the end of March 2011 was \$50 million and not the \$136 million that had been cited earlier in the day. He stressed that TransCanada and ExxonMobil had spent \$240 million on the project to date.

Vice-chair Fairclough wondered how much of TransCanada's commitment was available for reimbursement under the terms. Mr. Palmer responded that TransCanada had received \$50 million and should receive a total of \$100 million for money incurred through the end of March 2011.

Vice-chair Fairclough asked whether the \$100 million would be paid towards the money that the sponsors had spent. Mr. Palmer replied that after the sponsors received the total payment of \$100 million that they would have \$140 million remaining out of pocket.

Mr. Palmer read Page 9 titled "Path to Success":

Project exceptionally large, complex and important

2010 very productive for APP:

- Conducted first open season in North Slope history
- Making good progress on multiple fronts
- Diligently conducting the work needed to advance the project
- AGIA working as intended and commitments being met

To succeed we must:

- Attract customers
- Obtain regulatory approvals
- Achieve project financing
- Secure and maintain the support and active engagement of all key parties

Representative Hawker referred to a TransCanada press release and the Annual U.S. Congressional Report on the gasline progress that had stated that bids for significant volumes of gas had been received. He wondered whether the bids had contained sufficient volumes of gas that would enable the company to advance the project. Mr. Palmer replied that TransCanada was bound by confidentiality agreements and could not divulge the actual volume. He added that the company was still working to resolve the conditions and that it was important for other parties to do the same to have success on the project.

Representative Hawker asked whether the legislature and the State of Alaska should not be concerned about whether TransCanada had received sufficient commitments in its initial open season. Mr. Palmer understood that Alaskans and other bidders all wanted to know what the volumes were; however, that was not the practice in the pipeline industry. The company could not reveal the number of commitments until they were secured in precedent agreements. He noted that the confidentiality clause was laid out in FERC rules.

Representative Hawker clarified that he was interested in the magnitude of commitments and whether TransCanada had received sufficient commitments to declare a successful open season. He wondered whether TransCanada still believed that the project had the potential to be as extremely profitable as the legislature had been told three years earlier during AGIA discussions. Mr. Palmer did not believe that the cited testimony was his own.

Representative Hawker believed the testimony had been from the administration. He wondered whether Mr. Palmer thought that "the administration's assertion three years ago that

this project was wildly profitable under all circumstances," was an accurate statement.

Mr. Palmer replied that he did not have a comment about the administration's testimony. He relayed that TransCanada had been careful in its testimony three years earlier and had utilized the EIA gas price forecast as it had been directed. He relayed that different parties would have different responses when asked if the project was "wildly" profitable or economic. Factors included how a party viewed gas prices going forward, the arrangement with the State of Alaska regarding gas taxes, the availability of Pt. Thompson gas for the project, and the resolution of issues between the pipeline company and potential customers.

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Mr. Palmer continued to answer a question from Representative Hawker. He explained that the project would be economic for a pipeline company if it could attract credit worthy customers that were in a position to commit their gas. He added that customers would decide separately whether the project was economic for them.

Representative Hawker explained that the legislation sought to ask the administration the questions that had been illustrated by Mr. Palmer and to hold it accountable for statements that it had made in the past.

Representative Doogan reminded the committee that the topic had been voted on in the past and he encouraged new members to go back and study the record.

Mr. Palmer continued on Page 10 titled "Progress: Use of Alaska Resources," and explained that one of the requirements under AGIA was that TransCanada use Alaska resources. He relayed that the sponsors had completed the milestone of one million work hours with no incidents. There were approximately 115 TransCanada and ExxonMobil employees working on the project across the continent. The prior summer there had been 400 workers on the field and as of the end of the first quarter 2011 a total of 40 companies and 470 Alaskans had worked on the project. He highlighted that the sponsors continued to use Alaska businesses and workers to advance the development of the project.

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Mr. Palmer discussed Page 11 titled "Progress: Training Alaskan Workers," that outlined the company's commitment to the state to work on training Alaskans to work on the project:

Working with the State of Alaska Department of Labor and Workforce Development in their efforts to develop and implement training programs for Alaskan workers:

- APP is active member of the Alaska Gas Pipeline Training Plan Committee
  - Participating with state, contractors, labor organizations, University of Alaska and others
  - Implementing Alaska Gasline Strategic Training Plan
- Initial focus: Identifying future APP workforce needs and skills requirements
- Leading to development and implementation of training plans
- APP donated large diameter pipe to Fairbanks pipeline training school to aid in pipe handling and welding training

Accomplishment: Taking the necessary steps to prepare the Alaskan workforce for pipeline construction and operations jobs

Mr. Palmer moved to Page 12 titled "Progress: Attracting Customers":

APP's open season concluded on July 30, 2010

- Received conditional bids from major industry players and other parties
- Conditions included proposed changes to APP's commercial terms, as well as issues requiring

resolution between Shippers/Producers and the State

APP has progressed negotiations with potential Shippers following the close of the Open Season

- Good progress in addressing proposed amendments to commercial terms
- APP continuing engagement with potential shippers

Mr. Palmer continued on Page 13 ("Progress: Attracting Customers"):

The resolution of State and Shipper/Producer issues is fundamental to progress APP and to underpin the shippers' substantial investment

- Would be the largest privately financed construction project in the history of North America
- Issues will need to be concurrently advanced in order to secure signed precedent agreements

Accomplishment: APP continuing to progress the commercial process, but:

- Success will require all parties--including Shippers/Producers, State, and APP--to actively engage to realize a mutually beneficial outcome

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Mr. Palmer addressed Page 14 titled "Progress: Obtaining Regulatory Approvals":

Advancing essential regulatory work for securing permits:

- Aligning with regulators on path forward
- Completed extensive environmental field studies in 2010 and initiating major program for 2011

- o Archeology and cultural resources; wetlands delineation; fish habitat surveys
- Actively engaging public along pipeline route:
  - o Met with 32 Alaska communities in 2010-- project updates and listening for their issues; similar program in 2011
  - o Continuing communications with First Nations in Yukon and British Columbia
- Progressing socioeconomic assessment
  - o Interviews with Alaskan community leaders on potential impacts of large-diameter gas pipeline
- Secured land access for field studies on public land; progressing for private lands in 2011

Accomplishment: On schedule to complete the work needed to submit FERC certificate application and commence NPA compliance filings by Oct. 2012

Mr. Palmer added that there had been many more private lands than had been expected. The company's due diligence had found state records to be out of date and there were many more private lands along the right-of-way, which meant extra work and cost for the company.

Representative Guttenberg wondered whether Fairbanks had been added to the list of communities where the sponsors planned to hear commentary from residents. Mr. Palmer responded that there was a meeting scheduled in Fairbanks on April 26, 2011.

Mr. Palmer detailed that the sponsors had conducted the range of work needed to secure financing for the project: "Progress: Financing the Project" (Page 15):

- Developed preliminary finance plan, with input from leading financial institutions, for open season rate design

- On-going discussions with U.S. Department of Energy on use of Federal Loan Guarantees (FLGs)
  - Successful use of FLGs means lower financing cost for the project
  - Reduces rates to shippers; enhances economic value to all stakeholders
- Collaborating with Senate Committee on Energy and Natural
- Resources on amendments to 2004 statute authorizing FLGs for AK gas pipeline project
  - If passed by Congress, will increase FLGs from \$18B to \$30B, and allow access to Federal Financing Bank

Accomplishments: Developed preliminary finance plan that supports open season negotiations through reduced rates and enhanced value to all stakeholders; positioned for further financing enhancements

Mr. Palmer noted that the sponsors had spoken with 13 domestic and international financial institutions in order to advance discussions regarding a finance plan.

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Mr. Palmer pointed to Page 16 titled "Progress: Pipeline Engineering & Technology":

Progressing pipeline engineering and technology work in the lab and in the field:

- Advancing the project design
  - Geotechnical design; hydraulic and geothermal modeling; geo-hazard assessment; materials engineering; pipeline design; facilities engineering; construction and logistics planning
- Conducting engineering field work in Alaska, Yukon and British Columbia

- o LiDAR [Light Detection and Ranging] and aerial photo; routing; fault delineation; watercourse crossing reconnaissance; borehole and bulk soil sampling; borrow site reconnaissance
- Permafrost studies--includes research program with University of Alaska

Mr. Palmer stressed that all of the factors outlined on Page 16 were critical to an accurate assessment of work needed to ensure the advancement of a project.

Mr. Palmer read from Page 17 titled "Progress: Pipeline Engineering & Technology":

Conducting full-scale testing of project pipe (48"/X80)

- Objective is to validate models used to predict pipe tensile and compressive strain capacity
- Test program is designed to simulate strains caused by frost heave and thaw settlement
- Testing facility will be fully operational by May 2011
- Several mills providing pipe to be tested

Accomplishment: Conducting ongoing series of studies and planning to advance design of pipeline facilities in alignment with commercial and regulatory schedules

Mr. Palmer noted that the project pipe was standard size and that all items listed on Page 17 were necessary for project advancement.

Mr. Palmer directed attention to Page 18 titled "Progress: Gas Treatment Plant":

- Optimization and development studies underway in all areas of work
  - o Process planning; engineering; regulatory requirements; project execution

- o Studies have identified cost savings and improvements in plant lay-out
- Conducting on-site evaluations of major North American and Asian fabrication facilities to review capabilities and further refine construction planning

Accomplishment: Completed latest phase of studies and planning to advance design of GTP [gas treatment plant] facilities-in alignment with commercial and regulatory schedules

Mr. Palmer communicated that the companies continued to do the work listed in the presentation as the items were necessary for any pipeline project.

Mr. Palmer concluded the presentation with Page 19 titled "Next Steps":

All APP teams conducting the work needed to:

- Attract customers
  - o APP working diligently to resolve remaining issues
  - o Essential that issues outside of APP's control also be resolved
- Obtain regulatory approvals
  - o APP will submit FERC and major NPA filings in 2012
- Achieve project financing

Project can only advance with support and active engagement of all key parties

- Shippers/Producers
- State of Alaska
- U.S. and Canadian governments

- Communities along the pipeline route

Each party has a vital role in ensuring the effective commercialization of Alaska's natural gas resources

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Representative Gara wondered how the AGIA requirements on debt/equity ratio helped to keep transportation costs as low as possible in order for the project to be economic for producers. Mr. Palmer replied that the AGIA statute had a very high debt requirement relative to other pipeline projects and directed an applicant to have a minimum of 70 percent debt and 30 percent equity. He detailed that once the project was through construction and service that ExxonMobil had committed to 75 percent debt. He explained that from a customer's standpoint that debt was preferable as it was a much cheaper form of financing. Debt costs could be five percent to seven percent and taxes were paid on return on equity that was twelve percent which was effectively compounded from the standpoint of a customer.

Representative Gara asked whether it was correct that the higher the debt meant the lower the tariff rate that FERC would approve. Mr. Palmer replied in the affirmative.

Representative Gara asked whether the tariff rate would be reduced and margin would be freed up for producers if the state invested 20 percent to 40 percent into the pipeline but only requested an 8 percent rate of return.

Mr. Palmer replied that customers would pay lower tolls if an additional party took 30 percent ownership of the project and required a lower rate of return. He discussed that TransCanada and ExxonMobil had come down from a rate of return expectancy of 14 percent to 12 percent.

Representative Gara wondered whether the rolled in rates provision in AGIA made it more likely that independent explorers would help contribute gas to the pipeline. He explained that the provision required all shippers to share the costs of an expansion that was needed by a new shipper. The provision would be lost if the current project was lost. He noted that BP and ConocoPhillips were opposed to the requirement and thought that the new shipper should be required to fund the expansion.

Mr. Palmer responded that the statute had a limit of 115 percent of the original tolls for roll in tolls. Historically when tolls increased as a result of an expansion a rolled in structure generally encouraged new parties to commit their gas; whereas, current customers may have held an alternate view.

[3:00:17 PM](#)

AT EASE

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RECONVENED

Vice-chair Fairclough OPENED and CLOSED public testimony.

HB 142 was HEARD and HELD in committee for further consideration.

[Note: HB 142 was heard again during the meeting and appears later in the minutes.]

#hb121

HOUSE BILL NO. 121

"An Act establishing the commercial charter fisheries revolving loan fund, the mariculture revolving loan fund, and the Alaska microloan revolving loan fund and relating to those funds and loans from those funds; and providing for an effective date."

[3:08:50 PM](#)

Co-Chair Stoltze MOVED to ADOPT CSHB 121(FIN) Work Draft 27-GH1728\X (Kane, 4/1/11).

Representative Doogan OBJECTED for purpose of discussion.

Vice-chair Fairclough asked for an explanation of the CS.

CURTIS THAYER, DEPUTY COMMISSIONER, COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, discussed the changes that appeared in the CS. He relayed that there was a title change that deleted the language "relating to loans made to commercial fisherman under the commercial fishing loan act for product quality, improvements, and energy efficiency upgrades." Section 1 on Page 1 had been deleted from the previous

version that would have allowed the Department of Commerce, Community, and Economic Development (DCCED) to give an interest rate reduction to commercial fishing loan borrowers if 50 percent of the loan was spent on product produced or manufactured in Alaska. Language was inserted on Page 3, Line 17 that required an applicant to provide a document to the department from a state financial institution that showed the applicant had been denied a loan or that the loan was contingent upon the applicant receiving a loan from the Alaska Microloan Revolving Loan Fund. Page 3, Line 19 included new language related to the "turndown" provision that an applicant had been denied a loan for the same purpose or a loan from a financial institution was contingent on an applicant receiving a loan from the fund. He explained that there was a turndown provision for the microloan that was mirrored by the charter boat fisheries loan. The floor of the interest rate had been increased from 3 percent to 6 percent for the charter boat fishery program (Page 6, Lines 4 and 14). The total balance of the outstanding charter fisheries loan had been reduced from \$300,000 to \$200,000 (Page 4, Line 16). Changes to the legislation had been made in consultation with the industry to ensure that the program was not competitive with other financial institutions. The goal was to provide bridge funding between what the private sector was and was not able to finance and to produce economic development for the State of Alaska.

There being NO OBJECTION the CS was ADOPTED.

SUSAN K. BELL, COMMISSIONER, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, underscored that the legislation had resulted from extensive outreach to the economic advisory council, trade organizations, Alaska Native Claims Settlement Act (ANCSA) corporations, community leaders, the financing community, and other. She relayed that the goal was to help diversify the economy and to facilitate job creation. The department had been made aware of the need for increased access to capital in select areas and industry sectors. The first of three major components included the facilitation of year-round mariculture industry development in coastal communities. She discussed that out of 67 farms that only 25 were currently producing (10 in Southeast and 15 in Southcentral Alaska). The second component was to help commercial charter operators in Southcentral and Southeast Alaska to acquire charter halibut permits that were needed to comply

with new federal regulation. She emphasized that the department anticipated over 500 permittees with over 800 applications. The department's objective was to encourage Alaska ownership and to increase the economic benefits of the communities where permit holders resided through a recirculation of the earnings. The third component was to spur small business development through the creation of a microloan program. Alaska was one of the few states without a microloan program and funds could be used for startup business costs, working capital, inventory expansion, etc. She communicated that the programs complimented the state's small business loan programs and provided additional tools to diversify the economy and to sustain economic growth.

Representative Costello wondered whether the legislation would compete with the Alaska Commercial Fishing and Agriculture Bank (CFAB).

WANETTA AYERS, DIVISION DIRECTOR, ECONOMIC DEVELOPMENT, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, responded that the CFAB lending practices were similar to other private banking institutions and that there had been turndowns for commercial fishing loans in some circumstances. She detailed that borrowers that did not qualify for a CFAB loan would be considered under the loans in the legislation.

[3:16:31 PM](#)

Representative Wilson asked how many of the states with microloan programs used private banks compared to state financing. Ms. Ayers responded that the legislation was modeled after the Small Business Administration (SBA) Microloan Program and the loans were typically provided by non-governmental organizations such as economic development districts or non-profit community development corporations.

Representative Wilson asked whether the loans in the legislation would be operated and funded by the State of Alaska. Ms. Ayers replied in the affirmative.

Representative Doogan wondered where commercial charter fishermen had previously obtained loans. Ms. Ayers replied that the loan fund had been proposed to help fishermen due to new federal requirements on limited entry permits. The new requirement presented a barrier to entry that most of the businesses had not faced in the past. She relayed that

although a business may qualify for an asset loan that it was unlikely a business would qualify for private financing on a permit because it was a new requirement.

Representative Doogan wondered how much a loan would cost. Ms. Ayers replied that the department had heard that the charter halibut permit for a "six pack" license would cost up to \$80,000.

Representative Guttenberg wondered where the interest of the state would be met and whether the loan was specifically intended to provide funding to people who had been denied by another financial institution.

[3:19:53 PM](#)

Ms. Ayers responded that the state's interest in providing a loan to a qualified borrower was satisfied by the creation of a greater public good. She relayed that the objective was to concentrate Alaskan ownership to ensure that the economic benefits accrued from the activity would remain in Alaska. She noted that there had been a significant level of non-resident charter operations ownership in Southcentral and Southeast Alaska in the past.

Representative Guttenberg wondered about the surety that the debt would be repaid to the state and how the loan requirements differed between the state loan and a private institution loan. Ms. Ayers replied that a private lender would generally have a lower risk tolerance; however, the state would still require the loan to be sufficiently collateralized to secure the loan value. She added that the state typically had a higher risk tolerance and was able to exercise more patience regarding repayment terms in order to meet the public purpose objectives of the fund.

Representative Guttenberg was supportive of the goals. He wondered about the history of repayment and default on loans provided by the state. Ms. Ayers replied that the default rate was very low and it was less than one percent in the past fiscal year.

Representative Gara supported the legislation. He wondered whether the standards in the loan program were similar those in other loan programs. Ms. Ayers replied that the same best practices that were used on other loans would be used.

Representative Gara asked whether overall the state did not lose money on the loan funds as a result of the low default rate. Ms. Ayers replied in the affirmative. She explained that in the past the state had offered extremely patient terms under certain loan funds, such as the Fisheries Enhancement Revolving Loan Fund, and tended to make loans in the commercial fishing industry because historically there had been a lack of private sector financing in the area. The state had helped the fishing industry through some very challenging times and had been able to make modifications and work with borrowers to help them get right-side up on their loans.

[3:24:07 PM](#)

Representative Gara reiterated his support for the bill. He discussed that another revolving loan fund had been passed the prior year to help small businesses become more energy efficient; however, it was currently unfunded. He hoped that legislators would consider funding the program because private businesses in rural areas did not qualify for Power Cost Equalization (PCE).

Co-Chair Stoltze mentioned the Agriculture Revolving Loan Fund.

Vice-chair Fairclough discussed the fiscal notes.

Co-Chair Thomas thought the DCCED fiscal note related to charter fisheries should be increased to \$9 million. He believed the permit for a license was between \$80,000 and \$100,000 and in order to be in a position to provide loans to those in need that it would be better to increase the available funds. Commissioner Bell replied that the department had looked to make sure the funds were viable at different commercialization levels and explained that the increase to \$9 million would expand opportunities to more people in need of financing.

Representative Doogan asked for an explanation on the fiscal note notation that specified the capitalization had been reduced from \$5 million to \$3 million based on clarification of funding source. Ms. Ayers replied that a new source of federal funding that the department had hoped for was not available; therefore a lower capitalization had been recommended. She added that the department would take

Co-Chair Thomas's recommendation into account regarding the potential demand for the loan.

Representative Doogan asked whether the department had decreased the amount from \$5 million to \$3 million because they thought the amount was too high. Ms. Ayers replied that the amount had been reduced because the federal funding had not come through.

Representative Doogan asked about the reduction to \$3 million.

Vice-chair Fairclough believed that the department had not wanted to bring forward a fiscal note that was too large. She clarified that Co-Chair Thomas had suggested raising the amount to \$9 million to increase access to more people.

Representative Doogan wanted to understand the methodology in the number decrease that was reflected on the fiscal note.

Representative Wilson asked whether the three fiscal notes from DCCED totaled \$8.5 million. Ms. Ayers replied in the affirmative.

Representative Wilson asked whether there would be three additional positions created. Ms. Ayers responded that the department had requested one new position.

[3:29:38 PM](#)

Vice-chair Fairclough wondered whether the fiscal note dated 2/8/2011 that included funding for two full-time positions in the amount of \$169,000 had been replaced by a fiscal note dated 3/29/2011 that included funding for one full-time position in the amount of \$78,000. Commissioner Bell replied in the affirmative.

Vice-chair Fairclough informed the committee that there should be a total of four fiscal notes. Three notes included capital for different funds and one note included funding for one full-time position. Funding for the full-time position was \$78,000 in FY 12 and \$71,900 in FY 13 through FY 17.

Representative Wilson wondered how many fishing loans currently existed. Ms. Ayers replied that currently there

was the Commercial Fishing Revolving Loan Fund under which a number of eligible purposes existed and the Fisheries Enhancement Revolving Loan Fund that paid for the Aquaculture Association hatchery Fisheries Enhancement Program.

Representative Wilson asked whether there would be a total of five separate funds that included the current funds and those encompassed in the legislation. Ms. Ayers clarified that there were three separate loan funds in the bill that included the mariculture fund, the commercial charter fund, and the microloan fund. She noted that the microloan fund was not specific to fisheries.

Representative Wilson asked for verification that DCCED currently administered other loan funds. Ms. Ayers replied in the affirmative. She reiterated that other loans included the Fisheries Enhancement Loan Fund and the Commercial Fishing Revolving Loan Fund that helped users with vessel financing, refinancing, limited entry permits, quota share purchasing, commercial purposes, etc.

Representative Wilson surmised that there was currently no federal funding available to help with the programs. Ms. Ayers responded in the affirmative.

Co-Chair Stoltze supported the legislation. He stressed that the loan fund helped fisherman in Southeast and Southcentral Alaska that were faced with financial difficulty as a result of an external federal government action.

[3:34:26 PM](#)

Representative Doogan wondered whether it was a reaction to the "two fish, one fish change".

Co-Chair Thomas replied that a permit system had been created in Alaska that displaced a significant number of charter fishermen. He explained that in some circumstances lodges held permits for fishermen that they employed; however, the fishermen were now required to hold an individual permit. He opined that an increase to the base \$3 million in the fiscal note was important and that the loan would help bring fishermen back. He discussed that the state loan program had been in existence for a long time and that the default percentage was very low. He relayed

that the state was able to sell a permit to another fisherman if the current owner defaulted.

Vice-chair Fairclough discussed the proposed revision by Co-Chair Thomas that would change the base amount on the fiscal note related to the Charter Fisheries Revolving Loan Fund from \$3 million to \$9 million.

Representative Wilson wondered why funding could not be met through existing loans.

Co-Chair Thomas explained that the loan fund was a new program.

Representative Gara communicated that the state's revolving loan funds were well run and that they added jobs, improved the economy, and dealt with distress in the state. He thought that the increase was smart and did not cost the state anything and in the event that the state faced a worse fiscal situation the legislature could consider reducing the amount at that time.

Representative Doogan wondered whether the increase would be from \$3 million to \$9 million on the fiscal note labeled "Allocation: Com Charter Fisheries (RLF)."

Vice-chair Fairclough responded in the affirmative. The committee agreed on a revised fiscal note that would increase the Charter Fisheries Revolving Loan Fund to \$9 million.

Vice-chair Fairclough discussed the fiscal note that capitalized the microloan fund at \$2.5 million.

Representative Gara wondered whether the fiscal note was sufficient to make a real impact on the community. Ms. Ayers replied that the department believed it was sufficient.

[3:38:51 PM](#)

Representative Gara remarked that the number seemed small.

Vice-chair Fairclough pointed to the fiscal note that capitalized shellfish mariculture at \$3 million.

Representative Wilson asked how long the money would be allocated for the mariculture loan before the department would reassess whether other non-financial needs were more prevalent. Ms. Ayers replied that DCCED monitored new loan funds to determine how quickly the fund was subscribed and would then make determinations. She highlighted that proper outreach to potential users was important when a new fund was available. There was at least one new loan fund that the department was currently monitoring. New funds were typically given several years before a serious determination was made.

Representative Wilson wondered whether DCCED would provide a report to the legislature and potentially recommend the transfer of money from one program to another if the department had determined that a loan was not working. She noted that sometimes businesses were not successful for non-financial reasons. She asked whether the department had ever turned any loans back in. Ms. Ayers replied that she would need to do research on turning back capital. She believed that it was more likely that in cases such as commercial fisheries that the fund had given back through the successful funding of other activities.

Vice-chair Fairclough discussed the fiscal note that included funding for one full-time position.

Representative Doogan asked for an explanation of the \$2,400 capital outlay item listed in FY 12. Ms. Ayers responded that the allocation was related to office equipment, furniture, and other items associated with the creation of a new position.

Representative Doogan asked for information regarding the microloan funding source that began with \$5,300 in FY 12 and was reduced to \$3,500 in FY 13 through FY 17. Ms. Ayers replied that the incremental costs were allocated between the two funds [Micro-Loan Fund and the Commercial Charter Fisheries Fund] in the first year and was carried forward in future years.

Representative Doogan wondered whether the full-time position would be allocated to two different functions. Ms. Ayers responded that he was essentially correct, but that many individuals would be involved in the entire lending process. She added that DCCED had allocated the costs within the confines of the fiscal note.

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Representative Doogan wondered why the new position had not been allocated to Mariculture Revolving Loan Fund as well. Ms. Ayers responded that based on the potential volume of loans DCCED believed it could accommodate the fund with current staff.

Representative Edgmon wondered what interest rate each program would offer if the programs took effect that day.

Commissioner Bell replied that the Commercial Charter Fisheries Revolving Loan Fund would have a floor of 6 percent and a ceiling of 10.5 percent. The Shellfish Mariculture Revolving Loan Fund would have a floor of 5 percent and a ceiling of 9 percent. The Microloan Revolving Loan Fund would have a floor of 6 percent and a ceiling of 8 percent. She referred to the language "prime plus two" in the bill that would currently have been 5.25 percent and was close to market rates. The department had tried to create programs that filled public purpose, that recognized communication with the industry interested in utilizing the loans, and to find an appropriate comfort level within the banking community.

KEN L. LARSON, PRINCE WILLIAM SOUND CHARTER BOAT ASSOCIATION, FAIRBANKS (via teleconference), opposed the bill in its present form. He had operated a charter boat in Valdez beginning in 1984. He discussed that economic development in Alaska was on a downhill slide and the implementation of GHLS [Guideline Harvest Limit] and charter halibut permits [CHP] had wiped out 35 percent to 40 percent of operators. He believed that the one fish 37 inch rule in Southeast was the "death knell" for charters in the area. Operators in Southcentral had been told that they would be limited to the one fish rule under the catch-sharing plan the following summer. He discussed that Alaska Department of Fish and Game figures indicated that non-resident licenses had dropped 18 percent from 2006 to 2010 and the money generated from the area had dropped close to 12 percent. He stressed that the state had lost several hundred million dollars since 2006 and that the decline had continued to the Alaska tourism industry. He believed that the state was establishing a double standard. He discussed the CFAB loan program had been instituted when the IFQ's for halibut long liners were put in place in 1995 and were

currently at a 3 percent to 4 percent loan rate. The fisherman had been forced into a mold in a fishery where they made up 10 percent to 15 percent of the total catch. He wondered why the fisherman that wanted to purchase CHPs could not be included in the CFAB program. He relayed that it was difficult to obtain loans and that the state should tap into the existing CFAB program instead of setting up a new program.

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Representative Wilson asked whether Mr. Larson believed that his recommendations would open up the bill for utilization by a broader group of operators. Mr. Larson responded that he thought it would help. He explained that the problem was that many fishermen were looking for a boat and a permit and that \$100,000 would not come close to the costs needed.

Representative Wilson remarked that the bill had been changed to \$200,000.

Vice-chair Fairclough explained that a CS had been adopted and that one of the changes the Commercial Charter Fisheries Revolving Loan Fund was an increase to \$200,000. Mr. Larson believed that the increase would help significantly.

Vice-chair Fairclough asked Mr. Larson whether he maintained his opposition to the bill. Mr. Larson opined that the new program was unnecessary because it would duplicate the current CFAB program.

Representative Doogan referenced Page 4, Lines 15-16 that included the increase to \$200,000.

Vice-chair Fairclough read from Page 4, Lines 15-16: "The total balances outstanding on loans made to a borrower under AS 16.10.805 may not exceed \$200,000." Mr. Larson asked about Page 3, Line 31 that included language that a loan would not exceed \$100,000.

Vice-chair Fairclough replied that the language was referring to a different section of the code.

Mr. Larson queried whether the available amount was \$200,000 on a charter halibut permit, boat, or engine upgrade.

Vice-chair Fairclough responded that the administration would provide clarity at the end of the public hearing.

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PATRICK BOOKEY, SR., LUCK OF THE IRISH CHARTERS, NORTH POLE (via teleconference), was opposed to the current form of the legislation. He was a longtime Alaskan and worked as a charter operator. He expressed that 35 percent of the charter operators had been lost under the current charter halibut permit and that operators were the smallest user group. He was concerned that private boaters would still be allowed two fish and that the implementation of the one fish rule would put charter operators out of business. He thought the language in the bill related to the amount available under the loan was confusing. He was troubled by the requirement that an operator must have a physical license or residence in the state for 24 months in order to qualify for the program. He thought the CFAB program was better because the interest rates under the bill were no better for new fishermen. He explained that his boat and 12-pack permit amounted to over \$300,000 and that a buyer would not receive enough funding under the proposed loan.

Vice-chair Fairclough noted that Mr. Bookey had been referring Page 3, Lines 22-25.

MARK STEARNS, ALASKAN WOOD MOULDING, ANCHORAGE (via teleconference), spoke in support of the legislation. He believed that the microloan program was broadly based and would help a variety of business owners. He had known small businesses that had been turned down for loans despite good credit. He believed that the small program would help to bridge the gap during challenging times. He thought the bill was necessary and would be extremely helpful to small businesses that created jobs and were the backbone of Alaskan communities.

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RODGER PAINTER, PRESIDENT, ALASKA SHELLFISH GROWERS ASSOCIATION, JUNEAU, spoke in favor of the bill. He thanked the governor for introducing the legislation. He

appreciated a loan fund specifically for small businesses because there was a tendency to focus on large scale economic development. The mariculture loan addressed the association's revenue lag from three to eight years. The bill was structured recognize the problem and would encourage the development of new shellfish farms in rural Alaska.

RICK HARRIS, EXECUTIVE VICE PRESIDENT, SEALASKA CORPORATION, JUNEAU, referred to written testimony that had been provided (copy on file). The corporation was in support of the legislation and was specifically interested in the mariculture loan. He discussed that Southeast Alaska had been experiencing large outmigration and high unemployment. SEALASKA had reviewed Department of Labor statistics from 1996-2034 that showed that Ketchikan would lose 36 percent of its population, Prince of Wales would lose 62 percent, Skagway would lose 56 percent, and Wrangell would lose 56 percent. The corporation board of directors had decided that they would begin rebuilding jobs in rural communities one person at a time. He discussed the corporation's subsidiary called Haa Aani that was focused on economic development in Southeast. Southeast offered a range of resources that were necessary for the mariculture; however, there was no capital available for new businesses. He discussed other items that were necessary for oyster farmers. He believed that the bill would remove oyster farmers' lack of financing, which represented their number one obstacle. He hoped that the \$3 million would be available quickly in order to help put people to work.

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PAUL FUHS, PAC ALASKA, JUNEAU, supported the legislation. He expressed that the bill provided good mid-level economic development in necessary areas that represented substantial revenue and supported numerous jobs throughout the year. He shared a gooey duck with the committee and explained that it took approximately six to seven years for the shellfish to reach maturity: during the time businesses did not bring in revenue and experienced costs such as leases on the tidelands. Private banks would not provide financing; therefore, a state loan program was necessary. He explained that the reason for a new loan program was that existing programs were fully subscribed. He noted that default rates on state loans were historically very low. The farms needed start-up capital and would then become self-sustaining.

Representative Gara wondered why gooey ducks were not for sale in the supermarket. Mr. Fuhs replied that the primary market was overseas and that most people in America did not know how to cook them.

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Vice-chair Fairclough CLOSED public testimony.

Representative Doogan asked for verification of the two financial limits on the loan. The first was that the loan could not exceed over \$100,000 per year. The second limit was that the loan could not total more than \$200,000 per year. Ms. Ayers responded in the affirmative.

Representative Gara asked whether the department would reevaluate the amount designated to the microloan program. He thought that the allocation of \$2.5 million was too low.

Commissioner Bell responded that DCCED had initially thought that the program could have been supplemented with federal funding. The department wanted to make sure it was bringing forward loans that were viable and functional. The loan was mirrored after the SBA program which designated \$35,000 per individual or \$70,000 for two or more parties. The department's research had indicated that the loan activity was less than the amounts in many circumstances. She explained that loans may be in the range of \$15,000 to \$20,000 and that not all recipients would reach the cap.

Representative Wilson wondered why the interest rate for the charter fisheries loan was 6 percent and why the state could not use the other program that currently existed [CFAB]. Ms. Ayers replied that CFAB could currently lend in the categories addressed under the legislation. She explained that an individual would not need to take advantage of the loan under the bill if they were successful in obtaining financing through CFAB.

Representative Wilson wondered why a person would not utilize the CFAB program instead of the loan program proposed under the legislation. Ms. Ayers responded that she was not versed in the CFAB lending program; however, she would have been surprised to find that CFAB was lending below the current prime rate. She would need to verify the

information from the charter operators that testified earlier in the meeting.

4:17:28 PM

Commissioner Bell notified the committee that DCCED had consulted with CFAB and other private institutions and there had been no objection to the introduction of the new programs.

Representative Wilson requested verification on the current CFAB interest rate. She communicated that she had no objection to the loans, but wanted to make certain that the loan money would be accessible. Ms. Ayers replied that she would provide the information to the committee. She added that Richard Yamada with the Alaska Charter Association had been unable to stay to testify; however, he had testified on the association's support of the bill in the past.

Representative Wilson expressed her concern that the 6 percent interest rate may have been too high for cash strapped businesses. She agreed that the capital was important. Ms. Ayers answered that the 6 percent floor had been reached in consultation with the Alaska Banking Association. She elaborated that the state did not want to offer a rate that was significantly below market that would disadvantage the private lenders.

Representative Wilson ascertained that the reason for the loan program was to fill a niche that was not there; however, the niche was only filled at an interest rate of 6 percent or above. Ms. Ayers answered the state was operating as a lender of last resort and that private banking institutions would not approve of such low interest rates in a category that they would be likely to lend in. The terms of the loan fund had been discussed and vetted with the charter association, National Oceanic and Atmospheric Association (NOAA), and with banking organizations. The department was always on the lookout for gaps that it could fill to ensure access to capital, to facilitate new business entrants, and to increase resident participation.

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Representative Costello wondered why there was a 24-month residency requirement in order to qualify for the program.

Commissioner Bell responded that the residency requirement was identical to those in existing revolving loan funds.

Co-Chair Thomas told a personal story about his son who had received a boat and permit loan from the state after being turned down by a bank.

Representative Gara wondered what harm there was in offering lower interest rates to people who had been denied a loan by a private bank. He found it troublesome that the opinion of the private banks mattered.

Ms. Ayers replied that the department did not want a rate that was unsupported by other market dynamics. The department thought that a 6 percent loan was viable for applicants that could meet the eligibility requirements. She highlighted halibut charters in particular where the state was dealing with a changing federal fisheries management regime and a new barrier to entry. New entrants would often be eligible for private financing on a boat, but may need a state loan for the permit. The department felt that there would be a good balance between the private lenders and the state loan programs and that it was not a situation in which the banking industry was dictating the loan limits. All of the interest floors and ceilings listed in the legislation were within the historical norms.

Representative Gara wondered why the state would impose a 6 percent floor if the program could be solvent at a lower rate such as 4 percent. He believed that a bank's choice to not offer a loan should not impact the interest rate that the state offered.

Representative Doogan noted that the phrase "lender of last resort" bothered him considerably. He relayed that the presumption in the statement was that an applicant did not qualify for a loan through any normal commercial standard which put the state in a position of providing loans to substandard borrowers. He thought the expectation that the default number would be low was questionable. He opined that the items in combination with the argument for a relatively high interest floor did not sound like items that would lead to a successful banking operation.

Commissioner Bell replied that the term sounded dramatic, but it was a term that was commonly used in commercial and public financing. She reminded the committee that the less

than 1 percent default rate was very low. The department was had financing staff that reviewed loan applications and collateral and were in contact with the borrowers regarding their payments. She emphasized the professionalism of the organization and that DCCED had looked for the need and terms it could offer and prided itself on its increased outreach and vetting. She stressed there were many reasons a bank may not loan to a borrower that were not based on borrower risk, including the makeup and weighting of a bank's portfolio and lending limits.

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Co-Chair Thomas discussed that he had paid as high as 17 percent on a commercial fisheries related loan. He had seen gillnet permits that had been bought at \$150,000 to \$180,000 drop to \$30,000. He explained that some had defaulted but that the state rewrote the loans when possible. He had seen people get into trouble through no fault of their own and that people had bought permits that were priced too high. He relayed that permits for sale were popular and would be bought. He supported the loans under the bill and did not think that 6 percent was unfair. He told a personal story about fishing.

Representative Doogan was impressed by the testimony regarding the default rates. He was interested to see how the unique aspects of the bill would work out.

Representative Edgmon supported the legislation. He provided perspective that the committee had passed a bill that gave Alaska Industrial Development and Economic Association (AIDEA) the authority to work with a public sector partnership and allowed them to bond up to \$400 million per year. He emphasized that the funding to AIDEA had been large and that comparatively speaking the current bill represented "small potatoes." He stressed that the state had provided assistance to larger industry and that the state's ability to provide small businesses better terms than those offered by banks would help to provide them with incentives.

Co-Chair Stoltze MOVED to report CS HB 121(FIN) out of committee with individual recommendations and the accompanying fiscal notes.

CSHB 121(FIN) was REPORTED out of committee with a "do pass" recommendation and with three new fiscal notes by the Department of Commerce, Community, and Economic Development and one new fiscal note by the House Finance Committee for the Department of Commerce, Community, and Economic Development.

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AT EASE

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RECONVENED

#hb142

HOUSE BILL NO. 142

"An Act relating to the creation of a rebuttable presumption that the project licensed under the Alaska Gasline Inducement Act is uneconomic because of insufficient firm transportation commitments during the first open season."

JOE BALASH, DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES (DNR), shared that HB 142 had raised questions for the department and that DNR had requested a legal analysis from the Department of Law and contract attorneys. The legal report was confidential because it went to the interpretation of a contract that was composed of the AGIA statute, the request for proposal, the TransCanada application, and the accompanying correspondence. It was important to realize that any matters of interpretation of the license or the way it operated could be open to future litigation from the licensee or another party. He examined the process that was available under the AGIA statute. The licensee was performing and fulfilling its obligations to the state in terms of developing the necessary regulatory products as well as the engineering plans to support the acquisition of a certificate of public convenience and necessity. He emphasized that the cumulative process took years to complete.

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Mr. Balash discussed that commercial negotiations between private parties and potentially the state did not need to be a prerequisite to engineering and regulatory work that was also taking place. Under the AGIA process an open

season had been held and was successful in attracting bids. He discussed that the current question related to whether or not the bids would be converted into precedent agreements between enough parties. He explained that the precedent agreements would only cover the development phase and not necessarily the construction phase of the project. He elaborated that a precedent agreement was precedent to a party entering into a firm transportation agreement that would support the financing at a much later date once regulatory approvals were in place. The group of scientists and engineers was an "army unleashed" that was gathering necessary information for the FERC certificate. The department believed the process was going very well and it had been pleased with the performance of the licensee and partners. He expressed that DNR did not have significant insight into the commercial negotiation that was taking place between the parties. Private parties that had been in discussions with the licensee had required TransCanada to maintain certain privileges. The department had not pushed too hard but wanted to see more progress.

Mr. Balash highlighted that DNR was concerned about the development of a deadline by which the precedent agreements would need to be satisfied before other items in the bill kicked in. He detailed that one party's deadline could be used by another party as leverage in the commercial negotiation and could upset the commercial tension that had existed. The second concern was related to the effect the legislation could have on the state's reputation based on the commitment it had made. He stressed that the department would prefer to not cast any doubt on the assumption that partners doing business with the state needed to be able to count on the state's commitment.

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Mr. Balash delineated that the administration would continue to provide information to the legislature and the public. The department had provided the legislature with a reimbursement report at the beginning of the legislative session per the AGIA statute and voluntarily provided semi-annual reports at the end of April and October of each year. He communicated that the contents of the report could be tailored to meet the needs of the legislature. The department was prepared to work with the bill sponsors to help alleviate its concerns and to meet the needs of the legislature and the public.

Representative Wilson asked whether the department had taken into consideration that the increased gas development in the Lower 48 in recent years may negatively impact the success of the project.

Mr. Balash replied that DNR had been monitoring the issues and was cognizant of potential impacts to the viability of the project. He explained that the department had commissioned a study the previous fall to examine the impact of shale gas supplies on an Alaska North Slope project that had been posted on the AGIA coordinator's website. The authors of the report were also available to present to the legislature. He relayed that there were uncertainties and questions that surrounded the regulation of fracking and the long-term economic performance of shale wells. There was an abundance of the shale resource; however, it was unknown what costs were built into the reports that were published by the promoters of the resource. He emphasized that there were a number of factors that determined the long-term viability of shale and that drove the cost that shale could be produced economically.

Representative Wilson asked whether the department's concern was related to the dates listed in the bill. She viewed HB 142 as the legislature's due diligence as a result of public questions related to market changes and other. Mr. Balash replied that the dates were a source of concern, but it was no problem for the administration to provide certain information or reports by certain dates. He expressed that it was possible to rework the language to lessen the concerns of the administration.

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Representative Hawker asked where the bill laid out a specific deadline for the establishment of the precedent agreements. Mr. Balash responded that a precedent agreement deadline was not specifically established, but the dates in the bill triggered certain other actions or activities. The administration wanted to be sensitive to how the dates would affect the actions and considerations of the commercial parties and it did not want one or more parties to behave differently than they otherwise would.

Representative Hawker wondered whether the bill legally mandated the administration to change its current action in

regards to the implementation of the AGIA legislation and contract. He discussed the distinction between a legal mandate and how the bill could cause a commercial party to act in a different way. Mr. Balash responded with a "qualified no". The qualification was related to the effect of the creation of a presumption. He explained that the presumption would be used by someone for some purpose, which related to a significant matter under the AGIA terms in Section 240 [AS 43.90.240]. He hoped for an opportunity to craft language that would eliminate or ameliorate the administration's concern on the issue.

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Representative Hawker was committed to working with the administration to develop a balanced plan that would serve the best interests of the public.

Representative Doogan asked about the administration's position on the specific reasons that TransCanada did not like the bill. Mr. Balash answered that he had not been present during Mr. Palmer's testimony; however, there were significant pieces that raised concerns with the administration. He reiterated the administration's willingness to work with sponsors on reducing or eliminating its concerns and was more than prepared to provide information.

Representative Doogan wondered whether the bill would cause problems for the pipeline project and the administration if it was not amended. Mr. Balash responded in the affirmative. The administration was concerned about the success of the project in regards to the commercial negotiations that were taking place between the private parties. He opined that the legislature should rely on legislative legal counsel to determine whether it could effectively direct the department to do anything regarding the execution of the contract. Specific areas of concern lay in the creation of a presumption and in the rebuttal of a presumption based on a certain standard of evidence. He shared that it was helpful that sponsors intended to address firm transportation agreements in the bill with precedent agreements, but there was also a reference to the precedent agreements to transportation agreements that either supported the development or construction of the project, which was an area that the sponsor would try to address.

Representative Doogan wondered whether the attorneys representing each party would have to meet prior to any further legislative action.

Vice-chair Fairclough conveyed her intent to ask the bill sponsor to speak with the administration.

Vice-chair Fairclough RE-OPENED and CLOSED public testimony.

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Representative Guttenberg wondered whether the administration had asked for an attorney general opinion on the legal ramifications of the legislation. Mr. Balash replied that the administration had received an attorney general opinion but was not at liberty to share the analysis because it went to the interpretation of the contract that could be subject to litigation at a future date.

Vice-chair Fairclough noted that the legislature could ask for a legal analysis from Legislative Legal Services.

Representative Gara asked whether the administration would oppose the bill as long as it included the language "rebuttably presumed that the project is uneconomic," on Page 1, Line 11. Mr. Balash responded that it was one of the areas that concerned the administration. He noted that the administration preferred to avoid armies of lawyers and to keep armies of engineers and environmental scientists working to advance the project. He hoped that an agreement could be reached that would accomplish the goals of the sponsors in getting information from the administration.

Representative Gara asked whether it was correct that there had not been any disputes over the time during which TransCanada had provided biweekly progress reports to the administration. Mr. Balash responded in the affirmative. The progress reports were provided via telephone by the project leadership and the state gas team leadership. There were monthly meetings with the technical teams in Houston, Denver, and Calgary. The administration had been very pleased with the teams' openness and willingness to talk through the issues and to discuss what and why the teams

were doing what they were, and how it helped to move the ball along.

Representative Gara requested that the committee hear from Larry Persily at the next hearing on the legislation.

Vice-chair Fairclough passed on that the co-chairs had determined that it would be necessary for him to get the opinion from Mr. Persily outside of the committee meetings and to distribute the information to the committee.

Representative Doogan noted that he had also requested that the committee hear from Mr. Persily.

Representative Gara requested that Mr. Persily be allowed to testify.

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Representative Costello asked whether the administration had provided communication to the legislature at times required by statute and semiannually in a report. She believed that the bill was only asking for communication from the administration to the legislature. Mr. Balash replied that communication required by statute and the semiannual report had been provided to the legislature as a whole and did not include communications in subcommittee meetings or responses to written correspondence or other. He did not have an exhaustive list but would be happy to provide it.

Representative Costello wondered whether the problem centered on what the legislature may do with the information and not on the act of the communication itself. Mr. Balash disagreed. He noted that the legislature was a co-equal branch of government.

Representative Costello asked for a characterization of the information that had been communicated in the biweekly reports. She asked whether the meetings included information about the precedent agreement, engineering, the open season, or other.

Mr. Balash replied that in the biweekly conversations the administration was provided with a general overview and information on specific segments including the environmental regulatory and legal team, the GTP [gas

treatment plant] team, the pipe team, and occasionally from the commercial team. He relayed that the updates were very general. During the time that the project was going to submit its open season terms to FERC the licensee had come to the administration to determine whether they were executing a project change under the terms of the license. The licensee had improved the commercial terms in some areas and changes in others that had resulted in an economic improvement to the project, which was approved. He relayed that different information was provided at different times depending on what was taking place. He communicated that the decision making process would probably move more quickly if TransCanada was free to make decisions on the pipeline side on its own. Both sides of the partnership had to be in agreement prior to making any changes on the pipe side of the negotiation and added a layer of complexity to the negotiation process.

Representative Costello wondered whether the frustration of the public and legislature was justified because TransCanada had not met its self-imposed deadline to provide them with communication and that the current bill had been met with resistance due to what it could imply.

Mr. Balash replied that Alaskans had been frustrated for a long time. He thought that in the current situation the frustration that the public and the legislature felt was coming out in the legislation. The way the bill was written was causing concern for TransCanada and the administrators of the contract. He opined that the current meeting had helped to air the frustrations and concerns that ultimately could be addressed in a version that would address the frustration around communication.

[5:18:34 PM](#)

Representative Hawker asked how much more information was known by the administration than by the public in reference to Mr. Balash's testimony that there was not much information provided on the biweekly calls. Mr. Balash stressed that his earlier testimony related to "not much information" related only to the commercial side of the project. He clarified that the administration had received a tremendous amount of information from the other segments of the team that reported on a biweekly basis. The information provided to the administration was general in nature and was not "shipper specific." Due to

confidentiality agreements with shippers, TransCanada was not able to share any specifics related to bids that had been received.

Representative Hawker wondered how long the state should wait before it questioned the outcome of the open season in order to make the bill functional for the administration and in the state's best interest.

Mr. Balash answered that the outcome of the open season would depend on the reason a given action or inaction occurred. The reason that a bid did not result in a precedent agreement could be due to an outstanding commercial issue related to how private parties would divide up their proceeds, but it would be different if the shippers were flat out not interested in the project. Based on the overall construct of AGIA the administration had much more patience if there was a waiting period due to the negotiation of terms between private parties than a wait due to no interest from shippers. He explained that it was public knowledge that the administration was working to settle the dispute over the Pt. Thompson acreage and it could be a "key domino to fall" if it was resolved successfully. He believed the Supreme Court had recently communicated that the dispute needed to be resolved within a certain number of days and would then proceed to a hearing on the issue.

Representative Hawker wondered how long the state should wait to find out what the issues really were so that it could address them. He was troubled by the comment that the state should not be concerned about a delay in communication due to issues of a commercial nature between TransCanada and potential shippers. He thought that had been the situation for the past 30 years. He believed that the whole issue was to "coerce action, to expedite action, to incentivize action."

[5:24:14 PM](#)

Mr. Balash replied that the nature of the differences was relevant and important. He discussed that whether the issue should be used as a fuse for the continuation or discontinuation of regulatory and engineering work was a pivot point. There was some time that could be allowed for negotiations on terms between companies. He believed that the fundamental question was related to Page 2, Line 12 of

the bill that related to whether or not the economics were still present for the project to advance. He opined that the information that would best inform everyone was related to the markets, the timing, and what the shippers thought about the project. He believed that the information would help the state to know whether it should continue spending money to advance the project.

Representative Hawker wondered whether the legislation presented a breach of the contract. He opined that the bill did not impose a mandate for the establishment of a precedent agreement or transportation commitment and that concerns were more related to how commercial parties may alter their behavior as a result of the bill. He expressed that many legislative members believed that the state should be concerned with the amount of time that it would take for issues to be resolved.

Mr. Balash respectfully declined to answer the question based on advice from legal counsel. He added that the language on Page 1 related to creating a rebuttable presumption begged the question for what purpose and to what end.

Representative Hawker remarked that the committee could ask counsel the question. He thought it was problematic.

Vice-chair Fairclough pointed to the indeterminate fiscal note from the Department of Law.

HB 142 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

5:30:06 PM

The meeting was adjourned at 5:30 PM.