

HOUSE FINANCE COMMITTEE
March 21, 2012
1:40 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:40 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 Reggie Joule
Representative Mark Neuman
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Joseph Masters, Commissioner, Department of Public Safety; Michael Geraghty, Attorney General, Department of Law; Richard Svobodny, Deputy Attorney General, Criminal Division, Department of Law; Joe Michel, Staff, Co-Chair Stoltze; Representative Mike Chenault, Sponsor; Representative Mike Hawker, Co-Sponsor; Tom Wright, Staff, Representative Mike Chenault; John Hutchins, Assistant Attorney General, Oil, Gas and Mining Section, Civil Division, Department of Law; Rena Delbridge, Staff, Representative Mike Hawker.

PRESENT VIA TELECONFERENCE

Lieutenant Rodney Dial, Alaska State Troopers, Department of Public Safety; Joshua Decker, Attorney, American Civil

Liberties Union-Alaska; Quinlan Steiner, Public Defender Agency, Anchorage; Stuart Goering, Assistant Attorney General, Department of Law; Richard Odsather, Odsather International Marketing, Fairbanks; Merrick Peirce, Board Member, Alaska Gasline Port Authority, North Pole; Larry Wood, Self, Palmer; Jim Sykes, Self, Palmer; Michael Dukes, Assembly Member, Fairbanks North Star Borough, North Pole; Alan LeMaster, Self, Gakona; Park Kriner, Self, Glennallen; Randy Wagner, Self, Glennallen.

SUMMARY

HB 9 IN-STATE GASLINE DEVELOPMENT CORP

HB 9 was HEARD and HELD in Committee for further consideration.

HB 296 CRIME OF ESCAPE/DEF. OF CORRECT. FACILITY

HB 296 was SCHEDULED but not HEARD.

HB 359 SEX CRIMES; TESTIMONY BY VIDEO CONFERENCE

HB 359 was HEARD and HELD in Committee for further consideration.

HB 361 DISPOSALS OF STATE RESOURCES

HB 361 was HEARD and HELD in committee for further consideration.

HOUSE BILL NO. 359

"An Act relating to conspiracy to commit human trafficking in the first degree or sex trafficking in the first degree; relating to the crime of furnishing indecent material to minors, the crime of online enticement of a minor, the crime of prostitution, and the crime of sex trafficking; relating to forfeiture of property used in prostitution offenses; relating to sex offender registration; relating to testimony by video conference; adding Rule 38.3, Alaska Rules of Criminal Procedure; and providing for an effective date."

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JOSEPH MASTERS, COMMISSIONER, DEPARTMENT OF PUBLIC SAFETY, introduced himself and others present.

Co-Chair Stoltze congratulated Deputy Attorney General Rick Svobodny for his 30-plus years of state service.

Commissioner Masters thanked the committee for hearing HB 359. He explained that the bill furthered the state's efforts to strengthen laws that protect children and hold offenders accountable. He expressed strong support for the legislation. He discussed that many sections of the bill reflected a change in terminology from "promoting prostitution" to "sex trafficking"; the change made important distinctions by accurately describing the criminal act and using terms that were more common within law enforcement nationwide. The bill was more respectful of the victims who were lured and coerced into the sex trade by offenders. He stated that the crimes were occurring in Alaska and young girls/children were targeted and forced into the sex trade by traffickers. Changing the title of the crime would help lessen the shame and stigma many of the victims had associated with experiencing the crimes. He quoted from a statement Governor Parnell made when he presented the bill:

The crimes of sex trafficking and human trafficking are serious offences, which violate the most basic human rights and deprives victims of every shred of personal freedom.

Commissioner Masters relayed that the crimes were often perpetrated by offenders working together including, human and sex trafficking in the first degree. The list of felony offences acknowledged the reality and allowed individuals who conspired to commit the crimes more accountable under the state's conspiracy laws. He noted that Attorney General Michael Geraghty and Mr. Svobodny would provide further detail on the legislation.

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MICHAEL GERAGHTY, ATTORNEY GENERAL, DEPARTMENT OF LAW, echoed Commissioner Masters' testimony. He stated that the bill was a priority of the governor and should be a societal and legislative priority as well. He expressed that the department looked forward to working with the committee on the legislation. He highlighted items in the

bill: Section 4 addressed concerns raised by a U.S. district court judge decision regarding the distribution of indecent material to minors; the judge had found the law to be over-broad and unconstitutional.

Co-Chair Stoltze asked who filed the cases on behalf of sexual predators. He wondered what had taken place that led to the court challenge.

Attorney General Geraghty believed that the American Civil Liberties Union (ACLU) had challenged the law the prior June as drafted in the specific case. He explained that as the law applied to an individual the language turned into "and as applied challenge to the law."

Co-Chair Stoltze remarked on his earlier question related to who had filed the case.

Mr. Geraghty replied that the ACLU had thought the law was too broad and had challenged it. He believed that the deficiencies in the bill had been corrected and that it was constitutionally enforceable. He addressed that Section 6 increased the penalty for a patron of a prostitute to a Class C felony when the prostitute was a minor and the patron was 18 years or older and at least three years older than the minor. The department believed that a higher penalty for adults was appropriate when the person paid to have sex with a minor who could be participating in the trade against their will. There were other sections that dealt with videoconferencing of witnesses, given the state's obligation to establish competency of defendants, many of whom were in rural Alaska; other logistical issues existed including arranging testimony from professionals such as psychiatrists.

Mr. Geraghty recognized Mr. Svobodny for his 35 years of service and shared a related story.

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RICHARD SVOBODNY, DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW, discussed that the core of the information discussed by Commissioner Masters and Attorney General Geraghty was on page 5, line 9, which changed the nomenclature for promoting prostitution.

Representative Guttenberg asked for clarification of the bill version. Co-Chair Stoltze replied that the bill up for consideration was a House Judiciary Committee CS.

Vice-chair Fairclough MOVED the bill before the committee.

Mr. Svobodny continued to explain that the changes beginning on page 5, line 9 appeared in Sections 7 and 11 of the legislation. The provisions dealt with the crime of promoting prostitution in the first through fourth degrees. He addressed that the bill changed the term associated with the crime of promoting prostitution to "sex trafficking," which recognized that there was a victim. He discussed that provisions 1, 2, 7, 14, and 17 through 23 changed the term from "promoting prostitution" to "sex trafficking" in other statutes (i.e. the term promoting prostitution was changed to sex trafficking under Title 47 related to defenses that may be waived to adult court).

Mr. Svobodny pointed to the importance of a section that began on page 3, line 6 of the bill, which added the crime of human trafficking to the list of serious felony offences. The crime was different than sex trafficking and includes labor slavery and adult entertainment using coercion or force where a person is brought into the state for the specific purpose. He elaborated that the state could bring a conspiracy charge for serious felony offences; conspiracy involved a group of people that gather together to plan to engage in the illegal activity.

Co-Chair Stoltze queried whether a recent case involving a person in Chugiak/Eagle River who had brought in entertainers and held their passports fell under the scope of the bill. Mr. Svobodny answered in the affirmative. He continued to provide detail on the legislation. There were not many of the cases because the main witness was the person engaging in prostitution; the bill provided another tool to prosecute people without needing the victim to be present.

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Representative Wilson questioned whether the department believed that every prostitute was a victim.

Mr. Svobodny replied in the negative; however, a significant portion of young people were victims because

they needed shelter and ended up being forced to sell themselves in order to make money for the person who took them in. He acknowledged that there were also individuals who voluntarily engaged in prostitution; however, there were a substantial number of young people that were victims and victimized.

Co-Chair Stoltze surmised that by statute, minors who engaged in sexual activity with adults would be considered victims.

Mr. Svobodny agreed. He detailed that the bill did not take away the ability to prosecute people for sexual abuse of minors. The age of consent in Alaska was 16 and increased to 18 if the person was in a position of authority; because of the law regarding position of authority it was sometimes possible to prosecute pimps for sexual abuse of a minor. He furthered that the cases were hard to prove because they involved examining a pattern of conduct including, inducing a person to move away from their home, keeping them away from responsible adults, depriving them of a phone and communication, creating dependence for food and shelter, and other. The bill provided the necessary tools to prosecute such cases. He discussed that two years earlier the legislature had changed the statutes related to providing indecent materials to a minor at the governor's request; the change resulted from a lawsuit the ACLU had filed against the state. He expounded that the federal court determined that under current statute there were explicit sexual materials that could be distributed to minors; the bill resolved the problem of the "over breadth" issue by making the intent to sell the materials to a minor a crime including when the distributor knew or believed that the person was under the age of 16.

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Mr. Svobodny explained that Sections 5 and 6 dealt with a change in law related to prostitution. He believed that prostitution had been made illegal in Alaska in 1954 and it had become a criminal offense to be a patron of a prostitute in 2006. The bill increased the penalty provisions to a Class C felony when the patron is over the age of 18, is three years older than the prostitute, and the prostitute is under the age of 18. Currently the act of prostitution and the patronage of a prostitute were a Class B misdemeanor. The House Judiciary Committee had included a

provision that allowed a case to go to a jury if the patron asserted that he/she had a reasonable belief that the prostitute was 18 years of age or older; similar language was used related to sexual abuse of minors. The language essentially meant that a patron would have needed to card a prostitute in order to have a valid defense.

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Representative Doogan asked for an explanation of the sentence "another person that the person believes" (page 4, line 7). Mr. Svobodny explained that the sentence applied to a person distributing the [indecent] material to a person that they believe is under the age of 16.

Representative Doogan surmised that the words "another person" referred to the first person [responsible for the distribution of materials]. Mr. Svobodny responded in the affirmative.

Representative Wilson asked for verification that under the proposed legislation a 20 year-old could be charged as a felon unless he could prove that he believed the prostitute was over the age of 18. Mr. Svobodny replied in the affirmative. He restated that a person could be charged with a felony if they were over the age of 18, were three years older than the prostitute, and the prostitute was under the age of 18.

Representative Wilson asked for verification that a 17 year-old would be charged as a juvenile and with a misdemeanor, but a person who was 20 or 21 years of age would be charged as a felon. Mr. Svobodny answered that a 17 year-old would not be charged with a misdemeanor and would be charged as a delinquent in children's court. He elaborated that the punishment could range from "go home and stay with your parents to two years in a locked institution" depending on the youth's history and ability to be rehabilitated.

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Representative Wilson questioned how a person would go to court to say that they "knowingly or reasonably" thought that the prostitute had been over the age of 18.

Mr. Svobodny answered that the state would bring a charge of prostitution and the accused would need to prove the elements of the offence to a jury beyond a reasonable doubt. He detailed that the burden would shift to the defendant if they chose to raise the defense that the prostitute looked over the age of 18. The defendant would then be required to show how they had determined that the person was over 18 years of age (i.e. checking ID, asking the prostitute's friends, or other). The defense would acquit the defendant of the underlying offence if [he/she] convinced the jury that [he/she] had believed the prostitute was above the age of 18.

Representative Wilson wondered whether he had ever heard that a person had asked for identification from a prostitute. She was uncomfortable with the provision and believed that 20 and 21 year olds were still children. She concluded that unless the patron asked for ID, they would be guilty of a felony.

Mr. Svobodny replied that in the context of sexual abuse of a minor the specific defense was used frequently. He explained that a defendant could convince a jury by saying something like "she looked to me like she was 21. She told me she was 19. I asked her girlfriends how old she was, they said she was 18"; however, the defense would not be plausible if it was obvious the person was under the age of 18.

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Representative Joule wondered about the ability to plea bargain related charges.

Mr. Svobodny answered that approximately 93 percent to 97 percent of cases nationwide ended with plea negotiations. In Alaska people could engage in plea negotiations for sex offences, but they were still required to be included in the offender registry. He believed that it was a "fact of life" in the U.S. that most cases would be resolved through plea bargains. He reiterated that given concerns by the legislature and governor, he did not allow sex offences to be reclassified as another type of offense such as a burglary.

Representative Joule agreed that the reality [related to plea bargains] was a sad fact.

Co-Chair Thomas commented on two fish violations that had been prosecuted by the state recently: the individual who plea bargained received a smaller fine than the person that plead guilty. He wondered why the state would plea bargain on an offense when it had proof of guilt. Mr. Svobodny replied that he would be happy to discuss the cases once he had all of the information.

Co-Chair Thomas responded that the Department of Fish and Game had video of the offence for the individual who had received a plea bargain. He told a personal story.

Mr. Geraghty clarified that the state tried cases that had to be tried and did not agree to any plea bargains simply because it did not want the expense or could not afford to try them. He detailed that experienced attorneys understood how the cases were typically resolved; without the agreement of the judge the plea bargain was rejected and the case may go to trial. He stated that the reality was that most cases were plea bargained, which was an appropriate result when there were experienced prosecutors. He stressed that the state would not agree to any deals "simply for the sake of cutting a deal." He was happy to look into the specific case and he appreciated the point.

Co-Chair Thomas did not think it was necessary to look into it; however, he did not believe a plea bargain should be allowed when there was evidence of an offence. He told a personal story about a fine he had received. He referred to the \$4000 fine the fisherman had received and opined that it was too small.

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Representative Doogan pointed to Section 6 language that read "Prostitution is a Class C felony if" and asked what the current crime was.

Mr. Svobodny responded that under current statute, provision A specified that it was a Class B misdemeanor for a person to solicit or engage in sex for money. Provision C in the legislation related to prostitutes who were under the age of 18. He relayed that the bill did not change the penalty unless the prostitute was under the age of 18, there was a three-year age difference between the

prostitute and the patron, and whether the patron acted reasonable to determine the age of the prostitute.

Representative Doogan understood, but did not agree. He pointed to an escalation of charging that had been occurring. He opined that all crimes would be a Class C felony or higher if the current rate continued. He was not convinced that the specific set of circumstances justified the charge.

Representative Gara remarked that a person's belief that a crime should be classified as a less serious offence did not mean that they did not think it was a crime. He opined that the person committing the most egregious offense was the patron who hired a prostitute under the age of 18. He wondered whether the crime level should be raised for the "John" or "pimp."

Mr. Svobodny pointed to Sections 7 through 11 and explained that the existing offences were strong. He detailed that the bill would change the term from "promoting prostitution" to "sex trafficking." He agreed that the offence was probably more serious and had been considered that way since the legislature passed the statutes in 1978. He believed that promoting prostitution ranged from an unclassified felony to a Class C felony.

Mr. Geraghty added that Section 7 talked about sex trafficking including, inducing a person under the age of 18 to engage in prostitution, which would become a Class A felony under the legislation.

Mr. Svobodny clarified that the offence was currently a Class A felony. Mr. Geraghty remarked that current law already punished the pimp more seriously.

Representative Gara noted that he had asked the question in relation to Representative Doogan's comment.

Co-Chair Stoltze asked for verification that Section 6 addressed the "John" and Section 7 addressed the agent. Mr. Svobodny believed that promoting prostitution in the first degree was currently a Class A felony.

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Mr. Svobodny relayed that currently the prostitute or patron were each guilty of a Class B misdemeanor. Section 6 of the bill increased the penalty to a Class C felony if the patron was over the age of 18, three years older than the prostitute, and the prostitute was under the age of 18.

Co-Chair Stoltze wondered whether the following age ranges were examples of the three-year age difference: a 20 year-old with a 17 year-old; a 19 year-old with a 16 year-old; and an 18 year-old with a 15 year-old. He asked about the terms related to a person over the age of 18.

Mr. Svobodny replied that it was midnight on a person's [18th] birthday. The offense was a Class B misdemeanor if the patron was 19 and the prostitute was 17.

Representative Gara asked why it was more "gross" to have a 21 year-old hire a prostitute that was just under the age of 18 versus a 50 year-old hiring an 18 year-old. Mr. Svobodny replied the administration's position is that a line needed to be drawn somewhere. The goal was to create a greater protection for people under the age of 18; it was not the grossness factor, but the protection of children factor.

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Representative Gara understood that the line was that the person was a minor.

Vice-chair Fairclough believed that the administration was trying to place the burden on a person who was older and had more experiences with the difference between right and wrong. The purpose was to stress that an adult should not have sex with a minor. She opined that the intent of an increased penalty was to make an adult think twice and ask for ID if the person could be under the age of 18.

Mr. Svobodny added that the discussion was about an adult engaging in a conduct that was already illegal. The goal was to target individuals who went to prostitutes with the idea that they wanted somebody very young.

Mr. Svobodny directed attention to Section 12, which specified that the promotion of prostitution in the first through third degrees did not require corroboration and could rely on one person's testimony; the bill added the promotion of prostitution or sex trafficking in the fourth degree. Under current law property was subject to forfeiture when it was used to promote prostitution; the bill added the crime of prostitution to the list of crimes. He added that the House Judiciary Committee had narrowed the scope to Class C felony prostitution. Section 15 was conforming. Section 16 would allow witnesses to testify via videoconferencing related to the competency of a defendant.

Mr. Svobodny relayed that Section 19 was a conforming amendment that dealt with trafficking. Section 25 included a rule change that would allow videoconferencing under special circumstances where a witness was found by the court to be unavailable for trial (i.e. individuals serving in the military out-of-state and other). The videoconferencing represented a savings of time, money, and limited resources. He added that there was a special statute that applied to sex cases related to children. Sections 26 through 27 related to the effective date.

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Co-Chair Stoltze clarified that there were no retroactive effective dates. Mr. Svobodny agreed.

Representative Gara asked at what point did the penalty for sex trafficking increase based on the age of a prostitute. Mr. Svobodny replied that the age was 18 for promotion of prostitution in the first degree; it was an unclassified felony if the prostitute was under the age of 18 and it was a Class A felony if the prostitute was over the age of 18.

Representative Gara asked for verification that the penalty was an unclassified felony if the prostitute was under the age of 18 and a Class A felony if the prostitute was over the age of 18. Mr. Svobodny replied in the affirmative related to the promotion of prostitution in the first degree; it was the most egregious form of a person bringing a person into the prostitution trade.

Representative Gara believed the age should be 21 and would discuss it further when amendments were introduced.

LIEUTENANT RODNEY DIAL, ALASKA STATE TROOPERS, DEPARTMENT OF PUBLIC SAFETY (via teleconference), voiced support for the bill.

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JOSHUA DECKER, ATTORNEY, AMERICAN CIVIL LIBERTIES UNION (ACLU)-ALASKA (via teleconference), referred to email testimony that had been submitted by ACLU Executive Director Jeffrey Mittman. The ACLU had concern that Section 16, which allowed video conferencing in competency hearings, violated the confrontation clauses of Alaska's Constitution. The union anticipated that the state would be presented with facial challenges as well as challenges by individual defendants, resulting in "needless" legal expense.

Representative Gara asked for verification that Section 8 limited the circumstances where video conferencing was allowed. He clarified that he had meant Section 16(h).

Mr. Decker replied that Section 16(h) listed circumstances in which video conferencing was available. The agency believed that the circumstances were over-broad and outside the baseline the U.S. Supreme Court had established in the Maryland v. Craig decision. He explained that the reason for depriving a criminal defendant of their right to in-person, face-to-face confrontation had to be a need to further an important public policy; federal courts had determined that items such as convenience, cost savings, and efficiency did not meet the test. The agency had determined that the section as drafted was outside the minimum standards that had been set forth by the U.S. Supreme Court and would expose the state to constitutional challenges.

Co-Chair Stoltze asked whether the ACLU would sue. Mr. Decker replied that he could not answer the question and that the ACLU took litigation decisions one-by-one as they came.

Co-Chair Stoltze referred to language that the "the court may at the court's discretion." He wondered whether there were "run-away" courts in Alaska. Mr. Decker did not believe the bill or testimony impugned the integrity of the courts. The agency's concern was that the language would be

inconsistent with requirements of the U.S. Constitution and potentially the Alaska Constitution.

Representative Gara remarked that it was a constitutional principle that allowed defendants to be face-to-face with the accuser. He surmised that the principle should also apply to a competency hearing. He believed that if a person was presented with the possibility of a life jail sentence that the accuser should be present in person for the judge to determine whether the person was telling the truth.

Co-Chair Stoltze invited the Court System to provide any commentary as the bill included a court-rule issue.

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Vice-chair Fairclough thought the video conferencing was currently allowed for children and had been upheld by the supreme court.

Mr. Svobodny replied that the Alaska Supreme Court had upheld two-way videoconferencing with children; there was a statute that allowed for the video conferencing when the court determined that it would be detrimental to the child to appear in court. He remarked that the situations were slightly different. The competency hearings were slightly different as well; competency hearings in the Ninth and Fifth Circuit Courts in California were civil matters and not criminal matters. He stated that competency hearings were pre-trial matters, which could result from the request of the court, the state, and the defense. He furthered that there were a significant number of different items related to a competency hearing versus a trial; the supreme court had ruled that in relation to competency hearings there was not a Fifth Amendment right or a Sixth Amendment right as it related to counsel (the Sixth Amendment right of confrontation had not been addressed).

Co-Chair Stoltze CLOSED public testimony with the option to reopen it at a later time.

Mr. Geraghty looked forward to the committee's consideration of the bill.

Commissioner Masters echoed Attorney General Geraghty's remarks. He expounded that the bill was aimed at increasing protection for children in the state; many of whom were 15

to 17 years of age. In addition to changing the statutory definition of the crime to sex trafficking, the bill also provided additional protections to youths.

Representative Gara asked whether Section 16 (that waived in-person witness requirements in a competency hearing) would impact the fairness for a defendant in cross examination.

QUINLAN STEINER, PUBLIC DEFENDER AGENCY, ANCHORAGE (via teleconference), responded that the constitutionality of the two-way video conferencing in the state had not been determined. He stated that if the law passed the legitimacy would be challenged. He believed that there were strong arguments stating that confrontation should apply because it was a criminal proceeding. He observed that there were arguments on the other side as well. The relevant policy questions were convenience and money versus reliability of the fact finding process; cross examination was best done in person and was a critical part of ensuring that a court was presented with the best evidence.

Co-Chair Stoltze remarked on the occurrence of revictimization.

HB 359 was HEARD and HELD in Committee for further consideration.

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AT EASE

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RECONVENED

HOUSE BILL NO. 361

"An Act relating to the Alaska Land Act, including certain lease, sale, and other disposal of state land and materials; relating to production royalties from miners; relating to rights to use state water; and providing for an effective date."

Vice-chair Fairclough MOVED to adopt proposed committee substitute for HB 361, Work Draft 27-GH2717\B (Bailey, 3/21/12).

Co-Chair Stoltze OBJECTED for discussion.

JOE MICHEL, STAFF, REPRESENTATIVE BILL STOLTZE, relayed that the CS made four changes to the original bill. Section 1 had been inserted on page 1 to address sealed bid language. Alaska Statute 38.05.565 was inserted to the list of statutes on page 2; the statute was created by the bill on page 9.

Vice-chair Fairclough asked for the specific location the change had been made on page 2.

Mr. Michel replied that AS 38.05.565 had been added to page 4, line 11; the statute referenced a new statute created by the bill, which was located on page 8. The third and fourth changes inserted the language "or sealed bid" into new Sections 10 and 11 on page 5.

Co-Chair Stoltze WITHDREW his OBJECTION. There being NO further OBJECTION, Work draft 27-GH2717\B was adopted.

Co-Chair Stoltze discussed that any amendments would be addressed at a later date.

HB 361 was HEARD and HELD in committee for further consideration.

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RECONVENED

HOUSE BILL NO. 9

"An Act requiring the Joint In-State Gasline Development Team to report to the legislature recommended changes to state law that are required to enable or facilitate the design, financing, and construction of an in-state natural gas pipeline so that the in-state natural gas pipeline is operational before 2016; and providing for an effective date."

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Co-Chair Stoltze addressed amendments to the legislation.

Representative Gara MOVED to ADOPT Amendment 1, 27-LS0075\K.1 (Bullock, 3/16/12):

Page 4, following line 4:

Insert new subsections to read:

"(b) Notwithstanding the powers granted to the Alaska Gasline Development Corporation by (a) of this section and granted by the Alaska Housing Finance Corporation, the Alaska Gasline Development Corporation may not proceed with the construction of an in-state natural gas pipeline if the Alaska Gasline Development Corporation determines, after a full and objective study, that one or more of the following options provide a greater benefit to the state than an in-state natural gas pipeline constructed by the Alaska Gasline Development Corporation:

(1) continuing to develop a natural gas pipeline capable of transporting not less than 3,000,000,000 cubic feet of natural gas a day, but only if the Alaska Gasline Development Corporation finds there are adequate natural gas resources in the Cook Inlet sedimentary basin that may be economically produced to meet in-state demand;

(2) delivering natural gas and propane produced in the state by a means other than the development and construction of an in-state natural gas pipeline by the Alaska Gasline Development Corporation, but only if the Alaska Gasline Development Corporation finds that the alternative means for delivering natural gas and propane are less expensive than the construction of an in-state natural gas pipeline;

(3) continuing to develop a natural gas pipeline capable of transporting not less than 3,000,000,000 cubic feet of gas a day if the Alaska Gasline Development Corporation finds that the development of the larger capacity pipeline would deliver

cheaper natural gas to markets in the state and provide the state with greater revenue when compared to an in-state natural gas pipeline developed and constructed by the Alaska Gasline Development Corporation;

(4) delivering natural gas by truck to the Fairbanks North Star Borough and subsidizing facilities for delivering propane to rural communities in the state that are not connected to the state's contiguous road system if those alternatives are more cost-effective than the development and construction of an in-state natural gas pipeline by the Alaska Gasline Development Corporation.

(c) During development of the in-state natural gas pipeline and before the start of construction of an in-state natural gas pipeline, the Alaska Gasline Development Corporation shall determine whether a natural gas pipeline capable of delivering 3,000,000,000 cubic feet of natural gas a day or more from the North Slope to market is a viable project. If the Alaska Gasline Development Corporation determines that a natural gas pipeline capable of delivering 3,000,000,000 cubic feet of natural gas a day or more from the North Slope to market remains a viable project and there is an adequate supply of marketable natural gas in Cook Inlet to meet natural gas demand in the Railbelt, the Alaska Gasline Development Corporation shall research and consider whether a small-diameter natural gas pipeline from Cook Inlet to the Fairbanks area could be built to deliver natural gas at a reasonably economic cost. If the Alaska Gasline Development Corporation finds that a small-diameter natural gas pipeline from Cook Inlet to the Fairbanks area could be built to deliver natural gas at a reasonably economic cost under the circumstances described in this subsection, the Alaska Gasline Development Corporation shall stop the development of an in-state natural gas pipeline from the North Slope and study the viability of a small-diameter natural gas pipeline from Cook Inlet to the Fairbanks area."

Reletter the following subsections accordingly.

Page 5, line 15:

Delete "(c) and (d)"

Insert "(e) and (f)"

Co-Chair Stoltze OBJECTED.

Representative Gara explained that Amendment 1 went to the "crux" of his concerns about the bill. He discussed that Alaskans were interested in the cheapest gas available and did not want the state to make a decision that would result in more expensive gas. He calculated that by the time the gas reached Asia the gas would be approximately \$16 to \$17 if a .5 billion cubic feet (bcf) gasline was built. He listed costs contained within in his calculation including, a \$7.75 tariff to Big Lake, approximately \$2.00 for transportation to Nikiski, \$2.00 for the price of gas, the cost of conditioning the gas at an LNG facility (the cost was not known, but at some facilities it was between \$3 to \$4 per million cubic feet (mcf)), and shipping to Asia could be approximately \$1.00 to \$1.50. He expounded that the gas would also be expensive for Anchorage consumers; with a 250 mcf line, gas to Anchorage consumers would cost \$13.82 plus \$2.00 for distribution by the Enstar system.

Representative Gara remarked that the state may get to the point where the proposal in the bill was the only option; however, Amendment 1 proposed that the Alaska Gasline Development Corporation (AGDC) should make sure that it was necessary to move forward with the option. The amendment required the agency to assess whether it agreed with the U.S. Geological Survey findings that there were adequate stores of Cook Inlet natural gas to tide the state over. The question that arose was whether the cheapest way to get gas to Fairbanks was a bullet-line north if there was adequate gas in Cook Inlet. He opined that adequate stores in Cook Inlet would probably result in cheaper gas for Southcentral than the proposed bullet-line. He referred to a proposal in Fairbanks that would truck natural gas from the North Slope to Fairbanks that would cost between \$11 and \$16 per mcf; he surmised that it could be smarter to subsidize the Fairbanks proposal at a much lower cost versus the cost of the proposal in HB 9.

Representative Gara expounded that the amendment would require AGDC to determine whether there were less expensive options than the project in HB 9 that would cost \$400 million to reach project sanction and \$7 billion to build the gasline. He opined that the project would result in expensive gas for Alaskans and that a study had not been conducted to determine whether cheaper options were available. He stated that the ultimate goal of the bullet-line was to ship gas to Asia, but based on all of the information, a large line would result in less expensive gas to Asia and Alaskans and increased gas development and jobs on the North Slope. He relayed that the tariff for a large line was between \$1 and \$2 versus \$7 to \$9 for the smaller line. He did not believe the state should "jump off the diving board" on what could be a very important option if the other options were not feasible. He believed the bill constituted a \$400 million bet that all of the better options would fail.

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REPRESENTATIVE MIKE CHENAULT, SPONSOR, referred to the USGS and gas that was "yet to be found" in Alaska. He stated that there was a large difference between gas that was yet to be found and actual gas production. He furthered that in 1995 the USGS estimated that there was 2.14 [trillion cubic feet (tcf)] of gas that may be recoverable in Cook Inlet; the number had changed to 19 tcf. He did not believe anyone knew whether the gas was there. He questioned what formation the gas was in and what the development cost would be if the gas existed. He referred to a recent gas find in Cook Inlet; he was proud that the drilling companies were working in the area. He and Representative Mike Hawker had worked hard in recent years to incentivize companies to work in Cook Inlet. The recent find involved one well, drilled into a formation at 8,000 feet; there had been no testing done and he believed no mud logs had been taken. He stated that there had been no way to know what was there without knowing specifics about an area and developing a formula to determine the amount of gas.

Representative Chenault hoped gas was found because anyone living on the gas distribution system was faced with potential rolling brownouts. He referred to television ads in the area that indicated whether people could expect to lose power or needed to conserve energy. He stressed that Cook Inlet was running low on gas reserves. He recommended

that people talk to Enstar and Chugach to find out how long gas supplies would last. He recalled that in the past companies had believed there was oil in certain areas that ended up being dry. He remembered the Sunfish discovery that had amounted to nothing; it had involved initial projections of four or five platforms, millions of barrels of oil, gas, and thousands of jobs. He was concerned about a long-term energy supply for Alaska. He pointed to items in the amendment related to the study of a 3 billion cubic feet (bcf) per day gasline and gas transportation from Prudhoe Bay to Fairbanks or other. He relayed that some of the information was currently in proposed legislation.

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Representative Chenault queried whether the state was going to make people wait until the state determined whether the proposed line was large enough or until a study was conducted. He opined that AGDC had not been set up as a study group. The organization had been formed to look at a project that met the current Alaska Gasline Inducement Act (AGIA) process. He believed that telling the agency that it needed to study a 3 bcf per day line would invoke "treble damages" and was going against what some members of the legislature had felt was the right way to go at a certain time period. He stated that the current system only allowed a 500 bcf per day line. He would like to see a larger line, but the state had put the constraints upon itself. He remarked that he could pick legislators out who had supported and continued to support the system at the cost of gas to Alaskans.

Representative Chenault agreed that a 3 bcf per day line would be less expensive than the one proposed in the bill. He did not agree with Amendment 1. He believed that waiting to build a line from Cook Inlet to Fairbanks would do Fairbanks more harm; he stressed his desire to get gas to the community. He opined that the state would have to import foreign LNG if gas in Cook Inlet continued to decline, which would make gas in the Fairbanks area the most expensive in the world due to LNG import and tariff costs. He felt passionate about the direction the bill was headed; it was not everything he wanted because he would like to see a larger line. He could not predict whether a larger line would be built. He stated that the project was currently the only one that would bring gas from the North Slope to tidewater and if the legislature continued to stop

projects from moving forward it would be doing the state a disservice. He cited from a poll that 48 percent of those polled believed Alaska did not have a gasline because of leadership. He emphasized that leadership "had a bad habit of getting in the way of moving projects forward." He stated that Alaskans were ready to make a move and were willing to pay to subsidize a pipeline if needed.

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Representative Chenault relayed that the proposed legislation would not subsidize a pipeline. He stated that Alaskans were tired of not having gas. He opined that the state could wait for the largest pipeline to come along; he could argue that a 48 inch line was not the best investment because a 52 inch line would be better, but he opined that it was necessary to live in the real world related to what was possible.

REPRESENTATIVE MIKE HAWKER, CO-SPONSOR, endorsed Representative Chenault's comments.

Representative Gara responded that Amendment 1 did not violate AGIA. He explained that the bill was built under current law and the amendment did not seek to change the law; AGIA specified that a pipeline larger than .5 bcf could not be built without changing the law. The 3 bcf pipeline in the amendment was an AGIA pipeline. He opined that the problem with the current bill was that it assumed there was an export market to Asia through Nikiski and it would also produce very expensive gas. He suggested building the AGIA line to Valdez if there was an export market to Asia; a bigger line would provide cheaper gas to Alaskans and Asia. He pointed to work the governor was currently doing with the major three oil companies on the concept of a gasline to Valdez. He stated that a large line would produce roughly 50 percent cheaper gas; the cost of gas would be roughly \$16 under the current bill. He reiterated his earlier testimony that a larger line would create more jobs, more North Slope development and cheaper gas for Alaskans. He stressed that the proposed line would not work without a "massive" subsidy in the billions of dollars if the market did not exist in Asia. He opined that without the export the line became half the size, which would cost Alaskans \$17 to \$18 per million cubic feet (mcf) of gas. He believed less expensive options had to exist. He remarked that utilities had repeatedly said that the

rolling brownout concern was related to the gas delivery system in Southcentral Alaska and not gas supply.

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Representative Chenault responded that there was a gas delivery problem, but there was also a gas shortage issue. He wondered why gas storage construction was underway if there was not a gas shortage issue; the gas storage was in place to ensure that gas was available on the coldest days. He stated that if the gas was not available on the coldest days that it did equate to a gas shortage.

Representative Gara agreed that the storage facilities would ease the problems in Cook Inlet, but he did not believe that the state had reached the point that it needed to pass legislation that would spend \$400 million for expensive gas. He surmised that the state may reach the point in the future; however, he believed there should be a chance to build a "better, cheaper line that gets Alaskans cheaper gas."

A ROLL Call was taken on Amendment 1.

IN FAVOR: Gara, Guttenberg

OPPOSED: Costello, Doogan, Fairclough, Joule, Neuman, Stoltze, Thomas

The MOTION FAILED (7-2).

Co-Chair Thomas MOVED Amendment 2, 27-LS0075\K.2 (Bullock, 3/16/12):

Page 6, lines 24 -28:

Delete "certain information may not be disclosed without impairing the rights of a third party to maintain the confidentiality of the information, the state agency may require the Alaska Gasline Development Corporation to obtain the consent of the third party before the state agency transfers that information"

Insert "a law or provision of a contract to which the state agency is a party requires the state agency to preserve the confidentiality of the information and that delivering the information

to the Alaska Gasline Development Corporation would violate the confidentiality provision of that law or contract, the state agency shall identify the applicable law or contract provision to the Alaska Gasline Development Corporation and may require the Alaska Gasline Development Corporation to obtain the consent of the person who has the right to waive the confidentiality of the information under the applicable law or contract provision before the state agency transfers the information to the Alaska Gasline Development Corporation"

Co-Chair Stoltze OBJECTED for discussion.

TOM WRIGHT, STAFF, REPRESENTATIVE MIKE CHENAULT, explained that Amendment 2 had been recommended by the Department of Law and AGDC. The amendment would allow state information to be made available to AGDC from another state agency; if the information belonged to a third-party, AGDC would be required to obtain permission from that party to view the confidential information.

Representative Gara remarked that there was no limitation in the amendment regarding what type of information would remain confidential. The language "certain information" was not defined and could mean any information. He believed the amendment allowed third parties to determine what information they could choose to keep from the public. He opined that without a better definition of what information would be kept private, the public would not have access to information that may be important on items like cost, fair prices, and feasibility. He requested a more in-depth definition of "certain information" if one existed.

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Mr. Wright replied that the information was proprietary and confidential. He reiterated that a third party's consent would be required for AGDC to obtain the information from a state agency. He added that some of the information would be available to the public; information labeled proprietary or confidential would not be made available.

Representative Gara noted that he had misread Amendment 2 and understood that the "certain information" portion would be deleted. He stated that proprietary information language

the amendment would insert upheld his concerns that a third-party could limit the information available to the public.

Representative Doogan remarked that he did not have a problem with Amendment 2, but he did not understand it. He asked for verification that the state agency with access to third-party information would be required to obtain consent from the third-party prior to releasing it to AGDC.

Mr. Wright read from the amendment:

A law or provision of a contract to which the state agency is a party requires the state agency to preserve the confidentiality of the information and that delivering the information to the Alaska Gasline Development Corporation would violate the confidentiality provision of that law or contract...

Mr. Wright explained that the information was already confidential or proprietary; in order for AGDC to obtain the information third-party consent was required.

JOHN HUTCHINS, ASSISTANT ATTORNEY GENERAL, OIL, GAS AND MINING SECTION, CIVIL DIVISION, DEPARTMENT OF LAW, clarified that Amendment 2 applied to information that was required to be kept confidential by current law (AS 38.05.035 allowed applicants to submit information to the Department of Natural Resources under a promise of confidentiality) and by contract. He elaborated that most of the information could not be used by the state to support a competing project and was used to evaluate the application. The current bill language could be interpreted as repealing the statute as applicable to AGDC; therefore the amendment was aimed at clarifying that AGDC would have access to the information only with a third party's consent.

Co-Chair Stoltze asked whether there were similar provisions under the AGIA contract. Mr. Hutchinson replied in the negative.

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Representative Hawker reiterated that the language in Amendment 2 had been recommended by DOL.

Representative Guttenberg believed the public and the legislature had a right to have information available. He asked for verification that a state agency could not divulge information that was designated by a third-party as confidential even if the information was public in another location.

Mr. Hutchinson replied state agencies did not have any obligation to keep information private that was already in the public domain. He added that the confidential information was primarily engineering and financial data; under current law companies were entitled to request that the state keep the information confidential.

Co-Chair Stoltze WITHDREW his OBJECTION.

Representative Gara OBJECTED to Amendment 2. He voiced that under the legislation the state would pay \$400 million to get the project to project sanction. He believed that a company should be required to release engineering information that the state was essentially buying.

A ROLL Call was taken on Amendment 2.

IN FAVOR: Neuman, Costello, Doogan, Fairclough, Joule, Stoltze, Thomas
OPPOSED: Gara, Guttenberg

The MOTION PASSED (7-2). There being NO further OBJECTION, Amendment 2 was ADOPTED.

Co-Chair Thomas MOVED Amendment 3, 27-LS0075\K.15 (Bullock, 3/19/12) [Due to the length of the amendment it is not included in the minutes; a copy is available on file and on BASIS].

Co-Chair Stoltze OBJECTED.

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Representative Hawker explained that Amendment 3 represented the single greatest policy addition to the legislation; it created a framework for regulation under the Regulatory Commission of Alaska (RCA) for an instate gas pipeline authorized to operate as a contract carrier. The amendment replaced the existing components that exempted an instate pipeline from regulation under the

common carrier statutes of the public utilities and the Alaska Pipeline Act.

RENA DELBRIDGE, STAFF, REPRESENTATIVE MIKE HAWKER, provided a detailed description of Amendment 3 that replaced Sections 25 through 27 in HB 9, version K. The sections had exempted an AGDC instate natural gasline from regulation under RCA as a public utility and as an Alaska Pipeline Act pipeline for common carriers. The amendment created a structure that allowed for regulation under the RCA as a contract carrier. There was a change to the title that would specifically state that the bill related to the regulation of an instate gas pipeline authorized to provide transportation as a contract carrier. The language "provide transportation of natural gas by way of contract carriage" was inserted on page 4, line 4 of the legislation following the word "corporation." The language added a fifth ability to allow AGDC to provide contract carriage; the AGDC gasline would then apply specifically to the contract carriage section.

Ms. Delbridge pointed to Section 6 of the bill related to the Right-of-Way Leasing Act and the exemption of an AGDC line from several covenants including covenant 7, which stated "it will construct and operate the pipeline in accordance with applicable state laws and lawful regulations and orders of the Regulatory Commission of Alaska." The exemption had only been necessary if the pipeline would have been exempt from RCA oversight; the amendment called for RCA oversight; therefore, it removed the exemption. She pointed to a conforming change on page 9, lines 13 to 14 related to the removal of the exemption from covenant 7.

Ms. Delbridge directed attention to page 1, line 23 of Amendment 3 that provided the new regulatory structure. The new Section 25 of the bill would amend the RCA's decision making procedures to add a new regulatory chapter AS 42.08 to the list of chapters the RCA was able to administrate. The new Section 26 added a new section to the Alaska Public Utilities Regulatory Act. She elaborated that the contract carrier line would be regulated under AS 42.08 and needed to tie into the way RCA looked at public utility contracts under AS 42.05. The section worked to establish a link by allowing the RCA to include a covenant in contracts between a utility and AGDC that would enable the utility to pass on its costs in rates charged to consumers; the RCA approval

of the contract with AGDC and the public utility would make the covenant enforceable. The amendment worked to accommodate utilities that were not shippers that decided to buy gas shipped by another entity or to store gas it bought off of a line in order to keep any RCA filings related to the pipeline moving in a timely fashion. She furthered that the RCA would be required to review the utility contracts to determine whether they were "just and reasonable" in a 180-day time period.

Ms. Delbridge discussed that the Amendment 3 exempted an AGDC line from the two existing avenues the RCA had to regulate a gas pipeline (as a public utility or common carrier pipeline under the Pipeline Act). She relayed that the RCA regulated pipelines on a cost-based formula where rates and tariffs were regulated. Sponsors wanted to make contracts work that they believed could be entered into freely by two parties; therefore, under the amendment the RCA would review the pipeline contracts for fairness, but would not regulate the rates and tariffs. Sponsors had wanted backstops included in the bill; therefore, the new regulatory section required all precedent agreement contracts that came out of an open season between AGDC and shippers to be submitted to the RCA. The RCA would have 180 days (a typical timeframe for similar items) to decide whether a contract had been done fairly and without fraud; the contract would be automatically approved if the agency failed to make a decision within the designated time limit.

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Ms. Delbridge continued to discuss Amendment 3. A Certificate of Public Convenience and Necessity (CPCN) was required that would allow for the operation and construction of the pipeline. Some of the requirements that the RCA would normally investigate in a CPCN would be concluded by the legislature. The RCA typically looked at a project to determine whether it was in the public convenience and necessity; the amendment designated that the passage of the bill would be sufficient evidence that the project was in the public convenience and necessity. An applicant's proposal was also considered for its fitness, willingness, and ability. The amendment stipulated that through the creation of AGDC, the legislature had determined that the corporation was willing and able to do its work. The RCA would determine whether an operator had sufficient technical capability to operate a pipeline and

provide service. There were a number of RCA empowerments that enabled the commission to conduct its day-to-day business; the regulatory empowerments were repeated throughout statutes and included items such as standard decision making procedures and the ability to expedite its adjudication of matters. The commission's annual report would need to include any actions it had taken related to AS 42.08.

Ms. Delbridge addressed that Amendment 3 built backstops into the legislation. The RCA traditionally played a role in dispute resolution (in addition to its role in approving a project); the amendment would require that AGDC provide a dispute resolution mechanism within its contracts. She noted that although there were alternatives to a regulatory body conducting dispute resolution (i.e. adjudication or arbitration panel), the amendment allowed two parties to agree on a way to resolve future disputes. She observed that there was always a risk of dispute resolution method failure; the RCA would intervene if a dispute resolution failed and prevented a public utility from getting the gas thereby posing a threat to the public's safety and welfare. She discussed future unknown items such as expansions and interconnections that the RCA typically would take a detailed role in managing; the commission would be involved in situation where other parties may want to buy capacity in an expansion or be involved in an interconnection.

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Ms. Delbridge asked whether she should go through Amendment 3 section-by-section.

Representative Doogan responded in the affirmative.

Ms. Delbridge relayed that legal counsel was available for any detailed regulatory or RCA questions. She pointed to lines 21-23 on page 1 of Amendment 3 where Section 25 of the new structure amended the RCA's decision making procedures. A new chapter was added for an instate gas pipeline contract carrier to the list of regulatory chapters that were exempt from the RCA's decision making procedures and provided that the RCA chair may appoint a panel for hearings. The language was needed for the RCA to work into AS 42.08 and to run its daily business. Section 26 added a new section to include the Alaska Public Utilities Regulatory Act to AS 42.05 for review of certain

contracts by the commission; the section established a link between the existing public utility regulation and the new regulation for the instate gasline (AS 42.08). She explained that while an AGDC line would be regulated under 42.08 and exempt from public utility regulation, public utilities may have associated contracts for something other than transportation capacity that the RCA would regulate under AS 42.05. The RCA would include a covenant in contracts between a utility and AGDC that would enable the utility to pass on its costs in rates charged to consumers; the RCA approval of the contract with AGDC and the public utility would make the covenant enforceable. The amendment worked to accommodate utilities that were not shippers that decided to buy gas shipped by another entity or to store gas it bought off of a line in order to keep any RCA pipeline filings moving in a timely fashion. She furthered that the RCA would be required to review the utility contracts to determine whether they were "just and reasonable" in a 180-day time period.

Representative Doogan queried whether the contract would be approved automatically if the 180-day limit was not met. Ms. Delbridge replied that the 180-day period was the maximum time allowed for the RCA to make a decision. The amendment also asked the RCA to expeditiously consider contracts in order for the process to move at a reasonable pace. She confirmed that the commission's failure to approve or disapprove the contract within the given time period would be de facto approval.

Representative Doogan asked what would happen if the decision took longer than 180 days. Ms. Delbridge deferred the question to Stuart Goering with the Department of Law (DOL). She believed that the RCA found 180 days to generally be a reasonable processing timeframe when directed by the legislature.

Representative Doogan understood, but the issue was important and the deadline put a limit on the commission's decision making time. He wanted to fully understand the reason for including the provision in the legislation. Ms. Delbridge deferred the question to Mr. Goering if more information was needed on the sponsors' decision to restrain the timeline to prevent it from interfering with AGDC's ability to turn precedent agreements into firm transportation contracts and progress a pipeline.

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Representative Hawker firmly believed the 180-day requirement was necessary and appropriate. He explained that the legislature had looked at the time limit during the prior session when it reauthorized the RCA. A great deal of concern had been expressed that the RCA was taking too long to process requests and impeding the process as a result. The reauthorization had stipulated that the RCA submit a report evaluating the concerns to the current legislature. He recalled that the commission had concluded that it could make the improvements without constraining its resources. The goal of the 180-day deadline was to emphasize the importance of processing the requests on a timely basis. He agreed that Mr. Goering would be the appropriate person to provide a more detailed description of the RCA's processes.

Representative Gara communicated that sometimes the RCA could not make timely a decision because the appropriate parties were not providing information. He surmised that the amendment would allow parties to gain automatic approval of proposals if they withheld information until the 180-day deadline. He requested to hear from the RCA regarding the limit.

Representative Guttenberg requested that at some point the sponsors discuss the location in the Amendment that provided a definition of the project that would be regulated. He was interested to know where the regulatory process began. Ms. Delbridge replied in the affirmative.

STUART GOERING, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW (via teleconference), clarified that he was not able to speak on behalf of the RCA. He explained that the commission operated under a number of existing timelines, primarily under AS 42.05.175. The timelines had similar limitations that would give the applicant or utility applying for a tariff the approval it sought if the commission did not act within the specified time. The only variation between the provision up for consideration and the existing law was that under the latter the RCA had the ability to extend the timeline one time with good cause. The parties also had the option to consent to extending the timeline beyond the time listed in statute. He believed that whether 180 days was a sufficient period of time was a policy question for the commission. The RCA would have to

provide its opinion during the open meeting setting; there was a public meeting scheduled the following week where the issue could be addressed if the House Finance Committee wished.

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Representative Doogan communicated that he would potentially take the matter up again in the future.

Representative Hawker appreciated his decision. He had been consistently reminded in conversations with the RCA and DOL that the legislature's job was to set policy and that the agencies' responsibility was to implement the policies. He worked to be respectful of the RCA without abandoning the legislature's responsibility to an agency.

Ms. Delbridge continued to explain changes included in Amendment 3. Section 27 added a new subsection to the Alaska Public Utilities Regulatory Act exempting an instate gasline subject to AS 42.08 from regulation under the Public Utilities Act; Section 28 exempted the pipeline from the Pipeline Act. She expounded that the pipeline needed to be exempt from regulation under the other avenues, given that AS 42.08 had been created to regulate it. Section 29 added a new chapter to AS 42 (Public Utilities and Carriers and Energy Programs) titled In-state Pipeline Contract Carrier. She read from a handout prepared by her office (copy on file):

Section 42.08.010 Application of chapter; exemption. States that this chapter applies to an instate natural gas pipeline authorized by law to operate as a contract carrier. Exempts an instate natural gas pipeline subject exclusively to federal jurisdiction.

Section 42.08.020 Qualification of the Alaska Gasline Development Corporation; findings. Determines that AGDC is financially and managerially fit, willing and able to provide service under 42.08. States that an instate natural gas pipeline is required by public convenience and necessity. Directs the RCA to determine whether an entity applying under 42.08 is technically fit, willing and able.

Section 42.08.220 General powers and duties. Provides enabling direction for the RCA under 42.08. Requires

permits for construction, interconnections, expansions and abandonment. Enables the RCA to intervene in disputes that are between the carrier and a public utility, and that are unable to be resolved by contractual dispute resolution methods, and that threaten the public safety and welfare. Directs the RCA to not require rates or tariff regulations, and not to conduct further review of contracts approved under 42.08.

Ms. Delbridge elaborated that the addition of Section 42.08.220 was a sponsor position that encouraged an initial limited front-end look and trusted that the contracts would go forward (absent complaint) without an intermediary ruling by a regulatory body. She continued to read from the handout:

Section 42.08.230 Commission decision-making procedures. Directs the RCA to follow its standard decision-making procedures, and to expeditiously adjudicate matters.

Section 42.08.240 Publication of reports, orders, decisions and regulations. Standard RCA direction for publishing reports, orders, decisions and regulations.

Section 42.08.250 Application of Administrative Procedure Act. Standard RCA exemption from Administrative Procedure Act adjudication procedures; the RCA's adjudication procedures would apply.

Section 42.08.260 Annual report. Requires the RCA to include in its annual report activities related to 42.08.

Section 42.08.300 Review of certain contracts by the commission. AGDC or its successors will submit all precedent agreements to the RCA; precedent agreements with other than a public utility may be kept under seal. The RCA will have 180 days to approve or disprove precedent agreements as just and reasonable, based on whether contracts were negotiated at arm's length and whether there was unlawful activity or unfair dealing. Approved contracts are not subject to further review. A contract is arm's length if it is made between two unaffiliated parties; or, if parties are affiliated, they have followed the standards of

conduct for transmission providers adopted by the Federal Energy Regulatory Commission.

Ms. Delbridge expounded that precedent agreements may be kept under seal because the agreement was expected to take several months to a couple of years to negotiate. She pointed to Section 42.08.310:

Section 42.08.310 Contract carriage certificate. The owner of an instate natural gas pipeline must have a certificate of public convenience and necessity (CPCN) to construct a pipeline and to transport gas. The RCA has 180 days to issue a CPCN once application is made, providing that the applicant is found fit, willing and able to perform the services proposed. The RCA may attach conditions to and amend, suspend or revoke a CPCN. Operating authority may not be transferred without RCA approval.

Ms. Delbridge noted that the section marked the shift from regulation of contracts to regulating the gasline and the service provided. She moved on to Section 42.08.320:

Section 42.08.320 Tariffs, contracts, filing, and public inspection. Requires an instate natural gas pipeline carrier to file all rules, regulations, terms and conditions pertaining to service, and all contracts with shippers. Requires changes in tariff rates/rules and service conditions to be filed with the RCA.

Ms. Delbridge furthered that the filings were intended to be informational; the information on file with the RCA was the official record. She pointed to Sections 42.08.330 through 42.08.350:

Section 42.08.330 Expansion, dispute resolution. Contracts may provide for expansion, unless an expansion would violate the terms of the Alaska Gasline Inducement Act. Requires contracts to include procedures for resolving disputes.

Section 42.08.340 Regulatory cost charge. Implements standard RCA assessment of a user fee on regulated entities; includes a cap and directs administration of the user fee.

Section 42.08.350: Nothing to alter the calculation of taxes and royalty. Nothing in 42.08 will change the calculation of production taxes or of royalties due the state.

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Ms. Delbridge directed attention to Sections 42.08.400 through 42.08.900:

Section 42.08.400 Public records. RCA records are available to the public, except when classified by the RCA as privileged; precedent agreements will be kept confidential.

Section 42.08.410 Investigations. Allows the RCA to investigate matters in 42.08.

Section 42.08.510 Designation of service agents. Requires an instate natural gas pipeline carrier to file a named, permanent resident as its agent (standard RCA provision).

Section 42.08.520 Effect of regulations. Regulations adopted by the RCA under 42.08 have the effect of law (standard RCA provision).

Section 42.08.530 Judicial review and enforcement. RCA final orders are subject to the judicial review provisions in Section 13, HB 9.

Section 42.08.540 Joinder of actions. Appeals may be joined under applicable court rules (standard RCA provision).

Section 42.08.900 Definitions. Defines terms standard to the RCA (commission, commissioner, record) and includes terms within HB 9 (instate natural gas pipeline, instate natural gas pipeline carrier).

Representative Costello referred to Ms. Delbridge's testimony that the passage of the bill would be the acknowledgement that there was a public convenience and necessity for the project; however, she believed the responsibility was given to AGDC on page 3 of the amendment.

Ms. Delbridge explained that the amendment required a carrier to have a certificate to operate the pipeline. The amendment assumed that if the legislature passed HB 9 it would give AGDC the mission to build the pipeline and was by de facto in the public convenience and necessity. She expounded that a company would have to meet the standard if the project transitioned to an entity other than AGDC at the point of certification.

Representative Costello referred to a provision in the amendment requiring that AGIA could not be violated. She wondered whether the state would be held to the terms if AGIA went away in the future.

Ms. Delbridge responded in the negative. She detailed that the requirement was related to whether or not contracts for shipment on the line could provide for terms of expansion in the future. Section 42.08.330 allowed contracts to provide for expansion if they did not violate the terms of AGIA. Contracts made in the near future could have a contingency plan in the event that AGIA and its capacity limits were no longer a factor in the future.

Representative Gara communicated that he would like to make an amendment to the amendment at the appropriate time.

Representative Guttenberg wondered whether there was a way to contest a contract if necessary once it had been approved and deemed just and reasonable. Ms. Delbridge replied that the contract arrangement would be governed by contract law. She explained that a company could choose to include language that would allow for a contingency if there was a change in future circumstances.

Representative Hawker added that the section applied to the submittal of precedent agreements for firm transportation commitments to the RCA for review. The arrangements were contractual and would be used to obtain necessary financing to construct a pipeline. Once the contracts had been reviewed and approved by the RCA it was necessary for potential financiers to know that the contracts were firm and would not be second guessed after capital commitments were made.

[4:24:55 PM](#)

Representative Gara looked at page 2, line 22 of Amendment 3. He asked what would happen if parties did not give the RCA the information it needed to make a ruling on whether a contract was just and reasonable. He wondered whether the contract would automatically be approved if the decision was not made within 180 days. Ms. Delbridge did not believe it was the intent of the amendment to allow de facto approval if information was not provided within the time limit. She deferred the question to Mr. Goering for more detail.

Mr. Goering elaborated that a company would need to produce sufficient evidence to prove to the RCA that approval was warranted and that the contract was just and reasonable. He opined that currently the burden of proof requirement would allow the commission to disapprove the contract if sufficient information had not been provided by the company. He believed it would be better to provide for other ways out of the situation such as allowing the commission to find good cause to extend the time limit or to clarify that the commission could disapprove a contract if it had not been properly supported.

Representative Gara stressed that the amendment would allow for a contract to be automatically approved unless the commission could prove that a contract was unjust or unreasonable; the commission would not be able to prove that a contract was unjust or unreasonable if it did not have the information.

[4:29:19 PM](#)

Representative Hawker replied that the scenario described by Representative Gara was not the legislative intent of Amendment 3.

Ms. Delbridge clarified that the amendment assumed that a contract was just and reasonable if two parties were willing to sign it.

Mr. Goering responded that the language related to what the commission was required to find in order to rule that a contract was unjust and unreasonable was found in AS 42.05 and AS 42.06. He explained that there was a fairly significant body of precedent regarding a party's burden of proof. He expounded that it would be helpful if the legislation specified how to handle the situation should it

arise. He noted that it would not be an unusual situation for the commission to find itself in if the language in the amendment did not change. Due to the timelines in AS 42.05.175 there would be the same potential problem in the public utility realm as well. He noted that there had not been much of a problem in the past and the commission did have ways of dealing with the issues.

Representative Gara was happy to work with the sponsors' on the issue before the bill moved to the House floor.

Representative Hawker believed that clarity was always beneficial and that the RCA operated best when given clear direction. He would be happy to work with Representative Gara on adding clarity to the section that would not alter its intent.

[4:32:32 PM](#)

Representative Gara MOVED to AMEND Amendment 3 (Amendment 10 27-LS0075\K.17 Bullock 3/20/12 became Amendment 1 to Amendment 3).

Co-Chair Stoltze OBJECTED.

Representative Gara explained that Amendment 1 to Amendment 3 related to the tariff the RCA would allow companies to charge, which would then be passed off to consumers; the higher the tariff the higher consumer prices would be. Under the current amendment the state would approve a contract if two parties (i.e. a private carrier and private gas supplier) could reach an agreement as long as it was an arms-length negotiation with no fraud. Amendment 1 to Amendment 3 would require that the tariff price charged should be just and reasonable as determined by the RCA. He furthered that putting the decision in the hands of the RCA, followed the commission's traditional role in the regulation of consumer gas prices.

Representative Hawker did not support Amendment 1 to Amendment 3. The sponsors believed the arms-length requirement was appropriate. He did not believe that the Amendment 1 was applicable and stated that it would require a test established in AS 42.05.291(c), which was about regulating public utilities and included language related to standards of the measurement of the "quantity, quality, pressure, initial voltage, and other conditions pertaining

to the supply of the service, the accuracy of meters and appliances for measurement, and providing for the examination and testing of appliances used for measurement." He discussed that the issue was about precedent agreements and a sponsor of a pipeline project asking the commercial market whether there was commercial transaction to be had. He stressed that AGDC had a statutory obligation to make gas available in Alaska at the least possible cost. He stated that public utilities had an interest in protecting their consumers. The amendment attempted to respect the right of contract with an adequate review and assurance that a project would move forward with results in the best interest of the public.

[4:39:23 PM](#)

Representative Costello believed Amendment 1 to Amendment 3 was redundant given that there was a separate portion of the legislation that required the RCA to review precedent agreements. Ms. Delbridge answered in the affirmative. She elaborated that precedents between AGDC and any shipper (e.g. a public utility, private entity, or other) were required to be reviewed by the RCA to ensure that the contracts were entered into under fair and reasonable circumstances.

Representative Gara responded that unless the amendment was adopted, Amendment 3 exempted the specific portion of the gasline from the RCA review. He pointed to line 23 of Amendment 3, which designated that the commission had to determine that the price was just and reasonable if it was negotiated at arms-length. The commission did not get to determine whether the price was fair. He provided a hypothetical example of a negotiation between Enstar and a gas supplier. He opined that the entities may have no interest in protecting consumers, but the commission would have to find that the price was just and reasonable.

Representative Gara furthered that the amendment would enable the RCA to fulfill its traditional role of determining whether the price was just and reasonable. He furthered that the amendment would require the pricing to be just and reasonable under the standards adopted by commission under AS 42.05.291(c), which allowed the commission to adopt regulations for the accommodation and convenience of the public. He believed that the section was broad enough to allow regulations to be made. He referred

to page 6, line 14 of Amendment 3, which specified that AGDC had duties to the public, but it could transfer the gasline to successors that had a duty to their shareholders and not the public. He asked committee members to vote for the amendment if they believed that Enstar and a gas supplier did not have the public's interest at heart when setting a price.

Ms. Delbridge relayed that it was important for Amendment 3 to apply to AGDC and its successors because of the possibility that AGDC may partner with other entities to form a new company that would become the carrier. The bill required AGDC to pursue a project that brought gas to Fairbanks, through the Railbelt, and in Southcentral at the lowest possible cost. She opined that the sponsors may disagree with the concept that a producer and a company could enter into a contract without caring about the public because AGDC had a statutory obligation to carry forward with the public's interest.

A ROLL CALL was taken on Amendment 1 to Amendment 3.

IN FAVOR: Gara, Guttenberg

OPPOSED: Joule, Wilson, Costello, Doogan, Edgmon,
Fairclough, Stoltze

The MOTION FAILED (7-2).

Representative Gara WITHDREW his OBJECTION to Amendment 3. There being NO further OBJECTION, Amendment 3 was ADOPTED.

Vice-chair Fairclough remarked that she did not want her vote to be characterized by a statement made by another member. She understood that the issue was important to Alaskans and believed that the committee wanted to ensure a transparent process and that the public was well served with low cost energy.

[4:46:30 PM](#)

Co-Chair Stoltze held the remaining amendments until a later time.

HOUSE BILL NO. 296

"An Act relating to service of process on prisoners;
relating to the crime of escape; relating to the

definition of 'correctional facility'; amending Rule 4, Alaska Rules of Civil Procedure; and providing for an effective date."

HB 296 was SCHEDULED but not HEARD.

4:47:36 PM

RECESSED

6:54:36 PM

RECONVENED

Co-Chair Stoltze apologized for the teleconference connection difficulties that were making it hard for people to call into the meeting.

RICHARD ODSATHER, ODSATHER INTERNATIONAL MARKETING, FAIRBANKS (via teleconference), voiced his opposition to the bill. He remarked that he did not understand why the Joint Pipeline Office had not been used in making decisions. He believed the HB 9 proposals were counterproductive to Alaska and that the entire bill should be killed. The major problem in Fairbanks was that one of the spur lines extended 39 miles through some of the state's worst soils and terminated at the university experimental farm fields. It fell far short of the refinery located 20 miles further south in North Pole. He said one project would cost over \$200 million and wondered who would pay for it. The new project wanted to export gas, which was never stated in the public hearings. Large methane tankers could not operate in the upper Cook Inlet basin because of water depth, steerage, and six months of ice flow. New docks would have to be built a mile offshore to accommodate the tankers. The public had been told that the off-takes in Nenana and the Yukon River would have to be done after the open season; Nenana had been told it was supposed to get a methane and propane off-take, but it had not happened. There were many things in the bill that need to be taken care of. He was concerned about tariff prices.

MERRICK PEIRCE, BOARD MEMBER, ALASKA GASLINE PORT AUTHORITY, NORTH POLE (via teleconference), did not support the bill. He offered a shareholder and public perspective. He stressed that hundreds of millions of dollars had been wasted on a project that would not be built. The bill was good for Exxon, given that there was an estimated 250 trillion feet of gas worth trillions in the Asian market.

He stated that Exxon wanted to grab the resources cheaply then sit on them until the value increased; it had been warehousing the gas in the North Slope and Pt. Thompson for forty years. He believed that allowing Alaska gas to enter the world market too early threatened Exxon profits. The passage of HB 9 allowed for the warehousing of Alaska gas to continue by diverting public attention, time, and resources away from a credible project. He opined that Alaska was afraid to act and was allowing others make decisions about Alaska's future. He believed that HB 9 offered the wrong route, crossed the entire state with only two take-out points, did not provide Alaskans with affordable energy, did not provide gas for the military bases, and sought double digit return in equity which would cost Alaskans \$420 million per year. He did not understand what rational policy maker would want to see \$420 million transferred out of the Alaska economy to the owners of the project. He pointed out that the projects were opposed by the city of Valdez, North Pole City Council, Fairbanks North Star Borough Assembly, and the Alaska Municipal League. He cautioned that Alaska was competing with five projects in the lower 48, Canada, Russia and Australia. He stressed that the focus must be on a large gasline to Valdez.

[7:03:56 PM](#)

Representative Wilson asked about the status and future plan for the All Alaskan project. Mr. Pierce replied that he could not publically expose who the entity was talking with for confidentiality restrictions. He declared that it was hard to move forward when the North Slope developers did not want to sell the gas; it was hard to move to the next step without the commitment of the gas.

Representative Wilson wondered whether he would be against the project if the gas reached Fairbanks sooner rather than later. Mr. Pierce remarked that the Wood MacKenzie research showed a \$419 billion benefit for the Alaska LNG project with a large gasline. He stated that Alaska should be pursuing a large gasline project to assure Alaskans get the most affordable energy. Interior residents would see an 80 percent reduction with gas from the large pipeline rather than a bullet line. He pointed out that time and resources should not be spent on a project that was not economical.

[7:05:55 PM](#)

Representative Neuman asked if Mr. Pierce was proposing and supporting spending the Permanent Fund Dividend to build a gas pipeline.

Mr. Pierce replied that the Alaska Permanent Fund Corporation had \$41.5 billion in the different state savings accounts; without ever touching the Permanent Fund Dividend it could come up with the equity portion of the project and the state take control of the project and not wait for others who had a conflict of interest. The state had the resources, money, and talent to build the pipeline. Once the state has 51 percent equity position, the state could invite partners into the project, who he believed would come on board immediately.

LARRY WOOD, SELF, PALMER (via teleconference), testified in opposition to the bill. In 2002 Alaska voted to build the pipeline, but every legislature and governor had ignored the will of the people. He pointed out that \$14 million had been spent so far and nothing had been done; there had been no permits issued and the route has not been firmed up. The All Alaska Natural Gas Pipeline brought the benefit of the pipeline to Fairbanks, Ft. Greely, down the Richardson Highway, and a spur across the Dalton Highway. He wondered what the legislative body did not understand about value added resource development. Alaskans voted for the All Alaska Natural Gas Pipeline that existed in statute under Title 41, Section 41 to keep the gas in-state for the interior and long-term benefit of Alaska. Japan was interested in the gas. A Japanese delegation was in town, but the public was not privy to anything that was said to the governor or the legislature. There had been no public discussion from the legislature. He could not understand why the public was being ignored in the discussion. He wondered where the outrage was when the president of Conoco pulled out of the Denali project because they had intended to warehouse Alaska's gas all along; he opined that the project had been fostered on the state and it was done in a way to influence public decision.

[7:12:28 PM](#)

JIM SYKES, SELF, PALMER (via teleconference), testified strongly against the bill. He was troubled by many things related to the legislation. The Alaska Gasline Development Corporation would have almost unlimited authority to

determine ownership, operation, and financing. The agency would be exempt from Regulatory Commission of Alaska regulation which could result in forcing Alaskans to pay the highest price for gas in the world. Although the gas would be Alaskan, the consumers would be forced to repay for the cost of the line while the owner company would be assured of long-term profit regardless of the cost of the line. He found it to be troubling. The current route along the Parks Highway would bypass three military bases. The spur lines for Fairbanks the bases and the Richardson Highway had not been included in the costs. It was unclear if there would be an export component and there was an underestimation of what it would be; without export the line would only be half full. The tariff would be so excessive it would be uneconomical. The Department of Natural Resources estimated that there was as much gas in Cook Inlet as there had been taken out. He sympathized with the desire to get North Slope gas, but opined that HB 9 needed to be on backburner while other options were seriously considered. There had been talk about the larger line. He felt that HB 9 was the worst of all the gasline options and was a loser.

[7:16:10 PM](#)

Representative Mike Hawker recapped the Regulatory Commission of Alaska amendment adopted earlier in the day. The sponsors of the legislation brought forth the amendment that provided a regulatory structure for the pipeline in the Alaska that was specifically authorized by statute to operate as contact carriers. That regulatory authority was vested in the authority of the RCA and fulfilled the discussion in the House Resources committee. He stated that the House Finance Committee passed the amendment without objections.

Representative Gara interjected that he and Representative Guttenberg had tried to amend the RCA Amendment and believed the regulations could have been stronger. He felt that the RCA should have the power to ensure that the tariff rates were just and reasonable. His amendment had not passed. He relayed that the committee's support for the bill was not unanimous.

[7:18:19 PM](#)

MICHAEL DUKES, ASSEMBLY MEMBER, FAIRBANKS NORTH STAR BOROUGH, NORTH POLE (via teleconference), voiced his opposition to the bill for several reasons. He believed it contradicted the will of the people as stated by previous testifiers. The fact that the people voted to incorporate and create an agency that would develop their own pipeline had been ignored by administrations and legislators. He believed it was insulting to the people of Alaska. The economics of the proposed line would have the people in Fairbanks paying more than Anchorage. The line would be passing outside Dunbar and although Representative Wilson stated there could be an amendment to pass the gasline into Fairbanks, the problem was that the tariff cost could be close to the cost of current heating oil, which would not help. There had to be a difference in the cost between natural gas and heating oil. He stated that for a mass conversion to take place in a market for natural gas there had to be a substantive difference between the cost of natural gas and the cost of heating oil or people would not spend the thousands of dollars to convert to gas. There will be no benefits in air quality or space heating in the homes. He opined that the proposal completely ignored the military bases even though they have been using those numbers to justify the pipeline. He felt that there were many things wrong with HB 9 and that the people in Fairbanks did not really support it. He stated that the proposed pipeline in HB 9 would not solve the problem. [Lost call for short period]. He believed that the problem was a failure in leadership with the administration and legislature to put forth a line that would benefit the entire state. He stressed that HB 9 needed to be defeated. Japan was currently looking for 30 million metric tons of gas; therefore it was the time to strike to bring needed revenue into the state. He urged the defeat of HB 9.

[7:23:13 PM](#)

Representative Guttenberg pointed out that Mr. Dukes was not speaking for the borough assembly, but for himself. Mr. Dukes replied that the borough assembly passed a resolution supporting an All Alaska Gas Pipeline along with the City of Valdez and the Alaska Municipal League.

ALAN LEMASTER, SELF, GAKONA (via teleconference), testified against the bill. He owned a small business in Copper Valley and paid extremely high energy rates, which would not get better with the passage of HB 9. He urged the

committee to put aside his or her own limited vision for their districts, personal ambitions, and legacy hopes, and instead to support what was best for all the people of Alaska. He asked the committee to widen its vision to include the future of the children in Alaska. He felt that HB 9 was not the best plan on the table to bring low cost energy to the greatest number of Alaskans. The inability for Alaska's judiciary, the RCA, and the citizens of the state to challenge and object to any and all of the provisions within the bill exhibited a lack of transparency and was not acceptable. He stated that it was technically legal to repeal a ballot measure but, he advised that the ballot represented the will of the people and that repealing it (i.e. Section 29 of the bill) would not be popular with the people. He remarked that any project considered must include producing a pipeline to tidewater for export to ports outside the state of Alaska; the bullet line did not meet the directive on several levels. Valdez was the only port in the state that could handle the large ships necessary for such a project. He pointed to public concern that the process was superfluous, resulting in a great deal of effort, a lot of money spent, for very little or no gain. He urged denying HB 9 until it was compatible with all the provisions of the many bills and regulations that preceded it.

[7:28:11 PM](#)

Co-Chair Stoltze once again explained the teleconference difficulties and apologized to the people who might be waiting to speak.

PARK KRINER, SELF, GLENNALLEN (via teleconference), voiced opposition to the bill. After 41 years of living and having a business in the Alaska he believed that the Valdez route was financially, socially, employment percent wise, business wise, and morally the right way to go. He believed the health and future of Alaska depended on the decisions made. He stressed the extremely large energy costs to his business over the years. He believed there would be substantial savings with propane and natural gas. With the savings he would hire, build, and expand his business. He remarked on the advantages of an All Alaska Gas Pipeline. He recommended ending HB 9 and promoted the proposals of knowledgeable experts, like Representative Gara. He recommended that people read Representative Gara's "sensible" amendment recommendation.

Representative Gara thanked him for his support.

7:33:38 PM

RANDY WAGNER, SELF, GLENNALLEN (via teleconference), testified against the bill. He agreed with the amendments of Representative Gara and the former teleconference speakers. He supported the pipeline to send the gas down to Valdez. He believed that Alaska and the U.S. could profit from selling the gas to Japan. He indicated that there was an economic war with China; the Japanese could buy Chinese gas, but that would result in a loss of money for Alaska.

7:36:20 PM

AT EASE

7:54:31 PM

RECONVENED

HB 9 was HEARD and HELD in Committee for further consideration.

ADJOURNMENT

The meeting was adjourned at 7:56 PM.