

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

February 10, 2012

1:07 p.m.

MEMBERS PRESENT

Representative Eric Feige, Co-Chair
Representative Paul Seaton, Co-Chair
Representative Peggy Wilson, Vice Chair
Representative Alan Dick
Representative Neal Foster
Representative Cathy Engstrom Munoz
Representative Berta Gardner
Representative Scott Kawasaki

MEMBERS ABSENT

Representative Bob Herron

OTHER LEGISLATORS PRESENT

Representative Mike Chenault
Representative Mike Hawker

COMMITTEE CALENDAR

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."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 9

SHORT TITLE: IN-STATE GASLINE DEVELOPMENT CORP

SPONSOR(S): REPRESENTATIVE(S) CHENAULT

01/18/11	(H)	PREFILE RELEASED 1/7/11
01/18/11	(H)	READ THE FIRST TIME - REFERRALS
01/18/11	(H)	RES, FIN
02/06/12	(H)	RES AT 1:00 PM BARNES 124

02/06/12 (H) Heard & Held
02/06/12 (H) MINUTE(RES)
02/08/12 (H) RES AT 1:00 PM BARNES 124
02/08/12 (H) Heard & Held
02/08/12 (H) MINUTE(RES)
02/10/12 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

THOMAS WRIGHT, Staff
Representative Mike Chenault
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding the proposed amendments to HB 9 on behalf of Representative Chenault, prime sponsor.

JOE DUBLER, Vice President
Alaska Gasline Development Corporation (AGDC)
Director of Finance, Alaska Housing Finance Corporation (AHFC)
Department of Revenue (DOR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to HB 9.

DAN FAUSKE, President
Alaska Gasline Development Corporation (AGDC)
CEO, Alaska Housing Finance Corporation (AHFC)
Department of Revenue (DOR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to HB 9.

DARYL KLEPPIN, Commercial Manager
Alaska Gasline Development Corporation (AGDC)
Alaska Housing Finance Corporation (AHFC)
Department of Revenue (DOR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to HB 9.

STUART GOERING, Assistant Attorney General
Commercial/Fair Business Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to HB 9.

ACTION NARRATIVE

[1:07:28 PM](#)

CO-CHAIR PAUL SEATON called the House Resources Standing Committee meeting to order at 3:07 p.m. Representatives Dick, P. Wilson, Kawasaki, Gardner, Foster, Feige, and Seaton were present at the call to order. Representatives Munoz arrived as the meeting was in progress.

HB 9-IN-STATE GASLINE DEVELOPMENT CORP

[1:07:54 PM](#)

CO-CHAIR SEATON announced that the only order of business would be 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." [Before the committee was Version U, labeled 27-LS0075\U, Bullock, 1/19/12, adopted as the working document on 2/6/12.]

CO-CHAIR SEATON noted that the committee will be considering amendments today and in the future, so the bill will not be reported from committee today.

[1:08:36 PM](#)

REPRESENTATIVE P. WILSON moved to adopt Amendment U.1, labeled 27-0075\U.1, Bullock, 1/25/12, which read [original punctuation provided]:

Page 6, lines 15 - 16:

Delete "for the purpose of planning, designing, financing, developing, constructing, owning, and operating an in-state natural gas pipeline"

Insert "authorized to exercise the powers and take the actions described in AS 18.56.087"

CO-CHAIR SEATON labeled the foregoing Amendment 1, and objected for discussion purposes. He said the sponsors asked to have this amendment introduced.

[1:09:08 PM](#)

THOMAS WRIGHT, Staff, Representative Mike Chenault, Alaska State Legislature, on behalf of the prime sponsor, Representative Chenault, explained that the duties of the Alaska Gasline Development Corporation (AGDC) are laid out in the definition section of AS 18.56.087. Amendment 1 would encompass everything that AGDC has been charged to do under that section, instead of limiting AGDC's duties to "planning, designing, financing, developing, constructing, owning, and operating."

CO-CHAIR SEATON asked what specific parameters are being identified and included in that topic.

MR. WRIGHT replied that AGDC has certain functions under the bill itself and the sponsor wants to ensure that the definition of the corporation includes everything that the bill charges AGDC to do.

CO-CHAIR SEATON surmised that would include sales and marketing, which are not included in the current definition.

MR. WRIGHT responded correct.

[1:10:36 PM](#)

REPRESENTATIVE P. WILSON pointed out that the word "is" should be added to make the sentence read correctly.

MR. WRIGHT concurred.

REPRESENTATIVE P. WILSON moved Amendment 1 to Amendment 1 to insert the word "is" before the word "authorized".

CO-CHAIR SEATON objected for discussion purposes.

The committee took a brief at-ease.

REPRESENTATIVE P. WILSON withdrew Amendment 1 to Amendment 1.

CO-CHAIR SEATON withdrew his objection.

REPRESENTATIVE P. WILSON moved Conceptual Amendment 2 to Amendment 1 to insert "that is" before "authorized". There being no objection, it was so ordered.

[1:13:49 PM](#)

REPRESENTATIVE KAWASAKI asked whether the reason for Amendment 1 is to include more powers or to specifically exclude specific powers. He surmised it would include pretty much any power.

MR. WRIGHT answered it would include all the powers outlined in AS 18.56.087.

REPRESENTATIVE KAWASAKI inquired which powers are not included under the previous definition.

MR. WRIGHT replied that it could get into: eminent domain; acquire, by purchase, lease, or gift, land, structures, real or personal property; transfer or otherwise dispose of all or part of the in-state natural gas pipeline; and issuing bonds. He said Amendment 1 would a simpler route rather than just listing all these duties again underneath the definitions section.

CO-CHAIR SEATON said the duties are defined in [the bill] for the corporation and this ensures that regardless of the name attached to that corporation, the corporation can exercise those responsibilities.

MR. WRIGHT concurred.

There being no further objection, Amendment 1, as amended, was adopted.

[1:15:57 PM](#)

REPRESENTATIVE P. WILSON moved to adopt Amendment U.2, labeled 27-0075\U.2, Bullock, 1/25/12, which read [original punctuation provided]:

Page 11, line 15, following "must":
Insert "be"

CO-CHAIR SEATON labeled the foregoing Amendment 2.

MR. WRIGHT explained that this is a technical amendment because the word "be" was left out.

CO-CHAIR SEATON objected for discussion purposes.

The committee took a brief at-ease.

CO-CHAIR SEATON removed his objection after ascertaining no one wished to discuss Amendment 2. There being no further objection, Amendment 2 was adopted.

[1:17:44 PM](#)

REPRESENTATIVE P. WILSON moved to adopt Amendment U.8, labeled 27-0075\U.8, Bullock, 2/7/12, which read [original punctuation provided]:

Page 4, lines 22 - 25:

Delete all material.

Insert "[JOINT IN-STATE GASLINE DEVELOPMENT TEAM]. The Alaska Gasline Development Corporation [DEVELOPMENT TEAM] shall avoid duplicating studies, plans, and designs that have already been produced or otherwise obtained by other state entities."

CO-CHAIR SEATON labeled the foregoing Amendment 3, and objected for discussion purposes.

MR. WRIGHT explained the sponsors want to ensure it is clear and understood that AGDC will "avoid duplicating studies, plans, and designs that have already been produced or otherwise obtained by other state entities."

[1:18:50 PM](#)

REPRESENTATIVE KAWASAKI inquired whether any non-disclosure agreements were made by the Joint In-State Gasline Development Team, and would such agreements now be legally transferred to the Alaska Gasline Development Corporation (AGDC).

MR. WRIGHT deferred to the representatives of AGDC.

JOE DUBLER, Vice President, Alaska Gasline Development Corporation (AGDC), Director of Finance, Alaska Housing Finance Corporation (AHFC), Department of Revenue (DOR), understood the question to be whether any confidential agreements were entered into by the Joint In-State Gasline Development Team. He said the answer to that is no; all the agreements that have been entered into have been entered into by the Alaska Gasline Development Corporation and not the team itself.

[1:20:11 PM](#)

CO-CHAIR FEIGE asked whether any confidential agreements have been entered into by the Alaska Natural Gas Development Authority (ANGDA).

MR. DUBLER replied he has no way of knowing what agreements have been entered into by ANGDA. He understood that Amendment 3 relates to the Joint In-State Gasline Development Team, not ANGDA, but offered to research this and provide an answer to the committee by 2/13/12.

CO-CHAIR SEATON removed his objection to Amendment 3. There being no further objection, Amendment 3 was adopted.

[1:22:27 PM](#)

REPRESENTATIVE P. WILSON moved to adopt Amendment U.9, labeled 27-0075\U.9, Bullock, 2/8/12, which read [original punctuation provided]:

Page 10, line 30, through page 11, line 7:
Delete all material.

Renumber the following bill sections accordingly.

Page 11, line 13, following "pipeline":
Insert "by the Alaska Gasline Development Corporation, a subsidiary created by the Alaska Housing Finance Corporation under AS 18.56.086,"

Page 11, line 15:
Delete "section"
Insert "subsection"

Page 11, line 23, following "a":
Insert "necessary"

Page 11, line 24, following "authorization":
Insert "for the development, construction, or initial operation of a natural gas pipeline by the Alaska Gasline Development Corporation, a subsidiary created by the Alaska Housing Finance Corporation under AS 18.56.086"

CO-CHAIR SEATON labeled the foregoing Amendment 4 and objected for discussion purposes.

[1:22:48 PM](#)

MR. WRIGHT noted that this is also part of HB 215, which has been laid aside because it is being dealt with within HB 9. He said the sponsors feel it unnecessary to change AS 38.35.200 to make it fit for AGDC because that language applies to AGDC or an in-state gasline; therefore, the sponsors decided not to make those changes within that section. However, the sponsors did want to add a section, described under Section 13 of Version U, for judicial review, which is why this amendment is necessary.

CO-CHAIR SEATON requested Mr. Wright to explain what Amendment 4 would do.

MR. WRIGHT explained that Amendment 4 would keep the statute named under Section 12 unrevised. The language on page 11, line 9, [Section 13], would add a new subsection [to AS 38.35.200] dealing with judicial review, and this would remain. [Section 13] would remain unchanged to provide that this is specifically for the Alaska Gasline Development Corporation and no other venture.

CO-CHAIR SEATON removed his objection to Amendment 4. There being no further objection, Amendment 4 was adopted.

[1:24:58 PM](#)

REPRESENTATIVE P. WILSON moved to adopt Amendment U.10, labeled 27-0075\U.10, Bullock, 2/8/12, which read [original punctuation provided]:

Page 6, lines 1 - 11:

Delete all material and insert:

"(g) Upon request by the Alaska Gasline Development Corporation, a municipality or a state entity shall provide water, sand and gravel, other nonhydrocarbon natural resources, and a permit or a lease to the Alaska Gasline Development Corporation at the usual and customary rates. In this subsection, "state entity" means a state department, authority, or other administrative unit of the executive branch of state government, a public university, or a state public corporation.

(h) That part of the cost of providing, under (g) of this section, water, sand and gravel, or other nonhydrocarbon natural resources, or of entering into a lease or issuing a permit, that is borne by the Alaska Gasline Development Corporation for an in-state

natural gas pipeline project that is owned in whole or in part by the Alaska Gasline Development Corporation may not be included in the rate base in a proceeding under AS 42 or before the Federal Energy Regulatory Commission."

CO-CHAIR SEATON labeled the foregoing Amendment 5 and objected for discussion purposes.

MR. WRIGHT explained that Amendment 5 addresses a concern expressed by some committee members that HB 9 would force state agencies to give up resources to AGDC at no charge. Since AGDC has already paid for some of the leases it already has, the sponsors are trying to ensure that no additional fiscal cost is added. Thus, AGDC would be bearing the costs for leasing, permitting, and any other nonhydrocarbon resources that it deems necessary for the gasline, and these costs may not be included in the rate base in a proceeding under AS 42 or before the Federal Energy Regulatory Commission (FERC).

[1:26:21 PM](#)

REPRESENTATIVE GARDNER surmised that FERC would be involved if the gas were for export or crossing state lines.

MR. WRIGHT agreed that FERC would be involved if the gas crosses state lines or is exported to other states; otherwise, it is the U.S. Department of Energy that has jurisdiction.

REPRESENTATIVE GARDNER inquired at what point FERC would become involved if the original assumption is that the gas would not cross state lines or be exported.

MR. WRIGHT concurred that the language does not make any assumptions, but said that if there is a decision to export liquefied natural gas (LNG) to another state it would be included in this language.

[1:27:10 PM](#)

REPRESENTATIVE GARDNER asked what the actual trigger would be for notification of FERC; for example, would it be the contemplating, the holding of an open season, or the inviting of bids.

MR. WRIGHT deferred to representatives of AGDC for a reply.

DAN FAUSKE, President, Alaska Gasline Development Corporation (AGDC), CEO, Alaska Housing Finance Corporation (AHFC), Department of Revenue (DOR), responded that FERC would become involved if, for example, there was an export authority out of Port MacKenzie or elsewhere in Alaska and LNG was being shipped into the U.S., such as the West Coast. However, if that LNG was being shipped to the Orient or another foreign destination, the oversight would be by the U.S. Department of Energy, not FERC.

[1:28:32 PM](#)

REPRESENTATIVE GARDNER inquired what would trigger involvement of these [federal] agencies.

MR. FAUSKE deferred to Mr. Dubler.

MR. DUBLER answered that the trigger for getting FERC involved would be if AGDC entered into agreements with an LNG or some other shipper that intended to ship the gas from the AGDC pipeline to the West Coast or some other Lower 48 destination, including Hawaii. If the LNG facility had contracts to ship to a foreign country, there would be no trigger and FERC would not become involved.

DARYL KLEPPIN, Commercial Manager, Alaska Gasline Development Corporation (AGDC), Alaska Housing Finance Corporation (AHFC), Department of Revenue (DOR), explained that if a new LNG facility was built in Cook Inlet, then FERC would become involved with the construction of the new facility in terms of mainly AHFC and environmental permitting issues. However, FERC would not be involved with pipeline tariffs or regulations if no gas was intended for export to the Lower 48.

[1:30:07 PM](#)

CO-CHAIR SEATON, in regard to building a new facility, new dock, or other new structure, surmised this language means that the expense of that facility would not be included in a sales price or a tariff if that facility or dock was owned or partially owned by AGDC.

MR. DUBLER replied correct. The tariff on the gas going through the pipeline would only include costs from the North Slope to wherever the pipe stubs up on the south end of the pipeline. The cost of the LNG facility, wherever it was built, would be borne by the shipper of the LNG and would be included in the shipper's cost of shipping its LNG. The cost of the pipeline

owned by AGDC would only be the cost from one end of the pipe to the other. Whatever happened past the end of the AGDC pipeline would not apply to the tariff on the AGDC pipeline.

CO-CHAIR SEATON understood Mr. Dubler to be saying that HB 9 would not transfer anything beyond a pipeline and that AGDC could not build a facility; i.e. AGDC's authority for construction and development and purchase and marketing would not include a facility at the end.

MR. DUBLER responded that this is correct under his understanding of the language; the language would only allow AGDC to transmit gas from the North Slope to Fairbanks and Southcentral Alaska. Export facilities or LNG facilities are not included in the authorization in HB 9.

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REPRESENTATIVE GARDNER noted that the pipeline being contemplated would be able to carry half a billion [cubic feet of gas per day]. However, at this point it is known the state cannot use that much gas unless somebody else comes in to soak up that extra gas. Therefore, the gas would have to leave the state one way or another. She asked at what point the federal agencies would step in; for example, would it be when a contract is signed or when an open season is held or when it is anticipated that that is going to be the case.

MR. WRIGHT said he thinks it would be up to the entity that owns the facility to make that decision. For example, if it went to the ConocoPhillips LNG plant in Nikiski, that plant would be the one applying for the FERC license.

CO-CHAIR SEATON pointed out that AGDC is not authorized to own that facility.

MR. WRIGHT clarified that the gasline being talked about is "up to" half a billion [cubic feet per day]; it is not required that it be half a billion a day. It will depend on the demand and what is marketed.

[1:34:00 PM](#)

REPRESENTATIVE GARDNER noted that for Alaskan consumers it is important the gasline be as big as possible, otherwise the tariff will be too high.

MR. WRIGHT said the sponsors also want it to be as big as possible and the hope is that something occurs in the future that will allow the building of whatever line is deemed necessary. However, right now the sponsors are working under the constraints of AGIA.

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REPRESENTATIVE P. WILSON understood that Amendment 5 stipulates that, upon AGDC's request, the municipality or the state would have to provide to AGDC water, sand, gravel, [nonhydrocarbons], or permit at the usual and customary rates. She further understood that subsection (h) of the amendment would stipulate that none of the aforementioned can be included in the rate base. She asked for further explanation of these provisions.

MR. WRIGHT replied that AGDC is currently paying for its leases and permits; he offered his belief that the cost of AGDC's last permit was \$189,000. Amendment 5 specifies that municipalities and the state shall provide materials where applicable at a usual and customary rate. Additionally, these permits and materials could not be included in the base rate when determining the tariff. Someone is going to pay for these costs, he said, whether through the general fund or this way. The sponsors are trying to keep the tariff on this gasline as low as possible.

[1:36:18 PM](#)

REPRESENTATIVE P. WILSON understood that either the municipality or the state is going to absorb the cost.

MR. WRIGHT responded that the municipality or the state would be paid for any use of those resources. Public assets would be paid for with public money, it should not be passed on to the consumer.

MR. DUBLER interjected that what is trying to be avoided is the state funding these expenditures out of general funds and then having a private enterprise eventually take over trying to recover those costs from the consumers through the tariff. The purpose is to avoid the scenario of a private enterprise getting credit for expenditures that it did not actually pay out of its own pocket or through borrowing funds, and then turning around and trying to recover those costs in its rate base.

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CO-CHAIR SEATON understood that AGDC would have to get general fund appropriations for participation in the pipeline and would buy gravel, water, and materials from a borough or state agency at customary and usual prices. Those expenditures for building the gasline would not be included in the rate base; therefore, the general fund expense, or other mechanism of money from the state, would be a contribution to the project.

MR. WRIGHT answered correct. He said \$200 million is currently sitting in an account waiting for the creation of a fund for AGDC. Another \$35-\$40 million will likely be needed this year for AGDC to continue its work toward an open season or "FEL 3" and whatever else is needed to continue to get this project sanctioned. Some of these costs are being undertaken by AGDC now.

CO-CHAIR SEATON pointed out to members of the public that reason for all of the committee's questions is that the committee is making sure it understands how all the pieces fit together in this complex bill.

[1:39:14 PM](#)

REPRESENTATIVE P. WILSON understood that right now the state, or whoever pays for this, is never going to be able to recover its money. She asked whether, in the long run, the state is going to be part owner of the pipeline.

MR. WRIGHT replied that that is the decision legislators will be making when it comes time to sanction the project.

REPRESENTATIVE P. WILSON inquired whether the state will be able to stipulate what percentage of ownership it wants to have in the gasline.

MR. WRIGHT again responded that that is a decision legislators will be making at some point in time. He said this is a tool to get AGDC to the point where the legislature will be able to decide whether to sanction the project and one of those decisions will be how much state participation there should be in this project. So it is an unknown right now.

[1:40:38 PM](#)

REPRESENTATIVE P. WILSON, noting that different people may be members of the legislature when it comes time for making these

decisions, asked whether there are provisions in the bill that set something up so those questions get answered along with sanctioning of the project.

MR. WRIGHT answered that he wishes there was, but all the bill does is give AGDC the tools to move toward open season. If the open season is successful, legislation will be brought before the legislature that includes things in the project plan such as financing, route, and cost. At that point in time, all of the aforementioned decisions would be made. Also, a private corporation could come in at this point in time to take this over, and then any decision-making by the legislature would be very minimal.

[1:41:55 PM](#)

REPRESENTATIVE P. WILSON asked whether something should be put in the bill that would guarantee more than a yes or no on sanctioning, given that the legislature may be made up of new people.

MR. WRIGHT replied it will not be a simple yes or no answer, there will be a lot of components in this project on which the legislature will have to say yes or no. Therefore, putting those issues into the bill now would be pre-mature.

[1:43:08 PM](#)

CO-CHAIR SEATON shared that members are concerned about the broad latitude of projects that could go forward; for example, the project could be owned by a company that is exporting some product. The question is whether this means that all of the state's contributions to AGDC may not be included in that. He presumed that at the sanctioning or sale of the project to a private corporation, the legislature at that time would incorporate, to the extent it desires, the expenses of the project in the sales price.

MR. WRIGHT responded that he would hope so. He added that it could be compared to AGIA where the state is giving \$500 million to TransCanada without knowing where the project is at. The sponsors' point is that this is the only project at this time that has momentum, and that has a project plan that is working toward the goal of providing gas to Alaskans, and that hopefully sets up some economic opportunities for Alaskans. Right now, no other project in the state is moving ahead with the dynamics that AGDC has provided.

1:45:10 PM

MR. FAUSKE recalled that in previous testimony he spoke about \$400 million in aggregate to get AGDC through "FEL 3," and most of the expenditures being talked about are within that \$400 million. He also recalled stating that the state simply has to spend money because no one else will to get AGDC to the position of being sanctioned. He said some of this language is forward thinking in regard to buying gravel, sand, and other natural resources, and there might be an opportunity for AGDC to come back then to discuss the fiscal impact of those purchases. However, he continued, the vast majority of this work is to get to the point where the legislature can sanction a project with many of the details worked out down to a plus or minus 10 percent comfort level. He agreed with Mr. Wright that it is premature to determine all the questions now. He guaranteed that at the point of sanctioning it will be a very detailed and complex arrangement, and AGDC will be spending a lot of time with legislators, but the vast majority of questions will be answered at that time.

1:47:01 PM

CO-CHAIR SEATON pointed out that Amendment 5 specifically deals with sand, gravel, water, and other nonhydrocarbon resources, so it would be well beyond sanctioning when talking about the point of this amendment. The question is not the pre-sanctioning expenditures but the expenditures in construction that would not be rolled into a pipeline. Since that is a different question, committee members are trying to understand the parameters and what that would mean in different kinds of projects. He requested Mr. Fauske to address this.

MR. FAUSKE specified that he was speaking to the permit aspect in which AGDC and the Department of Natural Resources (DNR) are currently engaged. He said it is in the sanctioning phase that these materials will need to be purchased. The vast majority of sand, gravel, and other materials are construction items for building pads, roads, and so forth on the construction site of this project.

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CO-CHAIR SEATON said Amendment 5 provides that the expenditures for those items may not be included in the rate base in a

proceeding under AS 42 or before FERC. He asked whether this is Mr. Fauske's understanding.

MR. FAUSKE replied that it is. He recounted that the theory in the numerous discussions on the original [subsection] (g) was that Peter was being robbed to pay Paul and "why would we pay ourselves". He related that at a 2/8/12 meeting of the Alaska Municipal League (AML) this section of the bill was discussed at some length, and at which time he advised the attendees that an amendment was being prepared. He said mayors and political subdivision people were concerned that they would be unable to meet the demands of this bill or what was expected of them, so he thinks what is being proposed would make them feel much easier as well.

CO-CHAIR SEATON noted that the discussion was on [subsection] (h), not [subsection] (g).

[1:49:43 PM](#)

CO-CHAIR FEIGE understood that Amendment 5 would remove the requirement for the state and sub-elements of the state, such as small cities and municipalities, to provide free gravel. The proposed new [subsection] (g) would require the payment of reasonable and customary rates for the gravel that is purchased. [Subsection] (h) would provide that the expenditure on that gravel will be considered a contribution of Alaska towards the project; therefore, when the Regulatory Commission of Alaska (RCA) or FERC are deciding the amount of the gasline tariff, the price will be knocked down commensurate with the amount the state put in.

MR. WRIGHT answered correct, knowing that state resources are available now outside of the tariff helps define the project costs prior to the open season.

[1:51:09 PM](#)

REPRESENTATIVE GARDNER, regarding the proposed [subsection] (h) under Amendment 5 in which the RCA or FERC decides the tariff, noted that other parts of HB 9 would remove the RCA tariff-making provision and the FERC would not be deciding the tariff from the North Slope to Cook Inlet. She understood that the effect of [subsection] (h) would be to reduce the cost of building the gasline, thereby making it theoretically less expensive to provide Alaska's gas to Alaskans. However, she pointed out, the portion of gas not going to Alaskans is then

being subsidized by the state; the benefit being provided by excluding these costs will accrue to Alaskans as well as whoever gets the rest of the gas.

MR. WRIGHT responded that this will be one of the discussions at the point of sanctioning.

[1:52:24 PM](#)

REPRESENTATIVE GARDNER asked what the purpose is for excluding the cost of the sand, gravel, and water from the tariff.

MR. WRIGHT deferred to Mr. Dubler.

MR. DUBLER replied it was agreed that instead of having the costs borne by all of the agencies supporting this project be provided free of charge to the project, the AGDC would pay for them like any other entity would have to do. The thought then came up as to whether that is equitable to Alaskans to have to pay in their rate base for the resources that belong to them. Another thought was whether a private entity should benefit from the state funding those expenditures up front and be able to recover costs that it did not actually incur - that was the overriding concern that led to the language in Amendment 5.

[1:53:41 PM](#)

REPRESENTATIVE FOSTER asked whether there would be some way to allocate an additional cost to recoup that benefit if the gasline went to a private entity.

MR. WRIGHT said he thinks that can be addressed somewhat in Section 1, [paragraph] (4) on page 2, line 23, which allows for AGDC to dispose of project assets. He surmised that if a private entity took over the project, AGDC would charge the entity for the costs of the assets that are being disposed.

CO-CHAIR SEATON pointed out that that is what he was alluding to earlier when he said that AGDC's costs would be included in the sales price if the project was sold to a private entity, because the State of Alaska will have had general funds expended. Nothing is in here that would exclude incorporating those costs for materials acquired from DNR or a municipality in the sales price or into an ownership amount; that is a decision to be made at a future time if such a transfer goes forward. [Amendment 5] is only dealing with the base rate for the tariff; it does not

exclude those costs from being used as part of the calculation of percentage ownership or sales price of a pipeline.

MR. WRIGHT concurred there is nothing that prohibits AGDC in a negotiation from having those costs included in any future sale that it may deem necessary.

[1:56:23 PM](#)

REPRESENTATIVE FOSTER noted that Co-Chair Seaton is referring to the sale of the pipeline and Representative Gardner is referring to the benefit of a reduced tariff through the State of Alaska's contribution of sand, gravel, and other materials that would go to an entity that is liquefying and exporting the gas. He surmised that there must be other models from pipelines around the world for tracking the cost of that sand and gravel and quantifying that into a per unit price to add on as some kind of a fee if the gas is being exported.

CO-CHAIR SEATON said he thinks that is generally done through a tariff. The question here is that the sponsors of the bill are saying that to get this off of dead center they are committing some state resources that will not be included in the tariff because the tariff is anticipated to be a very significant obstacle for a pipeline going forward. He understood that this provision is to reduce the tariff to incentivize a pipeline. If the pipeline is owned [by the state] the costs would not be recovered through that tariff and if the pipeline was sold or transferred at some point in time there is nothing that would preclude AGDC from negotiating those prices.

[1:58:23 PM](#)

MR. WRIGHT reminded members of a previous statement made by Representative Chenault that at some point in time the lower tariffs would probably make up more than what those state resources are going to cost.

CO-CHAIR SEATON asked whether that is lower tariffs on the transmission of the state's royalty gas.

MR. WRIGHT said he cannot answer the question on royalty gas.

CO-CHAIR FEIGE said it would lower the cost to the consumer for savings over time.

CO-CHAIR SEATON understood it would lower the cost to consumers if the gas is used in-state.

MR. WRIGHT said correct.

REPRESENTATIVE GARDNER understood that the intention of this provision is to lower the cost of the tariff for everybody. In the event the entire gasline is sold the [cost] can be rolled into the sales price, if the state chooses to do so.

MR. WRIGHT said correct.

[1:59:28 PM](#)

REPRESENTATIVE P. WILSON understood the aforementioned; however, she said it seems to her that the pipeline is not economical, but a way is being found for getting gas to everybody. She conjectured that the real cost of the pipeline is so astronomical when all of that cost is added in that it would not be economical to sell the pipeline. Thus, if the state gives the gasline to somebody else, then it is going to be paying to give it to somebody else, because nobody is going to buy it if those costs are included in it.

CO-CHAIR SEATON responded that the costs of gas in the future are being projected and those costs could be \$20 per thousand cubic feet (MCF), in which case the project is very economical. There could be disruptions in worldwide gas supplies from current gas producers, so the price of gas could be high enough to support a direct private project. There are enough unknowns, he maintained, that it cannot be definitively said that the cost of building the pipeline will never be economical.

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MR. WRIGHT related that the position of Representative Chenault and Representative Hawker is that any reduction in tariff for any user, whether commercial or public, will benefit all Alaskans. There would be more volume, a lower tariff, and the likelihood of a line at all; so, any way to help reduce that tariff will be beneficial.

CO-CHAIR FEIGE, in regard to Representative Gardner's point that the tariff would be lowered for an export customer as well as Alaskans, advocated that that is not necessarily a negative impact for the state. Subtracting the transportation cost from what the customer pays, and working that back to the North

Slope, increases the gross value of that gas at the point of production, which is where the state taxes the gas. So, the state is not giving all that away completely, it is actually raising the value of what it can tax and thereby increasing the revenue on the taxation side.

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CO-CHAIR SEATON returned the discussion to Amendment 5, noting that [subsection] (h) is the part where there is debate. He advised that and an amendment could be added in the future because the committee will have the bill for awhile.

CO-CHAIR SEATON removed his objection to Amendment 5. There being no further objection, Amendment 5 was adopted.

MR. WRIGHT reported that the sponsors are working with the Department of Law (DOL) on some issues of clarification that might need further amending. The first meeting with the department was this morning, he said, so the sponsors will be working with DOL and the drafters to determine what fits into the bill and what is unnecessary. The sponsors are also having discussions with Mr. Stuart Goering, attorney general for the Regulatory Commission of Alaska (RCA).

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CO-CHAIR SEATON moved to additional testimony after ascertaining that there were no other amendments to be offered.

STUART GOERING, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), explained that he is the full-time counsel to the RCA. He said he is present today on behalf of the commissioners who are out of state on commission business. He offered to answer any background-type questions and to take any policy level questions, such as the merits of the bill, back to the commission for a response. He added that discussions of technical issues between the sponsors and the Department of Law will continue and he can answer any questions in that regard.

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CO-CHAIR SEATON, regarding the generalized concept in HB 9 to exclude AGDC from RCA jurisdiction, inquired where the RCA would normally have jurisdiction on a gas pipeline.

MR. GOERING replied there are two layers to that issue, the first being the policy of whether any particular entity would not be regulated, which is beyond what he could answer. However, it might be something that the RCA would be interested in commenting on, although to his knowledge the RCA has not discussed it.

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CO-CHAIR SEATON re-stated his question to ask what RCA regulation of an in-state pipeline means; what things does the RCA do with a pipeline that is transmitting in-state gas.

MR. GOERING reviewed how the RCA would ordinarily regulate a natural gas pipeline. He explained that the RCA has two organic statutes - AS 42.05, the Alaska Public Utilities Regulatory Act, and AS 42.06, the Pipeline Act. Under some circumstances, the primary one being the system of ENSTAR Natural Gas Company (ENSTAR), natural gas pipelines are regulated under AS 42.05. That is something of a legacy issue because the circumstances under which ENSTAR has done business all these years is somewhat sheltered by AS 38.35.220, which does not require that ENSTAR's right-of-way leases contain common carrier language. As a result, ENSTAR operates as a utility pipeline, not a common carrier pipeline. Other pipelines in the state that are subject to RCA jurisdiction, to the extent that they have leases from the state, operate under leases which have covenants in them under AS 38.35.120(a)(1) that require them to be common carrier pipelines. A common carrier pipeline is subject to the Pipeline Act, which means that the pipeline must have a certificate before business can be done as a pipeline carrier. If the pipeline has not yet been constructed, it would have to have that certificate and a permit from the RCA before construction began. Before service could be provided, the pipeline would have to have an approved tariff on file that would contain a cost-based rate, as well as all of the rules and regulations that govern the terms and conditions that the pipeline service is provided under.

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CO-CHAIR SEATON, in regard to tariff recovery, asked whether the RCA has parameters that cap the amount of recovery on equity.

MR. GOERING responded that the rate-making process involves five elements. The two elements the committee is currently asking about are the rate base, which is the size of the carrier's

investment in its plant and pipeline facilities, and the rate of return; both of which the RCA has jurisdiction to set. It will review the value of the pipeline for rate-making purposes and set that value, as well as setting the return that the pipeline carrier can receive on that rate base. The other elements of the rate-making process involve operating expenses, allowance for taxes, and so forth.

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CO-CHAIR SEATON, noting that under HB 9 the RCA would have no jurisdiction, asked who would set the value of the pipeline for municipal taxation.

MR. GOERING answered that the RCA does not set the value of a pipeline for municipal tax purposes even if it is a common carrier pipeline that is regulated under AS 42.06. Those are really distinct processes and the value of a pipeline for tax purposes is determined through the tax assessment process, which may or may not take into consideration the same factors that the RCA does in setting the rate base. The cost of the facilities is the primary factor for rate-making purposes, although that can be varied somewhat. Principally, he continued, it is based on the original cost of the facility.

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CO-CHAIR SEATON surmised that Mr. Goering is using the term "pipeline valuation" so that that can be a factor in determining the tariff.

MR. GOERING replied yes, there are two parts to the equation, both of which must be known. When setting a rate of return it must be known what it is going to be applied to, so the commission sets the value of the property. The applicable statute, AS 42.06.420, provides that the commission will value the property for the exercise of its jurisdiction and it can take into account new construction, extensions, and additions to the property of the pipeline carrier as those occur, but its principal guidance is from the original cost of the project. Whereas for tax purposes, as has been seen recently, original cost may or may not have much to do with the tax valuation of the pipeline.

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CO-CHAIR SEATON said the committee is trying to find out what the effect is of eliminating RCA jurisdiction on the pipeline. He asked whether there is another entity that would set the tariff rate of return for an in-state pipeline if RCA does not do this.

MR. GOERING responded that unregulated businesses are free to set their own prices however they want, whether that is based on the market or in response to some other force. In the case of a publicly-owned asset, that may be set by legislation or by processes that are set out in regulation. For example, a tariff that is not overseen by a regulatory body is the Alaska Marine Highway system. The marine highway has a tariff and is a common carrier of sorts since it provides transportation services. The assets are owned by the State of Alaska and those rates are set through a process that he is not familiar with, which may or may not be a cost-based process.

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CO-CHAIR SEATON commented that this is helpful in understanding what the effects are of having or not having RCA jurisdiction. In regard to the pipeline section about the ownership of the pipeline and the tariff, he inquired whether there are other aspects of having or not having an RCA-regulated pipeline.

MR. GOERING explained that the Pipeline Act provides a number of provisions related to pipeline carriers. One provision is that a certificated pipeline carrier must have a certificate. If the carrier wanted to expand or extend that line, it would have to come back and get that certificate modified. Any disputes about interconnection with that pipeline could be resolved on the administrative level rather than involving the courts, so an expert tribunal would do that. A lot of things conceptually go with a common carrier, he continued, one being the carrier cannot discriminate in the provision of service. That is fairly important because it means that anybody wanting to ship on the line gets to do so under the same terms and conditions as anybody else that is similarly situated. The RCA has the ability there to allocate usage of a pipeline if there is a dispute about whether somebody should be able to ship. If people want to interconnect with the pipeline, the RCA has the ability to oversee the interconnection process and to help resolve disputes about who should pay for the interconnection and whether the interconnection even should be made. For example, if someone wants to take gas off the line at a particular place for some purpose, whether to serve a utility or

an industrial process or to have a spur line, the commission would be able to oversee it if it is a regulated common carrier pipeline.

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CO-CHAIR SEATON surmised that in this case the AGDC or the owner of the pipeline could determine whether there were going to be disincentive rates; for example, whether gas sold anywhere on the pipeline system would be at a postage-stamp rate or a disincentive rate.

MR. GOERING responded it is difficult to say what the tariff would look like if [AGDC or the owner] were regulated by the RCA because voluminous facts go into a specific rate case. So, he cannot say what kind of rate structure there would be if it were regulated and what would be approved or what concepts would be included. But he can say that if the RCA is not regulating the rates, terms, and conditions of service, it would be up to the pipeline owner to decide what terms and conditions it wanted to offer service under. He supposed the courts would be the remedy for a dispute over whether the offer was consistent with the agreements that the pipeline owner had with the shipper.

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CO-CHAIR SEATON said the committee has been told that the RCA would still regulate the sale of any gas that was transmitted through the pipeline to any consumers in Alaska or utilities. He asked whether that is correct and whether there is a difference if the sale is to an ENSTAR or an electric association or to a company that would be making gas-to-liquids or LNG for export. He further asked where and which of those RCA would still have control over should RCA oversight be eliminated as proposed in HB 9.

MR. GOERING, assuming the bill as written for the purposes of his answer, stated that if AGDC is unregulated the RCA would not set the tariff that AGDC charges. He said he did not know how that would be set, but assumed it would be set by some sort of contract between the shippers and AGDC. If the shipper was a public utility like ENSTAR or Chugach Electric Association, the shipper would likely at the same time be buying gas from one or more producers or gas marketers. Traditionally, those utilities bring their gas sales agreements to the RCA for prior approval. ENSTAR does this because its tariff requires it to do so. Electric utilities do this because they want some measure of

certainty that the price they pay for gas is going to be able to be recovered in their rates. At that point of RCA's review of the gas sales agreement, the gas sales agreement may or may not include transportation costs. Many of the gas sales contracts currently in force in Cook Inlet include transportation bundled into the price of gas, i.e. the utilities are getting gas at a delivered price. It is possible for the utilities to structure their contracts so the transportation tariff is broken out separately or they may buy the gas in one transaction and buy the transportation services in another transaction. How and when the utilities would choose to bring those to the RCA would be somewhat up to them.

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CO-CHAIR SEATON understood the aforementioned would only be if it is a regulated utility buying the gas, not if it is another entity buying the gas.

MR. GOERING answered yes, and added that that would be true for a pipeline carrier that was dealing with an unregulated shipper, even if the pipeline itself was regulated. The transaction of a shipper paying a transportation tariff is not something the RCA is necessarily involved in, nor is the RCA involved in the purchase of the commodity, the natural gas itself, if the ultimate customer is not a regulated utility.

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REPRESENTATIVE GARDNER inquired whether there is any example of a pipeline in the U.S. built under terms similar to those contemplated in HB 9, those terms being the RCA or FERC jurisdiction, exemption from state procurement codes, exemption from injunctive relief from the courts, 60 day time limit on citizen protest of right-of-way issues, no standing for judicial review by anybody who has no direct financial interest, and some of the confidentiality terms.

MR. GOERING replied he is unfamiliar with that because he does not have responsibility for looking at how other states handle their pipelines. However, he continued, that does not mean it does not exist. Alaska is somewhat unique because of its large size and amount of resources and that the state regulates pipelines at the level that it does. He assumed that there are intra-state pipelines in the Lower 48, but said the most significant pipelines in the Lower 48 are inter-state pipelines that are not regulated by the states.

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CO-CHAIR SEATON requested Mr. Goering to contact the committee about any policy issues that should be transmitted to the RCA for answers.

CO-CHAIR SEATON requested Mr. Fauske or Mr. Dubler to respond to the analysis presented by Mr. Pedro van Meurs at a recent Legislative Budget and Audit Committee hearing in Anchorage. [Due to technical difficulties Mr. Fauske and Mr. Dubler were unable to respond.] Co-Chair Seaton subsequently announced that Mr. van Meurs will be in Juneau next week and urged Mr. Fauske and Mr. Dubler to speak to Mr. van Meurs about any questions that that they may have.

CO-CHAIR SEATON held over HB 9 after ascertaining that no one else wished to speak further about the bill.

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ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:30 p.m.