

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 5, 2012

1:33 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Joe Paskvan
Senator John Coghill

MEMBERS ABSENT

Senator Lesil McGuire

OTHER LEGISLATORS PRESENT

Representative Mike Hawker

COMMITTEE CALENDAR

CONFIRMATION HEARINGS

Select Committee on Legislative Ethics

Herman G. Walker - Anchorage

Dennis "Skip" Cook - Fairbanks

- CONFIRMATIONS ADVANCED

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 6(JUD) AM

"An Act authorizing the governor to remove or suspend a member of the Board of Regents of the University of Alaska for good cause; and establishing a procedure for the removal or suspension of a regent."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 215(JUD) AM

"An Act relating to the judicial review of a right-of-way lease or the development or construction of an oil or gas pipeline on state land; and relating to the lease of a right-of-way by the Alaska Housing Finance Corporation for a gas pipeline transportation corridor."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 6

SHORT TITLE: REMOVING A REGENT

SPONSOR(S): REPRESENTATIVE(S) GRUENBERG

01/18/11 (H) PREFILE RELEASED 1/7/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) EDC, JUD
02/11/11 (H) EDC AT 8:00 AM CAPITOL 106
02/11/11 (H) Heard & Held
02/11/11 (H) MINUTE(EDC)
02/21/11 (H) EDC AT 8:00 AM CAPITOL 106
02/21/11 (H) Moved CSHB 6(EDC) Out of Committee
02/21/11 (H) MINUTE(EDC)
02/23/11 (H) EDC RPT CS(EDC) 5DP
02/23/11 (H) DP: P.WILSON, SEATON, KAWASAKI, FEIGE,
DICK
03/21/11 (H) JUD AT 1:00 PM CAPITOL 120
03/21/11 (H) Heard & Held
03/21/11 (H) MINUTE(JUD)
03/23/11 (H) JUD AT 1:00 PM CAPITOL 120
03/23/11 (H) Scheduled But Not Heard
04/04/11 (H) JUD AT 1:00 PM CAPITOL 120
04/04/11 (H) Moved CSHB 6(JUD) Out of Committee
04/04/11 (H) MINUTE(JUD)
04/05/11 (H) JUD RPT CS(JUD) 3DP 1NR 1AM
04/05/11 (H) DP: GRUENBERG, HOLMES, THOMPSON
04/05/11 (H) NR: PRUITT
04/05/11 (H) AM: KELLER
04/11/11 (H) TRANSMITTED TO (S)
04/11/11 (H) VERSION: CSHB 6(JUD) AM
04/12/11 (S) READ THE FIRST TIME - REFERRALS
04/12/11 (S) JUD
03/05/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 215

SHORT TITLE: PIPELINE PROJECT: JUDICIAL REVIEW/ROW

SPONSOR(S): REPRESENTATIVE(S) CHENAULT

03/29/11 (H) READ THE FIRST TIME - REFERRALS
03/29/11 (H) JUD
04/06/11 (H) JUD AT 1:00 PM CAPITOL 120
04/06/11 (H) Heard & Held
04/06/11 (H) MINUTE(JUD)
04/08/11 (H) JUD AT 1:00 PM CAPITOL 120
04/08/11 (H) -- Rescheduled to 4/9/11 @ 12:30 pm --
04/09/11 (H) JUD RPT CS(JUD) NT 5DP 2NR

04/09/11 (H) DP: LYNN, KELLER, THOMPSON, PRUITT,
GATTO
04/09/11 (H) NR: GRUENBERG, HOLMES
04/09/11 (H) JUD AT 12:30 AM CAPITOL 120
04/09/11 (H) -- Rescheduled from 4/8/11 --
04/11/11 (H) TRANSMITTED TO (S)
04/11/11 (H) VERSION: CSHB 215(JUD) AM
04/12/11 (S) READ THE FIRST TIME - REFERRALS
04/12/11 (S) JUD, FIN
03/05/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

REPRESENTATIVE MAX GRUENBERG
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of HB 6.

FULLER A. COWELL, Regent
UA Board of Regents
Anchorage, AK

POSITION STATEMENT: Testified in opposition to HB 6.

CHRIS CHRISTENSON, Associate Vice President
State Relations
University of Alaska (UAA)
Anchorage, AK

POSITION STATEMENT: Discussed the changes the Board of Regents proposed to HB 6.

DENNIS "SKIP" COOK, Appointee
Select Committee on Legislative Ethics
Fairbanks, AK

POSITION STATEMENT: Testified as appointee to the Select Committee on Legislative Ethics.

HERMAN G. WALKER, JR., Appointee
Select Committee on Legislative Ethics
Anchorage, AK

POSITION STATEMENT: Testified as appointee to the Select Committee on Legislative Ethics.

REPRESENTATIVE MIKE CHENAULT
Speaker of the House
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Prime sponsor of HB 215.

TOM WRIGHT, staff
Representative Mike Chenault
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Provided a sectional analysis of HB 215.

JOHN HUTCHINS, Assistant Attorney General
Civil Division
Oil, Gas and Mining Section
Department of Law (DOL)
Juneau, AK

POSITION STATEMENT: Answered questions related to HB 215.

JOE BALASH, Deputy Commissioner
Department of Natural Resources (DNR)
Anchorage, AK

POSITION STATEMENT: Anchorage, AK

DAN FAUSKE, CEO
Alaska Housing Finance Corporation (AHFC) and
President
Alaska Gasline Development Corporation (AGDC)
Anchorage, AK

POSITION STATEMENT: Answered questions related to HB 215.

JOE DUBLER, Vice President and Chief Financial Officer
Alaska Gasline Development Corporation
Anchorage, AK

POSITION STATEMENT: Provided information and answered questions related to HB 215.

ACTION NARRATIVE

[1:33:23 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. He recognized that the committee did not have a quorum due to conflicting meeting obligations at the end of session, but other members were expected. Senator Wielechowski and Chair French were present at the call to order. Senators Coghill and Paskvan joined the committee during the course of the meeting.

HB 6-REMOVING A REGENT

[1:34:02 PM](#)

CHAIR FRENCH announced the consideration of HB 6. He noted that the committee did not have a quorum and would take no action on the legislation.

1:34:33 PM

REPRESENTATIVE MAX GRUENBERG, sponsor of HB 6, stated that the bill is in response to an incident several years in which a member of the University of Alaska (UA) Board of Regents was indicted and subsequently convicted of a felony. The board found that other than the impeachment process, it did not have a procedure to remove or suspend the member. This is potentially a serious problem if the Board of Regents needs a full quorum, he said.

REPRESENTATIVE GRUENBERG explained that Section 1 pertains to legislative findings and purposes and indicates why establishing this procedure is important and also constitutional. Section 2 adds a new section .155 to AS 14.40 laying out the procedure for the governor to either suspend or remove a regent. It is patterned after the statutory removal procedures for certain other boards. Section 3 - the applicability section - stipulates that the bill applies to all conduct that occurs before, on, or after the effective date.

1:41:32 PM

CHAIR FRENCH asked the sponsor to summarize the two legal memorandums in the bill packet. One was dated April 17, 2007 from Jean Mischel, Legislative Counsel with Legal and Research Services, and the other was dated February 2, 2007 from Assistant Attorney General Michael Barnhill with the Department of Law (DOL).

REPRESENTATIVE GRUENBERG reviewed the Department of Law response to the question of whether the governor has the authority to remove a member of the UA Board of Regents without cause. Mr. Barnhill's answer was no. He acknowledged that legislative counsel concluded that regents serve at the pleasure of the governor and may be removed at any time, and University of Alaska counsel concluded that a regent may be removed only through impeachment by the Legislature.

CHAIR FRENCH asked the sponsor if he crafted the bill in response to the idea that there had to be good cause for removing a regent.

REPRESENTATIVE GRUENBERG replied he absolutely did.

He reviewed the Legislative Legal Services' response to the question. Ms. Mischel's answer was yes; the governor has the general authority to remove a regent absent cause. She cited the constitutional authority under Article VII, sec 3 and Article III, sec. 26.

REPRESENTATIVE GRUENBERG offered his opinion that even if the Board of Regents were to bring a constitutional challenge, a judge would likely favor the process that the bill establishes, particularly since the board has for years failed to act. He asked the record to reflect that the House Judiciary Standing Committee received no response when it informed the Board of Regents that it was considering this kind of legislation. He maintained that HB 6 will avert a potential crisis and ensure that the board can function at full strength.

[1:46:57 PM](#)

CHAIR FRENCH asked if there was opposition in the House to this particular bill.

REPRESENTATIVE GRUENBERG responded that HB 6 passed unanimously in the House.

[1:48:47 PM](#)

FULLER A. COWELL, Regent, UA Board of Regents, Anchorage, AK, testified in opposition to HB 6. He said the constitution provides impeachment as the method for removing a regent from office and that has served the university well in its near 100-year history. In fact, there has been just one case where a regent did not resign immediately when there was a controversy. In that instance, the regent's attorney advised him not to resign, because it might indicate guilt. The board has 11 members so even in that case it was able to operate effectively and govern the university.

MR. COWELL informed the committee that the board was in the process of changing its bylaws to facilitate recommending impeachment when a majority of the members believes it is appropriate. He noted that although the board opposes HB 6, the university discussed with the sponsor several changes to the bill if it does move forward, he said.

[1:51:34 PM](#)

CHRIS CHRISTENSON, Associate Vice President, State Relations, University of Alaska (UAA), said he was prepared to discuss the changes the Board of Regents propose if the committee were to decide to move the bill forward.

CHAIR FRENCH questioned the efficiency of relying on the impeachment process to remove a regent. If an issue came up during the Interim, the Legislature would either have to call itself into special session for an impeachment process or wait until the next 90-day Session to take up the matter.

MR. CHRISTENSON replied the board believes that the founders intended the procedure to be impeachment only. Giving the power to anyone else potentially politicizes the Board of Regents and the university in the process. He reiterated that the current process works well and the board's ability to govern is not affected if one member is missing. He highlighted that after the controversy arose in 2007, that regent did not attend meetings or vote. He did not resign because his attorney advised that it would look like an admission of guilt. That was to no damage to the university, he stated.

CHAIR FRENCH offered his perspective that it was damaging and embarrassing to the university to have a regent under indictment for embezzlement among other things. The issue dragged on a long time and he was identified as a regent in every news report.

MR. CHRISTENSON responded that it was no more embarrassing than when so many legislators were indicted. The Legislature continued to function and it, too, had the ability to impeach those members.

[1:55:43 PM](#)

MR. CHRISTENSON reviewed the provisions in HB 6 that were of particular concern to the Board of Regents. First, the regents request the removal of Section 1. It suggests the board has the power to do something it has not done and that is why the bill is necessary. AS 14.40.170(b)(1) is cited as granting the authority, but the language is very vague. What the statute essentially does is give the board the authority to regulate its internal operation as a board, which is very different from the explicit authority to remove a constitutional officer. This would override the will of the governor who appointed the regent and the will of the legislature that confirmed him or her.

CHAIR FRENCH asked if he would draw a distinction between the words "remove" and "suspend" or if both were problematic.

MR. CHRISTENSON replied both are problematic because in both instances someone is prevented from doing the job they were appointed and confirmed to do. In essence, the board is

substituting its own political judgment without an explicit grant of statutory or constitutional authority.

The second concern relates to Section 2. The new Sec. 14.40.155(a) lays out the conditions under which a governor may suspend a regent, and all but the provision in paragraph (4) are based on proceedings by an independent entity. Paragraph (4) does not belong because it involves a verified complaint of malfeasance or nonfeasance in office under consideration by the governor. In this case the governor could immediately remove the regent without waiting for another entity to act so there is no reason to suspend. He continued that the provision is even more problematic because of its subjectivity and the fact that it may or may not be politically motivated. The regents suggest establishing a process that would be more difficult to manipulate politically, and specifically request removal of paragraph (4).

Finally, the regents request that the language in the new Sec. 14.40.155(a)(5) be tightened to apply to a formal allegation or charge by a professional or occupational licensing body alleging or finding a violation of relevant licensing statutes.

[2:00:49 PM](#)

SENATOR PASKVAN joined the committee.

CHAIR FRENCH asked the sponsor if he would like to comment on the testimony from Mr. Cowell and Mr. Christensen.

[2:01:23 PM](#)

REPRESENTATIVE GRUENBERG offered to work with Mr. Christenson to resolve the problems. He then suggested inserting a statement in the bill that these procedures were in addition to the impeachment procedure.

CHAIR FRENCH responded that would be redundant because the impeachment proceedings are in the constitution and nobody would presuppose that they had been done away with.

REPRESENTATIVE GRUENBERG said he did not agree with the second suggestion to remove Sec. 14.40.155(a)(4) regarding a verified complaint.

CHAIR FRENCH asked if an email to the governor would be sufficient to be a verified complaint.

REPRESENTATIVE GRUENBERG said no it would be a formal, sworn document.

CHAIR FRENCH suggested he consider changing the term "verified" to "sworn" if his intention was to require a sworn statement.

[2:04:54 PM](#)

SENATOR COGHILL joined the committee.

REPRESENTATIVE GRUENBERG indicated he would like to have a new CS drafted and would try to find accommodation wherever possible.

CHAIR FRENCH said he liked the idea of the bill but had some questions about constitutionality.

HB 6 was held in committee.

CONFIRMATION HEARINGS: SELECT COMMITTEE ON LEGISLATIVE ETHICS

[2:08:08 PM](#)

CHAIR FRENCH announced the next order of business would be confirmation hearings for the Select Committee on Legislative Ethics. He noted that the committee had a quorum.

He asked Mr. Cook to tell the committee why he wanted to continue serving on the Select Committee on Legislative Ethics.

[2:08:21 PM](#)

DENNIS "Skip" COOK, appointee, Select Committee on Legislative Ethics, Fairbanks, AK, said he has served on the committee since 1998 and would be happy to serve for another term. It's an honor to be on the committee and deal with the matters that come before it, he stated.

CHAIR FRENCH thanked Mr. Cook for his length of service in what can be a very contentious area.

SENATOR COGHILL said he appreciates that Mr. Cook is able to see things beyond the lawyer mindset; he brings significant history to understanding the ethics laws as they have changed over the years.

[2:10:34 PM](#)

SENATOR PASKVAN described Mr. Cook an excellent candidate and stated support for another term of service.

CHAIR FRENCH reviewed Mr. Cook's resume and noted that he was valedictorian of the Fairbanks High School in 1958.

[2:11:27 PM](#)

SENATOR WIELECHOWSKI moved to forward the name Dennis "Skip" Cook to the full Senate for consideration with the understanding that this does not reflect intent by any member to vote for or against the confirmation.

CHAIR FRENCH announced that without objection Mr. Cook's name would be forwarded to the full Senate for consideration.

[2:12:21 PM](#)

CHAIR FRENCH brought the confirmation of Mr. Walker before the committee.

[2:12:28 PM](#)

HERMAN G. WALKER, JR., appointee, Select Committee on Legislative Ethics, Anchorage, AK, said he was honored that Chief Justice Carpeneti asked him to submit his name for another term. He has served since 2002 and brings historical knowledge of the committee and the issues it deals with.

CHAIR FRENCH commented that 10 years of service is significant and both the committee and community win when a member is willing to devote this amount of time. He thanked Mr. Walker for his service.

SENATOR COGHILL thanked Mr. Walker for being willing to serve another term and expressed appreciation that he is always willing to listen to complaints from the legislative perspective.

[2:15:09 PM](#)

SENATOR WIELECHOWSKI moved to forward the name Herman G. Walker Jr. to the full Senate for consideration with the understanding that this does not reflect intent by any member to vote for or against the confirmation.

CHAIR FRENCH CHAIR FRENCH announced that without objection Mr. Walker's name would be forwarded to the full Senate for consideration.

[2:15:34 PM](#)

At ease.

HB 215-PIPELINE PROJECT: JUDICIAL REVIEW/ROW

2:16:18 PM

CHAIR FRENCH announced the consideration of HB 215 and asked for a motion to adopt the Senate committee substitute, version X.

2:16:43 PM

SENATOR PASKVAN moved to bring Senate CS for CSHB 215, labeled 27-LS0741\X, before the committee for purposes of discussion.

CHAIR FRENCH found no objection and recognized the sponsor, Representative Mike Chenault, Speaker of the House.

2:17:00 PM

REPRESENTATIVE MIKE CHENAULT, Speaker of the House of Representatives and prime sponsor of HB 215, read the following sponsor statement into the record: [Original punctuation provided.]

The objective of House Bill 215 is to prohibit the filing of lawsuits that have the potential to delay construction of in-state gaslines. The provisions under House Bill 215 modify current statute and the provisions only apply to state land rights-of-way. Claims may be filed only by an applicant, a competing applicant of a person who has a direct financial interest affected by the lease of a right-of-way. The requests for judicial review must be filed within 60 days of the publication of notice for a right-of-way lease application. Judicial review may only be granted for claims challenging the validity of the statute or challenging a denial of rights under the state constitution. Any claim will be barred unless it is filed within the 60-day time frame. The Department of Environmental Conservation, under the Clean Water and Clean Air Acts, is exempted from the provisions pertaining to judicial review.

All claims are to be filed in Alaska Superior Court, which will have exclusive jurisdiction to determine the proceeding. The court will not have the jurisdiction to grant any injunctive relief with the exception of an issuance of a final judgment.

The legislation is modeled after the Trans-Alaska Pipeline legislation, 43 USC, Chapter 34, that was adopted by Congress in 1973 (43 USC, Chapter 43, Sec. 1652 (d)). Similar legislation to House Bill 215 was

passed by the Alaska State Legislature in 1973, Senate Bill 3, related to the TAPS line.

The bill also allows the Alaska Gasline Development Authority (AGDC) to move from a common carrier requirement to a contract carrier option. This change is necessary to pursue a successful open season and project financing for an in-state gasline.

[2:19:56 PM](#)

TOM WRIGHT, staff, Representative Mike Chenault, explained that version X reflects some of the changes that the House Resources Committee made to HB 9 and changes some provisions in HB 215 so that it only applies to the AGDC in-state line. This was done by adding new subsections that apply only to AGDC.

[2:21:37 PM](#)

CHAIR FRENCH asked how much overlap there was between HB 9 and HB 215, version X, and if both were necessary to accomplish the sponsors' purposes.

MR. WRIGHT replied three House bills that are currently residing in the Senate were incorporated into HB 9. These are HB 189 dealing with confidentiality agreements, HB 203 that establishes the in-state gas pipeline fund, and HB 215. If and when those bills advance, they will be removed from HB 9. He noted that HB 9 also contains other recommendations that AGDC and the sponsors felt was necessary.

CHAIR FRENCH asked him to confirm that none of the bills had a Senate analog.

MR. WRIGHT confirmed there were no analogs.

CHAIR FRENCH highlighted that this was the first hearing and asked Mr. Wright to proceed as he saw fit.

[2:22:59 PM](#)

MR. WRIGHT provided a sectional analysis of HB 215.

Section 1 amends AS 38.34.050(c), Cooperation and access to information. It adds language that excludes covenants found in AS 38.35.120[(a)(1), (2) and (5) from the covenants required to be included in the lease.] It exempts the AGDC line from being a common carrier. The ability to be a contract carrier will work to the advantage of shippers and buyers.

SENATOR PASKVAN asked what transitioning to contract carrier might do with gas from Nenana or the Yukon Flats if it were discovered in the next three years, for example.

MR. WRIGHT mentioned the 500 mcf/day limitation under AGIA and confirmed that there had been discussions with Doyon and Anadarko about transporting gas on an in-state line. He then deferred the question Mr. Fauske or Mr. Dubler with AGDC.

Section 2 amends AS 38.35.100(d), Decision on application. Section 3 amends AS 38.35.120(a), Covenants required to be included in lease. Section 4 amends AS 38.35.120(b), Covenants required to be included in lease. These sections have conforming changes and include clarifications and simplification of language requested by the Department of Law (DOL).

Section 5 amends AS 38.35.200, Judicial review of decisions of commissioner on application. The current version X narrows the application by adding new subsections. The new subsection (c) only applies to the in-state gas pipeline. It allows a competing applicant or person with a direct financial interest affected by the lease of a right-of-way to raise an objection within 60 days of the application or 60 days after the effective date, and it allows an applicant standing to seek judicial review anytime in the process. This is modeled after the Trans-Alaska Pipeline Authorization Act. Only those who have standing are allowed to bring an action alleging that an action will deny rights under the state constitution or challenging the validity of the section. The complaint has to be filed in a state superior court and the court may not grant injunctive relief with the exception of a final judgment. It also exempts an appeal of a permitting decision by the Department of Environmental Conservation under AS 46.03 and AS 46.14 that is delegated to the department by the U.S. Environmental Protection Agency. He noted that DEC intends to offer several clarifying changes.

Section 6 amends the uncodified law by adding a new section for transition and legislative intent. It says that if a right-of-way lease is entered into before the bill passes, the contract that was signed for the lease can be amended as soon as practicable to reflect changes made in this legislation.

[2:28:32 PM](#)

CHAIR FRENCH reviewed the language in Section 6 and summarized that a contract put in place before the bill passes can be conformed to what is contained in this bill.

MR. WRIGHT agreed.

SENATOR WIELECHOWSKI asked for an explanation of the specific covenants in AS 38.35.120(a)(1), (2), and (5) that were excluded in Section 2.

MR. WRIGHT deferred to Mr. Hutchins with the Department of Law (DOL).

[2:30:45 PM](#)

SENATOR PASKVAN asked if the AGIA statutes had a provision that was comparable to the judicial review in Section 5.

MR. WRIGHT replied the sponsors indicated they couldn't recall one way of the other.

[2:31:39 PM](#)

JOHN HUTCHINS, Assistant Attorney General, Civil Division, Oil, Gas and Mining Section, Department of Law (DOL), addressed Senator Wielechowski's question. He explained that the covenant in AS 38.35.120(a)(1) requires the lessee to become a common carrier. It allows the state, through contract with the lessee, to impose common carrier regulations on the lessee.

SENATOR WIELECHOWSKI asked for an explanation of the significance of common carrier from the standpoint of the state.

MR. HUTCHINS replied a common carrier designation means the operator of the pipeline is required to accept, on non-discriminatory terms, any gas that is submitted for shipment on the line. The practice in the gas industry is that a line that is not a common carrier is a contract carrier. As a rule there is an open season and contracts are entered into for shipment of defined quantities of gas at defined terms.

SENATOR WIELECHOWSKI asked if the bill would require the lessee to be a common carrier.

MR. HUTCHINS clarified that the bill would allow the lessee to operate the line without being a common carrier. As a rule, pipelines in Alaska are required to operate as common carriers if they have a lease under AS 38.35 over state land.

SENATOR WIELECHOWSKI questioned why the state would want to grant this exemption.

MR. HUTCHINS replied it is a policy question for AGDC to address, but in general, it is an issue of how the line can best be filled.

CHAIR FRENCH asked if he was generally saying that a pipeline that has a right-of-way across state land has to be a common carrier, and the paragraph (1) exemption is because AGDC has a business case interest for needing to be a contract carrier.

MR. HUTCHINS said yes.

CHAIR FRENCH asked for an explanation of the exemption in paragraph (2).

MR. HUTCHINS said all the exemptions are related to common carrier. Paragraph (2) is agreement by the lessee to interchange gas, providing interconnections as necessary. This would support the role as a common carrier. If someone is required to take gas that is offered on non-discriminatory terms, it is also important to have a means to allow connections to a line to enable the shipment of that gas.

CHAIR FRENCH asked the meaning of the word "interchange."

MR. HUTCHINS replied he understands it to mean trade.

2:35:48 PM

CHAIR FRENCH recognized that Representative Hawker was present.

SENATOR WIELECHOWSKI asked for a layman's explanation of what covenant in AS 38.35.120(a)(2) would be exempted.

MR. HUTCHINS replied it says AGDC does not have to accept, transport, and allow a gas supplier to use the line to trade with a gas purchaser gas over the line.

SENATOR WIELECHOWSKI asked for an example of how that works under current law.

MR. HUTCHINS offered a hypothetical example of an oil discovery in a new field on the North Slope by an explorer that was not an owner of the Trans-Alaska pipeline. That explorer is allowed to submit that oil for transportation on TAPS if it meets the quality requirements of TAPS and pays the tariff set by the RCA. If that's done, TAPS is required to accept that oil for transport.

SENATOR WIELECHOWSKI said he was still trying to understand what was being exempted.

CHAIR FRENCH asked Mr. Balash to supplement the explanation.

2:38:30 PM

JOE BALASH, Deputy Commissioner, Department of Natural Resources (DNR), provided an explanation of the covenants under AS 38.35.120(a). The covenant under subsection (a)(1) goes to rates and charges associated with pipeline costs and fees. Subsection (a)(2) speaks to the interconnections that apply to multiple pipelines that connect with one another. The policy call made by the Legislature through this statute was to minimize the number of pipelines required to cross state land. Hopefully this achieves some efficiency in the economics as well as minimizing the environmental footprint, he said. For example, the Kuparuk pipeline connects to the TAPS facilities. He said he wasn't aware of a specific example for a gas pipeline, but there were perhaps two each in Cook Inlet and the North Slope.

CHAIR FRENCH said he was thinking about Beluga and Tyonek.

MR. BALASH pointed out that a number of those pipelines were constructed before AS 38.35 was adopted, so a number of the gas pipelines in Cook Inlet are not bound by that statute.

SENATOR PASKVAN offered his interpretation of subsection (a)(2). Subsection (a) says the pipeline has to accept it because it is a common carrier and the rates have to be fair. Paragraph (2) says the pipeline has to provide connections and facilities at every location where they intersect, and that's what "interchange" means.

MR. BALASH said that's right, and read together it gives the whole picture of what the covenants mean.

SENATOR WIELECHOWSKI questioned why it would be in the consumers' interest for AGDC not to be a common carrier, because it would seem to be good for the consumer to require them to take in any gas. He asked for an explanation of the policy.

MR. BALASH opined that the question in this case is whether or not the consumer will get the service. In the natural gas pipeline business, particularly a long haul pipeline such as being contemplated by AGDC, financing depends on the ability to enter into firm transportation agreements. The common carrier requirement that has developed in Alaska is one that requires a

pipeline to provide service on demand, as opposed to on contract. Because of that requirement, a shipper may not be able to count on getting their product delivered from point A to point B. He opined that there is a need to address that constraint, because AGDC has undertaken the covenant in AS 38.35.120 through the right-of-way that was granted in July 2011.

[2:42:13 PM](#)

SENATOR COGHILL asked if this contemplates that long-term contracts will be necessary, that the line will be full for an extended period, and that any new exploration will be thwarted, but could stand in line.

MR. BALASH suggested he pose the question to AGDC because the issue as to whether or not others may be able to gain access to the pipeline will depend on the business model employed and the contracts signed.

SENATOR COGHILL indicated he wanted to proceed with caution.

[2:43:43 PM](#)

MR. BALASH continued to explain that subsection (a)(5) relates to the means of providing for offtake at a wholesale level along the pipeline route. For example, if the pipeline goes through Fairbanks, Senator Paskvan will not have a separate contract with the carrier to get gas for his home and businesses; it will go through the local utility.

CHAIR FRENCH asked if he was saying that subsection (a)(5) requires going through a local utility and that the bill exempts that requirement.

MR. BALASH said no, and clarified that it relates to offtake points along the pipeline as determined [by the Regulatory Commission of Alaska (RCA)] under AS 42.06.340, which is the Pipeline Act.

SENATOR WIELECHOWSKI asked if the result of this particular exemption would be to remove RCA regulation over the pipeline in this section.

MR. BALASH replied he didn't believe that was the case; rather, it was just with regard to this specific reference in this bill.

[2:45:18 PM](#)

SENATOR PASKVAN questioned whether, under this provision, there would be no obligation to provide a connection at Fairbanks if the first open season is contracted with export only and the pipeline is at capacity.

MR. BALASH expressed uncertainty about that, because a project with a significant export component would already be exempt from the common carrier requirements.

[2:46:36 PM](#)

At ease from 2:46:36 p.m. to 2:47:10 p.m.

MR. BALASH directed attention to AS 38.35.120(a)(1)(A) and the current CS, version X, on page 3, lines 8-14. That language exempts a lessee that owns or operates a natural gas pipeline from the common carrier requirement. In Senator Paskvan's hypothetical, RCA would be preempted by the Federal Energy Regulatory Commission (FERC).

CHAIR FRENCH asked if subsection (a)(7) provides exemption from RCA and puts regulatory authority under FERC.

MR. BALASH agreed FERC jurisdiction would apply if it is granted under the natural gas act.

CHAIR FRENCH summarized that FERC jurisdiction would apply for exported gas, and Mr. Balash agreed.

He asked if the in-state portion of the gas would be exempt from RCA.

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MR. HUTCHINS confirmed that the in-state portion of the gas is exempted from the common carrier regulation. The Pipeline Act establishes that the RCA regulates common carriers and sets a tariff, but it is not set up to price regulate a contract carrier. He offered his understanding that the sponsors were considering adding conceptual amendments to HB 215 to allow a mechanism for contract carrier price regulation by the RCA. He continued that this specific provision, covenant (7), does remove the agreement by the lessee to submit to RCA regulation of tariffs in this context.

MR. BALASH clarified that the bill does not exempt the Pipeline Act, AS 42.06; the lessee's obligation to submit to regulation under AS 42.06 is what is being exempted.

SENATOR WIELECHOWSKI asked how tariffs would be calculated.

MR. HUTCHINS explained the open season process.

CHAIR FRENCH posed a hypothetical example where ENSTAR contracted to get gas from the North Slope.

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MR. HUTCHINS confirmed the contract would be with AGDC or whatever entity owned the pipeline.

CHAIR FRENCH asked if it was fair to say that, at this point, it was unclear who would own the pipeline.

MR. BALASH responded that the legislation specifically refers to a right-of-way owned by AGDC.

SENATOR WIELECHOWSKI questioned whether it wouldn't be good for consumers if there was a mechanism like RCA to sideboard what tariff could be charged.

MR. BALASH agreed that was a policy decision, but the fact that AGDC is a state corporation offers some natural protections.

SENATOR WIELECHOWSKI asked if the bill provides some protection in the event that AGDC no longer owns the line

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MR. BALASH deferred the question.

MR. HUTCHINS said that the transfer of the right-of-way requires the approval of the commissioner under AS 38.35.120(a)(9).

SENATOR WIELECHOWSKI asked if some sort of consumer protection conditions would be set on the rates if AGDC transferred the pipeline to ENSTAR, for example.

MR. HUTCHINS replied absent some other regulation, HB 215 would allow ENSTAR to enter into negotiations for transport of gas and would not restrict the contracts ENSTAR might enter into.

MR. WRIGHT suggested that Mr. Dubler and Mr. Fauske address some of the committee's questions.

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DAN FAUSKE, CEO, Alaska Housing Finance Corporation (AHFC) and President, Alaska Gasline Development Corporation (AGDC), introduced himself.

JOE DUBLER, Vice President and Chief Financial Officer, Alaska Gasline Development Corporation, introduced himself.

MR. FAUSKE addressed the contract carrier issues reminding the committee that financing is envisioned through the sale of revenue bonds and that the line is limited to 500 mcf/day. He mentioned discussions with Doyon, Limited regarding their Nenana Basin field and noted that it resides below the 68th parallel.

CHAIR FRENCH clarified that someone could build a larger gas pipeline from the North Slope, it just wouldn't qualify for preferential state support that was granted to the AGIA licensee.

MR. FAUSKE agreed.

SENATOR WIELECHOWSKI asked if he had a legal opinion about whether or not it would violate AGIA to bring 500 mcf/day of gas from the North Slope and an equal amount off the flats from Doyon, Limited.

MR DUBLER replied they did not solicit a legal opinion because the law is very clear that AGIA only applies above the 68th parallel, and the foothills is well south of that.

MR. FAUSKE highlighted that similar discussions took place in reference to potential findings in Cook Inlet. AGDC envisions a commercial entity at the end of the line to make the tariffs affordable to Alaskans. Judging from a confidential, non-binding expression of interest meeting in July 2011, the line will be at full capacity. That is critically important for Alaskan consumers.

He continued to discuss the tariff issue. Front end loaded (FEL) 1 has been completed and after stage 3 the project will or will not be sanctioned. He spoke in support of the independent project analysis (IPA) on mega projects because the project can be halted anytime it doesn't make economic sense. He continued that the costs were currently plus or minus 30 percent on the \$7.5 billion project and the goal at sanction was to be at plus or minus 10 percent. Under the current analysis the tariff for Fairbanks would be about \$10.33/mcf, whereas the cost now is \$23.33/mcf. The tariff for Anchorage is estimated to be

\$9.63/mcf. He discussed straddle plants in both locations and the difference in cost due to economies of scale. He noted that the tariff estimates were based on a 70/30 debt-equity ratio.

MR. FAUSKE stated that he wanted the record to reflect that the only money being contemplated by the state for this \$7.5 billion project is \$400 million to get to FEL 3. Beyond that point financing will be through the sale of revenue bonds. He highlighted that that goes back to the contract carrier issue in order to get financing. It would be impossible to finance the project under common carrier requirements because investors and/or companies would not be willing to risk that things could change at any time.

CHAIR FRENCH held HB 215 in committee.

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There being no further business to come before the committee, Chair French adjourned the meeting at 3:05 p.m.