

HOUSE FINANCE COMMITTEE
March 29, 2013
2:01 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 2:01 p.m.

MEMBERS PRESENT

Representative Alan Austerman, Co-Chair
Representative Bill Stoltze, Co-Chair
Representative Mark Neuman, Vice-Chair
Representative Mia Costello
Representative Bryce Edgmon
Representative Les Gara
Representative Lindsey Holmes
Representative Scott Kawasaki, Alternate
Representative Cathy Munoz
Representative Steve Thompson
Representative Tammie Wilson

MEMBERS ABSENT

Representative David Guttenberg

ALSO PRESENT

Representative Mike Hawker; Former Representative Gene Kubina; Joe Michel, Staff, Representative Bill Stoltze; Cory Mills, Legislative Liaison, Department of Law; Joe Dubler, Vice President and Chief Financial Officer, Alaska Gasline Development Corporation and Director of Finance, Alaska Housing Finance Corporation, Department of Revenue.

PRESENT VIA TELECONFERENCE

Bonnie Harris, Civil Division, Oil, Gas and Mining Section, Department of Law; Stuart Goering, Civil Division, Commercial and Fair Business Section, Department of Law.

SUMMARY

HB 4 IN-STATE GASLINE DEVELOPMENT CORP

HB 4 was HEARD and HELD in committee for further consideration.

#hb4

HOUSE BILL NO. 4

"An Act relating to the Alaska Gasline Development Corporation; making the Alaska Gasline Development Corporation, a subsidiary of the Alaska Housing Finance Corporation, an independent public corporation of the state; establishing and relating to the in-state natural gas pipeline fund; making certain information provided to or by the Alaska Gasline Development Corporation exempt from inspection as a public record; relating to the Joint In-State Gasline Development Team; relating to the Alaska Housing Finance Corporation; relating to judicial review of a right-of-way lease or an action or decision related to the development or construction of an oil or gas pipeline on state land; relating to the lease of a right-of-way for a gas pipeline transportation corridor, including a corridor for a natural gas pipeline that is a contract carrier; relating to the cost of natural resources, permits, and leases provided to the Alaska Gasline Development Corporation; relating to procurement by the Alaska Gasline Development Corporation; relating to the review by the Regulatory Commission of Alaska of natural gas transportation contracts; relating to the regulation by the Regulatory Commission of Alaska of an in-state natural gas pipeline project developed by the Alaska Gasline Development Corporation; relating to the regulation by the Regulatory Commission of Alaska of an in-state natural gas pipeline that provides transportation by contract carriage; relating to the Alaska Natural Gas Development Authority; relating to the procurement of certain services by the Alaska Natural Gas Development Authority; exempting property of a project developed by the Alaska Gasline Development Corporation from property taxes before the commencement of commercial operations; and providing for an effective date."

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Co-Chair Stoltze noted that the bill before the committee had one amendment. He noted that the revised amendment deleted a reference to the "days of notification."

Co-Chair Stoltze MOVED Amendment One 28-LS0021\R.8, Bullock, 3/29/13. Representative Holmes OBJECTED for discussion.

Page 4, line 23, following "state":

Insert ", except that the commissioner of natural resources and the commissioner of revenue may not be designated to serve on the board unless the project for which a license is issued under AS 43.90 has been abandoned or is no longer receiving the inducements in AS 43.90.110(a) or the commissioner of natural resources and the commissioner of revenue are no longer signatories on a valid contract under AS 43.90."

Page 12, lines 14 - 20:

Delete "The conduct of and results from field studies and other technical information; trade secrets; and information that discloses the particulars of a business or the affairs of a private enterprise, investor, advisor, consultant, counsel, or manager developed or obtained by the corporation relating to the development, financing, construction, or operation of an in-state natural gas pipeline project by the corporation that, if disclosed, could cause commercial or competitive harm or damage are confidential and not subject to AS 40.25.110."

Insert "Information and trade secrets of the corporation are confidential and not subject to AS 40.25 if the corporation determines that disclosure would cause commercial or competitive harm or damage to the corporation. Information that discloses the particulars of a business or the affairs of a private enterprise, investor, advisor, consultant, counsel, or manager that is developed or obtained by the corporation and related to the development, financing, construction, or operation of an in-state natural gas pipeline project by the corporation is confidential and not subject to AS 40.25."

Page 38, line 29, following "state;":

Insert "and"

Page 39, lines 4 - 6:

Delete "; and

(7) order an expansion of an in-state natural gas pipeline or order an open season under the terms provided for an expansion or open season in this chapter"

Page 39, line 17:

Delete "90"

Insert "30"

Page 43, line 14:

Delete "an approved"

Insert "a"

Page 43, line 15, following "parties":

Insert ", and the formation of the precedent agreement or related contract was not affected by unlawful market activity or unfair dealing as described in (b)(1) of this section"

JOE MICHEL, STAFF, REPRESENTATIVE BILL STOLTZE, explained the revised amendment. He began with page 4, line 23 following the word "state" insert, "except that the commissioner of natural resources and the commissioner of revenue may not be designated to serve on the board unless the project for which a license is issued under AS 43.90 has been abandoned or is no longer receiving the inducement under or the commissioner of natural resources and the commissioner of revenue are no longer signatories on a valid contract under AS 43.90."

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Mr. Michel noted the next change shown on page 12, lines 14-20. He stated that the language was deleted beginning on line 14, page 12. New language was inserted stating "information and trade secrets of the corporation were confidential and not subject to AS 40.25 if the corporation determined that disclosure would cause commercial or competitive harm or damage to the corporation." Information that disclosed the particulars of a business or the affairs of a private enterprise, investor, advisor, consultant council or manager that was developed or obtained by the corporation and related to the development, financing, construction or operation of an instate natural gas

pipeline project by the corporation was confidential and not subject to AS 40.25.

Mr. Michel discussed the next change on page 38, line 29 including a drafting correction; insert the word "and." The next change seen on page 39 lines 4-6 deleted "and" and inserted "order and expansion of an instate natural gas pipeline or an open season under the terms provided for an expansion or open season in this chapter."

Representative Holmes understood that similar language was added on page 38 lines 9-11. She assumed that the language was deleted. Mr. Michel concurred and apologized. She noted that the language was also included on page 39 of the CS, lines 5 and 6. She assumed that the language on line 39 was eliminated because it was duplicative.

CORY MILLS, LEGISLATIVE LIAISON, DEPARTMENT OF LAW, agreed with Representative Holmes' assessment.

Mr. Michel continued with page 39, line 17 where the number 90 was deleted and the number 30 was inserted. He noted that page 43 the words "an approved" were removed and the letter "a" was inserted.

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Mr. Michel concluded with page 43, line 15, following "parties" the language "and the formation of the precedent agreement or related contract was not affected by unlawful market activity or unfair dealing as described in (b)(1) of this section" was inserted.

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Representative Gara asked about the amendment allowing for an expansion of the gas pipeline and its potential conflict with the Alaska Gasline Inducement Act (AGIA) mandate that the state not exceed a 0.5 BCF pipeline.

Ms. Mills recommended posing the question to Bonnie Harris who served as an advisor to AGIA.

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BONNIE HARRIS, CIVIL DIVISION, OIL, GAS AND MINING SECTION, DEPARTMENT OF LAW (via teleconference), stated that the

language regarding expansion of a pipeline was intended to bind non-competition terms with AGIA's limitations. She noted that clarifying language might be indicated, but she opined that the CS expressed the intent correctly.

Representative Gara recalled a discussion regarding the extension of the Regulatory Commission of Alaska (RCA). The discussion focused on potential that a party might withhold information, preventing the RCA from issuing their decision in a timely manner.

Ms. Mills believed that the language could be found in 42.05 of the CS. She deferred the question to Mr. Goering from the RCA.

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STUART GOERING, CIVIL DIVISION, COMMERCIAL AND FAIR BUSINESS SECTION, DEPARTMENT OF LAW (via teleconference), stated that the information sought by Representative Gara was found in AS 42.05.433, which clarified the ability to extend time for review of "related contracts" if the party submitting them had not furnished adequate information. He mentioned a provision in the contract carriage certificate language in AS 42.08.330(b), page 44 that allowed the commission to extend the review period for the duration of the delay caused by the failure of the applicant to provide additional information reasonably required by the commission.

Representative Gara asked about page 44, line 21. He asked if the language in the CS required an RCA finding that the pipeline be "in the public convenience and necessity."

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Mr. Goering stated yes. The finding was required for applicants other than Alaska Gasline Development Corporation (AGDC). He noted that AS 42.08.020, beginning on page 36 of the CS allowed that if AGDC was the applicant, the public convenience and necessity required the pipeline. He stated that AS 42.08.330 applied to all other applicants. The applicant must demonstrate public convenience and necessity in order to receive the certificate.

Representative Gara posed hypothetically that AGDC retained a role but contracted with another company to build and operate a pipeline. He asked which provision would apply in the situation.

Mr. Goering replied that the exact structure of the business would determine the answer. He explained that AS 42.08.020 would apply if AGDC was the applicant for the certificate with a hypothetical contract to operate the pipeline. If another entity applied for the certificate, AS 42.08.330 would apply and the application would require a showing that the proposed service was in the public convenience and necessity.

Representative Gara asked about the CS. He understood that an AGDC pipeline was eligible for two possible sources of funds: the reserve fund and bonding. He wondered if money from the reserve fund was not subject to the moral obligation of the state, but bonding would incur state responsibility for moral obligation.

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Co-Chair Stoltze stated that he would revisit the question following adoption of the amendment.

Representative Holmes addressed language on page 38, lines 9-11 regarding an RCA expansion. She noted that Representative Gara had inquired whether the expansion was constrained by the AGIA license. She believed that any expansion would have to be in accordance with the chapter. She added that AS 42.08.300 limited any expansion in conflict with AGIA.

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Representative Holmes WITHDREW her OBJECTION. Amendment one was ADOPTED.

Co-Chair Stoltze noted a discussion about legislative approval. He did not want legislative approval to provide hindrance or handicap. He hoped that legislative approval could be triggered by events. He requested that proposed amendments address constitutional or legislative prerogatives.

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Representative Holmes asked about legislative oversight and prerogatives regarding the assets of AGDC. She noted that AGDC would be a subsidiary of the state and its assets would belong to the state. She wondered about the process if AGDC had a failed open season. Would the legislature have ownership of AGDC's assets if an open season failed? How would the state regulate AGDC if an open season failed?

JOE DUBLER, VICE PRESIDENT AND CHIEF FINANCIAL OFFICER, ALASKA GASLINE DEVELOPMENT CORPORATION AND DIRECTOR OF FINANCE, ALASKA HOUSING FINANCE CORPORATION, DEPARTMENT OF REVENUE, replied that assets belonging to AGDC and the Alaska Housing Finance Corporation (AHFC) also belonged to the state. The boards of both entities were staffed with commissioners and public members to allow the assets to be managed in accordance with the state's desires. In the event of an open season, all data and designs would be property of the state. Funds would be transferred back to the state after the corporation was dissolved.

Representative Gara understood that AGDC was governed by a board that would serve with two commissioners.

Mr. Dubler agreed and saw board approval as a primary control of the corporation.

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Representative Gara asked about a requirement for reimbursement for transferring the state's work product to a private entity.

Mr. Dubler did not recall a requirement of that nature. He did recall that the board would have a fiduciary responsibility to the state to safeguard their assets. He noted that AHFC and AIDEA operated in a similar fashion.

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Representative Gara discussed the moral obligation of the state. He wondered if the bonds would be considered a moral obligation if another, better project emerged.

Mr. Dubler replied no. He explained that the construction period would be financed with different debt than the long-term bonds taken out for a construction loan. The

construction lenders demand a high rate because of the completion risk assumed.

Representative Gara asked about moral obligation for AGDC financing.

Mr. Dubler replied that the state was not responsible for a moral obligation of AGDC. States often established separate corporations for housing agencies and student loan corporations to eliminate possibilities for general or moral obligations unless chosen so by the state. He stated that AGDC would be a stand-alone corporation in Alaska. The state was not responsible for the debt of the subsidiary.

Representative Gara was surprised and comforted by the information. He asked legal counsel's opinion on the matter.

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Ms. Mills stated that the issue had been vetted. The administration opposed the Capital Reserve Fund initially because of its creation of a moral obligation. She agreed with the statement made by Mr. Dubler regarding the state's lack of moral obligation.

Representative Gara requested a letter from the Attorney General assuring the committee that the legislature was not pledging the moral obligation if AGDC were to bond.

Ms. Mills offered to provide the requested letter.

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Representative Costello asked about the gasline project in relation to Susitna.

Mr. Dubler viewed the two projects as complimentary. The Susitna hydro project provided electricity for the railbelt. The natural gas would provide an alternative to electricity when needed. He mentioned a schedule of projected gas flow and noted that some demands would not be met. Susitna would provide the remainder of the energy needs for the region.

Co-Chair Stoltze understood that the Susitna project was evolving.

Mr. Dubler commented that the projections for growth in the railbelt led to anticipation of a shortfall in 2025 for total energy usage in the region. He reiterated that the Susitna project was complimentary to the gasline project.

Co-Chair Stoltze pointed out support for the instate gasline from entities opposing the Susitna project.

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Representative Thompson pointed out that Fairbanks was part of the railbelt.

Mr. Dubler appreciated the clarification. He was unsure of the exact definition of "railbelt."

Representative Gara asked if the reserve fund was required by AGDC to bond.

Mr. Dubler believed that AGDC could bond without the reserve fund. The reserve fund provided an additional tool by creating the moral obligation. He stated that AGDC would revisit the legislature with a request if a reserve fund was deemed necessary. He pointed out that revenue bonds would provide typical financing for the project.

Co-Chair Stoltze recognized former Representative Gene Kubina for providing bagels to the committee.

Representative Mike Hawker appreciated that the committee continued to hear the bill.

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ADJOURNMENT

The meeting was adjourned at 2:38 p.m.