

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

February 6, 2013

1:03 p.m.

**MEMBERS PRESENT**

Representative Eric Feige, Co-Chair  
Representative Dan Saddler, Co-Chair  
Representative Peggy Wilson, Vice Chair  
Representative Craig Johnson  
Representative Kurt Olson  
Representative Paul Seaton  
Representative Geran Tarr  
Representative Chris Tuck

**MEMBERS ABSENT**

Representative Mike Hawker

**OTHER LEGISLATORS PRESENT**

Representative Mike Chenault  
Representative Andrew Josephson

**COMMITTEE CALENDAR**

**SPONSOR SUBSTITUTE FOR 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 and its subsidiaries 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 the price of the state's royalty gas for certain contracts; 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."

- HEARD & HELD

HOUSE BILL NO. 77

"An Act relating to the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other disposals of state land, resources, property, or interests; relating to authorization for the use of state land by general permit; relating to exchange of state land; relating to procedures for certain administrative appeals and requests for reconsideration to the commissioner of natural resources; relating to the Alaska Water Use Act; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 4

SHORT TITLE: IN-STATE GASLINE DEVELOPMENT CORP  
SPONSOR(S): REPRESENTATIVE(S) HAWKER, CHENAULT

01/16/13	(H)	PREFILE RELEASED 1/7/13
01/16/13	(H)	READ THE FIRST TIME - REFERRALS
01/16/13	(H)	RES, FIN
01/30/13	(H)	SPONSOR SUBSTITUTE INTRODUCED
01/30/13	(H)	READ THE FIRST TIME - REFERRALS
01/30/13	(H)	RES, FIN
02/04/13	(H)	RES AT 1:00 PM BARNES 124
02/04/13	(H)	Heard & Held
02/04/13	(H)	MINUTE(RES)
02/06/13	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 77

SHORT TITLE: LAND DISPOSALS/EXCHANGES; WATER RIGHTS  
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/18/13 (H) READ THE FIRST TIME - REFERRALS  
01/18/13 (H) RES  
01/30/13 (H) RES AT 1:00 PM BARNES 124  
01/30/13 (H) Heard & Held  
01/30/13 (H) MINUTE(RES)  
02/01/13 (H) RES AT 1:00 PM BARNES 124  
02/01/13 (H) Heard & Held  
02/01/13 (H) MINUTE(RES)  
02/06/13 (H) RES AT 1:00 PM BARNES 124

**WITNESS REGISTER**

RENA DELBRIDGE, Staff  
Representative Mike Hawker  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Speaking on behalf of the joint prime sponsors, Representatives Chenault and Hawker, continued review of the sectional analysis of SSHB 4.

FRANK RICHARDS, Manager  
Pipeline Engineering & Government Affairs  
Alaska Gasline Development Corporate (AGDC)  
Alaska Housing Finance Corporation (AHFC)  
Department of Revenue (DOR)  
Anchorage, Alaska

**POSITION STATEMENT:** During hearing of SSHB 4, answered questions.

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

**POSITION STATEMENT:** During hearing of SSHB 4, answered questions.

LAURA STATS  
Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 77.

JAMES SULLIVAN, Legislative Organizer  
Southeast Alaska Conservation Council (SEACC)  
Juneau, Alaska

**POSITION STATEMENT:** Proposed an amendment to HB 77.

GUY ARCHIBALD, Mining and Clean Water Coordinator  
Southeast Alaska Conservation Council (SEACC)  
Juneau, Alaska

**POSITION STATEMENT:** Recommended that HB 77 be amended or not passed.

REBECCA SEGAL  
Alaskans for Responsible Mining (ARM)  
Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 77.

RICK ROGERS, Executive Director  
Resource Development Council for Alaska, Inc. (RDC)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 77.

RACHAEL PETRO, President/CEO  
Alaska State Chamber of Commerce  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 77.

#### **ACTION NARRATIVE**

[1:03:25 PM](#)

**CO-CHAIR DAN SADDLER** called the House Resources Standing Committee meeting to order at 1:03 p.m. Representatives Seaton, Tarr, Olson, Feige, and Saddler were present at the call to order. Representatives P. Wilson, Tuck, and Johnson arrived as the meeting was in progress. Representatives Chenault and Josephson were also present.

#### **HB 4-IN-STATE GASLINE DEVELOPMENT CORP**

[1:03:47 PM](#)

CO-CHAIR SADDLER announced that the first order of business is SPONSOR SUBSTITUTE FOR 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 and its subsidiaries 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 the price of the state's royalty gas for certain contracts; 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."

[1:04:13 PM](#)

RENA DELBRIDGE, Staff, Representative Mike Hawker, Alaska State Legislature, on behalf of Representatives Mike Chenault and Mike Hawker, joint prime sponsors of SSHB 4, continued review of the sectional analysis of SSHB 4, directing attention to Section 3, which creates the Alaska Gasline Development Corporation's (AGDC) corporate identity in statute, including its powers, responsibilities, and duties. She paraphrased from page 5 of the sectional analysis [original punctuation provided]:

**Sec. 31.25.180, Validity of pledge**, declares as valid and binding any pledge of assets or revenue of the corporation to payment or interest.

*(From AHFC 18.56.120. This is a standard statement that lenders need to see. It assures lenders that AGDC has the statutory authority to pledge revenue; in turn, that protects AGDC contracts under the U.S. Constitution contracts clause so that future state legislative action cannot violate protected contracts.)*

**Sec. 31.25.190, Capital reserve funds**, allows AGDC to establish capital reserve funds to secure its obligations, and directs fund management. Requires annual reports to the governor and legislature.

*(From AHFC 18.56.125 with structural modifications per legal counsel. This section includes a moral, but not legal, obligation of the state to replenish, if necessary, a reserve fund created to cover interest payments due on bonds.)*

**Sec. 31.25.200, Remedies**, permits enforcement of rights by those holding AGDC obligations.

*(From AHFC 18.56.130 with structural changes by legal counsel. Lenders need to see this standard statement.)*

**Sec. 31.25.210, Negotiable instruments**, declares that obligations are promises to pay an amount of money.

*(From AHFC 18.56.135. This is a standard statement that lenders need to see.)*

MS. DELBRIDGE noted that proposed "Sec. 31.25.200 and Sec. 31.25.210" are a standard bond authority term that lenders would want to see within the bonding statutory authority.

[1:06:58 PM](#)

MS. DELBRIDGE continued her review of the sectional analysis from which she paraphrased [original punctuation provided]:

**Sec. 31.25.220, Obligations eligible for investment**, AGDC obligations as legitimate investments.

*(From AHFC 18.56.150. This allows investment in AGDC bonds by the state and by other private institutions in the state.)*

MS DELBRIDGE explained that the aforementioned proposed statute provides that Alaska banks and others with fiduciary duties to their investors can buy into these bonds. She characterized it as a certified investment. Returning to the sectional analysis from which she paraphrased [original punctuation provided]:

**Sec. 31.25.230, Refunding obligations,** permits the corporation to refund obligations and provides direction for managing refunds.

*(From AHFC 18.56.160. This is a standard statement that lenders need to see. Bond refinancing is common. As refinancing occurs, this section allows AGDC to refund prior obligations.)*

MS. DELBRIDGE stated that refinancing is common with revenue bonds, and therefore there needs to be the ability to refund their previous obligations as the new ones are assumed.

[1:07:55 PM](#)

REPRESENTATIVE SEATON, regarding refunding of obligations, posed a scenario in which there is a takeover of those obligations such that the money is refunded to AGDC. If there is an actual refund, he asked if the money would stay in AGDC or return to the general fund if it is advanced.

MS. DELBRIDGE related her understanding that because AGDC is exempt from the Executive Budget Act under this legislation, the money does not necessarily return to the general fund. She offered to obtain a more definitive answer on that question.

[1:08:44 PM](#)

MS. DELBRIDGE returned to the sectional analysis from which she paraphrased [original punctuation provided]:

**Sec. 31.25.240, Credit of state not pledged,** prohibits AGDC from pledging the state's credit. AGDC obligations are limited to AGDC's backing.

*(From AHFC 18.56.170)*

[1:08:57 PM](#)

**Sec. 31.25.250, Limitation on personal liability,** protects corporation officers from personal liability.

*(From AHFC 18.56.180)*

MS. DELBRIDGE said that there is an expectation that this provision should be valuable in terms of attracting qualified

board members. She then returned to the sectional analysis from which she paraphrased [original punctuation provided]:

**Sec. 31.25.260, Tax exemption,** exempts AGDC from paying state and local taxes on corporation property or property income.

*(From AHFC 18.56.190. This exemption applies to the corporation. The state and local property tax exemption in HB 4, section 32, applies to a project owned or financed by, in whole or in part, AGDC.)*

**Sec. 31.25.270, Annual report,** requires an annual report to the governor, legislature and public, including an independent audited financial statement.

*(From AHFC 18.56.200; omits an additional reporting requirement for mortgage loans investments.)*

[1:09:47 PM](#)

REPRESENTATIVE SEATON asked whether the property would be tax exempt if AGDC becomes a partner in a property. He recalled that there is a provision [in SSHB 4] that [such property] would be exempt until commercial operation began. However, this proposed provision, Sec. 31.25.260, would exempt the property from all taxation for the life of the project.

MS. DELBRIDGE indicated that both [exemptions] exist. Later in the bill is a provision that would exempt any AGDC partnership property, that is a pipeline in which ADGC is involved regardless of the ownership, from paying state and local property taxes during construction. Within its corporate authority, any property AGDC has is always exempt when it is the owner of the property. Ms. Delbridge said that it is fairly standard within the state that one state entity does not tax another state entity, which is why it is included in the corporate provision.

[1:11:07 PM](#)

REPRESENTATIVE SEATON requested a legal analysis regarding this tax exemption. For instance, he asked whether the Ketchikan Shipyard for which the state is a partner with the Alaska Industrial Development and Export Authority (AIDEA) would become a nontaxable entity. Representative Seaton said that he had no problem with a tax exemption during construction, but providing

one project a competitive advantage over another project that is not financed by the state would essentially be picking winners and losers in the commercial realm.

MS. DELBRIDGE agreed to provide confirmation as to how this provision would play out.

REPRESENTATIVE SEATON agreed that is what he is seeking, as well as the limitations as far as the partnership and whether it would change the competitive status between a project financed by AGDC and a project independently. Although he did not believe that to be the case, he expressed the need to be sure.

[1:12:51 PM](#)

CO-CHAIR SADDLER inquired as to which section of SSHB 4 has the provision regarding exemption of AGDC partnerships.

MS. DELBRIDGE specified that the property tax exemption is in Section 34, which is an exemption of AGDC owned or financed project from state and local property taxes during construction. The sponsors included this provision in SSHB 4 because it is one way the state, having declared AGDC its designee to do pipeline projects that are in the interest in the state, can help the project succeed by keeping costs down and not taking taxes from it during the critical period when risk is high.

[1:13:45 PM](#)

REPRESENTATIVE TARR inquired as to the amount of lost revenue to the state due to the aforementioned property tax exemption.

MS. DELBRIDGE deferred to the AGDC representative.

[1:14:22 PM](#)

FRANK RICHARDS, Manager, Pipeline Engineering & Government Affairs, Alaska Gasline Development Corporation (AGDC), Alaska Housing Finance Corporation (AHFC) Department of Revenue (DOR), said that although he did not have those numbers, he recalled that the taxation rate is about 20 mills. He offered to make the calculations and provide the information to the committee.

[1:14:46 PM](#)

MS. DELBRIDGE continued paraphrasing from the sectional analysis, as follows [original punctuation provided]:

**Sec. 31.25.270, Annual report,** requires an annual report to the governor, legislature and public, including an independent audited financial statement.

*(From AHFC 18.56.200; omits an additional reporting requirement for mortgage loans investments.)*

**Sec. 31.25.390, Definitions.**

MS. DELBRIDGE informed the committee that definitions in SSHB 4 were from pieces of the former AS 38.34 statute, which was created through the passage of House Bill 369 [from the 26th Alaska State Legislature].

[1:15:22 PM](#)

MS. DELBRIDGE then moved on to Section 4 of SSHB 4 and paraphrased from the sectional analysis [original punctuation provided]:

**Section 4 (procurement code exemption),** adds new paragraphs to AS 36.30.850(b), *Public Contracts, State Procurement Code, Application of this chapter,* exempting AGDC, its subsidiaries, and ANGDA contracts from the state procurement code. The exemption is reinforced in AGDC's statutes (HB 4 Section 3) and in ANGDA's statutes (HB 4 Section 22).

[1:15:50 PM](#)

REPRESENTATIVE TUCK asked why AGDC is being placed under the Department of Commerce, Community & Economic Development (DCCED) rather than the Department of Transportation & Public Facilities (DOT&PF), which already has a solid procurement system in place and is an agency that deals with infrastructure. He characterized this as "quite a piece of infrastructure." He recalled that the Alaska Energy Authority (AEA) does not have subsidiary powers, and then asked whether DCCED has subsidiary powers.

MS. DELBRIDGE replied that she is unsure as to whether DCCED has subsidiary powers, but suggested that it probably does not as it is a department not a corporation. With regard to why AGDC was placed under DCCED, she related the sponsors' belief that in-state gasline projects are about more than simply the project construction. Such in-state gasline projects are about putting

together the financial deal and terms and negotiate with many diverse commercial entities. Putting together a package is of as great importance as the construction process and DCCED fully represents the benefits to the state the sponsors believe AGDC will bring in commerce, economic development, and developing communities.

[1:17:36 PM](#)

REPRESENTATIVE TUCK related his understanding that Ms. Delbridge will provide the committee with a written explanation as to why the state's procurement codes do not work for a project such as this.

MS. DELBRIDGE replied yes.

[1:18:16 PM](#)

MS. DELBRIDGE, returning to the sectional analysis, directed attention to Section 5 [original punctuation provided]:

**Section 5 (RCA accounting, conforming)** amends AS 37.05.146(c)(22), *Public Finance, Fiscal Procedures Act, Definition of program receipts and non-general fund program receipts.*

MS. DELBRIDGE explained the RCA collects fees from the entities it regulates under its regulatory framework. The fees are intended to cover the RCA's costs, and therefore are not accounted for within the general fund. This legislation adds another kind of regulatory framework to the RCA's jurisdiction, and thus this new framework, Chapter 42.08, needs to be added to the regulatory frameworks from which the RCA can collect fees without being subject [to being placed] back in the general fund.

[1:19:04 PM](#)

MS. DELBRIDGE continued paraphrasing from the sectional analysis, which read [original punctuation provided]:

**Section 6 (gas or electric utilities, conforming)** amends AS 38.05.180 (bb)(1), *Public Land, Alaska Land Act, Oil and gas and gas only leasing*, to conform with Section 11 creating covenants specific to a contract carrier pipeline.

MS. DELBRIDGE explained that since a second set of covenants reflecting contract carriage has been created, statute referring to covenants for a common carrier would have to now include the [second set of covenants].

[1:20:14 PM](#)

MS. DELBRIDGE, returning to the sectional analysis, directed attention to the following [original punctuation provided]:

**Section 7 (definitions)** repeals and reenacts AS 38.34.099, *Public Land, In-State Natural Gas Pipeline, Definitions*, to refer to the definitions in the new 31.25 (HB 4, Section 3).

*This relocates definitions relevant to AGDC from the In-State Natural Gas Pipeline statute -created by [House Bill] 369 in 2010 - to the AGDC corporate statute in Section 3. As portions of the In-State Natural Gas Pipeline statute remains, this section refers to the new location for definitions.*

MS. DELBRIDGE pointed out that when House Bill 369 passed, AS 38.34 was created and included definitions specific to this type of a project and AGDC's work. Since a new corporate structure for AGDC has been created in statute, the definitions have been moved into that new corporate structure for AGDC. She then continued to paraphrase from the sectional analysis:

**Section 8 (right-of-way leases, conforming)** amends AS 38.35.100(d), *Public Land, Right-of-Way Leasing Act, Decision on application*, to conform to Section 11, right-of-way leasing for a contract carrier.

**Section 9 (right-of-way leases, conforming)** amends AS 38.35.120(a), *Public Land, Right-of-Way Leasing Act, Covenants required to be included in lease*, to conform to Section 11, right-of-way leasing for a contract carrier.

**Section 10 (right-of-way leases, conforming)** amends AS 38.35.120(b), *Public Land, Right-of-Way Leasing Act, Covenants required to be included in lease*, to conform to Section 11, right-of-way leasing for a contract carrier.

**Section 11 (contract carrier covenants)** adds a new section to AS 38.35, *Public Land, Right-of-Way Leasing Act*, to establish covenants for a contract carrier gas pipeline. This section does not alter the existing covenants in the Right-of-Way Leasing Act. A carrier must agree to abide by the covenants in order to receive a state right-of-way lease. Of 14 existing covenants for common carriers, 11 still apply to a contract carrier. The others are adapted to reflect contract carrier principles, while retaining the policy that pipelines on state rights-of-way should encourage broader development of oil and gas resources by expanding when commercial opportunities exist and shipping without unreasonable discrimination.

[1:21:04 PM](#)

MS. DELBRIDGE explained that a carrier would apply to the state for a right-of-way lease, under either the common carrier covenants or the contract carrier covenants. A great deal of negotiating and application is involved before the commissioner grants the right-of-way lease. Addressing the new covenants, she said any pipeline wanting to apply as a contract carrier for a state right-of-way lease could apply under these covenants as they are not specific only to AGDC. The contract carrier covenants are very similar to the common carrier covenants as they require services from the pipeline be offered without unreasonable discrimination. Therefore, the laws of the state must be followed and one must not abandon a pipeline until appropriate and clean up any damages. Ms. Delbridge noted that there are some key differences in that the common carrier covenants require expansion as deemed necessary by the RCA while the new contract covenants respect that under the regulatory framework the contracts between a shipper and a pipeline have been used to set the terms for such things as expansions. Thus, expansions are still required for a contract carrier, but when that carrier is presented with a commercially feasible opportunity to expand and not simply do so when told to by another body.

[1:22:56 PM](#)

REPRESENTATIVE SEATON, noting there are a number of contract carriers on the Kenai Peninsula, inquired as to whether an application can be made to change from a common carrier pipeline to a contract carrier pipeline.

MS. DELBRIDGE said she believes that would largely be left to the Department of Natural Resources (DNR) to govern how they would manage applications to amend existing right-of-way leases. She opined that it is a very long and complex process. She then noted that the DNR commissioner always retains the authority to decide whether or not an applicant should be issued a right-of-way lease under whatever set of covenants they apply. The DNR commissioner, in issuing a lease, determines the kind of a pipeline [the applicant is].

[1:25:00 PM](#)

REPRESENTATIVE SEATON surmised that this authority may provide pipelines the ability to reapply for existing pipelines and change gas pipelines from common carrier to a contract carrier pipeline.

MS. DELBRIDGE said she understands the question, but does not know the existing DNR process for amending a right-of-way lease, particularly when the covenants are a key part of that lease. "It's not a small modification," she stated.

[1:25:53 PM](#)

MS. DELBRIDGE returned to the sectional analysis [original punctuation provided]:

**Section 12 (right-of-way leases, costs)** adds a new subsection to *AS 38.35.140, Public Land, Right-of-Way Leasing Act, Payment of rental and costs*, requiring a right-of-way lease to be issued at no cost to AGDC.

*This reinforces in the Right-of-Way Leasing Act the provision in HB4, Section 3 (31.25.090, Interagency cooperation; confidentiality) that leases should be made at no rental fee/cost to AGDC.*

MS. DELBRIDGE highlighted that currently AGDC is paying close to \$200,000 annually for each right-of-way lease it has through the state. Again, if, through SSHB 4, the legislature finds that AGDC is doing gas pipelines in the best interest of the state, it is perhaps, in the sponsors' view, not productive to have to pay a fee to a state agency as a lease payment. In response to Co-Chair Saddler, she specified that the current annual payment is \$180,000.

[1:26:49 PM](#)

MS. DELBRIDGE continued review of the sectional analysis [original punctuation provided]:

**Section 13 (judicial review)** adds new subsections to AS 38.35.200, *Public Land, Right-of-Way Leasing Act, Judicial review of decisions of commissioners on application*, limiting judicial review of state lease, permit or other authorization decisions. Claims challenging this provision must be brought within 60 days of the effective date of HB 4; future claims alleging a constitutional violation must be brought within 60 days of the action and must be filed in superior court. The court may not grant injunctive relief.

*One of the significant risks in megaproject development is costly delays triggered by lawsuits and/or injunctive relief while a lawsuit is being decided. There is precedence for limiting injunctive relief on projects the state determines are in the best interests of the public (TAPS and the federal Alaska Natural Gas Pipeline Act of 2004).*

[1:27:36 PM](#)

REPRESENTATIVE TARR questioned whether the legislature has the ability to limit the judicial branch in terms of timing, particularly on a constitutional issue. She asked if someone with the Department of Law (DOL) is present to address her question.

MS. DELBRIDGE answered that no one with DOL is present today. However, she offered that there are other instances in which judicial review has been limited. Judicial review was limited for the Trans-Alaska Pipeline System (TAPS) and on federal decisions through the Alaska Natural Gas Pipeline Act of 2004. The intent is that in those instances in which the state has declared something in the best interest of the public of the state, it is reasonable to place boundaries on the process of objecting to those activities.

CO-CHAIR SADDLER said the committee could invite DOL to answer that question and others.

[1:28:49 PM](#)

MS. DELBRIDGE returned to the sectional analysis [original punctuation provided]:

**Section 14 (personnel act exemption)** exempts AGDC and subsidiaries from AS 39.25.110, *Public Officers and Employees, State Personnel Act, Exempt service*. This exemption is reinforced in AGDC's corporate statutes.

[1:29:12 PM](#)

CO-CHAIR FEIGE inquired as to the reasoning behind Section 14. More specifically, he asked whether Section 14 is in place to pay people what they are worth or get outside of the salary scales the State Personnel Act requires.

MS. DELBRIDGE confirmed that AGDC expects to need to hire a number of experts in particular fields, and thus needs to be competitive with the private sector entities with which it will work to put the pipeline together.

[1:29:45 PM](#)

MS. DELBRIDGE continued review of the sectional analysis [original punctuation provided]:

**Section 15 (public officials disclosures)** makes the board of directors of AGDC and subsidiaries subject to public official financial disclosure rules in AS 39.50.200, *Public Officers and Employees, State Personnel Act, Definitions*.

[1:30:08 PM](#)

REPRESENTATIVE SEATON inquired as to whether members of the board of directors are considered employees, and therefore exempt as well.

MS. DELBRIDGE specified that the members of the board of directors are not employees of the corporation. The board of directors receives compensation per day on official board business and receives per diem and travel when needed to do so for board meetings. The members of the board of directors are not salaried.

[1:31:10 PM](#)

CO-CHAIR SADDLER pointed out that the legislation includes many provisions in which expediency and importance of the project have motivated some exemptions and streamlining limitations, whereas Section 15 seems to be contrary to that. Therefore, he inquired as to the reasoning behind [Section 15].

MS. DELBRIDGE opined that the sponsors have tried to balance being responsible to Alaskans while at the same time providing for expediency and eliminate road blocks. The sponsors believe that Alaskans need to know whether the board members have any financial interests that would cause a conflict.

CO-CHAIR SADDLER noted his agreement with such public disclosure, but cautioned that the expansion of public disclosure to other boards and commissions service has tended to inhibit people from serving, and thereby limiting the number of applicants.

[1:32:28 PM](#)

REPRESENTATIVE TARR asked if there is a conflict of interest that one could foresee that would cause a board member to be dismissed.

MS. DELBRIDGE explained that the governor appoints the members of this board and they can be removed for cause by the governor. Part of the reason for Section 15, she opined, is that there seems to be less of a genuine conflict of interest once one publicly discloses a conflict of interest.

[1:33:09 PM](#)

CO-CHAIR SADDLER asked if there is a provision allowing AGDC board members to exempt themselves from a vote if there is a conflict, as is the case in the legislature.

MS. DELBRIDGE replied no.

CO-CHAIR SADDLER then asked whether that would cause any problems with the voting of the board.

MS. DELBRIDGE clarified that the majority of the board, three members, would have to vote in the affirmative for something substantive to pass. She then said that Co-Chair Saddler raises a good point that the sponsors would like to address.

[1:34:00 PM](#)

MS. DELBRIDGE returned to the sectional analysis [original punctuation provided]:

**Section 16 (confidentiality)** amends AS 40.25.120(a), *Public Records and Recorders, Public Record Disclosures, Public records; exemptions; certified copies*, to exempt eligible information and information covered by an AGDC confidentiality agreement from disclosure under the state Public Records Act. This relates to HB 4, Section 3, allowing AGDC to keep certain information confidential.

MS. DELBRIDGE reminded members that Section 3 specifies at length what types of things can be kept confidential and how confidentiality agreements with private sector entities and other state entities would work. She characterized Section 16 as a backstop in that those things that are allowed to be confidential do not get to be released under the State Public Records Act.

[1:34:41 PM](#)

REPRESENTATIVE SEATON requested identification of the duration of confidentiality of the various confidential items. He opined that the public would have more confidence knowing that at some point confidential items, such as the bids, will be made public once it is not necessary for them to be confidential. He suggested that perhaps it could be submitted in the form of a written spread sheet.

MS. DELBRIDGE agreed to do so.

[1:37:05 PM](#)

CO-CHAIR FEIGE asked whether there is anything in SSHB 4 that limits what can be held confidential versus not confidential. He further asked whether AGDC could make all its business confidential or is it limited to particular items. He requested that the aforementioned be included in the spreadsheet Ms. Delbridge agreed to provide the committee.

MS. DELBRIDGE said that there are some limits that reflect commercial harm, which she said she would clearly articulate in a document.

[1:37:48 PM](#)

MS. DELBRIDGE proceeded with the sectional analysis from which she paraphrased [original punctuation provided]:

**Section 17 (ANGDA as gas marketer)** amends AS 41.41.010(a), Public Resources, Alaska Natural Gas Development Authority, Establishment of the authority, enabling ANGDA to act as a gas marketer instead of a gas transporter, and eliminating proscriptive language regarding gas supply and gas markets.

*This section retains ANGDA's purpose of acquiring natural gas produced in the state and delivering it to market, in sufficient quantity to help assure the long-term viability of a pipeline, but removes other purposes including designing, constructing, operating and maintaining a pipeline and other facilities.*

MS. DELBRIDGE noted the purposes of designing, constructing, operating, and maintaining a pipeline and other facilities is given to AGDC.

[1:38:52 PM](#)

REPRESENTATIVE SEATON recalled that ANGDA had been a bidder on firm transportation for some other entities/utilities. He then inquired as to the status of those bids were this legislation to pass. Upon a request for clarification from Ms. Delbridge, Representative Seaton said the bids were either those in the Alaska Pipeline Project for which TransCanada held an open season or the small diameter pipeline project.

MS. DELBRIDGE related her understanding that ANGDA did place some bids on the in-state gas arm of the large pipeline TransCanada put through an open season. However, TransCanada has closed its open season and moved on to another project. Therefore, she understood from the Department of Revenue (DOR) that there are no ongoing debts or liabilities associated with ANGDA.

[1:40:06 PM](#)

CO-CHAIR SADDLER surmised that ANGDA would be "a subsidiary, it would not be the only subsidiary AGDC would be allowed to have." He further surmised that the legislation would not limit ANGDA to be the only gas marketer subsidiary.

MS. DELBRIDGE said Co-Chair Saddler is correct on both counts.

[1:40:22 PM](#)

MS. DELBRIDGE moved on to Section 18 of the sectional analysis, from which she paraphrased [original punctuation provided]:

**Section 18 (ANGDA as AGDC subsidiary)** amends AS 41.41.010(b), *Public Resources, Alaska Natural Gas Development Authority, Establishment of the authority*, to make ANGDA a subsidiary of AGDC. ANGDA is currently situated in the Department of Revenue.

**Section 19 (ANGDA as gas marketer)** amends AS 41.41.010(d), *Public Resources, Alaska Natural Gas Development Authority, Establishment of the authority*, to clarify ANGDA's role as a gas marketer.

**Section 20 (ANGDA board)** repeals and reenacts AS 41.41.020, *Public Resources, Alaska Natural Gas Development Authority, Authority governing body*, to state that ANGDA will be governed by the AGDC board of directors.

**Section 21 (ANGDA board compensation)** amends AS 41.41.060, *Public Resources, Alaska Natural Gas Development Authority, Compensation of board members; per diem and travel expenses*, to reflect the new 31.25.020, entitling AGDC's board to receive compensation when serving as ANGDA's board.

*AGDC's board will receive \$400 per day compensation when acting as ANGDA's board; this is the same amount board members receive while acting as AGDC's board.*

[1:41:01 PM](#)

MS. DELBRIDGE, in response to Representative P. Wilson, confirmed that ANGDA's board will be the same board as AGDC's board, which she remarked is relatively common with subsidiary corporations.

[1:41:05 PM](#)

REPRESENTATIVE TUCK questioned why it is necessary to have a subsidiary, an extra layer, a middleman if it is all the same.

MS. DELBRIDGE opined that a middleman or marketer is important to have with this pipeline. Furthermore, there is a chance that the smaller entities, including electric utilities, may not have the credit worthiness or the financial backing to commit to long-term shipments on this pipeline on their own. Therefore, a middleman/marketer who can make those long-term commitments and ship the gas for them could be very important.

[1:42:14 PM](#)

REPRESENTATIVE TUCK clarified that he is asking why not just make that a function of AGDC.

MS. DELBRIDGE specified that it is necessary to have some level of a firewall between the pipeline company that is offering space for shipment/sale and those who are buying space, whether it is a marketer or individual. She characterized it as similar to ExxonMobil Production Company and ExxonMobil Pipeline Company, which are the same corporate entity with firewalls between the parent and its subsidiary.

REPRESENTATIVE TUCK said he understood that ExxonMobil Corporation would have such a firewall due to liability concerns and such. Is liability the concern, he asked. He then asked if Ms. Delbridge could inform the committee why the firewall is necessary.

CO-CHAIR SADDLER suggested that would be a good question for the attorneys.

[1:43:23 PM](#)

REPRESENTATIVE SEATON asked if this addresses the conflict of interest that is created when one builds, regulates, and is a shipper of the pipeline such that one is on both sides of the table at once. He related his understanding that as a legal entity, those need to be separated.

MS. DELBRIDGE agreed that is one reason to want to separate these. Certainly, private sector partners will want to know that their shippers are getting a fair deal and fair negotiations made at an arm's length and that there is not a special deal for a marketer. A marketer, for example, may not specifically ship just the state's utility gas. "It is a matter of keeping things fair and very clear," she said.

[1:44:25 PM](#)

REPRESENTATIVE SEATON requested that Ms. Delbridge follow-up regarding the tax consequences, the tax non-liabilities for taxes, and whether SSHB 4 places ANGDA in a different tax situation than another shipper.

MS. DELBRIDGE nodded in that she would do so.

[1:45:47 PM](#)

REPRESENTATIVE P. WILSON inquired as to why ANGDA is necessary and expressed interest in further clarification of the firewall concept.

MS. DELBRIDGE clarified that the board of directors for AGDC and ANGDA would be the same, but the firewall exists so that the two corporations are distinct. Distinct in that they would not talk to each other when making a deal. With regard to the specific legal recourse with a subsidiary and its parent corporation, she offered to provide the committee with that information.

[1:48:07 PM](#)

DAN FAUSKE, President, Alaska Gasline Development Corporation (AGDC), CEO/Executive Director, Alaska Housing Finance Corporation (AHFC), Department of Revenue (DOR), pointed out that currently the board of directors for the Alaska Housing Finance Corporation is the same as the board of directors for the Northern Tobacco Securitization Corporation, the Alaska Capital Management Corporation, and the Alaska Corporation for Affordable Housing. As mentioned by Ms. Delbridge, the board would have to be very careful as it conducted its business with the individual corporations. The federal government, under the Federal Energy Regulatory Commission (FERC) guidelines and others, is very strict in reference to a pipeline company and a shipping company. There has to be a clear firewall as there cannot be an association in which the two are doing business as one. Although there can be a board that oversees it and a separate board meeting to conduct the business of that organization separately, there are very strict guidelines as to how that business activity occurs. The goal is to prohibit a situation in which the same people who run AGDC, for instance, building the pipeline are in a room with the people who will ship it with no public input or oversight in conducting business. However, he stated that there are ways to do it that are efficient. For instance, AHFC held its meeting, adjourned, and then called to order the annual Northern Tobacco

Securitization Corporation meeting and conducted a separate meeting.

1:50:06 PM

REPRESENTATIVE P. WILSON surmised that it is just a way of getting around the rules and regulations.

MR. FAUSKE disagreed. If SSHB 4 proceeds as it is written, the authority will be created and the board members will have an equal opportunity to serve on the AGDC Board for the pipeline activities as well as the gas marketing because the job descriptions and requirements will seek people in the industry. The idea of the same board handling similar business is very common. The day-to-day operations of the separate entities have to be very clearly delineated. He highlighted that the bonds of the Northern Tobacco Securitization Corporation are not a liability of AHFC, even though it is a subsidiary of AHFC. The structure was such that when the bonds were sold there was a premium paid.

1:51:54 PM

REPRESENTATIVE TARR, regarding the liability, asked whether that would also be true of this proposed separation such that a financial obligation through ANGDA that is not met would only impact the subsidiary corporation while not having a financial impact on the parent corporation.

MR. FAUSKE said that is the way he would advise structuring it, but the individual transaction would have to be reviewed. For instance, if AGDC were involved in the issuance of the debt on behalf of this pipeline, it would be a wholly owned debt of the corporation not a debt of the state, AHFC, or ANGDA; it would be a wholly owned subsidiary separate and clear from other activities. Mr. Fauske highlighted that investors are made aware of this situation.

1:53:50 PM

REPRESENTATIVE TARR noted that AHFC makes very large capital expenditures, but related her understanding that the Northern Tobacco Securitization Corporation will eventually dissolve as the payments dwindle. She then requested a comparison of the relative size and scale of the financial obligation that the other few are making in comparison to the relationship of this one. She asked whether the examples with AHFC are the same

scale in terms of financial obligations through the separate corporations as is the entities involved in SSHB 4.

MR. FAUSKE replied no, for instance on an annual basis he requests from the legislature the authority for a specific amount of bonding activity. There are no further dealings with the legislature in regard to that transaction unless he needs to exceed the amount specified. Therefore, there are checks and balances on the amount of debt. He reminded the committee that AHFC has its own general obligation credit, which is used on a limited basis. The majority of the work is revenue anticipation notes, revenue bonds, mortgage revenue bonds; the full faith and credit of the deal is based on the security of the economy and the state, the credit scores of the borrowers, and all the things that go into analyzing where the money comes to pay the bonds. A mortgage revenue bond is based on the credit worthiness of those paying their mortgages because in the secondary market [AHFC] sells bonds in the market and uses that cash to purchase mortgages from the banks.

[1:56:17 PM](#)

MR. FAUSKE then turned to AGDC and the potential \$7.5-\$8 billion project. He said, "This, too, is a revenue bond." However, it is not based on the full faith and credit of the state nor is it based on the full faith and credit of AHFC. Rather, it will be a stand-alone deal, which means one must go before the investors and the rating agencies, and other checks and balances because a product is being sold. The product has to be creditworthy and noteworthy, in the sense that there are many choices for investors. Therefore, the due diligence and scrutiny is severe. For instance, the revenue bonds that could be sold by AGDC could be purchased by pension funds, insurance companies, municipalities, and others that actively pursue such. The bonds would be about the last transaction made. Before going to Wall Street to initiate a deal, all the firm transportation, precedent agreements, etcetera will have to be in place for the investor to see a clear path between the investment and the project in which the investor invests. Often the contracts span 10-20 years. The bonds would then be sold to help pay off the project.

[1:59:13 PM](#)

REPRESENTATIVE SEATON, referring to Section 21 and the \$400 per day compensation of the board members, surmised that the compensation would not be received concurrently.

MS. DELBRIDGE deferred to Mr. Fauske regarding how it would work for AHFC.

MR. FAUSKE advised that although there can be a situation in which the board meetings occur on the same day, the meetings would be activities of two separate boards. He noted that over the years there have been attempts to increase the AHFC Board stipend as it remains at \$100, which was established in 1972. The board members for the Northern Tobacco Securitization Corporation Board are paid more as it was modeled after the Permanent Fund Board in an attempt to attract board members. Mr. Fauske said it is possible the board members could draw pay for each board meeting, but he expressed the need to research it further and get back to the committee.

MS. DELBRIDGE added that the sponsor's intent is that if a person has to be prepared and invest the time for any meeting, even when separate meetings are held concurrently, that person is compensated as that board member for that official business.

[2:01:17 PM](#)

REPRESENTATIVE SEATON inquired as to how ANGDA is going to bring assets to the table to secure this gas marketing deal if ANGDA is not pledging the bonding or assets of AGDC.

MR. FAUSKE reminded the committee that ANGDA would be a marketing arm of the corporation that is separate and would negotiate the price of the gas and market the gas. Whereas, AGDC is a pipeline company and thus ANGDA would serve as AGDC's marketing arm.

[2:02:51 PM](#)

REPRESENTATIVE SEATON related his understanding that ANGDA has value because it is bringing security assets.

MR. FAUSKE stated that one of the advantages when this was first discussed a year ago was that the enabling legislation that created ANGDA was already in place, and therefore there would be no need to reinvent the wheel. One of the primary factors to utilize the existing statutes was it also honors that the voters had voted to create ANGDA.

[2:04:00 PM](#)

REPRESENTATIVE TUCK requested documentation of the pros and cons of having the ANGDA marketing subsidiary with this particular project in SSHB 4.

MS. DELBRIDGE agreed to do so.

[2:05:17 PM](#)

MS. DELBRIDGE returned to the sectional analysis from which she paraphrased [original punctuation provided]:

**Section 22 (ANGDA procurement)** amends AS 41.41.070(d), *Public Resources, Alaska Natural Gas Development Authority, Authority staff*, to include legal and bond counsel in the services for which ANGDA may contract, and exempts contracted services from the state procurement code.

*With the repeal (HB 4, Section 35) of the provision making the attorney general the legal counsel for ANGDA, this section enables ANGDA to contract for legal and bond services.*

**Section 23 (ANGDA disclosure)** amends AS 41.41.090(b), *Public Resources, Alaska Natural Gas Development Authority, Conflicts of interest*, to remove involvement with a "project" from the circumstances requiring disclosure. ANGDA board members must disclose conflicts of interest; as ANGDA will no longer be developing projects, an interest in a project in which ANGDA has invested assets does not need to be disclosed.

[2:05:48 PM](#)

CO-CHAIR SADDLER requested that Ms. Delbridge return to the committee with information regarding why it is necessary for ANGDA to have its own bond and legal counsel.

MS. DELBRIDGE agreed to do so.

[2:06:30 PM](#)

REPRESENTATIVE P. WILSON, referring to Section 22, asked whether the provision eliminates or gives the attorney general as legal counsel for ANGDA.

MS. DELBRIDGE explained that in the repealer section the statute that makes the attorney general legal counsel for ANGDA is repealed. In order to provide some statutory direction for ANGDA, language allowing ANGDA to contract for legal counsel is inserted.

[2:07:36 PM](#)

MS. DELBRIDGE continued to paraphrase from the sectional analysis [original punctuation provided]:

**Section 24 (ANGDA confidentiality)** amends AS 41.41.150(a), *Public Resources, Alaska Natural Gas Development Authority, Public access to information*, to expand ANGDA's existing confidential records authority to include information in a confidential agreement between ANGDA and AGDC.

[2:08:12 PM](#)

REPRESENTATIVE JOHNSON remarked that Section 24 is not a very effective firewall.

MS. DELBRIDGE acknowledged that Section 24 could cause some firewall problems. She offered to clarify in conjunction with the discussion regarding why a marketing subsidiary is required and a firewall should be in place to include how the exchange of confidential information through confidential agreements would impact that.

[2:08:44 PM](#)

MS. DELBRIDGE returned to the sectional analysis [original punctuation provided]:

**Section 25 (ANGDA as gas marketer)** amends AS 41.41.200, *Public Resources, Alaska Natural Gas Development Authority, Powers of the authority*. This removes ANGDA's authority to exercise eminent domain, as ANGDA would serve as a marketing arm and not as a pipeline builder.

**Section 26 (ANGDA property)** amends AS 41.41.450, *Public Resources, Alaska Natural Gas Development Authority, Property of the authority*. As HB 4 deletes the definition of "project" from ANGDA's statutes, references to a "project" are changed to mean 'for the

purposes of the corporation.' With this change, ANGDA is able to acquire property for the corporation's purpose, but not for a project.

[2:09:32 PM](#)

MS. DELBRIDGE, in response to Co-Chair Saddler, specified that "the corporation" refers to ANGDA.

[2:09:46 PM](#)

REPRESENTATIVE P. WILSON inquired as to what type of property could be acquired for the corporation's purpose, but not for a project.

MS. DELBRIDGE explained that a corporation might have property for a project that is tangible property on which the project sits, such as a pipeline; whereas a corporation could have property that is not physical property/land such as information, financial property, and other assets. She clarified that financial property would be money, investments, accounts, debts, liabilities, and bonds. At one point ANGDA had a conditional EIS for some right-of-way, which would be considered to be property of the corporation. In further explanation, Ms. Delbridge specified that the sponsors' intent was that ANGDA would remain a corporation, a subsidiary of AGDC, even if it no longer performed projects. Therefore, ANGDA would need to retain the ability to have and manage property.

[2:11:22 PM](#)

REPRESENTATIVE SEATON asked whether that property would include gas. Would ANGDA have the ability to purchase gas or is that excluded as a conflict of interest, he further asked.

MS. DELBRIDGE answered that ANGDA, as a marketing subsidiary, would pay AGDC a fee to ship gas on the pipeline. Therefore, ANGDA could own gas that it is then contracting with AGDC for shipment of.

[2:12:05 PM](#)

REPRESENTATIVE SEATON expressed discomfort with going from a marketer to an owner of gas, and therefore he requested a written explanation regarding the difference between AGDC as an owner and shipper of gas versus as a marketer of gas. This, he

opined, seems to be outside the discussions of what the purpose of ANGDA would be.

MS. DELBRIDGE agreed to do so. However, she clarified that in the context of SSHB 4 the term marketer means to take a commodity and then market it - that is move it from sellers to buyers. She said that if "marketer" means owning it in the middle that is the intent of the middle man/aggregator concept.

[2:13:33 PM](#)

MS. DELBRIDGE returned to the sectional analysis [original punctuation provided]:

**Section 27 (ANGDA PLAs)** amends AS 41.41.500, *Public Resources, Alaska Natural Gas Development Authority, Contract terms relating to use of Alaska resources*. As HB 4 deletes the definition of "project" from ANGDA's statutes, references to a "project" are changed to mean 'for the purposes of the corporation.' With this change, ANGDA shall have project labor agreements that secure timely completion of a project of the corporation.

**Section 28 (ANGDA definitions)** amends AS 41.41.990, *Public Resources, Alaska Natural Gas Development Authority, Definitions*. The definition of "board" is changed to mean the AGDC board acting as ANGDA's board.

[2:14:29 PM](#)

REPRESENTATIVE TUCK related his understanding that projects were eliminated from ANGDA's capabilities, and therefore he inquired as to what exactly Section 27 is doing.

MS. DELBRIDGE, noting that she had to ask the same question to Legislative Legal Services, explained that when the definition of "project" was deleted in another part of ANGDA statute, the term "project" had to be eliminated from this section as well.

CO-CHAIR SADDLER mentioned "corporate purposes labor agreement."

[2:15:05 PM](#)

REPRESENTATIVE TUCK clarified he was referring to "project" in terms of "secure timely completion of a project of the

corporation," for which the corporation has been identified as ANGDA. He acknowledged that the intent is to keep the ANGDA wishes of the public, but Sections 19-28 seem to strip ANGDA of what it once was.

MS. DELBRIDGE said Representative Tuck's comment was duly noted. She then stated that the sponsors' did not intend to strip ANGDA but rather intended to find a continuing role for ANGDA within a gasline project that is going forward, although ANGDA no longer has offices, personnel, or funding.

REPRESENTATIVE JOHNSON reiterated his question as to why maintain ANGDA. He remarked he has yet to hear a good reason to maintain ANGDA.

MS. DELBRIDGE acknowledged there is no need since AGDC has the ability to create other subsidiaries for whatever purposes it deems necessary to carry out its corporate mission. The sponsors recognize that ANGDA was created by the voters, and thus it is politically difficult to eliminate. However, ANGDA had a specific mission to have a pipeline operational by 2007, a legislative audit in 2010 recommended that ANGDA sunset as it had likely exceeded its statutory authority in pursuing some of the other projects it pursued after no longer able to deliver on its original mission. She characterized it as a balancing act.

[2:18:52 PM](#)

CO-CHAIR SADDLER held over SSHB 4.

[2:19:06 PM](#)

The committee took an at-ease from 2:19 p.m. to 2:21 p.m.

**HB 77-LAND DISPOSALS/EXCHANGES; WATER RIGHTS**

[2:21:47 PM](#)

CO-CHAIR FEIGE announced that the next order of business is HOUSE BILL NO. 77, "An Act relating to the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other disposals of state land, resources, property, or interests; relating to authorization for the use of state land by general permit; relating to exchange of state land; relating to procedures for certain administrative appeals and requests for reconsideration to the commissioner of natural resources;

relating to the Alaska Water Use Act; and providing for an effective date."

CO-CHAIR FEIGE opened public testimony.

[2:22:31 PM](#)

LAURA STATS, paraphrased from the following written statement [original punctuation provided]:

I am here to speak against the passage of HB 77.

I come to you on behalf of my family and all the people who hunt, fish and gather food from this great land we call Alaska. Most importantly, I come on behalf of my grandson, Huck Daugherty, who is 4 years old and who at his tender age has already gone out with his parents and uncles to harvest salmon taller than he is and prawns bigger than his own hands, for him there is a magic in that; and in that magic lies an honest reality which must be protected in perpetuity. And you have the responsibility to protect our lands, streams and oceans.

Please look to our Alaska Constitution when making your decision on voting for HB 77. It states in Article 8 section 3

Titled: Common Use

"Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

It explains in the Citizen Guide of the Alaska Constitution and I quote: "This section enshrines in the Alaska Constitution the common law doctrine that natural resources must be managed by the state as a public trust for the benefit of the people as a whole, rather than for the benefit of the government, corporations, or private persons."

Who will HB 77 be protecting and representing, will it be protecting the common use clause of our constitution and the rights of the citizens of Alaska or does it protect a corporation which has it's own special interest not consistent with that of preserving the tender balance of the streams and waterways where our food arises from?

Please vote against the passage of this bill.

Thank you for hearing me with your open hearts and strong minds.

[2:25:27 PM](#)

JAMES SULLIVAN, Legislative Organizer, Southeast Alaska Conservation Council (SEACC), paraphrased from the following written remarks [original punctuation provided]:

Thank you for the opportunity to testify.

There has been much discussion, within this committee and with our organization and with our friends, about the issue of water reservations and revoking personal use reservations. We find this issue problematic and want to make sure that our environment is being protected and that anadromous streams have the highest priority when permits are being issued.

We would like to propose that amend this bill so that when any entity applies for a water right on any anadromous body of water that [Department of Natural Resources] DNR issue a water reservation on behalf of the fish. DNR can simply refer to the Anadromous Waters Catalog to see if the waterway is on there, then put in an appropriate reservation.

This would align DNR with our state constitution and its public trust responsibility. It would ensure the protection of our salmon. It would enhance sustainable economic development across our state.

Salmon is our greatest renewable resource, it is in our legislature's best interest to put in a mechanism, in statute, that protects that resource as other entities apply for water rights.

Alaska Constitution Article 8 § 3. Common Use

"Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

[2:27:39 PM](#)

REPRESENTATIVE SEATON highlighted the language in Section 1, which read: "the issuance of a general permit if the commissioner finds that the activity is unlikely to result in significant and irreparable harm to state land or resources." He asked whether SEACC finds the language problematic in that irreparable harm rather than significant harm has to occur before a general permit is issued.

MR. SULLIVAN said SEACC has discussed the issue of irreparable harm and having some sort of proving ground to do that, which is why he is recommending amending HB 77 such that DNR would issue a water reservation on behalf of the fish when any entity applies for a water right on any anadromous body of water and that mechanism would limit the type of work that can be done on the stream or waterway. Mentioning the Anadromous Fish Protection Act, he then offered his opinion that there are conflicts with the use of irreparable harm and existing statute.

[2:29:50 PM](#)

GUY ARCHIBALD, Mining and Clean Water Coordinator, Southeast Alaska Conservation Council (SEACC), in response to Representative Seaton's question, informed the committee that irreparable harm is not well defined. He noted that he mainly deals with federal lands. For instance, the Greens Creek Mine has a draft environmental impact study (EIS) that requires the filling in of a major portion of an anadromous salmon stream. The mine is located within the Admiralty Island National Monument where it is mandated by Congress not to produce any harm to the salmon. The U.S. Forest Service does not consider filling in that salmon stream with toxic tailings to be irreparable harm to the monument values.

MR. ARCHIBALD then related his confusion with Commissioner Sullivan's testimony that Alaska ranks second to last in the world in terms of producing permits for large projects, especially when [Glenn] Haight, Development Manager, Development Section, Division of Economic Development, Department of Commerce, Community & Economic Development (DCCED), stated [on January 31, 2013] that "Alaska has a very favorable environment in the mining industry." There is evidence that answers the question, which comes from the Fraser Institute's Annual survey to over 5,000 international mining companies. This last year over 800 companies, which were responsible for \$6.3 billion of exploration funding in 2011, responded to that survey. The results from that survey ranked Alaska number four in the world

in combined policy and mineral potential. The survey compared Alaska to over 90 separate mining districts in the world. The survey also found that only 1 percent of respondents cited environmental regulations as being a mild or strong deterrent in Alaska. Furthermore, only 1 percent of the respondents thought the tax regime, both the rate of the tax and the complexity of the code, was either a mild or strong deterrent to permitting in Alaska. Part of the backlogging and permits is that there is no trigger for evaluation of a permit; once a permit is applied for DNR must process it. He noted that mining is highly speculative and many of the companies are junior companies and almost all of them apply for permits when they do not have a proven ore reserve. The ore reserves are certified as an implied ore body, which by definition means they have zero certainty of an economic ore. They apply for permits, he opined, because it adds to the value to the project they are trying to sell and basically fuels speculation. Therefore, Mr. Archibald requested that DNR institute a trigger such that an application will be reviewed when certification of a proven ore body is submitted. With such a trigger, those resources used on mines that will never enter into production, can be transferred and used for larger projects. He suggested that the aforementioned would reduce the backlog of permits. Mr. Archibald highlighted that the state did attempt a streamlined permitting process with the Rock Creek Mine north of Nome, which was permitted in less than two years. The Rock Creek Mine was located entirely on state land, so did not require a National Environmental Policy Act of 1969 (NEPA) process. The Rock Creek Mine operated for six months, after which it shut down, the company walked away, and the tailings pond immediately filled with water. The Department of Environmental Conservation (DEC) had to remedy the situation for which the estimated cost of cleanup is \$20-\$30 million. Since the Rock Creek Mine was only bonded for \$9.6 million, the difference between the bonded amount and the actual cleanup costs will be borne by Alaska's taxpayers. In conclusion, Mr. Archibald requested that HB 77 not move forward or if it does, that it moves forward with significant amendments.

[2:34:51 PM](#)

REPRESENTATIVE TARR asked if Mr. Archibald had specific amendments.

MR. ARCHIBALD reiterated his suggestion to include an amendment that creates a trigger for review. In the anti-degradation of water quality there is a trigger level to review an application, which he would suggest using for any project [in order to

determine] how legitimate is it that a project will enter into production before the state spends many state resources. He pointed out that the Greens Creek Mine EIS cost the U.S. Forest Service over \$1 million to produce.

[2:35:52 PM](#)

REPRESENTATIVE TUCK surmised then that the intent of Mr. Archibald's suggestion is to have a filter to eliminate the projects for which there is no intention for them to make it to fruition and actually focus on the ones that are intended to [produce].

MR. ARCHIBALD agreed, adding that many of the speculative mines will produce a preliminary economic assessment for their investors long before there is any certainty with their ore body. There is a 401 certification process in which a third party evaluates whether there is a legitimate, profitable, economical ore body.

[2:36:42 PM](#)

REPRESENTATIVE P. WILSON related her understanding that the state does not allow people to just go out and mine, but rather requires they obtain permits and core drillings. She emphasized that there is no way to determine whether a site is profitable until a lot of research is performed, research that requires permits. Therefore, she questioned how to utilize Mr. Archibald's suggestion, noting that often companies only need three to four permits to determine whether the site is economical. Still, it takes a lot of work and time to reach the point of determining whether a site is economical.

MR. ARCHIBALD said that is true, but pointed out that these exploration permits fall under a categorical exclusion. A categorical exclusion is used because the land manager estimates that the drilling impacts to the human health environment are so small that it is not worth the time or effort to assess it, and thus the company is given a categorical exclusion from further analysis and the permits, which are two to three pages long, allow companies to drill. He mentioned that he has observed up to 70 drill holes in a year. This permit is a conditional use permit that is valid for a year. However, the companies apply for such a permit year after year. When the companies reach the point of building a mill and a tailings dam and needs a solid waste permit, an air quality permit, and wastewater discharge permit, the project would then reach the level of review of

DNR's large mine permitting program. At that point, the EIS then requires review of the human health effects as well as environmental effects, which is when the costs arise. At the point of the EIS is when the trigger should come into play, he clarified. Given the current price of gold, it will not take much to reach the [economical] threshold for gold mining, he opined. The threshold/trigger, he reiterated, would winnow out the legitimate projects versus those speculative projects.

[2:39:52 PM](#)

REPRESENTATIVE P. WILSON begged to differ, saying that it depends on the price of metals and various other aspects. Therefore, what one may refer to as speculative may be considered in the running economically one year but not the next due to price fluctuations.

MR. ARCHIBALD noted his agreement, acknowledging that there will be some agency discretion. However, he maintained that there are many examples of mine projects that were "beyond the pale of speculation." For instance, less than two years ago a company from Oklahoma staked 92 square miles of the Yakutat forelands and announced that there was \$34.5 billion worth of gold there, more gold than has been mined in the history of the state. The company did note that there were issues with the chain of custody on the assay samples, which no one took with any credibility and in the meantime the company's stock rose and the principals made money from selling their allocated 20,000 shares a quarter. He characterized the aforementioned as an egregious example of pure speculation.

[2:41:48 PM](#)

REBECCA SEGAL, Alaskans for Responsible Mining (ARM), began by informing the committee that ARM is a statewide coalition of communities and conservation organizations. She said that upon thorough review, ARM opposes the passage of HB 77.

[2:42:31 PM](#)

RICK ROGERS, Executive Director, Resource Development Council for Alaska, Inc. (RDC), paraphrased from the following written testimony [original punctuation provided]:

RDC is a statewide business association representing forestry, oil and gas, mining, tourism, and fishing

industries. Our mission is to grow Alaska through responsible resource development.

A top legislative priority of RDC is to encourage the state to promote and defend the integrity of Alaska's permitting processes and advocate for predictable, timely, and efficient state and federal permitting processes based on sound science and economic feasibility.

RDC supports HB 77. The Alaska Legislature, to its credit, provided DNR with additional resources to address what had become an untenable backlog of permits and authorizations. Such backlogs negatively affect our resource industries as well as individual Alaskans seeking required state authorizations. We understand that while a backlog still exists, DNR has made real progress in catching up on that work.

Ramping up staff to adjudicate a backlog is addressing the symptom, however systematic improvements to what has become a very complex set of statutes authorizing DNR's work is also needed to help prevent future backlog and delays.

The Governor, with the support from DNR Commissioner Sullivan and his staff, has identified specific means of improving the efficiency of our complex permitting system. The administration should be applauded for proposing numerous changes to the DNR enabling statutes in order to make their processes more timely and efficient. Adapting our key DNR statutes to ensure we are adjudicating our land and resource authorizations in a more timely and efficient manner is overdue.

We encourage this committee to support the administration's efforts to more efficiently manage DNR's tremendous workload as the reach of the department affects a broad cross section of Alaska businesses, resource industries and individuals.

Thank you for the opportunity to comment.

[2:45:20 PM](#)

REPRESENTATIVE SEATON noted that Section 1 of HB 77 allows granting of a general permit, which seems to increase the efficiencies of certain activities. However, he asked whether the standard for a general permit should be significant and irreparable harm.

MR. ROGERS replied that his reading of the language is that it "is unlikely to result in significant or irreparable harm", which he characterized as a fairly reasonable standard. From his experience, the department does not issue general permits except for the most innocuous activity. Typically, general permits are the type of activity that is not benefitting industry as much as individual Alaskans who are attempting to accomplish more de minimis activities. However, he deferred to Commissioner Sullivan. Mr. Rogers opined that general permits have not been overused and characterized them as a far more efficient tool. He said he did not believe there is the desire to create a situation in which Alaskans have to obtain permits for activities for which a general permit would adequately protect the public interest.

[2:48:09 PM](#)

REPRESENTATIVE SEATON noted his agreement with Mr. Rogers regarding the ability to have general permits. He then related his understanding that Mr. Rogers is saying that a general permit can be issued if the activity is unlikely to cause significant or irreparable harm, not a combination of the two.

[2:48:53 PM](#)

CO-CHAIR SADDLER recalled testimony from SEACC regarding the impact of Alaska's existing permitting process and its standing in terms of mineral development. He then inquired as to whether RDC views Alaska's permitting process as helpful or harmful to the mineral industry in the state.

MR. ROGERS stated that the permitting process is absolutely necessary for the state's mineral industry, but clearly Alaska ranks near the bottom in terms of the timeframes to permit large projects. He characterized the argument that the permitting system is fine and needs no improvements as somewhat outrageous. Aside for the impact on industry, Mr. Rogers expressed the need to consider the impact on the state. While the mineral industry is one of the impacted entities with respect to DNR permits, Mr. Rogers stressed how far DNR reaches into the everyday lives of Alaskans. There are so many activities that require a DNR

authorization irrespective of the mining industry that he cautioned focusing solely on the mining industry. Still, he maintained that improvements can be made [to the permitting process].

[2:51:04 PM](#)

REPRESENTATIVE TARR recalled that the testimony mentioning non-commercial forest products should have referred to non-timber forest products because those permits are actually generally for commercial application. She then inquired as to what Mr. Rogers considers to be sound science and whether he had examples of projects that are being held up under the existing permitting process that would move forward under the proposal in HB 77.

MR. ROGERS, regarding sound science, related RDC believes it is important that these decisions are made on the true costs, benefits, and impacts to the environment. Therefore, standards and permitting decisions should be made on empirical evidence and the best available technology and understanding how best to develop the resources. In further response to Representative Tarr, Mr. Rogers said he could not point to a specific project, rather he viewed [HB 77] as an incremental tweak to the DNR statute. Although he didn't believe HB 77 to be changes that would suddenly make it a lot simpler for businesses to obtain authorizations, it is worth supporting. Some of the changes embodied in HB 77 will not impact the resource industries that RDC represents. For instance, not requiring a public notice for a short plat of property in an unorganized borough where there are no easements is not earth-shattering for the mining and oil and gas industries. However, it makes sense for all industries if it frees up DNR staff hours to focus on something that is far more important to the state, makes it easier for the public to get things done, and relieves some fiscal pressure on the limited resources of the state. Ultimately, Mr. Rogers gave deference to DNR.

[2:55:42 PM](#)

REPRESENTATIVE TUCK asked Mr. Rogers to provide any statistics regarding where Alaska ranks in terms of permitting that differ from those presented thus far.

MR. ROGERS agreed to do so.

[2:56:14 PM](#)

RACHAEL PETRO, President/CEO, Alaska State Chamber of Commerce, paraphrased from the following written testimony [original punctuation provided]:

The Alaska Chamber is a statewide membership organization made up of all sizes and types of businesses from across Alaska.

The Alaska Chamber's primary mission is to advocate for policies that improve Alaska's business climate. Efficient, predictable and common sense regulations and permitting processes are integral to creating an environment in which businesses, new and old, can succeed. Each Fall Alaska Chamber members gather to set its legislative agenda for the following year.

For the past several years in a row, including this year, Alaska Chamber members have expressed strong support for Alaska's policies and regulations that guide development of Alaska's natural resources while protecting Alaska's environment. At the same time, we have also advocated for streamlining those same regulations and policies where bureaucratic and business efficiencies can be gained.

In regard to the Fraser Institute's study, referenced earlier today in testimony, internationally, Alaska ranks just below Kazakhstan and just above Columbia in regard to uncertainty concerning environmental regulations. In regard to regulatory duplication and inconsistencies Alaska ranks below Honduras and just above Niger. Alaska Chamber members believe Alaska can do better!

The Alaska Chamber supports the provisions within HB 77/SB26 because they provide clarity, eliminate unnecessary processes, and modernize statutes based on the experience gained over many years from the professional staff within the Department of Natural Resources.

It is our belief that HB 77 is a common sense piece of legislation that should receive broad bipartisan support. Thank you for the opportunity to testify this afternoon.

[2:58:47 PM](#)

CO-CHAIR SADDLER inquired as to where in the Alaska State Chamber's priority list was permitting ranked.

MS. PETRO answered that permitting was ranked number 2 in over 25 priorities. She noted that permitting has long been one of the Alaska State Chamber's priorities. In further response to Co-Chair Saddler, Ms. Petro confirmed that membership of the Alaska State Chamber of Commerce is not just the resource industry but all aspects of state business and economic activity, that is all sectors of the economy.

[2:59:39 PM](#)

REPRESENTATIVE TUCK asked whether there is a separate statistic for permitting from the Fraser Institute's study.

MS. PETRO said she could not answer that question, but noted that the Fraser Institute study has multiple sub-rankings, of which she referred to two. She informed the committee that the Fraser Institute study is on-line and there is a link to it on the Alaska State Chamber's web site or she could forward interested members a copy.

[3:00:33 PM](#)

CO-CHAIR FEIGE kept public testimony open and held over HB 77.

[3:01:06 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:01 p.m.