

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 1, 2014

4:36 p.m.

MEMBERS PRESENT

Representative Eric Feige, Co-Chair
Representative Dan Saddler, Co-Chair
Representative Peggy Wilson, Vice Chair
Representative Mike Hawker
Representative Kurt Olson
Representative Paul Seaton
Representative Scott Kawasaki
Representative Geran Tarr

MEMBERS ABSENT

Representative Craig Johnson

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 138(FIN) AM

"An Act relating to the purposes, powers, and duties of the Alaska Gasline Development Corporation; relating to an in-state natural gas pipeline, an Alaska liquefied natural gas project, and associated funds; requiring state agencies and other entities to expedite reviews and actions related to natural gas pipelines and projects; relating to the authorities and duties of the commissioner of natural resources relating to a North Slope natural gas project, oil and gas and gas only leases, and royalty gas and other gas received by the state including gas received as payment for the production tax on gas; relating to the tax on oil and gas production, on oil production, and on gas production; relating to the duties of the commissioner of revenue relating to a North Slope natural gas project and gas received as payment for tax; relating to confidential information and public record status of information provided to or in the custody of the Department of Natural Resources and the Department of Revenue; relating to apportionment factors of the Alaska Net Income Tax Act; amending the definition of gross value at the 'point of production' for gas for purposes of the oil and gas production tax; clarifying that the exploration incentive credit, the oil or gas producer education credit, and the film production tax credit may not be taken against the gas production tax paid in gas; relating to the oil or gas producer education credit; requesting the governor to establish an

interim advisory board to advise the governor on municipal involvement in a North Slope natural gas project; relating to the development of a plan by the Alaska Energy Authority for developing infrastructure to deliver affordable energy to areas of the state that will not have direct access to a North Slope natural gas pipeline and a recommendation of a funding source for energy infrastructure development; establishing the Alaska affordable energy fund; requiring the commissioner of revenue to develop a plan and suggest legislation for municipalities, regional corporations, and residents of the state to acquire ownership interests in a North Slope natural gas pipeline project; making conforming amendments; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 138

SHORT TITLE: GAS PIPELINE; AGDC; OIL & GAS PROD. TAX

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/24/14	(S)	READ THE FIRST TIME - REFERRALS
01/24/14	(S)	RES, FIN
02/07/14	(S)	RES AT 3:30 PM BUTROVICH 205
02/07/14	(S)	Heard & Held
02/07/14	(S)	MINUTE(RES)
02/10/14	(S)	RES AT 3:30 PM BUTROVICH 205
02/10/14	(S)	Heard & Held
02/10/14	(S)	MINUTE(RES)
02/12/14	(S)	RES WAIVED PUBLIC HEARING NOTICE, RULE 23
02/12/14	(S)	RES AT 3:30 PM BUTROVICH 205
02/12/14	(S)	Heard & Held
02/12/14	(S)	MINUTE(RES)
02/13/14	(S)	RES AT 8:00 AM BUTROVICH 205
02/13/14	(S)	Heard & Held
02/13/14	(S)	MINUTE(RES)
02/14/14	(S)	RES AT 3:30 PM BUTROVICH 205
02/14/14	(S)	Heard & Held
02/14/14	(S)	MINUTE(RES)
02/19/14	(S)	RES AT 3:30 PM BUTROVICH 205
02/19/14	(S)	Heard & Held
02/19/14	(S)	MINUTE(RES)
02/20/14	(S)	RES AT 8:00 AM BUTROVICH 205
02/20/14	(S)	Heard & Held
02/20/14	(S)	MINUTE(RES)

02/21/14 (S) RES AT 8:00 AM BUTROVICH 205
02/21/14 (S) Heard & Held
02/21/14 (S) MINUTE(RES)
02/21/14 (S) RES AT 3:30 PM BUTROVICH 205
02/21/14 (S) Heard & Held
02/21/14 (S) MINUTE(RES)
02/24/14 (S) RES RPT CS 2DP 4NR 1AM NEW TITLE
02/24/14 (S) DP: GIESSEL, MCGUIRE
02/24/14 (S) NR: FRENCH, MICCICHE, BISHOP,
FAIRCLOUGH
02/24/14 (S) AM: DYSON
02/24/14 (S) RES AT 8:00 AM BUTROVICH 205
02/24/14 (S) -- MEETING CANCELED --
02/24/14 (S) RES AT 3:30 PM BUTROVICH 205
02/24/14 (S) Moved CSSB 138(RES) Out of Committee
02/24/14 (S) MINUTE(RES)
02/25/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/25/14 (S) Heard & Held
02/25/14 (S) MINUTE(FIN)
02/25/14 (S) FIN AT 5:00 PM SENATE FINANCE 532
02/25/14 (S) Heard & Held
02/25/14 (S) MINUTE(FIN)
02/26/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/26/14 (S) Heard & Held
02/26/14 (S) MINUTE(FIN)
02/27/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/27/14 (S) Heard & Held
02/27/14 (S) MINUTE(FIN)
02/28/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/28/14 (S) Heard & Held
02/28/14 (S) MINUTE(FIN)
03/03/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/03/14 (S) Heard & Held
03/03/14 (S) MINUTE(FIN)
03/04/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
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03/05/14 (S) FIN AT 5:00 PM SENATE FINANCE 532
03/05/14 (S) Scheduled But Not Heard
03/06/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/06/14 (S) Heard & Held
03/06/14 (S) MINUTE(FIN)
03/07/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/07/14 (S) -- MEETING CANCELED --

03/10/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/10/14 (S) Heard & Held
 03/10/14 (S) MINUTE(FIN)
 03/10/14 (S) FIN AT 5:00 PM SENATE FINANCE 532
 03/10/14 (S) Heard & Held
 03/10/14 (S) MINUTE(FIN)
 03/11/14 (S) FIN AT 5:00 PM SENATE FINANCE 532
 03/11/14 (S) Heard & Held
 03/11/14 (S) MINUTE(FIN)
 03/12/14 (H) RES AT 1:00 PM BARNES 124
 03/12/14 (H) -- MEETING CANCELED --
 03/14/14 (S) FIN RPT CS 6DP 1AM NEW TITLE
 03/14/14 (S) LETTER OF INTENT WITH FIN REPORT
 03/14/14 (S) DP: KELLY, MEYER, DUNLEAVY, FAIRCLOUGH,
 BISHOP, HOFFMAN
 03/14/14 (S) AM: OLSON
 03/14/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/14/14 (S) Moved CSSB 138(FIN) Out of Committee
 03/14/14 (S) MINUTE(FIN)
 03/14/14 (H) RES AT 1:00 PM BARNES 124
 03/14/14 (H) <Pending Referral>
 03/17/14 (H) RES AT 1:00 PM BARNES 124
 03/17/14 (H) <Pending Referral>
 03/18/14 (S) TRANSMITTED TO (H)
 03/18/14 (S) VERSION: CSSB 138(FIN) AM
 03/19/14 (H) READ THE FIRST TIME - REFERRALS
 03/19/14 (H) RES, L&C, FIN
 03/19/14 (H) RES AT 1:00 PM BARNES 124
 03/19/14 (H) Heard & Held
 03/19/14 (H) MINUTE(RES)
 03/21/14 (H) RES AT 1:00 PM BARNES 124
 03/21/14 (H) Heard & Held
 03/21/14 (H) MINUTE(RES)
 03/24/14 (H) RES AT 1:00 PM BARNES 124
 03/24/14 (H) Heard & Held
 03/24/14 (H) MINUTE(RES)
 03/25/14 (H) RES AT 4:30 PM BARNES 124
 03/25/14 (H) Heard & Held
 03/25/14 (H) MINUTE(RES)
 03/26/14 (H) RES AT 1:00 PM BARNES 124
 03/26/14 (H) Heard & Held
 03/26/14 (H) MINUTE(RES)
 03/27/14 (H) RES AT 4:30 PM BARNES 124
 03/27/14 (H) Heard & Held
 03/27/14 (H) MINUTE(RES)
 03/28/14 (H) RES AT 1:00 PM BARNES 124
 03/28/14 (H) Heard & Held

03/28/14	(H)	MINUTE(RES)
03/31/14	(H)	RES AT 1:00 PM BARNES 124
03/31/14	(H)	Heard & Held
03/31/14	(H)	MINUTE(RES)
04/01/14	(H)	RES AT 4:30 PM BARNES 124

WITNESS REGISTER

MIKE NAVARRE, Mayor
Kenai Peninsula Borough
Kenai, Alaska

POSITION STATEMENT: Testified during discussion of CSSB
138(FIN) am.

CHARLOTTE BROWER, Mayor
North Slope Borough
Barrow, Alaska

POSITION STATEMENT: Testified during discussion of CSSB
138(FIN) am.

DAVID COBB, Mayor
City of Valdez
Valdez, Alaska

POSITION STATEMENT: Testified during discussion of CSSB
138(FIN) am.

LUKE HOPKINS, Mayor
Fairbanks North Star Borough
Fairbanks, Alaska

POSITION STATEMENT: Testified during discussion of CSSB
138(FIN) am.

W. TODD MILLER
Baker & Miller, PLLC
Washington, D.C.

POSITION STATEMENT: Testified during discussion of CSSB
138(FIN) am.

CHUCK SCHUETZE
Manley & Brautigam
Anchorage, Alaska

POSITION STATEMENT: Testified during discussion of CSSB
138(FIN) am.

ACTION NARRATIVE

[4:36:23 PM](#)

CO-CHAIR ERIC FEIGE called the House Resources Standing Committee meeting to order at 4:36 p.m. Representatives Olson, Seaton, P. Wilson, Tarr, Kawasaki, Hawker, Saddler, and Feige were present at the call to order.

SB 138-GAS PIPELINE; AGDC; OIL & GAS PROD. TAX

[4:37:02 PM](#)

CO-CHAIR FEIGE announced that the only order of business is CS FOR SENATE BILL NO. 138(FIN) am, "An Act relating to the purposes, powers, and duties of the Alaska Gasline Development Corporation; relating to an in-state natural gas pipeline, an Alaska liquefied natural gas project, and associated funds; requiring state agencies and other entities to expedite reviews and actions related to natural gas pipelines and projects; relating to the authorities and duties of the commissioner of natural resources relating to a North Slope natural gas project, oil and gas and gas only leases, and royalty gas and other gas received by the state including gas received as payment for the production tax on gas; relating to the tax on oil and gas production, on oil production, and on gas production; relating to the duties of the commissioner of revenue relating to a North Slope natural gas project and gas received as payment for tax; relating to confidential information and public record status of information provided to or in the custody of the Department of Natural Resources and the Department of Revenue; relating to apportionment factors of the Alaska Net Income Tax Act; amending the definition of gross value at the 'point of production' for gas for purposes of the oil and gas production tax; clarifying that the exploration incentive credit, the oil or gas producer education credit, and the film production tax credit may not be taken against the gas production tax paid in gas; relating to the oil or gas producer education credit; requesting the governor to establish an interim advisory board to advise the governor on municipal involvement in a North Slope natural gas project; relating to the development of a plan by the Alaska Energy Authority for developing infrastructure to deliver affordable energy to areas of the state that will not have direct access to a North Slope natural gas pipeline and a recommendation of a funding source for energy infrastructure development; establishing the Alaska affordable energy fund; requiring the commissioner of revenue to develop a plan and suggest legislation for municipalities, regional corporations, and residents of the state to acquire ownership interests in a

North Slope natural gas pipeline project; making conforming amendments; and providing for an effective date."

[4:37:27 PM](#)

MIKE NAVARRE, Mayor, Kenai Peninsula Borough, stated his commitment to work with the governor and the legislature to advance a successful natural gas project that protected the long term interest of the state, the communities, and the residents. He expressed concern for the potential impacts to municipal and state revenues, both local and state tax bases, resulting from the confidential negotiations only broadly outlined in the Heads of Agreement (HOA) and the proposed enabling legislation. He pointed out that municipal governments relied on state revenue for education, roads, and revenue sharing programs. He declared that, although the proposed bill was a significant departure from existing tax policy and structure, the borough wanted to avoid any adversarial position with the administration on legislation resulting from confidential negotiations. He expressed support for the newly created advisory board, even though the community role, specifically for negotiations, was unclear. He referenced the criteria in the HOA which detailed that the administration and the signers for the HOA would support legislation resulting from the negotiations, even though the advisory board had made no commitments for support. He said that the Kenai Peninsula Borough had promoted limits for changes to the existing tax structure on oil. He stated that the vision was complex and very different from the status quo, with accompanying pressure to advance a natural gas project. He acknowledged the difficulty for understanding complex issues in a short period of time. He expressed his desire to highlight the areas of concern for his borough, and to ensure these were addressed.

[4:40:52 PM](#)

CO-CHAIR FEIGE stated that the committee would value the input from the municipalities.

REPRESENTATIVE SEATON asked about the principles and policies supported by the Kenai Peninsula Borough.

MAYOR NAVARRE replied that he was waiting to meet with the advisory committee in order to see what structure was envisioned by the administration and the producers. He referenced an earlier advisory group for the Stranded Gas Development Act (SGDA) which had compiled recommendations. He declared support

as long as there were no negative impacts compared to the taxing structure under existing oil and gas legislation. He allowed that part of the structure had to recognize where the assets were sited, with an allocation plan based in part on this to recognize the impacts to specific areas. He noted there was also an overriding concern for state revenues.

REPRESENTATIVE SEATON asked if there was concern for the effects of a big project, including an increase in taxes, after the borough had already absorbed the impacts of industrial development.

MAYOR NAVARRE acknowledged that this was an even greater concern for areas that would not have the assets sited in their communities, and cited the need for impact payments in lieu of a short term tax structure.

REPRESENTATIVE TARR directed attention to the creation of the interim advisory board in the proposed bill, and asked for suggestions to language that "would make the mayors more comfortable."

MAYOR NAVARRE replied that an alignment of interest and consensus for the relationship between the state and the municipalities was as important as an alignment between the producers and the state. He expressed concern for a conflict between a business relationship and a sovereign relationship that favored the state over the local governments. He suggested a possible need for a Memorandum of Understanding among the heads of municipal governments to further define its role and ways to advance its recommendations.

CO-CHAIR SADDLER asked about the comparative importance for money the municipalities could use as they see fit, or for specific needs funded directly.

MAYOR NAVARRE replied that, as all the municipalities had different taxing structures, it could lead to unnecessary details when specific needs were identified and detailed. He suggested it was of greater importance to identify the overall general impacts, and allow the communities to make the determinations.

CO-CHAIR SADDLER asked for a listing of the largest needs, including infrastructure, social services, or government services.

MAYOR NAVARRE replied that this would differ between the ramp up for construction, and then the impact during and after construction. He declared there would be a need for roads, harbors, and social services, including fire and emergency services. He relayed that the Kenai Peninsula Borough currently had some capacity in the schools, which would be impacted depending on the population increase.

[4:48:44 PM](#)

REPRESENTATIVE SEATON asked to follow up on an earlier question by Representative Tarr, specific to the proposed bill. He pointed out that the proposed bill offered the only opportunity for the committee to put limits on the amount of discretion. He opined that waiting until after further negotiations would not allow for any changes. He suggested that any general provisions for essential structure be submitted immediately while the bill was still under consideration.

MAYOR NAVARRE responded that the municipalities had difficulty writing its own amendments to the proposed legislation, as they did not have access to Legislative Legal Services. He suggested that Payment in Lieu of Taxes (PILT) could address some of the municipal concerns, although its implementation could still be subject to legislation. He opined that the advisory committee or an MOU could better define the structure of a PILT.

CO-CHAIR SADDLER asked about the current property tax structure in the Kenai Peninsula Borough.

MAYOR NAVARRE replied that the tax value for the current year was approximately \$7.6 billion for the entire borough. He said that a \$20 million facility sited on the Kenai Peninsula would have a significant impact. In response to Co-Chair Saddler, he said that the general government mill rate was 4.5 mills, however there were service areas that had a separate tax base. He offered an example for Nikiski which he opined to be about 12 mills, with a bit higher rate in Homer.

[4:52:50 PM](#)

REPRESENTATIVE P. WILSON asked about the borough sales tax.

MAYOR NAVARRE replied that the sales tax was 3 percent with a 9 month holiday for taxes on non-prepared foods. He stated that this revenue was dedicated to the schools.

REPRESENTATIVE SEATON asked for clarification that this was the mill rate for the borough, with an additional sales tax in the cities, about 7.5 percent.

MAYOR NAVARRE reported that Homer had a 7.5 percent sales tax, while Soldotna and Kenai had a 6 percent sales tax.

REPRESENTATIVE OLSON pointed out that there was a \$500 cap.

REPRESENTATIVE SEATON reported that this was per sale.

MAYOR NAVARRE commented that this discussion highlighted the differences between local tax bases in various communities, and the difficulty for fitting them together.

CO-CHAIR FEIGE reported that there was no property tax in Delta Junction.

REPRESENTATIVE TARR asked for comments on the development of a plan for municipalities, regional corporations, and residents to participate in the ownership, included in the proposed bill.

MAYOR NAVARRE suggested that, as the proposed bill was already complex enough, he was not sure of the security for an investment.

[4:56:19 PM](#)

CHARLOTTE BROWER, Mayor, North Slope Borough, said that large projects similar to this could set a positive course for the future, but that it was necessary to be prepared for the impact. She offered an example of the Trans-Alaska Pipeline System (TAPS), which brought billions of dollars in revenue, as well as a demand for public and social services, infrastructure, and education. She declared that the proposed bill and the HOA needed to define "consultation." She pointed out that the process for enabling contracts would be a ratification vote by the legislature. If the local municipal taxing authority was to be modified to provide fiscal certainty, then the boroughs needed to have a meaningful part in the initial process. She questioned whether the enabling contract would be used to re-classify current taxable properties under AS 43.56. She allowed that it was unclear whether this was a concern, as it was not defined in the proposed bill. She declared that it was necessary for municipal governments to defend the current tax status. She reminded the committee that she had previously spoken in support of a fair and equitable revenue sharing

program for the proceeds from oil and gas development on the outer continental shelf. She declared the need for resources to "keep up with infrastructure requirements, expand emergency response and search and rescue capabilities, and work to maintain healthy communities and a healthy eco-system." The basic discussion for impacts from oil and gas development was similar for on-shore and off-shore. She pointed out that the local governments were responsible for providing basic essential services, schools, emergency response, public safety, health, and social services. She reported that, as municipal boroughs relied on the authority to levy property taxes to generate the necessary revenue for these public services, there was concern when there was discussion for exemption from property taxes for a project of this magnitude. She offered her belief that municipal taxes were not an issue for the margin of profitability to these large projects. She expressed her support for a natural gas pipeline when the local municipal governments had the authority to levy taxes to provide the necessary services.

[5:03:53 PM](#)

REPRESENTATIVE SEATON asked for clarification that Mayor Brower wanted existing oil and gas facilities and infrastructure left in its current method of taxation and not included in the proposed bill.

MAYOR BROWER expressed her agreement.

CO-CHAIR SADDLER asked about the current property tax structure and valuations in the North Slope Borough.

MAYOR BROWER replied that 95 percent of the current valuation for \$19.7 billion was state assessed. There was a current 18.5 mill rate for operations and maintenance. In response to a further question from Co-Chair Saddler, she added that each city government was allowed to have taxation, although there was a PILT of about \$5 million every 5 years for each village in the North Slope Borough on behalf of the city governments. She reported that the North Slope Borough was responsible for all the services with the exception of recreation and cemeteries. She reported that the PILT was for sales and use taxes, as only the borough had property tax, and not the cities.

[5:07:32 PM](#)

DAVID COBB, Mayor, City of Valdez, reported that the HOA laid the framework for the future negotiation of fiscal terms for an LNG project, and included enactment of the enabling legislation. It stated that the State of Alaska and the North Slope producers would negotiate a payment in lieu of taxes (PILT), which would eliminate property taxes during the operating life of the project. The agreement would also provide for the producers to pay pre-negotiated impact fees during construction rather than property taxes as required by Alaska law, stating that this would reduce valuation disputes between the parties, and ensure a healthy, long term oil business. He expressed concern that the yet to be negotiated gas line terms might expand to alter property taxes paid on existing infrastructure. He expressed support for the inclusion of municipalities on the commission, and shared that, although he had been told there was no intention to change the taxation regime on the existing infrastructure, these non-binding assurances were "something less than comforting." He relayed that the Stranded Gas Development Act contract was the only time that producers had reached consensus for fiscal terms on a gas line, and he pointed out that it had required PILT payments on new gas infrastructure and existing oil infrastructure. He noted that the HOA only pursued another study, and he opined that it was unrealistic to not believe that history would repeat itself and the producers would ask for changes to the existing tax structures. He reported that it was appropriate for the City of Valdez to receive more than 90 percent of its operating revenue from the existing property tax structure, due to the demands on the infrastructure and services. He declared that significant reductions to this revenue would have a catastrophic impact on its ability to meet those service needs and to meet existing bond obligations. He listed the goals of the city: protection of property taxes on existing oil and gas property with legislation declaring this clear intent; Alaska municipalities must be able to analyze all the details of the project plan before proper measurement to the impact of construction on the community, and each municipality needed to discuss, negotiate, and agree to terms that directly affect these impacts on municipal budgets; and, although property tax concessions for new infrastructure may be appropriate to facilitate project development, it is necessary for the local municipality to assess and define the local impacts and economics for a determination to the extent an LNG project should pay property taxes less than other property owners, so a PILT can be properly analyzed. He declared that it was necessary for meaningful participation by the municipalities. He expressed an understanding for the complexity of any task with more

involvement, but it was important to have meaningful, participatory government. He offered his belief that a confidential, open ended process by the producers similar to the Stranded Gas Development Act would result in extreme financial consequences to the municipalities, and that it was necessary to address these concerns immediately.

REPRESENTATIVE SEATON asked about any amendments proposed by the municipalities.

MAYOR COBB offered his understanding that Mayor Navarre had these amendments.

CO-CHAIR SADDLER asked for clarification that project fiscal terms needed to be analyzed before the PILT could be determined. He asked if the local impact needs were independent of the project fiscal terms, or should the PILT be determined by the amount available from the project.

MAYOR COBB responded that they were independent of the project and the communities' needs would be for new roads, new schools, new water and sewer, and other things directly impacted by the project.

CO-CHAIR SADDLER asked for clarification that the municipalities would have to understand the project fiscals or the physical impact on the community, before an appropriate PILT rate could be negotiated.

MAYOR COBB replied that it was necessary to know the fiscal impact on the communities.

REPRESENTATIVE P. WILSON asked Mayor Cobb if the cities themselves would prefer to do the negotiations.

MAYOR COBB clarified that the cities had to have a role, and be a participant along with the State of Alaska, during the negotiations, instead of the state negotiating on behalf of the municipalities.

CO-CHAIR FEIGE asked for Mayor Cobb's reaction regarding the administrative order for an interim advisory board.

MAYOR COBB replied that this order should be expanded, as it was vague and did not clarify what would happen.

CO-CHAIR SADDLER asked about the current property tax structure and valuations in the City of Valdez.

MAYOR COBB, in response, explained that the property tax was 20 mills, and it was almost all from the Oil and Gas industry, except for a small residual. He declared that the valuation was about \$3 billion in Valdez, and that there was not any sales tax or other source of income.

CO-CHAIR SADDLER asked if there was a residential property tax.

MAYOR COBB confirmed that homeowners did pay a property tax of 20 mills.

[5:20:39 PM](#)

LUKE HOPKINS, Mayor, Fairbanks North Star Borough, relayed that one concern was for the existing taxes on oil and gas structure, noting that he did not have complete assurance from the comments by the governor that the existing oil and taxes would not be modified. He stated that he did not receive a clear definition and understanding for fiscal certainty during discussions with the producers. He reflected on participation as part of the municipal advisory group for the Stranded Gas Development Act, and that most of this resulted in a statement of concerns, and not in legislation. He declared that fiscal certainty was based on standards of flow and not on the municipality property tax structure in AS 43.56. He expressed his concern with the PILT structure, as it had been described in the administrative order and other information presented by the governor. He said he dealt with PILT agreements, and that the structure of the financing was always discussed. He offered his concern that it was necessary to agree on a PILT, instead of just advising, and that agreement for the amount of the PILT should be put in proposed SB 138. He declared that "it was incredibly important" for the parties to agree on the PILT. He stated that a verbal assurance was not strong enough. He referenced the earlier bond commitments and the ability to re-pay them as revenue streams decreased, which could transfer a heavy burden onto the tax payers with changes to the existing oil and gas structure. He pointed out that, as the municipal advisory group under the Stranded Gas Development Act had developed the impacts from construction of a gas line, it was necessary to discuss the projected construction and impacts information prior to any determinations for aid. He urged the committee to amend SB 138 and insert language that addresses consent to a PILT.

[5:29:54 PM](#)

CO-CHAIR SADDLER asked how Mayor Hopkins would like to see a PILT and impact aid structured.

MAYOR HOPKINS asked if he was referencing a dollar amount or a structure to arrive at a value.

CO-CHAIR SADDLER replied "both."

MAYOR HOPKINS explained that the impact aid should be a value determined by the impact to schools and other services from the amount of construction. He opined that it would be possible to get a rough estimate for this, and also recognize the ongoing impacts. He reported that going to a PILT required a property tax value, or some value assessed by a neutral party, and then work on an agreement which was less than this. He expressed his understanding for the opportunities presented by a gas pipeline for the state. He suggested that a structure for a PILT would begin with a financial value however, it would be necessary to share the internal information. He stated that this had to be a negotiated and consented to value.

CO-CHAIR SADDLER asked if there was any limit to the life of a PILT.

MAYOR HOPKINS explained that the PILT agreements that he had negotiated had a "reopener" where it was possible to sit down and review the numbers. This allowed them to address any changes and consider changes to property taxes and cost of living adjustments.

REPRESENTATIVE P. WILSON asked about the mill rate.

MAYOR HOPKINS, in response to Representative P. Wilson, said that the borough had an 11.2 mill rate, with no personal property or sales tax.

REPRESENTATIVE P. WILSON asked for clarification to what the mill rate was applied.

MAYOR HOPKINS replied that it was on real property, but not on cars, boats, or airplanes.

[5:35:48 PM](#)

CO-CHAIR SADDLER asked for the total assessed valuation of the Fairbanks North Star Borough.

MAYOR HOPKINS replied that the net taxable value was about \$7.8 billion.

CO-CHAIR SADDLER asked about the value of the Alaska gas line project to the borough, exclusive of property taxes and PILT impact aid.

MAYOR HOPKINS replied that the project was incredibly valuable for its overarching economic benefits. He noted that it would bring lower cost energy to the community, as a large diameter gas line had been shown to bring the lowest cost of natural gas to Alaskans. For Fairbanks, he opined that it would recharge the economic structure and it would offer businesses a lower cost to help spur economic growth. He stated that it was a complicated issue for the economic return to the state.

[5:38:26 PM](#)

REPRESENTATIVE SEATON asked if the mill rate was combined for the city and the borough.

MAYOR HOPKINS replied that the 11.2 mill rate was for the borough, which had to fund local contributions for the schools, and did not include either the mill rate for the City of Fairbanks or the City of North Pole. He noted that 6.5 - 6.8 mills was directed to the schools, with the remainder directed to general government.

REPRESENTATIVE SEATON asked about the mill rate for the City of Fairbanks.

MAYOR HOPKINS explained that the City of Fairbanks had a 4.9 mill cap, in addition to the borough taxes, and that the city had had several failed proposals for a sales tax. He reported that the City of North Pole had a 3 percent sales tax on certain items, with caps, and a 2 or 3 mill rate on real property.

[5:40:31 PM](#)

REPRESENTATIVE P. WILSON asked Mayor Cobb for clarification about the 20 mill rate on oil and gas.

MAYOR COBB explained that 90 percent of the City of Valdez tax base revenue was generated through that tax, although a small

percentage was paid by non-oil and gas property. He declared that everyone paid the 20 mill rate.

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MAYOR NAVARRE stated that an earlier problem had been for defining the placement of the proposed amendments in order to accomplish the goals. He reported that the amendments were currently being drafted by Legislative Legal Services, and would be introduced to the committee as soon as possible by the legislator sponsoring those amendments. He pointed out that municipalities preferred to advocate for themselves during negotiations, as there would be natural conflicts during any negotiations by the state on behalf of the municipalities. He noted that these conflicts could affect bonding abilities and future state funding for the municipalities.

REPRESENTATIVE SEATON reflected on an earlier statement by the administration which had compared the upcoming project to a road into the Red Dog Mine, which was paying a mid-20s mill rate. He asked Mayor Navarre for his reflections on this PILT.

MAYOR NAVARRE opined that there were benefits for this structure over a long period of time, as it was a stable revenue source with gradual inflation proofing, along with other tax components necessary for the tax base to meet the needs of the community.

REPRESENTATIVE SEATON asked whether the PILT structure, although not necessarily cheaper than the 20 mill rate, would be constructed in a less volatile manner.

MAYOR NAVARRE agreed that this "would be something that we would embrace" as it could offer the impact money up front, as well as a stable tax payment over the life of the project. He pointed out that not all the communities favored a PILT, but would instead prefer a valuation to be taxed at the mill rate. He offered his belief that a PILT structure could work, as it would quadruple the overall tax base, without a similar level of impact to the community.

CO-CHAIR SADDLER asked for a description to the optimal impact aid system.

MAYOR NAVARRE offered that his preference would be based on the value of the asset over time, and not see any erosion of the tax base, which would be more beneficial for his community and the borough.

CO-CHAIR SADDLER asked if he would also prefer the re-opener clauses.

MAYOR NAVARRE expressed his agreement, opining that everyone would benefit from those clauses, as both the government and the businesses wanted fiscal certainty.

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W. TODD MILLER, Baker & Miller, PLLC, directed attention to his letter addressing the antitrust issues for the LNG project in the proposed bill. [Included in members' packets] He noted that, although an anti-trust analysis could often be quite complicated, in this case, it was not because the creation and operation of joint ventures was now common and this was designed and intended to be pro-competitive with substantial benefits to consumers. He opined that there was not much risk with creation of this joint venture. He suggested that any issues would center on the operation of the venture, which was also addressed in the enclosed letter. He directed attention to the HOA, which discussed the pro-expansion principles. He noted that this venture, with a pro-competitive approach, contained substantial protection for the consumer, as it avoided the "hold-up" problem created by a group wanting to lessen capacity and restrict output. He directed attention to prior litigation in Canada for operational issues between commercial entities, noting on page 6 the Alaska Gasline Port Authority v. ExxonMobil Corp case, in which there was concern that the producers were failing to supply gas. He opined that the assumption was for the state and producer interests to be aligned for the creation and operation of this venture. He directed attention to the state action doctrine which provided additional protection for any action by the state should there be concerns from an anti-trust perspective, as the legislature was taking action in the interest of the citizens of Alaska. This was a judicially created doctrine which allowed the state to create immunity as it was allowed to legislate and displace anti-trust laws in instances similar to this. He noted that the state could clarify that it intends for the operation to supersede any anti-trust remedies, as it would add additional protection to the state.

CO-CHAIR SADDLER asked for any cases regarding the state action doctrine, whereby a state wished they had this and did not, so he could get a sense for its importance.

MR. MILLER replied that there were instances where private actions had been brought against municipalities, but he could not point to any specifics.

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REPRESENTATIVE HAWKER, referring to the bottom of page 5 of the aforementioned letter, read: "The State of Alaska could make clear that whatever its other goals and the anti-trust risks of Alaska LNG venture may be, that it intends that its legislation and the subsequent operation of AGDC and AGDCS to displace the role of competition in the development and marketing of Alaska's North Slope natural gas." He asked if this had identified the nature of the proposed project. He pointed to the generic anti-trust rules concerning operations and the formation of a joint venture, and expressed his agreement that this had already been widely examined by the courts. He directed attention to the top of page 4, and the specifics of the proposed joint venture, "Reviewing the terms of the proposed joint venture among the state and producers." He asked about the supposition for the joint venture "as we understand it, will be the producer of the LNG gas for export and the seller of the natural gas to the utilities serving customers in Alaska." He asked whether this referenced the joint venture between the State of Alaska and TransCanada, or in the context of the overall venture between the producers, the State of Alaska, TransCanada, and all the involved parties.

MR. MILLER explained that the proposed bill did not include a lot of discussion about operations for any venture. He noted that those ideas relied on the MOU and HOA. He directed attention to the aforementioned letter, and in response to Representative Hawker, he stated that "from a joint venture stand point, I think it's fairest to say it's the broader venture, that we're not sort of parsing it, and there's no real need to parse it down to the level of small venture versus large venture." He declared that this was a broader, joint venture concept, and the individual specific responsibilities were not quite as important.

REPRESENTATIVE HAWKER expressed his agreement with the interpretation. He directed attention to the reference for the joint venture as "it" which amalgamated the parties: the three producers, and the smaller joint venture between the State of Alaska and TransCanada. He offered his belief for the concept of the larger venture, "the pipe within a pipe," which was not a single venture, but instead allowed each of the partners to

establish its own prices, terms for operation, and shipping. He asked if this altered the perception of this venture.

MR. MILLER replied that the information was helpful; however, it would not change the basic conclusion that the venture agreement did not create substantial anti-trust risk. To the extent that each party retained a certain freedom for pricing, it would be necessary to recognize the joint venture with elements of competition. He warned that the individual competition element could not be artificially restrained.

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REPRESENTATIVE HAWKER directed attention to the next sentence regarding prices of delivery for the gas, which would be submitted to FERC for review and approval. He pointed out that the pipe within a pipe concept allowed that each of the producer parties would not be subject to price regulations, as they were an NGA Section 3 activity which removed them from these regulations. He offered his belief that there was not any intent from the State of Alaska to limit or constrict competition among anyone in this process.

MR. MILLER expressed his agreement and noted that it did not change the basic conclusion. He noted that it was important to continue to compete in "your pipe within the pipe kind of world."

REPRESENTATIVE HAWKER moved on to the conclusion of the aforementioned letter, which talked "about things we could do." He acknowledged the state action doctrine, which specifically allowed a state to withdraw a sector of the economy from the competitive forces of the market place. He offered his opinion as a legislator that they were not attempting to do this, but were crafting the venture in such a manner to facilitate the continuation of the competition, with the same outcome for no anti-trust consideration as they were not operating as one or in collusion. He declared that this legislation did not intend to displace the role of competition in the development and marketing of the North Slope gas. He directed attention to footnote 4, page 5, which clarified that there was not the intent to displace competition. He noted that the role of AGDC was to promote and assist the State of Alaska in maximizing the benefit to Alaskans; whereas, the producers had the different mission to maximize profit to its shareholders. He expressed his agreement that, as there was not a lot of anti-trust risk,

it would not be necessary for the follow up suggestions by Mr. Miller.

MR. MILLER commented that the idea was embodied in the first sentence, which stated that there was not significant anti-trust risk generated by the joint venture creation or operation. He noted that they had only offered some practical guidance should the legislature feel that need, but he acknowledged that it may not be necessary with the explanations by Representative Hawker.

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REPRESENTATIVE TARR relayed that a consultant had suggested that one way to strengthen the state's position was to require that the agreement to market gas include that the state gas be marketed at the same price as the producer's gas. She asked if the State of Alaska could include this language without facing an anti-trust situation.

MR. MILLER replied that it was not clear that having such an agreement would be an anti-trust violation, although it would be good to have more information for the language of the provision. He offered his belief that there was not an issue for the state to have a "most favored nation" provision for marketing the state's gas, as there was not any discussion for the price of the gas. He suggested that this would be a distribution contract.

[6:14:16 PM](#)

CHUCK SCHUETZE, Manley & Brautigam, referred to his letter [included in members' packets] which focused on SB 138 and listed three qualifying grounds for federal income tax exemption. He offered his belief that the least restrictive qualification was as a political subdivision with implied statutory immunity for tax purposes. He relayed that the test looked primarily for substantial sovereign powers that, in this case, AGDC would have. He offered an anecdote for a tax court case in 1944 which was often cited by the IRS to set the standard for necessary qualification. He listed the three necessary sovereign powers: the power to tax, the power of eminent domain, and the power to police, which he defined as broader than perceived, as it included regulatory powers. He cited a similarity to provisions in AS 31.25 and in the proposed bill, which offered AGDC the power of eminent domain and the power to adopt regulations for carrying out the purposes of AS 31.25. He noted that these would include regulations for

governing the operation of the project. Referencing the aforementioned tax court case, he pointed out that it was only necessary to have two of the three sovereign powers. He directed attention to another revenue ruling, AS 73.563, which required state agencies to assist in an enterprise by exercising sovereign powers on behalf of that enterprise. He pointed out that the proposed bill contained a clause which allowed the Department of Revenue (DOR) and the Department of Natural Resources (DNR) to adopt regulations, on behalf of AGDC, to implement the proposed bill. He noted that DNR was also authorized to adopt reasonable regulations necessary to carry out the chapter, and to grant AGDC a right of way lease for the gas pipeline corridor at no appraisal or rental cost. He opined that these buttressed the power of eminent domain.

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MR. SCHUETZE moved on to discuss the issues of qualifications for the power. He directed attention to AS 31.25.240, which implied that AGDC was not a political subdivision as its obligations were not debts of the state or a political subdivision. Reflecting on AS 31.25.010, he noted that AGDC was an instrumentality for tax purposes other than a political subdivision, which he had discussed in the aforementioned letter. He strongly recommended a ruling request before moving forward for an assurance from the IRS that the project would not be subject to federal taxation. He recommended statutory changes and suggested organizing AGDC as a public corporation under AS 31.25.010. He stated that the next most useful grounds for tax exemption qualification were to be an integral part of the state, with a key test for whether the state had control over AGDC. He reported that the state had control of its board of directors, as those members were appointed by the governor and subject to confirmation by the legislature. He pointed out that the state also made substantial financial commitments to AGDC. He added that managing the finances, the revenue, and the rulings was also an important determination. He directed attention to the term sheet for the MOU, which listed that the obligations were supported by "the full faith and credit of the state."

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MR. SCHUETZE expressed concern that there was some discretion for the IRS to either ignore corporate separation under the structure of AS 31.25.010, which stated that AGDC was a separate corporate entity, or require qualification under Section 115 of

the Internal Revenue Code. He said that the statutory test Section 115 to qualify for exemption was straightforward and it was necessary to show that the income of AGDC was derived from the exercise of an essential government function, and that income was accrued to the state, or its political subdivisions. He summed up the first two categories: AGDC appeared to be an essential governmental function as it made money for the state, according to the sense of the private letter rulings, although it had been suggested that it was almost impossible to find a reasoned description for essential governmental functions; accrual to the state seemed to be satisfied, although there was some lack of clarity in the language of the statute which described how money would be distributed from AGDC to an appropriate fund. He suggested that further defining this to be a state fund would be helpful. He relayed that an additional standard declared that there could not be any private benefit, noting that the AGDC funds went to the state. He opined that the state investment in the pipeline made the project more feasible for private parties, which could be considered more than an incidental benefit. He reported that the rulings which denied exemption had found the benefits to be directed primarily to private parties.

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MR. SCHUETZE discussed the difference between the house and the senate versions of the bills. He noted that the proposed house bill contemplated that the interest in the project would be owned through a subsidiary of AGDC, which could direct the interest in the pipeline to be examined under Section 115, and he opined that it would be a cleaner ruling request for AGDC to own the interest in the pipeline directly as it had eminent domain power and substantial police powers. This would give a stronger argument for implied statutory immunity.

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REPRESENTATIVE SEATON asked whether, if the state conducted an expansion and the volume times the cost went down, then the private benefit would accrue to all the parties. However, if the price was higher, and no expense accrues to the producers, would this become a private benefit upon expansion.

MR. SCHUETZE replied that he could not give a definite answer because of the relative lack of authority to the question. He stated that a private letter ruling was seldom negative, as they

were usually withdrawn if the tax payer was told a ruling would not be issued.

REPRESENTATIVE SEATON opined that this was the only issue in which there was a direction of potential private benefit in the project.

[6:33:16 PM](#)

REPRESENTATIVE HAWKER asked for clarification to one statement which he suggested was inaccurate. He directed attention to Section 61 of the proposed bill, which described the authority of the transition regulations for DOR and DNR to adopt regulations implementing the proposed act. He noted that Mr. Schuetze referenced that this was a collaborative effort with AGDC, while, in fact, AGDC had completely separate statutory regulatory authority. He said this drafting language was a convention used at the state which gave departments the authority to draft regulations today that involve legislation that will take effect in the future. He declared that it had nothing to do with a directed collaborative relationship with AGDC. He stated that, although there was a current requirement in statute, along with an intent for the state agencies to collaborate with the AGDC needs and activities, this issue for the regulations was not relevant to this.

MR. SCHUETZE offered his belief that Section 61 was not significant for a ruling.

REPRESENTATIVE HAWKER directed attention to page 6 of the aforementioned letter from Mr. Schuetze, and addressed the suggestion that AGDC was not a political subdivision of the state. He said that the record of testimony in the creation of AGDC would show that it was contemplated that AGDC would not be issuing general obligation debt, as its only debt authority was to issue revenue debt. He pointed out that revenue debt was not a debt of the state, but instead a debt of the project. He asked if this necessitated a change of wording for the proposed bill.

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MR. SCHUETZE explained that he tried to make the facts as compelling as possible to the extent of his control of the situation. He stated that it would be best if the proposed bill stated that AGDC was regarded as a political subdivision for tax

purposes, as any statement that suggested that it was not a political subdivision did raise an issue.

REPRESENTATIVE HAWKER referenced earlier testimony from Department of Law regarding terms used in drafting legislation, and he pointed to language in the letter from Mr. Schuetze that used language almost inherently prefaced "for tax purposes." He stated that, although the state drafting language could be interpreted differently than the language used by the Internal Revenue Service, it could have the same final results for a tax exempt entity.

MR. SCHUETZE offered his belief that this was correct.

REPRESENTATIVE HAWKER asked for clarification that Mr. Schuetze suggested securing a private letter ruling as soon as possible. He asked if it would be better to know the exact facts and circumstances for that ruling, specifically whether or not AGDC would participate in this large venture project or would operate as a back-up project, rather than pursuing a private letter ruling which may not apply to the final role of AGDC.

MR. SCHUETZE expressed his agreement to file the private letter ruling request after there were definitive documents.

REPRESENTATIVE HAWKER stated that there was an appropriate time and place, which may not be immediate upon reflection of the whole project.

MR. SCHUETZE said that the letter had primarily focused on the ruling request being made much later into the project. He pointed out that the IRS could change its ruling position at any time. He noted that the IRS would issue guidelines in their first revenue procedure of the year for what they would accept and rule on.

REPRESENTATIVE HAWKER expressed his agreement that the request for a private letter ruling did not necessarily mean one would be forthcoming.

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REPRESENTATIVE TARR asked if it mattered whether AGDC had a role in two different projects, when a request was made for a private letter ruling for one project.

MR. SCHUETZE replied that he had focused on this particular project for the large natural gas pipeline, and he did not focus on any separate project. He pointed out that it was never a bad idea to get multiple rulings on specific items.

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REPRESENTATIVE TARR asked about the removal of the requirement that any subsidiary corporation for AGDC had to be a non-profit corporation, which the administration had explained would allow the best possible corporate structure for its role in the project. She asked if it would be a "cleaner way to go" just to use AGDC. She asked if this more permissive language for subsidiary structure in the proposed bill would be more threatening in any consideration of AGDC for tax purposes.

MR. SCHUETZE explained that both published rulings and private letter rulings had "check the box" regulations which both tax payers and business transactions relied on for structuring Limited Liability Corporations (LLC) with certain tax characteristics such as partnerships and wholly owned entities. He offered his belief that a wholly owned AGDC subsidiary would most likely be treated as part of AGDC, per AS 77.01, even though recent private letter rulings had not addressed this section of the code, but had instead focused on the aforementioned three tests. He opined that the extra authority was not a detraction.

REPRESENTATIVE TARR asked if benefits to individual Alaskans would be a violation to the private benefit restriction.

MR. SCHUETZE asked for clarification.

REPRESENTATIVE TARR asked if there was a corporate structure that would allow a private benefit and not disqualify it from the standard of a public corporation.

MR. SCHUETZE explained that "conceivably you could set up an entity where AGDC is in-part owned by the state and in-part owned by private parties. That would clearly be a private benefit." Some of the revenue generated would go to the state and some to the private parties, although that was not the intent of the proposed bill or the current statute. He stated that the language of the proposed bill was designed to benefit all Alaskans, in various ways, with no impermissible private benefit for Internal Revenue Code Section 115 ruling purposes. He said the key to qualification under this section was to

document and show that there was not a more than incidental private benefit, and was primarily designed to benefit the state.

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REPRESENTATIVE HAWKER referred to Section 6 of the Alaska Statehood Act, which directed the state to develop its resources to the benefit of the expansion and development of its communities. He asked if this would have an overriding influence on any questions regarding taxation.

MR. SCHUETZE replied that this section of the Alaska Statehood Act "would very much help in seeking a ruling request to help document that this was intended to be for a public purpose."

REPRESENTATIVE HAWKER stated that there was a very clear purpose outlined in this section of the Alaska Statehood Act.

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REPRESENTATIVE SEATON referenced private investment and the ability to develop a fund to finance an investment. He opined that there would not be any problem with a municipality making this investment, but he asked if investment by individual Alaskans would also be allowed.

MR. SCHUETZE offered his understanding that individual Alaskans, as well as municipalities, could invest in the project, although they would not be investing in AGDC itself. He suggested that a subsidiary could create possible issues.

REPRESENTATIVE SEATON asked if this investment could simply be a funding source.

MR. SCHUETZE replied that the IRS had determined that income from a company which owned the interest in the project could not go to private parties. He suggested clarification in the proposed bill. He did not see ownership by others in the overall project as problematic, as long as the individuals had their own direct interest in the project.

REPRESENTATIVE SEATON opined that a return on investment in the project did not create any problems.

MR. SCHUETZE replied that an investment by AGDC, the producers, and the pool of individual investors into the project would

enhance the case by the state for no incidental private benefit, as the investment came from outside AGDC.

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REPRESENTATIVE TARR referred to page 54, line 26, of the proposed bill, and replied that the language read participate in the ownership of a North Slope natural gas pipeline, rather than an investor of a joint venture. She asked if that language was problematic, and whether the purchase of stock for an ownership interest in a North Slope natural gas pipeline was still part of the overall benefit to all Alaskans.

REPRESENTATIVE HAWKER explained that the referenced section was a direction to the state to develop a report that considered those options, and was not based on the premise that such a condition was viable or practical.

[CSSB 138(FIN) am was held over.]

[7:00:29 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 7:00 p.m.