

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

April 6, 2014

1:07 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<br>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  
03/04/14 (S) Heard & Held  
03/04/14 (S) MINUTE(FIN)  
03/05/14 (S) FIN AT 9:00 AM SENATE FINANCE 532  
03/05/14 (S) Heard & Held  
03/05/14 (S) MINUTE(FIN)  
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 FINANCE 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  |
| 04/01/14 | (H) | Heard & Held               |
| 04/01/14 | (H) | MINUTE(RES)                |
| 04/02/14 | (H) | RES AT 1:00 PM BARNES 124  |
| 04/02/14 | (H) | Heard & Held               |
| 04/02/14 | (H) | MINUTE(RES)                |
| 04/03/14 | (H) | RES AT 4:30 PM BARNES 124  |
| 04/03/14 | (H) | Heard & Held               |
| 04/03/14 | (H) | MINUTE(RES)                |
| 04/04/14 | (H) | RES AT 1:00 PM BARNES 124  |
| 04/04/14 | (H) | Heard & Held               |
| 04/04/14 | (H) | MINUTE(RES)                |
| 04/05/14 | (H) | RES AT 10:00 AM BARNES 124 |
| 04/05/14 | (H) | Heard & Held               |
| 04/05/14 | (H) | MINUTE(RES)                |
| 04/06/14 | (H) | RES AT 1:00 PM BARNES 124  |

**WITNESS REGISTER**

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

**POSITION STATEMENT:** During the hearing on CSSB 138(FIN) am, answered questions related to proposed amendments.

DAN FAUSKE, President  
 Executive Team  
 Alaska Gasline Development Corporation (AGDC)  
 Department of Commerce, Community & Economic Development (DCCED)  
 Anchorage, Alaska

**POSITION STATEMENT:** During the hearing on CSSB 138(FIN) am, answered questions related to proposed amendments.

MICHAEL PAWLOWSKI, Deputy Commissioner  
 Office of the Commissioner  
 Department of Revenue (DOR)

**POSITION STATEMENT:** During the hearing on CSSB 138(FIN) am, answered questions related to proposed amendments.

DONALD BULLOCK JR., Attorney  
 Legislative Legal Counsel  
 Legislative Legal and Research Services  
 Legislative Affairs Agency

Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing on CSSB 138(FIN) am, answered questions related to proposed amendments.

CHRISTOPHER POAG, Assistant Attorney General  
Labor and State Affairs Section  
Civil Division (Juneau)  
Department of Law (DOL)  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing on CSSB 138(FIN) am, answered questions related to proposed amendments.

#### **ACTION NARRATIVE**

[1:07:21 PM](#)

**CO-CHAIR ERIC FEIGE** called the House Resources Standing Committee meeting back to order at 1:07 p.m. Representatives Hawker, Olson, Seaton, Saddler, Kawasaki, and Feige were present at the call back to order. Representatives Tarr and P. Wilson arrived as the meeting was in progress. [The meeting was previously recessed at 4:44 p.m. on April 5, 2014.]

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

[1:07:29 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."

CO-CHAIR FEIGE noted the committee would resume consideration of amendments to CSSB 138(FIN) am.

[1:07:49 PM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 21, labeled 28-GS2896\I.A.56, Bullock, 4/3/14, which read:

Page 15, following line 30:

Insert a new bill section to read:

"\* **Sec. 16.** AS 38.05 is amended by adding a new section to read:

**Sec. 38.05.023. Prohibited agreement or contract term relating to the tax on oil production.** An agreement or contract negotiated under AS 38.05.020(b)(11) or other agreement or contract in which the state is a party and that is associated with a North Slope natural gas project may not include a provision that reduces or requires future compensation to a producer for changes in the tax levied on oil production under AS 43.55.011."

Renumber the following bill sections accordingly.

Page 17, line 24:

Delete "sec. 17"

Insert "sec. 18"

Page 21, line 16:

Delete "sec. 27"

Insert "sec. 28"

Page 25, line 9:

Delete "sec. 30"

Insert "sec. 31"

Page 31, line 18:

Delete "sec. 37"

Insert "sec. 38"

Page 53, lines 24 - 25:

Delete "sec. 23"

Insert "sec. 24"

Page 56, line 6:

Delete "16, 17, 23 - 27, 29, 30, 37, 39, and 55 - 61"

Insert "16 - 18, 24 - 28, 30, 31, 38, 40, and 56 - 62"

Page 56, line 8:

Delete "Section 38"

Insert "Section 39"

Page 56, line 9:

Delete "secs. 62 and 63"

Insert "secs. 63 and 64"

REPRESENTATIVE SADDLER objected.

REPRESENTATIVE SEATON stated the purpose of Amendment 21 is to address the concerns brought forth by municipalities that if the Alaska Stranded Gas Development Act had been passed and the pipeline had not been built, the property tax structure would have been changed. Amendment 21 says that the payment in lieu of taxes (PILT) being negotiated will take effect on project sanction.

The committee took an at-ease from 1:09 p.m. to 1:10 p.m.

[1:10:00 PM](#)

REPRESENTATIVE SEATON said Amendment 21 would separate oil tax revisions from the things that can be negotiated under other terms by the administration. It would take away any perceived authorization for incorporating oil tax fiscal certainty from the authorization that the legislature is giving the administration to negotiate at this time that would be refined to gas. It does that in two ways. The tax could not be reduced and future compensation could not be required in case a future legislature changes the tax on oil.

[1:11:17 PM](#)

CO-CHAIR FEIGE requested the administration's position on the amendment.

JOE BALASH, Commissioner, Department of Natural Resources (DNR), stated that although the department has sympathy for the intent and pursuit of Amendment 21, it opposes it. He recollected that at a prior meeting there had been discussion about how the cost for the state's share of the gas production and infrastructure is going to be carried against oil revenues, and he indicated that that is something the department has committed to in the HOA. He stated that while these future agreements will not take on oil taxes directly, there will be a need for provisions that address indirect effects of changes to oil in the future if there is an impact on gas. He said one example of that is if 20 years from now the legislature decides that a net production tax is no longer the way to go and instead chooses to go to a gross tax, then upstream costs would no longer be recognized in the production tax system. He questioned what the parties would do in the future if something like that happened. For that reason, he explained, the department is concerned that the language [of Amendment 21] would tie its hands. Further, he said if the production tax rate were changed up or down by the legislature, the "knock on" effect relative to gas costs would have some impact on each of the parties, including the state. He said the department thinks having the ability to address those what-ifs in the agreement is going to be necessary commercially.

[1:13:54 PM](#)

REPRESENTATIVE KAWASAKI asked whether the proposed amendment deals solely with the contract terms related to the LNG proposal and AS 38.05.020(b)(11) and not based on any future project.

REPRESENTATIVE SEATON answered yes. He stated that under Amendment 21, the administration would be allowed to negotiate

gas terms, but would not be able to lower the tax rate on oil or - if a future legislature changes the tax rates on oil - to bind the state to "take the treasury and reimburse for any amount that's changed on that." He added, "And this does say it reduces the tax rates or reduces tax levies."

[1:15:34 PM](#)

CO-CHAIR FEIGE questioned why the proposed amendment is necessary if the state already has the authority to change oil taxes and would have to approve the contracts that come back.

REPRESENTATIVE SEATON responded that if the state negotiates a whole contract around a reduction in oil tax or fixing the oil taxes through a compensation rate for 25 years or the extent of the contract, then the state will have to come back to a difficult scenario of "looking at a system that may compromise the ability of the legislature to approve those contracts." He stated the purpose of Amendment 21 is to clarify ahead of time that oil tax rates are not to be negotiated in a gas contract and that future compensation for actions of future legislatures are not effectively precluded, and thus negotiations could be made around terms that the legislature would approve.

[1:17:15 PM](#)

REPRESENTATIVE TARR highlighted the words "reduces or requires" within Amendment 21, and questioned why the word "requires" is necessary if the primary concern is reduction.

REPRESENTATIVE SEATON explained there are two issues involved. The first is that tax rates could be reduced; the other is that the state treasury would be required to take money out of the treasury and compensate companies for any increase in costs that could occur.

[1:18:31 PM](#)

REPRESENTATIVE HAWKER offered his understanding that the stated purpose of Amendment 21 is to prohibit contractual fiscal certainty. He opined that it is not that simple and there is a lot wrong with the language of the proposed amendment. He restated the language without the future compensation clause as follows: "agreement or contract in which the state is a party". He said the state is not going to be a party in a lot of the contracts; in some ways, an instrumentality or public corporation of the state might be a party to the contracts, so

there is something there that is limiting and ill defined. He continued with the language as follows: "agreement or contract in which the state is a party and that is associated with a North Slope natural gas project may not include a provision that reduces" ... "the tax levied on oil production". He said he can foresee that in the complexity of all the contracts that will be negotiated, there may be a consequential effect of perhaps moving an expense item into the realm of the oil production tax net regime that would, in fact, reduce the tax levied on oil production. He said going to the gross 13 percent and the way the royalty agreements will be written, there could be a claim that "by cost shifting from a net tax on gas to a net tax on oil, ... the entire operations of this legislation reduces the tax levied on oil production as a result of its execution." He called this "bad circular logic."

REPRESENTATIVE HAWKER pointed to language in Amendment 21 that would require "a contract that reduces or requires future compensation to a producer" and said he does not think "compensation" is well-defined or defined in tax code, and he is unsure what "compensation" is, but questioned what would happen if there is some sort of contingent clause that says "if something happens then the consequence is this." He expressed concern over amendments that indicate the legislature is thinking it knows with certainty all the facts and circumstances that will be encountered in the future of negotiating these complex arrangements. Further, he expressed concern with committing things to words without knowing the ramifications of actually executing the contracts. He recollected that Co-Chair Feige had said that contracts have to be brought back to the legislature for detailed review, and with plenty of time to do so. He opined that that is the time the legislature should be stepping into this role, not now by putting amendments into statute that "constrain the ability of the state to negotiate the best possible deals in executing a natural gas pipeline project."

[1:22:45 PM](#)

CO-CHAIR FEIGE inquired whether the Alaska Gasline Development Corporation (AGDC) has an opinion on how Amendment 21 would affect the corporation.

DAN FAUSKE, President, Executive Team, Alaska Gasline Development Corporation (AGDC), Department of Commerce, Community & Economic Development (DCCED), replied he is not sure how [Amendment 21] would affect AGDC.

1:23:18 PM

MICHAEL PAWLOWSKI, Deputy Commissioner, Office of the Commissioner, Department of Revenue (DOR), stated that while he appreciates the sponsor's intent in Amendment 21, he thinks Representative Hawker has brought up an important point: the words and how they get interpreted matter. He echoed that there could be unintended consequences in amendments that try to put "sideboards" in statute or uncodified law that narrow development of agreements that will already be coming back to the legislature for approval. In particular, he noted that Amendment 21 is to a producer and is limited solely to production tax. He said production tax is not the only way the state achieves value from its resource development. Regarding durability and fiscal stability, he said he hopes the legislature continues to provide input throughout the process; however, the agreements that come back must be understood by both the public and the legislature. He opined that means keeping all the options on the table and avoiding a specificity that may produce unintended consequences rather than promoting clarity. He stated that if the indirect effects Mr. Balash described are necessary in a contract, then they should be stated up front for the public, developed with the legislature over the next few years, and put forward for public review. He suggested that [Amendment 21] might push the project to start looking for alternative creative ways, such as against corporate income tax or royalties, and he stated his preference is to "put it right out in front and center for the public and the legislature."

REPRESENTATIVE SADDLER maintained his objection to the motion to adopt Amendment 21.

REPRESENTATIVE SEATON said the intent of the proposed amendment is not to micromanage. He said if the language of the proposed amendment is too specific, he would be willing to replace Amendment 21 with a letter of intent clarifying that the legislature has heard the commissioners say that the intention is not to negotiate oil and that the legislature agrees.

1:28:20 PM

REPRESENTATIVE HAWKER emphasized that a letter of intent from the committee is not an endorsement of the full House; therefore, he said he will not endorse a letter he has not read.

CO-CHAIR FEIGE told Representative Seaton he is welcome to craft a letter of intent, on which the committee could then take a vote.

REPRESENTATIVE SEATON said he would never ask anyone to vote on something they had not seen.

[1:29:23 PM](#)

REPRESENTATIVE SEATON withdrew his motion to adopt Amendment 21. He then stated his intent to draft a letter of intent and bring it back for the committee's review.

[1:29:40 PM](#)

CO-CHAIR FEIGE, after discussion with members, determined that amendments labeled 28-GS2806\I.A.3, Bullock, 3/31/14; 28-GS2806\I.A.55, Bullock, 4/3/14; 28-GS2806\I.A.61, Bullock, 4/3/14; and 28-GS2806\I.A.66, Bullock, 4/3/14 would not be offered at this time.

The committee took an at-ease from 1:33 pm. to 1:34 p.m.

[1:34:44 PM](#)

REPRESENTATIVE KAWASAKI moved to adopt Amendment 22, labeled 28-GS2806\I.A.38, Nauman/Bullock, 4/2/14, which read:

Page 25, line 8, following "project":

Insert "; the commissioner of revenue may not authorize payments in lieu of taxes to a municipality in a contract negotiated under this paragraph unless amounts collected as payments in lieu of taxes to a municipality are not less than the amount the municipality would have collected under AS 29.45 and AS 43.56 over the period of the agreement between the municipality and the taxpayer for the payment in lieu of taxes"

Page 26, line 15, following "project":

Insert "; the commissioner of revenue may not authorize payments in lieu of taxes to a municipality in a contract negotiated under this paragraph unless amounts collected as payments in lieu of taxes to a municipality are not less than the amount the municipality would have collected under AS 29.45 and AS 43.56 over the period of the agreement between the

municipality and the taxpayer for the payment in lieu of taxes"

REPRESENTATIVE SADDLER objected.

REPRESENTATIVE KAWASAKI prefaced his explanation of Amendment 22 by remarking that the committee has heard quite a bit of testimony from municipalities across the state and has introduced intent language pertaining to a municipal advisory commission and a payment in lieu of tax (PILT) issue. However, he said he is offering Amendment 22 on behalf of those in Fairbanks and the rest of Interior Alaska. He said under the proposed amendment, revenues received by the state and municipalities over initial project terms could not be negotiated away and could not be less than what would be collected under current statute.

1:36:39 PM

MR. PAWLOWSKI said the entire advisory commission process - its operations, documents reviewed, and recommendations - will be public. He said he sees [Amendment 22] as potentially limiting on that negotiation. He said as the governor's advisory board, the designated mayors are a part of that group. He stated that any recommendations to come forward to change statute, which is what would need to happen for PILT or property tax to move forward, would be deliberated by the legislature. That change will come out of a recommendation of that group, which will conduct a public process. He said at this time he is not supportive of limiting the discussion around an open public forum. He said an interesting aspect of PILTs and impact payments related to "the shapes of the curves." He explained that in a traditional property tax environment it starts off high when the property is installed and then depreciation over time reduces that. With time value of money, he said, consideration may be given to increasing and escalating payments for predictability -- an option that was described in the Heads of Agreement so that as a community looks out to the future those increasing payments over time provide more predictability for their budgets. The question of whether it would have been less is a question that is very difficult to determine when things like the time value of money are introduced; using a different discount rate would change that assumption. A deeper problem he has with Amendment 22, he said, is the implication that the commissioner of DOR could, through contract, authorize a PILT or a payment in lieu of taxes. He said to date he has consistently testified the department's belief that Article 9,

Sections 3 and 4, of the Constitution of the State of Alaska clearly reserve that power to the legislature. Therefore, he is uncomfortable with the aforementioned implication.

[1:39:51 PM](#)

REPRESENTATIVE HAWKER concurred with Mr. Pawlowski, stating that the right to tax is the sovereign right of legislators and that right cannot be signed off to the administration in a contract. He said he thinks [Amendment 22] is a null and void proposal. He said this sort of amendment voids the concept of a payment in lieu of taxes (PILT), even if the legislature chose to "pursue one." He added, "We're putting some kind of a measurement under there that would have to be determined, and that's this future knowledge of what taxes would have been collected under the statutes over the period of the agreement." He said the whole point of a PILT is to make it easy on people so those calculations, which are difficult to do with a huge project, do not have to be done. He said he opposes Amendment 22.

[1:41:35 PM](#)

REPRESENTATIVE TARR said she does not interpret Amendment 22 as taking away the authority of the legislature to authorize a contract. She offered her understanding that Legislative Legal and Research Services did not bring up any constitutional issues when Amendment 22 was drafted, and she suggested someone from Legislative Legal and Research Services could weigh in on that. Regarding a PILT, she said at some point there will be an agreement made as to the value, and instead of having the traditional payment schedule of larger payments over time, as Mr. Pawlowski mentioned, [the payments] "would just be equalized." She proffered that under Amendment 22, whatever stop point of value and payment schedule is chosen, the overall payments could not be less than the described value. She suggested there may be two interpretation of the language, and she questioned whether anyone could address that.

CO-CHAIR FEIGE, emphasizing the word "unless" in the language of Amendment 22, said his interpretation is that if the payments are going to be graded on what they would receive by tax, then the commissioner would be allowed to "authorize that PILT," which is, as Representative Hawker mentioned, not an authority that the legislature necessarily wants to delegate to any department.

REPRESENTATIVE TARR asked whether anyone from Legislative Legal and Research Services or Department of Law (DOL) is available on line.

[1:43:43 PM](#)

CO-CHAIR FEIGE said there are quite a bit of unknowns related to what municipalities will require, how they would want taxes structured, which is why the governor issued the administrative order to put that working group together to help collect that information, define the problem, and recommend a potential solution. He opined that the legislature should give the group time to report back to the legislature before its next regular session. He said he thinks doing anything with PILTs at this point is premature.

REPRESENTATIVE KAWASAKI clarified that Amendment 22 pertains solely to the project and the contracts that would be negotiated on those projects. He said it is not intended to give the commissioner the authorization, but rather that "they don't have the authorization to create a contract negotiated under the paragraph." He said it is technical amendment in that it is unknown what the taxing authority of the municipalities would end up costing, but he opined that language is needed in SB 138 to protect municipalities and their ability to tax. He said he wants the legislature to make clear that it supports municipal authority to tax property. He said he does not know if Amendment 22 will achieve that goal, but it is an attempt to at least begin the discussion.

[1:46:14 PM](#)

REPRESENTATIVE P. WILSON ventured that "they might come up with something very unique that's never been done before, but that will do much better than this" and she does not want the legislature to prevent any creativity that could take place in the process.

The committee took an at-ease from 1:47 p.m. to 1:48 p.m.

[1:48:12 PM](#)

DONALD BULLOCK JR., Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, Alaska State Legislature, in response to Co-Chair Feige, explained that Article 9, Section 1, of the constitution prohibits surrendering, suspending, or contracting away the

power to tax, except as provided in that article. He said this is an issue that Legislative Legal and Research Services has dealt with often in the past in terms of the Alaska Gasline Inducement Act (AGIA), under which an exemption was provided to producers who committed during the first open season. He said the constitution appears to prohibit taxing away the power of taxation. He concluded as follows:

So, in other words, if a payment in lieu of taxes provided that a tax payer would pay a certain amount over time rather than allow the municipality and the assembly each year to determine what the necessary mill rate was for the municipality, if that was the ... contract, it would be unconstitutional under Article 9, Section 1.

1:50:19 PM

MR. BULLOCK, in response to Representative Tarr, said the commissioner of DOR administers the oil and gas property tax under AS 43.56 and there is a link between the department's taxation of oil and gas property with municipalities that impose a property tax on the same property. He continued as follows:

So, if it was a tax issue and the commissioner of revenue is negotiating something that effects the municipalities tax under his power under this particular part of the bill that's being amended, then this sets a limit that if a payment in lieu of taxes survived a constitutional challenge, that the municipality would not suffer by receiving less under a payment in lieu of taxes agreement compared to what they would anticipate receiving as mil rates evolved and as property values changed over the life of the contract.

MR. BULLOCK indicated that over a period of time, a payment in lieu of taxes could not be less than what a municipality would have otherwise received from its property tax.

1:52:20 PM

REPRESENTATIVE SEATON asked for clarification regarding "may not authorize unless".

MR. BULLUCK said there are two issues at play. The first is whether the commissioner of DOR can even enter into or be a

party to a negotiation over payment in lieu of taxes. If that survived a constitutional challenge, then the second part is what the terms would be that relate to the payment in lieu of tax. He said the terms are that over all, that payment in lieu of tax could not result in less revenue to the municipality compared to if the municipality "just taxed it" as it normally would.

REPRESENTATIVE SEATON summarized that the "unless" would not authorize the commissioner to negotiate the taxes; it just means if the commissioner's negotiations are deemed constitutional, then they would have to meet certain requirements.

MR. BULLOCK confirmed that if the commissioner was allowed to negotiate a PILT, he/she could not negotiate one that would result in less money. In response to a follow-up comment, he stated that the problem with Amendment 22 is that it makes it sound as if a PILT is all right, and the legislature must decide whether it wants to take the chance that a court is not going to strike down this type of agreement.

[1:54:58 PM](#)

REPRESENTATIVE TARR stated that that problem exists without the amendment, so it is not the amendment that is presenting that constitutional issue. "It's the very issue of suggesting negotiating PILT," she surmised.

MR. BULLOCK concurred; there nothing in the bill that addresses PILT. The bill authorizes the negotiation of certain contracts and gives the power very generally. Amendment 22, as well as some of the others the committee has been considering, are putting some sort of boundaries as to what the issues are that may be addressed in contract or, if an issue is part of a contract, what the legislature's desire is as to how the issue should be considered.

[1:56:07 PM](#)

REPRESENTATIVE SADDLER [maintained his objection].

REPRESENTATIVE KAWASAKI reiterated that he thinks there needs to be some protections for property tax payers. He noted that property tax payers in Fairbanks pay some of the highest taxes in the state, and he said he feels uncomfortable allowing CSSB 138(FIN) am to move forward without some sort of treatment that would ensure taxes are spread equitably across all properties.

[1:57:25 PM](#)

A roll call vote was taken. Representatives Seaton, Tarr, and Kawasaki voted in favor of the motion to adopt Amendment 22. Representatives Hawker, Olson, P. Wilson, Saddler, and Feige voted against it. Therefore, Amendment 22 failed by a vote of 3-5.

[1:58:54 PM](#)

REPRESENTATIVE TARR moved to adopt Amendment 23, labeled 28-GS2806\I.A.28, Bullock, 4/2/14, which read:

Page 15, following line 30:

Insert a new bill section to read:

"\* **Sec. 16.** AS 38.05 is amended by adding a new section to read:

**Sec. 38.05.023. Limitation relating to the toll structure for transporting natural gas.** An agreement or contract associated with a North Slope natural gas project that provides for the state to pay a person for transporting natural gas under a firm transportation services agreement may not include a toll structure that bases a charge for transportation on a return on equity of more than 15 percent, including any adjustment to a base rate determined at the time of the final investment decision."

Renumber the following bill sections accordingly.

Page 17, line 24:

Delete "sec. 17"

Insert "sec. 18"

Page 21, line 16:

Delete "sec. 27"

Insert "sec. 28"

Page 25, line 9:

Delete "sec. 30"

Insert "sec. 31"

Page 31, line 18:

Delete "sec. 37"

Insert "sec. 38"

Page 53, lines 24 - 25:

Delete "sec. 23"

Insert "sec. 24"

Page 56, line 6:

Delete "16, 17, 23 - 27, 29, 30, 37, 39, and 55 - 61"

Insert "16 - 18, 24 - 28, 30, 31, 38, 40, and 56 - 62"

Page 56, line 8:

Delete "Section 38"

Insert "Section 39"

Page 56, line 9:

Delete "secs. 62 and 63"

Insert "secs. 63 and 64"

REPRESENTATIVE SADDLER objected.

REPRESENTATIVE TARR noted Amendment 23 references the Memorandum of Understanding (MOU), Exhibit C, page 2, Key Processing and Transportation Commercial Terms 6, [Terms & Conditions 6], which relates to return on equity (ROE) as modified by [Terms & Conditions 8], which is the rate tracker differential. She said this subject came up during discussions with Roger Marks, [contract consultant to Legislative Budget and Audit Committee], who talked about conditions in the market that could change and ensuring "a good deal" in a relationship with TransCanada. She said, "Right now they can have a return on equity of 12 percent, which would be adjusted by the rate tracker differential." She said the rate tracker differential is the difference between the interest rate of a 30-year U.S. Treasury note when the MOU was signed, which was January 14, 2014, and at the time of final investment decision (FID), which she estimated may be five years from now. She said Amendment 23 would ensure that in the event of a spike in interest rates, TransCanada's actual return on investment could not increase by more than 3 percent above the negotiated contract term. Representative Tarr said she was interested in the proposed amendment following Mr. Marks' suggestion that [Alaska's] relationship with TransCanada is more like that of a bank and [the state] may be able to find better financing terms in the market. She said, "So, this ... maintains that relationship, but just puts some ... of the sidebars in there." She related that in the analysis seen for TransCanada, the modeling has been done at 12 percent and no work has looked at what would happen if interest rates spiked

and the ROE increased. She added, "So, this amendment limits that again to the 15 percent."

[2:00:53 PM](#)

REPRESENTATIVE HAWKER observed that the word "person" in Amendment 23 means a corporate citizen, and he questioned what would happen if that person was a "go-it-alone" entity, such as AGDC, and the state would therefore be paying itself to be the transporter of the gas. He indicated that the structure of the return on the state's own equity in the transportation of its own gas is an unknown quantity: it could be 2 percent; it could be 18 percent .... He opined that those are the kind of elements in the deliberations that the legislature should not be constraining at this point, and if the legislature trusts the administration to negotiate contracts and bring them back to the legislature, then it should not attempt to predict the future by telling the administration now that it cannot make a certain decision. He said, "This is where we have killed every pipeline project that has come along to date." He stated opposition to Amendment 23.

CO-CHAIR FEIGE remarked that the legislature has ultimate veto power on the contract when it comes back for legislative review.

[2:02:53 PM](#)

REPRESENTATIVE SADDLER offered his recollection that there had been some analysis of the interest rates and return on investment in the Black & Veatch analysis. He added, "So, that's entirely accurate." He said he also has concerns about predicting future economic and financial arrangements, and he said [Amendment 23] gets into "the weeds of the finances." He stated he would not support Amendment 23.

[2:03:27 PM](#)

MR. BALASH said DNR opposes Amendment 23. He explained one reason for the opposition is that it would be in direct conflict with the terms of agreement with TransCanada and create an uncertainty for all parties. He observed that "this would be a feature of the general law for such time as it remains in place." He said that markets and conditions change, which is one of the reasons that the department agreed "to rely on the 30-year treasury as a marker for this rate tracker mechanism." He continued as follows:

If those numbers are escalating ..., then our returns on our various funds and other wealth will also rise in the returns that they're achieving, we would expect. So, we think that 15 is just, frankly, an arbitrary number that may mean something today, but over time may not.

2:04:41 PM

REPRESENTATIVE TARR requested Mr. Balash to address, within the context of the proposed amendment, Mr. Marks' concerns about whether the state could be getting a better financing option. She directed attention to the phrase "with a North Slope natural gas project", within Amendment 23, and said she thinks it would be confined "to this particular project," although "because it's specific to a term of the MOU with TransCanada - that part is not referenced here." She stated that the intent is "not for it to fly outside of this particular instance."

MR. BALASH responded that Representative Tarr is correct that it is related to a North Slope project that would be subject to the agreements negotiated in AS 38.05.020(b)(10-11); although, he said DNR does not know with certainty that the Alaska LNG Project, as contemplated in the HOA, is going to be successful and go forward. He said DNR is optimistic, but its view of TransCanada's role in Alaska differs starkly from that of Mr. Marks. He explained that DNR does not see TransCanada as a bank. "If we thought they were simply providing a financial service for us, we could do better and we would do better. We can do better with our friends at the Department of Revenue, for crying out loud."

2:06:48 PM

MR. PAWLOWSKI added that page 20 of CSSB 138(FIN) am contains a broad definition for a North Slope natural gas project, which could be applied to any project. He said it is unknown whether the permutations of the context of this amendment within that statute would be broader. He said the equity option agreement with TransCanada allows the state to "stand on both sides." He stated that the legislature needs to work further on those agreements as they evolve. He said the state may find it wants to wholly finance and get a return or that the return in the equity option is equally as important, and that may depend on "where that resides within the state and the revenues the state returns from that equity option."

2:07:53 PM

REPRESENTATIVE SEATON stated one concern related to the charts and graphs presented by Black & Veatch showed that a lot of value in the project was in the transportation aspect. He expressed his concern that depending on what prices are for the actual product, the state may need to extract revenue from the transportation portion, instead of just the sales agreement. He said he does not think the state should limit itself, especially if it turns out that the state is paying itself. He said transportation related revenue is a more even source of revenue than just looking at the sales price on the spot market or based on how long a term contracts are. For those reasons, he said, he does not support Amendment 23.

2:09:53 PM

REPRESENTATIVE TARR said she thinks if this particular project does not go forward, the legislature is going to be "redefining everything"; however, because of Representative Seaton's expressed concerns, she asked if "this could be written to be more specific to that particular TransCanada MOU relationship." While waiting for a response from Mr. Bullard, she asked whether there is a percentage at which the administration feels would not restrict negotiations but would meet the concerns of Alaskans that the state would get a fair return on its investment on its resource.

MR. PAWLOWSKI responded the current MOU provides flexibility related to "lots of other terms," such as the blend between debt and equity. He said, "It makes a huge difference when you start to move one term on what the operations are of the other terms." He said he does not believe there would be a term that the administration would be comfortable with outside the MOU.

2:13:05 PM

MR. BALASH added that this is speaking to an agreement that provides for the state to pay a person, and a person could include AGDC; therefore, he opined, the point made by Representative Seaton is a good one to keep in mind. Speaking to Representative Tarr's question about an agreeable percentage amount, he said because this is a general law that will be on the books unless changed, he thinks "it is just something that's inappropriate to put into a statute like this." He said if the general economy and market at large is changing so much that 30-year treasuries have gone up a full 300 basis points, he thinks

the state will be facing "cross-pressures across the board" that will challenge the economics of this project.

REPRESENTATIVE TARR agreed.

[2:14:36 PM](#)

REPRESENTATIVE TARR asked Mr. Bullock whether there is a way for [Amendment 23] to be written to be more specific to the issue she is addressing, because "a few percentage points on ... the dollars we're talking about make a big difference." Further, she asked him to address the use and definition of the word "person".

[2:15:12 PM](#)

MR. BULLOCK replied some of the amendments that have been seen are in uncodified law related to the types of contracts that might be signed; however, Amendment 23, as well as some of the others, is put in codified law. The amendments in uncodified law are intended to be more responsive to the MOU and, in some cases, the HOA. They are in uncodified law because they are meant to take affect for a limited period of time. When putting them in uncodified law, the law will apply to the negotiations on this particular project. He said Amendment 23 is in codified law, thus is intended to apply into any future contract that DNR negotiates with a person that would carry the state's gas. He said Amendment 23 could be put into uncodified law, in which case the 15 percent may be more reasonable in the current environment. Notwithstanding that, he said all the oil and gas contracts and projects discuss rate of return on equity and the amount of debt, and the legislature can always determine how much it wants the state to be liable for. He said circumstances may change in the future, in which case the 15 percent could be amended in the future, and it would be the prerogative of the legislature to make that decision.

[2:17:17 PM](#)

CO-CHAIR FEIGE expressed his hope that all the rules would not have to be renegotiated every time. He said the legislature's job should be to establish the framework so that entities beyond the state can know with certainty what Alaska's rules are. He said this particular project does require some statute changes because of its nature; however, he does not envision the constant need for revision of rules on all future projects.

[2:18:34 PM](#)

CO-CHAIR SADDLER maintained his objection to the motion to adopt Amendment 23.

[2:18:39 PM](#)

A roll call vote was taken. Representatives Tarr and Kawasaki voted in favor of the motion to adopt Amendment 23. Representatives Olson, Seaton, P. Wilson, Hawker, Saddler, and Feige voted against it. Therefore, Amendment 23 failed by a vote of 2-6.

The committee took an at-ease from 2:19 p.m. to 2:40 p.m.

[2:40:24 PM](#)

REPRESENTATIVE TARR moved to adopt Amendment 24, labeled 28-GS2806\I.A.44, Nauman/Bullock, 4/3/14, which read:

Page 1, line 4, following "**projects;**":

Insert "**relating to the investments of the Alaska Housing Finance Corporation, the Alaska Retirement Management Board, the constitutional budget reserve fund, and the Alaska permanent fund;**"

Page 2, following line 15:

Insert a new bill section to read:

"\* **Section 1.** AS 18.56.090 is amended by adding a new subsection to read:

(g) Funds of the corporation may not be invested in an Alaska liquefied natural gas project, as defined in AS 31.25.390, unless specifically authorized by the legislature."

Page 2, line 16:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Page 12, following line 8:

Insert new bill sections to read:

"\* **Sec. 15.** AS 37.10 is amended by adding a new section to read:

**Sec. 37.10.225. Limitation on investment.**  
Notwithstanding AS 37.10.220, the board may not invest

in an Alaska liquefied natural gas project, as defined in AS 31.25.390, unless specifically authorized by the legislature.

\* **Sec. 16.** AS 37.10.430(c) is amended to read:

(c) A special subaccount is established in the budget reserve fund (art. IX, sec. 17, Constitution of the State of Alaska). Money in the subaccount shall be invested to yield higher returns than might be feasible to obtain with other money in the budget reserve fund. In establishing or modifying the investment policy for the subaccount in the constitutional budget reserve fund, the commissioner of revenue shall assume that those funds will not be needed for at least five years. Income earned on money in the subaccount shall be retained in the subaccount by the department. **Funds of the subaccount may not be invested in an Alaska liquefied natural gas project, as defined in AS 31.25.390, unless specifically authorized by the legislature.**

\* **Sec. 17.** AS 37.13.120 is amended by adding a new subsection to read:

(f) The board may not invest money from the fund in an Alaska liquefied natural gas project, as defined in AS 31.25.390, unless specifically authorized by the legislature."

Page 14, line 3:

Delete "sec. 14"

Insert "sec. 18"

Page 17, line 24:

Delete "sec. 17"

Insert "sec. 21"

Page 21, line 16:

Delete "sec. 27"

Insert "sec. 31"

Page 25, line 9:

Delete "sec. 30"

Insert "sec. 34"

Page 31, line 18:

Delete "sec. 37"

Insert "sec. 41"

Page 53, lines 24 - 25:

Delete "sec. 23"  
Insert "sec. 27"

Page 54, line 25:  
Delete "sec. 14"  
Insert "sec. 18"

Page 56, line 6:  
Delete "Sections 1 - 14, 16, 17, 23 - 27, 29, 30,  
37, 39, and 55 - 61"  
Insert "Sections 1 - 18, 20, 21, 27 - 31, 33, 34,  
41, 43, and 59 - 65"

Page 56, line 8:  
Delete "Section 38"  
Insert "Section 42"

Page 56, line 9:  
Delete "secs. 62 and 63"  
Insert "secs. 66 and 67"

REPRESENTATIVE HAWKER objected.

REPRESENTATIVE TARR said early in the process she submitted a list of questions [to the commissioners of DNR and DOR] regarding the project's investment scenarios and funding sources. [The 3/21/14] response from [Commissioner Balash] and Commissioner Rodell indicated that investment could be made from the funds listed [in Amendment 24] without appropriation. She related there was a concerned response that brought forward more explanation, which elicited "additional concern." She said there are some sidebars, such as the prudent investment rule for the Alaska Permanent Fund. She said there are a couple other issues, which may, "because of timeframes, constrict the other funds from being used." She stated, "I just want to make it clear on the record, because those two instances where it was ... publicly stated that that could happen without an appropriation, that that's not in fact what we will likely see happen; that's not the intention. Of course everybody gets concerned when people talk about spending from the permanent fund."

[2:42:59 PM](#)

REPRESENTATIVE OLSON said he had a problem with Amendment 24. He stated that one of the reasons the aforementioned funds have been successful over the years is that [the legislature] has not

been able to micromanage them. Left to the management of the funds, they have prospered. He said there have been several attempts over the last 10 years to either prohibit certain investments or direct funds to be spent in a particular way and that, he opined, is not the responsibility of the legislature.

REPRESENTATIVE HAWKER concurred with Representative Olson. He posited that "in the dialog on this" there should not be "a takeaway that says it is certainly my intent to prohibit an investment by any one of these entities in an Alaska North Slope natural gas pipeline if it does, in fact, fit into their investments profiles, all of their prudent investor rule compliance, all their investment guidelines, all the issues they have regarding concentration of risk, but something that meets the muster that all investments must meet prior to being made by these agencies or funds. We're not restricting them either, by dropping this amendment and not taking it further."

[2:44:29 PM](#)

REPRESENTATIVE KAWASAKI asked for confirmation that the intent of Amendment 24 is not that the funds could be used, but that they would have to be authorized by the legislature.

REPRESENTATIVE TARR answered yes. She reiterated that there was concern that funds could be appropriated without legislative approval.

[2:45:05 PM](#)

CO-CHAIR FEIGE said those serving on the boards and corporations listed in the proposed amendment are nonpolitical and have expertise the legislature does not have to make the decisions they make. He asked if the administration had feedback on Amendment 24.

MR. PAWLOWSKI said the investments of these funds are done by professional investment managers, under investment policies, rules, and guidelines. He mentioned the Constitutional Budget Reserve (CBR) and said there are limits on the duration of the investments. The subaccount in the CBR was created by the legislature to allow for slightly longer duration; however, he surmised that "even this type of investment does not fit within that." He said a hands-off approach is used regarding those who manage the permanent fund. He deferred to Chris Poag from the Department of Law to offer further information.

[2:48:29 PM](#)

CO-CHAIR FEIGE reviewed Amendment 24 and asked Mr. Christopher Poag to speak to it.

CHRISTOPHER POAG, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Juneau), Department of Law (DOL), replied his understanding of the MOU is that if the time comes to exercise an equity option, then the legislature would be involved in that decision; therefore, he does not think any of the fund [managers] would have the ability to exercise the option without the legislature speaking to the investment. He indicated that if the time came where the legislature and the administration encouraged the exercise of the option and thought it would be a good idea to use the assets of one of the two funds - the Alaska Retirement Management (ARM) Board retirement assets or the Permanent Fund Corporation assets - "this would be ... in probably a smaller portion of" the portfolio, as "special opportunity investments."

MR. POAG added he is not familiar with the size of the ARM Board's "special opportunities," but surmised that even considering the size of the board's aggregate assets, this probably would be outside the scope of the board's current investment policies for this type of investment. Nevertheless, he said he thinks it is plausible that if the legislature and the administration encouraged that investment, the board would then - unless [the legislature] modified the prudent investor rule - have to consider whether that investment met the risk profiles and the size of the allocation consistent with the board's investment portfolio, before the board would make that decision.

MR. POAG talked about the constitutional mandate that the Permanent Fund Corporation shall engage in income-producing investments. He said the corporation used to provide a list for the legislature's review, but somewhere along the line, the corporation proved itself with a good track record and was given carte blanche by the legislature, as long as its investments were consistent with the prudent investor rule. He stated, "If this were, for example, an investment that had a higher risk profile than they would have otherwise invested in, unless you mandated or direct them to make that investment, they would not use that prudent investor rule that's provided to them to make the investment." He said it is speculative at this point to say whether or not the investment would fit within the profile because the risk profile is unknown. Also, the legislature

needs to give the green light to the investment. For those reasons, he said he thinks Amendment 24 is unnecessary. Theoretically, if the time comes and the legislature, assuming this did not fit within its prudent investor rule, wishes to direct that investment, the constitution certainly would allow for that.

[2:52:58 PM](#)

REPRESENTATIVE HAWKER said Amendment 24 does not specify whether it pertains to an equity investment, which is buying ownership in a project, or something different, such as buying the debt behind the project. He said the debt could be that of TransCanada, ConocoPhillips, or BP, specifically to promote this project. He said even if it was the State of Alaska's debt, it likely would be rated high quality, with a low-profile and predictable return in the fixed return component of the state's portfolios. Representative Hawker said there is a presumption [in Amendment 24] that the Permanent Fund [Corporation] cannot step up to the plate and take an equity position in the project without authorization from the legislature; however, he said it does not address "whether that's a direct or an indirect." He indicated that the last he heard, one of the largest single holdings of the Alaska Permanent Fund was the ExxonMobil Corporation, and by the state holding that, it has an indirect, but very real investment in the project going forward. He said if the amendment is to be considered further, the language must be clarified as to direct and indirect investment, equity, debt, and other concerns. He echoed Representative Olson's previous statement that the legislature has been successful in the management of the state's investments, the liquid capital, because the legislature has hired the best qualified people and not put constraints on them beyond proper investment guidelines.

[2:55:56 PM](#)

REPRESENTATIVE KAWASAKI recalled that at the outset of his testimony, Mr. Poag mentioned that equity options would come back the legislature at some point in time. He said he thinks "the concern addressed in this amendment is that the permanent fund - prudent invest rule out of the way - that AHFC [Alaska Housing Finance Corporation], ARM Board, or one of these organizations can make an investment without." He inquired whether it is the case that they can.

MR. POAG stated he assumes the purpose of Amendment 24 is specifically to prevent these funds from exercising the option

in the MOU. He requested correction if his assumption is not right.

[2:56:52 PM](#)

REPRESENTATIVE TARR said a question she asked [Commissioner Balash and Commissioner Rodell] and their [3/21/14] response to that question are as follows:

The MOU Equity Option term sheet mentions that the state's equity share could be owned by a state investment fund such as the CBR. Would it be possible for an equity investment to be made by fund managers, as part of their portfolio, without an act of appropriation by the legislature?

Yes, it would be possible for an equity investment to be made without a legislative appropriation, assuming the entity charged with managing the assets of the fund determined the investment satisfied the investment criteria that they are bound by [AS 37.10.071, AS 37.13.120]. ... It is the intent of the MOU to only allow the state or one of its funds to own the equity interest. An external manager would not actually own the equity option, but they could manage the option, as it has been exercised by the state using state funds they manage.

REPRESENTATIVE TARR stated [Amendment 24] addresses the point that [an equity investment] could be done without a legislative appropriation. She indicated her constituents have expressed concern that the legislature be involved with how the state spends its money. Amendment 24 is an attempt to ensure that the legislature is engaged [in how the state's money is spent].

REPRESENTATIVE SADDLER posited that the legislature is engaged, because it established the prudent investor operating guidelines under which these funds are managed.

[2:59:13 PM](#)

REPRESENTATIVE OLSON asked Representative Tarr if she has any documentation from her constituents, such as e-mails, that can be added to the committee packet so their concerns will be on the record.

REPRESENTATIVE TARR answered yes. She related that people asked her about this at a constituent meeting. The [3/21/14] answers [from the commissioners] were made public a few days ago and in response to that a news article was written about one piece of it and this issue came up. She noted that she has been in frequent communication with the administration about this and her intent here was to have the conversation, because this is public information, to clear this up and then she was planning to remove the amendment.

3:00:00 PM

MR. PAWLOWSKI expressed appreciation for Representative Tarr reading that question into the record because within the department's answer was a good illustration of the dialogue that has been had. He offered his belief that many of the committee members were instrumental in constructing the prudent investor rule.

CO-CHAIR FEIGE surmised that many constituents may not be aware of the rule.

MR. PAWLOWSKI, regarding the department's response read by Representative Tarr, emphasized that there is a difference between exercising the option and owning the option. He noted that this came up from the term sheet in the MOU with TransCanada, [Exhibit C], page 2. In that term sheet is a provision that would allow the transfer of the equity option to a fund, if the legislature were to exercise the option. He reminded members that the option is part of the firm transportation services agreement which will come back to the legislature for consideration. He said right now the administration has agreed to work with AGDC on that option; however, the legislature could decide that that is a valuable asset that could be transferred to a fund. He said, "We didn't want that to be taken off of the table." He recollected that in the department's aforementioned response, it used the term "ownership of the option" and not "exercise" [the option], and he explained that is because of the linkage to the firm transportation services agreement. He opined that "getting the order of events is important in considering this question."

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REPRESENTATIVE KAWASAKI asked whether AHFC and the ARM Board have the same strict prudent investor rules as the Permanent Fund Corporation.

MR. POAG answered he cannot speak to AHFC; however, he said the ARM Board has one of the more vigorous prudent investor rules, which occurs in AS 37.10.071 and references sole financial best interest. He said it is a prudent investor rule different from that which was codified by the legislature in AS 37.13.120 and followed by the Permanent Fund Corporation.

CO-CHAIR FEIGE recollected that Mr. Fauske was the former head of AHFC; he therefore fielded Representative Kawasaki's question to him.

MR. FAUSKE responded that AHFC dealt in short-term money market funds, not equity investments, because of the cash draw requirements on the corporation as it purchased mortgages.

[3:04:07 PM](#)

REPRESENTATIVE HAWKER, in response to the Co-Chair, withdrew his objection for the purpose of allowing Amendment 24 to be withdrawn.

REPRESENTATIVE TARR responded further to Representative Olson's prior request for documentation for the record.

[3:05:24 PM](#)

REPRESENTATIVE TARR [withdrew Amendment 24].

[3:06:32 PM](#)

REPRESENTATIVE TARR moved to adopt Amendment 25, labeled 28-GS2806\I.A.25, Nauman/Bullock, 4/1/14, which read:

Page 1, line 7, following "on gas;":

Insert "**relating to an option for the state to acquire an ownership interest in a North Slope natural gas project;**"

Page 15, following line 30:

Insert a new bill section to read:

"\* **Sec. 16.** AS 38.05 is amended by adding a new section to read:

**Sec. 38.05.023. State option to acquire an ownership interest in a North Slope natural gas project.** (a) An agreement or contract associated with a North Slope natural gas project that includes an

option for the state to acquire an ownership interest in a gas pipeline or gas treatment plant may not require the state to exercise the option before December 31, 2016.

(b) In this section, "gas pipeline" and "gas treatment plant" have the meanings given in AS 31.25.390."

Renumber the following bill sections accordingly.

Page 17, line 24:

Delete "sec. 17"

Insert "sec. 18"

Page 21, line 16:

Delete "sec. 27"

Insert "sec. 28"

Page 25, line 9:

Delete "sec. 30"

Insert "sec. 31"

Page 31, line 18:

Delete "sec. 37"

Insert "sec. 38"

Page 53, lines 24 - 25:

Delete "sec. 23"

Insert "sec. 24"

Page 56, line 6:

Delete "16, 17, 23 - 27, 29, 30, 37, 39, and 55 - 61"

Insert "16 - 18, 24 - 28, 30, 31, 38, 40, and 56 - 62"

Page 56, line 8:

Delete "Section 38"

Insert "Section 39"

Page 56, line 9:

Delete "secs. 62 and 63"

Insert "secs. 63 and 64"

REPRESENTATIVE HAWKER objected.

[3:06:40 PM](#)

REPRESENTATIVE TARR explained Amendment 25 is another issue she has been discussing with the administration. She said a concern that has come up, given the number of issues that are being addressed here, is the speed at which things are happening and some pressure on people to make decisions quickly that they may not be comfortable with. She noted that the MOU says the state's equity option is available through the end of 2015. Given all of the different agreements and the timeline within which they are supposed to happen, delaying this by one year will not impact anything else. She understood from her conversations with the administration, however, that also in the MOU is some flexibility should both parties not be ready at 12/31/15. She said the attempt in Amendment 25 is because of the importance in deciding whether to exercise that equity option without feeling pressure. Her last conversation with Commissioner Balash, she related, was about delaying that decision until the end of the 2016 legislative session, rather than 12/31/16, because that would give a little more time for the appropriation to be made than would be necessary potentially to exercise that option. She requested the administration to address the date.

[3:08:25 PM](#)

COMMISSIONER BALASH confirmed there has been ongoing dialogue with the sponsor of Amendment 25 regarding this and other amendments. In this particular case, he said, what is being talked about is the intent of parties to have this option available at the movement from Pre-Front-End Engineering and Development (Pre-FEED) to Front-End Engineering and Development (FEED), and the date of 12/31/15 was inserted as a backstop to that. Everyone is optimistic that the project will be at that particular juncture and have some action before the end of calendar 2015. However, he continued, if it becomes necessary to extend the date to sync up with the transition from Pre-FEED to FEED and that particular date, there will be opportunity to work with the counter-parties to go ahead and extend that date. He said he is concerned that stating upfront that an extension of time is needed now will put the state in an awkward position relative to the counter-parties and that it will have the effect of potentially giving the counter-parties leverage to extract some other concession from the state, which is not the intent of the amendment sponsor. The administration would appreciate the flexibility, he noted, and would appreciate the legislature keeping it informed about this particular concern as time goes on through 2015.

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REPRESENTATIVE P. WILSON understood Amendment 25 is not saying hold off until then, but rather to extend the date so there is that flexibility. She asked whether the administration would have the flexibility to do that anyway.

COMMISSIONER BALASH responded the administration will have the flexibility to pursue that with TransCanada. It is an agreed upon term in the MOU, so the administration will need to work it out with TransCanada. He said he does not want to have to do that until he needs to do that. If it is going to cost him something as a negotiator to get that extension of time, he is not going to ask for that extension unless he thinks he needs it, in which case he is sure there will be something that TransCanada will be interested in at the time.

3:11:42 PM

REPRESENTATIVE HAWKER noted this is a statutory one-year delay in moving the project forward with certainty and assuredness about how it is going to take form. This is not a cost-free amendment, he argued. There has been testimony that each year of delay is a cost of \$800 million to the project. Currently the MOU has a deadline that is making sure all of the parties to the MOU and HOA keep moving forward at an appropriate pace. He said he does not want to give the other parties another year to find excuses for doing this or that, he wants to see a project keep moving forward and moving forward on the reasonable track that has been agreed to by all the parties.

REPRESENTATIVE TARR maintained that is not what Amendment 25 does. It says "before" December 31, so it does not prohibit the parties from doing things any earlier; it could even be before 12/31/15 as anticipated. However, she said, she has talked to the administration and everybody is expecting there will be some slippage in the timeline as set forth now. Amendment 25 offers flexibility with that decision making, she argued, it is not requiring things to take longer; it is only if it is necessary.

REPRESENTATIVE HAWKER responded that is the whole point -- these are negotiations. Right now there is a hard fast closure date, he said, and the legislature is gratuitously giving a whole year without asking for anything in return from all the other counter-parties in the agreement, and that is wrong.

[3:13:56 PM](#)

REPRESENTATIVE HAWKER maintained his objection.

REPRESENTATIVE TARR related she has been working closely with the administration on all of her amendments. Every effort, she said, is to do what she can to help move this project forward and to ensure it has direct benefits for Alaskans and that the state gets a fair return. She said she does not want to do anything that hinders the administration. In the spirit of working together she withdrew her motion to adopt Amendment 25.

[3:15:05 PM](#)

REPRESENTATIVE KAWASAKI moved to adopt Amendment 26, labeled 28-GS2806\I.A.64, Bullock, 4/3/14, which read:

Page 13, line 18, following "paragraph":  
Insert "(A)"

Page 13, line 20, following "contract;":  
Insert "and

(B) must include a provision that requires that each party to the agreement or contract pay, in proportion to the party's ownership interest in the North Slope natural gas project, the costs of that portion of infrastructure downstream from the point of production that are directly related to the North Slope natural gas project; the state may not pay for any costs of infrastructure upstream of the point of production; infrastructure costs include the costs of construction, improvement, and maintenance of roads, bridges, port facilities, and utilities;"

Page 15, line 12, following "paragraph":  
Insert "(A)"

Page 15, line 14, following "contract;":  
Insert "and

(B) must include a provision that requires that each party to the agreement or contract pay, in proportion to the party's ownership interest in the North Slope natural gas project, the costs of that portion of infrastructure downstream from the point of production that are directly related to the North Slope natural gas project; the state may not pay for any costs of infrastructure upstream of the point of

production; infrastructure costs include the costs of construction, improvement, and maintenance of roads, bridges, port facilities, and utilities;"

[3:15:13 PM](#)

CO-CHAIR SADDLER objected.

REPRESENTATIVE KAWASAKI explained Amendment 26 deals with the [4/2/14] discussion the committee had with the Department of Transportation & Public Facilities (DOT&PF) regarding impacts to the state's roads, rails, and ports, and the disposition of who ends up paying for those. Testimony was heard from the deputy commissioner regarding the airport in Deadhorse, for instance, where federal highway funds cannot be used and the state is paying for those facilities. He said Amendment 26 clarifies who is responsible for those roads, rails, and ports and who is responsible for their construction. The committee heard that under the Alaska Stranded Gas Development Act there was a great undertaking with DOT&PF and the producers about how much that was going to cost. Under the AGIA license, he added, DOT&PF also did a complex study on how much the increase to roads, rails, and ports would cost, which was approximately \$2 billion. He said he does not think the state should be exclusively on the hook. Testimony was heard that the state will not be exclusively on the hook and that somehow industry will benefit from the roads as well as legislators' constituents, and Amendment 26 requires it in advance. He maintained it is necessary that this be clarified before getting too far down the road on this bill.

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CO-CHAIR FEIGE posed a scenario in which a new bridge is built over the Yukon River to carry the LNG pipeline across. He understood Representative Kawasaki to be saying that if this new bridge is a supplementary or a replacement bridge for the current bridge, that the bridge would then be owned by each of project partners in the same proportion that they are part of the project. He asked who would pay for the maintenance on that bridge as it is utilized over its lifespan.

REPRESENTATIVE KAWASAKI responded the sizes of facilities are being ramped up and his question during the discussion with DOT&PF was whether there is any actual figuring of how much the maintenance and operation are going to be once those roads are done. He said there is no real matrix in which to do that and

the state ought to be concerned every time it builds a road. Under Amendment 26, a negotiation will happen between DOT&PF and the partners in this project. He recognized the state has a responsibility to those roads, too, but said the state is spending millions of dollars on roads north of Fairbanks and on airports in remote locations. Those costs should be borne by the folks utilizing them the most, he argued, and this should be clarified in the language of the bill before moving forward.

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REPRESENTATIVE HAWKER addressed Amendment 26 in the context of where its provisions would be placed in the statute. He noted the proposed amendment language states "must include a provision that requires that each party to the agreement or contract" to do the aforementioned. He pointed out that the section of CSSB 138(FIN) am [in which this language would be inserted] is page 15, [lines 8-14], which is about the authorities of the commissioner of the department of natural resources and which state, "in consultation with the commissioner of revenue, participate in the negotiation of agreements that include balancing, marketing, disposition of natural gas, and offtake and contracts and development of terms for inclusion in those proposed agreements and contracts associated with a North Slope natural gas project". Amendment 26 is a tax assessment, he maintained, and it seems that if the committee wants to create specific assessments on roads, highways, and infrastructure on the producers, it ought to be structured in statute entirely differently. He argued he does not see the gas balancing, marketing, gas sales contracts, and project development contracts contemplated under this provision of statute as having much relevance to that infrastructure development.

REPRESENTATIVE KAWASAKI responded Amendment 26 has to be placed in this section of the bill because when the commissioner of natural resources is negotiating all of the other terms this is a term that [legislators] would like included. He said he does not think it is specifically DNR's responsibility to find out how much those roads are going to cost; rather that is a negotiation between DOT&PF and the producers. He recalled explanations during the Alaska Stranded Gas Development Act that the producers spent a lot of time interacting with DOT&PF to figure out what kinds of things the producers would need to advance a project. He said Amendment 26 speaks to that. He deferred to Mr. Bullock for further explanation.

[3:23:26 PM](#)

CO-CHAIR FEIGE offered his view that ongoing maintenance is a reason for property tax statutes. He inquired whether the cost of infrastructure that would be addressed in Amendment 26 would not already be accounted as per the committee's discussion regarding the impact aid and the PILTs that must be fleshed out by the advisory board.

REPRESENTATIVE KAWASAKI replied he thinks there definitely are municipalities that want to weigh in on their direct and indirect impacts, which was addressed by [Amendment 15]. However, he continued, there is a lot of unorganized borough where there will not be these impacts. He reiterated that during the AGIA discussions, DOT&PF said the price tag for getting to the point of being ready to build a pipeline would be \$2 billion. He said that while this is a different project and the testimony was that it would cost much less than \$2 billion, it is still unknown what the cost will be.

CO-CHAIR FEIGE noted that even unorganized borough property is still subject to the 20 mil tax, which goes to the state. He maintained that the committee has already accounted for what Amendment 26 is looking for.

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MR. BULLOCK believed one of the precedents for this type of agreement has to do with the road to Skagway where the mining company that was shipping ore down the highway paid for things like beefing up Captain Moore Bridge to be able to handle the trucks. It would not necessarily be part of the ownership, he said, it is more like a user fee. Responding to Representative Kawasaki, Mr. Bullock explained that Amendment 26 was put into the section of the bill related to the responsibilities of the commissioner of natural resources because when the request was made it was an important enough provision that it was tied directly into the powers of the commissioner within AS 38.05.020(b)(11). He said he does not know the reason why it had such a high level of importance as opposed to other terms.

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CO-CHAIR FEIGE requested the administration's position on Amendment 26.

MR. PAWLOWSKI said the concern underlying Amendment 26, as he understands it, comes from a reading of the Heads of Agreement,

particularly on page 16, Article 10. He explained there was a broad recognition within the Heads of Agreement group that there are additional needs for state support of the project going forward. He said [Article 10.1.c] references "appropriations and permitting for the construction of necessary in-state infrastructure" and he noted that that has been interpreted by people to imply that it is solely the state's responsibility to pay for that infrastructure. He expressed his wish that that specific question would have been asked of the Heads of Agreement sponsors when they were before the committee because he believes he has heard them say in other committees or, if not, in the walk-arounds he has done with them, it is not a presumption that it is solely the state's responsibility. This is part of the impact aid discussion, he added. Just as DOT&PF told the committee, he continued, there are natural dividing lines behind what is general use infrastructure and the improvements to that infrastructure that go specifically to the project. He said he understands the concern and agrees it is an important one to talk about and to recognize that it is not the state's interpretation of that section of the Heads of Agreement that it is solely the state's responsibility for infrastructure. In that context, he noted that Amendment 26, page 1, line 6, states, "requires that each party to the agreement or contract pay, in proportion to the party's ownership interest in the North Slope natural gas project, the costs of that portion of infrastructure downstream from the point of production". This worries him, he said, because it ties the administration's hands to agree to a payment of a portion. In this project, the state will be a party either through an agent like AGDC or TransCanada and the state will have up to a 25 percent share in this project. Amendment 26, he argued, would imply it is a given that the state will pay 25 percent of the cost of that infrastructure. Given that has not been negotiated or discussed yet, he said he is concerned about setting that precedent in statute going into that discussion because the administration would like the freedom, both in the impact discussion and to push for the lowest possible state share, of any appropriation support. Recognizing there will be some, he continued, he does not want to start off at 25 percent and be bound to a 25 percent number when the state could potentially push for lower.

[3:30:15 PM](#)

REPRESENTATIVE TARR said she appreciates having this discussion and getting it on the record because Article 10 is in regard to additional state support for the Alaska LNG Project. Therefore, it is easy to interpret the language about appropriations and

permitting for the necessary infrastructure as meaning that it will be borne by the state solely. She related that when drafting Amendment 26, it was awkward trying to say what the proportional amount would be because, depending upon the location, one project sponsor could have a disproportionate benefit to that infrastructure development. The point brought up by DOT&PF the other day, and like the user fee example suggested by Mr. Bullock, was that DOT&PF will typically apportion a new road; for example, a new shopping center needing turning lanes will pay some portion and the rest would be paid by the state. She said she wants to put on the record that she hopes what is negotiated is not just proportional to the ownership interest, but thinking about improvements that benefit one project sponsor more than the others, and whether the public is getting the benefit. The committee was shown by DOT&PF that its use of the state's flexible highway funding for improvements on the Parks Highway is of great benefit to the state's residents and visitors. As infrastructure development for the project is moved into, she continued, it may become clearer that one project sponsor benefits more than the general public of Alaska.

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MR. PAWLOWSKI offered his appreciation for Representative Tarr's statements. He said he would like to put on the record that AIDA is currently involved in building an ore shed [at the Captain Moore Bridge] to expand the state's facilities there, and this is being done based on a five-year contract with the mining company who will ship its product through. He explained AIDA is relying on that long-term contract to finance the development of that ore shed. He said he can see similar opportunities with railways and ports where [the Alaska LNG Project] will have a long-term contract to, say, move pipe on the rail out of Port MacKenzie. The state would potentially be paying for that upgrade through a financing based on the commitment of the contract to use the infrastructure, which reminds him that Amendment 26 might actually limit [the state's] ability to do that in a way that serves the state's interest. He assured members that these are all things that [the administration] is going to be working on and considering.

[3:33:26 PM](#)

REPRESENTATIVE KAWASAKI appreciated the administration's clarification of Article 10.1.c of the Heads of Agreement. He said he now understands that the proportion to the ownership

provision [within the amendment] does not actually make sense. He offered his hope that during negotiations for infrastructure that will help everyone, and when the state is building things to ramp up to a project, that the state does not expose itself to huge maintenance and operating costs in the future. He withdrew his motion to adopt Amendment 26.

[3:34:12 PM](#)

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

The committee took an at-ease from 3:34 p.m. to 3:35 p.m.

[3:35:52 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:36 p.m.