

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 9, 2014

8:07 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

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
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)	-- Testimony <Invitation Only> --
04/05/14	(H)	RES AT 10:00 AM BARNES 124
04/05/14	(H)	-- Testimony <Invitation Only> --
04/06/14	(H)	RES AT 1:00 PM BARNES 124
04/06/14	(H)	Heard & Held
04/06/14	(H)	MINUTE(RES)
04/07/14	(H)	RES AT 1:00 PM BARNES 124
04/08/14	(H)	RES AT 8:00 AM BARNES 124
04/08/14	(H)	Heard & Held
04/08/14	(H)	MINUTE(RES)
04/08/14	(H)	FIN AT 8:30 AM HOUSE FINANCE 519
04/08/14	(H)	-- MEETING CANCELED --
04/08/14	(H)	RES AT 4:30 PM BARNES 124
04/08/14	(H)	Heard & Held
04/08/14	(H)	MINUTE(RES)
04/08/14	(H)	FIN AT 6:00 PM HOUSE FINANCE 519
04/08/14	(H)	-- MEETING CANCELED --
04/09/14	(H)	RES AT 8:00 AM BARNES 124

WITNESS REGISTER

MICHAEL PAWLOWSKI, Deputy Commissioner
Office of the Commissioner
Department of Revenue
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on
CSSB 138(FIN) am.

JOE DUBLER, Vice President/Chief Financial Officer
Alaska Gasline Development Corporation
Department of Commerce, Community & Economic Development
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on CSSB 138(FIN) am.

JOE BALASH, Commissioner
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on CSSB 138(FIN) am as Commissioner-appointee to the Department of Natural Resources.

MARY GRAMLING, Assistant Attorney General
Oil, Gas and Mining Section
Civil Division (Juneau)
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered a question during the hearing on CSSB 138(FIN) am.

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

POSITION STATEMENT: Answered questions during the hearing on CSSB 138(FIN) am.

ACTION NARRATIVE

[8:07:03 AM](#)

CO-CHAIR ERIC FEIGE called the House Resources Standing Committee meeting back to order at 8:07 a.m. Representatives P. Wilson, Hawker, Seaton, Saddler, and Feige were present at the call back to order. Representatives Tarr, Kawasaki, Johnson, and Olson arrived as the meeting was in progress. [The meeting was previously recessed at 6:56 p.m. on April 8, 2014.]

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

[8:07:26 AM](#)

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."

[8:07:32 AM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 39, labeled 28-GS2806\I.A.7, Bullock, 4/1/14, 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. Timing of state investment in a North Slope natural gas project. 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 require an investment by the state in the project until a final investment decision is made to construct the project."

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"

CO-CHAIR SADDLER objected.

REPRESENTATIVE SEATON explained Amendment 39 would direct that the timing of the state's investment [in the project] would not be until the project was sanctioned or a final investment decision (FID) to construct the project was made. He reminded the committee that consultants representing the legislature had

previously testified on the amendment but they were not in agreement. Testimony was also heard from consultants representing the administration. He requested the committee hear the administration's opinion on Amendment 39 at this time.

[8:08:43 AM](#)

MICHAEL PAWLOWSKI, Deputy Commissioner, Office of the Commissioner, Department of Revenue, said the administration does not support Amendment 39 for several reasons. Firstly, the basic premise of the Heads of Agreement (HOA) was centered on the percentage of state participation, the process to move the project forward and - most importantly - that the state will participate. He expressed the administration's belief that the material benefits for state participation early in the project are interwoven through the HOA in terms of the development of the commercial agreements regarding expansion policies and the access for third parties to gas. Also, ensuring the state has access to data and a full understanding of the project indirectly through TransCanada (TC), or directly through the Alaska Gasline Development Corporation (AGDC), is critical to the sizing and the design of the components of the project. Lastly, the other parties to the HOA see state participation as a key enabler for the project that demonstrates the state's commitment, and sends a message to the natural gas marketplace. He stressed the importance of the market's reception to the project during the Pre-Front-End Engineering and Design (Pre-FEED) stage. Mr. Pawlowski restated the administration's opposition to Amendment 39.

REPRESENTATIVE SEATON recalled the concern stated by Roger Marks [contract petroleum economist consultant to Legislative Budget and Audit Committee] about circumstances that would result if the project does not go forward and is not sanctioned. He concluded that the subject has been thoroughly vetted, and withdrew Amendment 39.

[8:12:13 AM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 40, labeled 28-GS2806\I.A.99, Bullock, 4/6/14, 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. State access to data developed under contract. An agreement or contract in which the state or an agent of the state is a party that is negotiated under AS 38.05.020(b)(11) must include a requirement that, if the commissioner determines that the North Slope natural gas project is not making adequate progress toward a final investment decision, the state shall have access to data developed under the agreement or contract in which the state has participated financially. Access by the state to the data may not be on terms that are more restrictive than the terms that are applicable for access by any other party in the North Slope natural gas project."

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"

CO-CHAIR SADDLER objected.

REPRESENTATIVE SEATON explained Amendment 40 seeks to ensure that the state's investment leads to the use of data [that would have been developed under contract] should the project not achieve sanction. He said he wants the [forthcoming] agreements to make clear that after the state invests \$600 million it gains full use of the data pertaining to the project, should the project not go forward. Representative Seaton related previous testimony by the legislature's consultants that projects "don't get a vote of not going forward or not sanctioning" but can be delayed for years. Therefore, Amendment 40 directs that if a project stops making adequate progress to FID after achieving the FEED stage, the commissioner of natural resources can determine that the project has stalled and the state can use the data. He assured the committee the amendment does not take away data from other parties and referred to page 1, lines 10-12 of Amendment 40 which read:

Access by the state to the data may not be on terms that are more restrictive than the terms that are applicable for access by any other party in the North Slope natural gas project.

[8:15:33 AM](#)

REPRESENTATIVE SEATON then moved to adopt Amendment 1 to Amendment 40 as follows:

Page 1, line 9, after "has":
Insert "directly"

REPRESENTATIVE SEATON explained Amendment 1 to Amendment 40 will make sure "that we're not talking about our relationship with TransCanada." He clarified that Amendment 40 is applicable when the state has put in its 20-25 percent of the costs in [the project], and the state would then have the full use of that data for another project if this one stalls.

[8:17:19 AM](#)

REPRESENTATIVE JOHNSON objected to Amendment 1 to Amendment 40. He requested clarification on whether the amendment to the amendment specifically excludes information that the state may

have paid for through TransCanada. He surmised the state may want access to that information as well as what the state has "directly" paid for. He expressed his concern that there are a lot of things the state might not have access to because the state wrote the check to a second party who then got the data; although the state paid for it, it was not paid "directly."

MR. PAWLOWSKI said the principle of access to data is a key interest of the state; the state's relationship with TransCanada on a prospective basis is that TransCanada would be making expenditures directly, while the state, through Pre-FEED and with 90-day notice, has the right to terminate the relationship with TransCanada. In that event, the state would repay development costs and allowance for funds used during construction (AFUDC) if the state terminated, and TransCanada would release the data to the state "as is, where is." Thus the intent of Amendment 1 to Amendment 40 is to recognize that the aforementioned exchange of information has already been pre-agreed to and specified in the Memorandum of Understanding (MOU) [with TransCanada].

REPRESENTATIVE JOHNSON referred to the "as is, where is" clause and expressed additional concern about how the data would be acquired. He requested clarification on how the two agreements with TransCanada compare related to "what data is available "under the current agreement that we're replacing with this agreement"

[8:20:57 AM](#)

MR. PAWLOWSKI directed attention to the Letter of Clarification to Memorandum of Understanding (Letter of Clarification) [dated 4/4/14] released to the committee by the parties that describes the process by which the previous relationship with TransCanada under the Alaska Gasline Inducement Act (AGIA) [passed by the 25th Alaska State Legislature] would be terminated in a sequential fashion. The terms of the MOU are built around the contribution of the previous data "that the state has paid for a portion of, a very substantial portion of, but not the entirety of." The MOU covers the use of that data and the purchase of the data with the payment of development costs should the state exercise its termination rights. On the matter of "as is, where is," he pointed out the importance of [Amendment 13, adopted on 4/5/14,], which put AGDC in a prime consultative role with DNR in the development of the agreement. He explained it is important because AGDC would be using the remanded data, and having AGDC work directly with DNR means to have the utmost use

of the data after it is transferred. Mr. Pawlowski characterized [Amendment 13] as one of the key factors to the state's success in this process.

[8:22:34 AM](#)

REPRESENTATIVE JOHNSON said he was "not totally comfortable with the explanation" and opined the data is all the state has in the project even though a significant amount of money has been paid. He said he wants full access to everything the state has paid for, or invested in, or the state's partners have invested in. He expressed his concern that he does not know if "this gets us there" and whether "'directly' changes it that much." He cautioned that not having the data may lead to a competitive disadvantage for partners in another project. There remain issues about the data but "if we're paying for it we should own it." He withdrew his objection to Amendment 1 to Amendment 40.

[8:24:56 AM](#)

REPRESENTATIVE P. WILSON objected, and requested Mr. Pawlowski to further explain the administration's stance on the amendment to the amendment.

MR. PAWLOWSKI explained that the way the amendment is crafted causes broad concern amongst the parties. Specifically, "directly" is relevant to the [Alaska LNG Midstream Services Term Sheet] agreed to with TransCanada in the MOU, because post-FEED, the commissioner of DNR could exercise a different termination right than the ones that have already been agreed to in the MOU. He restated that for the next 18-24 months the state can terminate its relationship with TransCanada with 90-day notice. At that point, the state would pay development costs and AFUDC. His concern with Amendment 40, without Amendment 1, is that the amendment would "clearly upend a term in the MOU relating to termination events after, during, the FEED stage."

REPRESENTATIVE P. WILSON suggested the use of the word "indirectly" instead of "directly."

[8:27:01 AM](#)

MR. PAWLOWSKI expressed his understanding that in the context of the amendment "directly" recognizes that the state is not directly paying for its share of the midstream, unless the state exercises a termination event with TransCanada. In the

midstream, TransCanada is "writing the checks ... and paying the cash" and Amendment 40 would upend the relationship where, if the state terminates, a true-up occurs and the parties exchange information.

REPRESENTATIVE P. WILSON inquired whether, no matter what, the state will get that information with Amendment 1 to Amendment 40 and the word "directly."

MR. PAWLOWSKI affirmed that the exchange of information is in the Term Sheet of the MOU, and when the state pays the development costs, it gets the information. Because this agreement is in the commercial agreements, he reiterated that it is very important to the state to have AGDC working with the agencies since AGDC will be using the data and needs to be engaged in the development process.

[8:29:18 AM](#)

JOE DUBLER, Vice President and Chief Financial Officer, Alaska Gasline Development Corporation, Department of Commerce, Community & Economic Development, acknowledged that the access to data has been a difficult issue for the state and TransCanada under AGIA and the Alaska Liquefied Natural Gas Project (the Alaska LNG Project). He stressed that the data needs to be available to AGDC in the event of the failure of the Alaska LNG Project so the state can use the data that it has paid for in the Alaska Stand Alone Pipeline (ASAP) project. Currently, AGDC is not a participant "in the midstream" and would only participate in the event of exercising the 40 percent option in the MOU with TransCanada. If the project fails within 18 months, the state will not have spent money on the data, thus will not have access to the data. However, if the state exercises its option at the end of Pre-FEED, the state has a right to the data. The term "as is, where is" does not mean the data is "locked up" but that TransCanada would provide the data in its existing form.

REPRESENTATIVE HAWKER turned the debate to Amendment 40, and asked whether the state has access to the data if TransCanada withdraws. The specifics of the amendment are not about TransCanada "going away" but are about "not making adequate progress." He directed attention to page 9 [of Exhibit C of the MOU, Key Item 9, Termination Event Alaska LNG Midstream Services Term Sheet,] paraphrasing the item as follows:

Upon a termination event and payment for those development costs, then the Transporter, TransCanada, shall assign all of its interest in the Pre-FEED JVA [joint venture agreement] or the FEED Agreement, including all of its equity stake to the shipper, the State of Alaska

REPRESENTATIVE HAWKER asked for verification that the preceding statement means the state gets all the data upon a termination event. He began a review of several related points. It is clear there is a list of termination events that would result in the state getting the data without the amendment, including giving 90-day notice before FEED. If the termination event is prior to the negotiations of the firm transportation service agreements (FTSA), the five-year "tag" goes away too. After FEED, if partners withdraw or if the state is unable to sell gas on acceptable terms, the state gets the data. At FID, the state or TransCanada can walk away from the project for any reason and the state gets the data. Representative Hawker listed further termination events specified in the MOU. He then asked for concurrence with his opinion that the state is adequately protected under the MOU as previously cited, but warned that the amendment modifies the MOU by adding the descriptor of "not making adequate progress," and further specifies that the state gets "access," when the termination event clause directs that the state gets the data. Finally, Amendment 1 to Amendment 40 adds the modifier of "directly" with the implications thereof. He said he does not agree with the amendment in general and addition of the word "directly" boxes the state into something that he does not want to go to.

[8:37:23 AM](#)

REPRESENTATIVE SEATON observed that the four parties to the agreement are the three producers and the state. The state may subdivide its interest with TransCanada, and the amendment addresses the state's access to the data with the other three parties. The administration suggested the addition of the word "directly" to avoid the appearance of an "end run around the MOU and the termination events." On the other hand, after a termination event, the state will have directly participated financially. The purpose of Amendment 40 is to ensure that if the project does not proceed to FID but stalls, the state has full access to the data for which it has paid \$600 million. Representative Seaton concluded that Amendment 1 to Amendment 40 ensures the relationships agreed to with TransCanada in the MOU are not interrupted.

CO-CHAIR SADDLER stated his opposition to Amendment 1 to Amendment 40.

REPRESENTATIVE TARR observed that data not already established in the MOU with TransCanada would come from the work of the first joint venture during Pre-FEED. She asked whether the state needs to address access to the data specific to the joint venture work because the state's participation would not be direct or indirect, but through AGDC's position in the joint venture.

[8:40:35 AM](#)

MR. PAWLOWSKI reminded the committee that the terms of the termination events as described in the MOU will be further developed and expanded. In the HOA are found principles related to the sharing, access, and use of data by the administration and the parties. The Alaska Gasline Development Corporation will be "in the room" on substantial portions of the project and now, with the amendments made by this committee, indirectly through the commissioner of natural resources on the development of the transportation agreements. During the development of the commercial terms that govern how data is shared and used by the Pre-FEED joint venture agreement (JVA), AGDC will be working on the state's behalf to ensure that the principle of the state's access to data is upheld.

CO-CHAIR FEIGE noted that the state's agreement with TransCanada and the terms regarding the data after a termination event are well-explained on page 9 of Exhibit C of the MOU [Key Item 9, Termination Event Alaska LNG Midstream Services Term Sheet]. He surmised that because Amendment 40 pertains to the other parties to the future JVA, or other contracts, the word "directly" is necessary.

[8:43:17 AM](#)

MR. PAWLOWSKI responded that the suggestion of the word "directly" was to recognize that there is an indirect relationship in the midstream, and the specifics of how TransCanada's interest is conveyed to the state are in the MOU. The administration's concern is about the introduction of a new subjective standard - "if the commissioner determines that" - to what is a detailed commercial arrangement where termination events are defined to both parties, so they are not subjective as the project moves through the FEED stage. During Pre-FEED,

there is acceptance of a 90-day termination event with TransCanada for any reason, because there is a lower level of commitment before FID is made. Although this amendment is applicable prior to FID, he remarked:

It's [that] subjectivity that I think creates more confusion in what [are] commercial terms and how they'll be executed. That's why I think some of the [discomfort] comes from, related directly to the TransCanada memorandum of understanding, and the word "directly."

CO-CHAIR FEIGE inquired as to whether [Amendment 1 to Amendment 40] is a support for the process, or creates a limitation on the administration's ability to negotiate in the future.

MR. PAWLOWSKI said he viewed the word "directly" as a clarifying term. He deferred to the commissioner of natural resources.

[8:45:49 AM](#)

JOE BALASH, Commissioner, Department of Natural Resources, speaking as Commissioner-appointee to the Department of Natural Resources, assured the committee the principle identified by the [amendment and the amendment to the amendment] is consistent with the state's policy. In this context, the insertion of the word "directly" introduces the question of timing; the state's direct financial participation becomes relevant if, or when, it makes a payment, which is not direct involvement, but an extension of the state's credit. At the point in time the state makes a payment, it has participated directly, financially. Commissioner Balash opined the word "directly" helps relative to the state's relationship with TransCanada, but does not necessarily help in the state's relationship with AGDC; for example, at the time the commissioner of natural resources and the president of AGDC have to make an agreement on midstream services for the liquefaction plant. He questioned whether AGDC is directly involved from the beginning due to its status as a public corporation. He restated that the insertion of the word "directly" helps in the case of the TransCanada MOU, but was unsure if it was helpful in the case of arrangements with AGDC.

MR. DUBLER agreed with the testimonies of the commissioner of natural resources and the deputy commissioner of revenue.

REPRESENTATIVE P. WILSON asked for an opinion from the Department of Law (DOL) on its interpretation of the effect of Amendment 1 to Amendment 40.

[8:50:03 AM](#)

MARY GRAMLING, Assistant Attorney General, Oil, Gas and Mining Section, Civil Division (Juneau), Department of Law (DOL), advised that the addition of the word "directly" potentially limits the type of participation considered under the amendment. The type of the financial participation would be determined by the terms of the contract and how the state has been involved.

MR. PAWLOWSKI stated it is difficult to put commercial terms into statute due to the nuances of negotiated agreements. The administration agrees with the principle in the proposed statute; however, unintended consequences around the words when it comes to the commercial agreements are a problem in Amendment 1 to Amendment 40, and, more broadly, in Amendment 40.

[8:52:18 AM](#)

REPRESENTATIVE P. WILSON removed her objection to Amendment 1 to Amendment 40.

CO-CHAIR SADDLER objected.

A roll call vote was taken. Representatives Johnson, Seaton, Tarr, Kawasaki, and Feige voted in favor of Amendment 1 to Amendment 40. Representatives Hawker, Olson, P. Wilson, and Saddler voted against it. Therefore, Amendment 1 to Amendment 40 was adopted by a vote of 5-4.

[8:53:36 AM](#)

CO-CHAIR FEIGE returned discussion to Amendment 40.

CO-CHAIR SADDLER expressed his concern about giving the commissioner [of natural resources] the unilateral right to declare that there has not been adequate progress. Although not a real termination event, this declaration may lead to "a path to failure." He requested clarification on what data the state would have access to during contract negotiations - after a finding of insufficient progress or after termination - that it would not have otherwise.

MR. PAWLOWSKI deferred to AGDC.

MR. DUBLER responded that some of the data acquired by AGDC and applied to the Alaska LNG Project, from the AGIA-based project, includes geologic borehole data, which helps determine how to best drill through the subsurface, stream-crossing data, fish surveys, cultural resource surveys, and other Geological Information System (GIS) data that helps the engineers that are designing the pipeline.

[8:56:20 AM](#)

CO-CHAIR SADDLER asked whether this information is the type of data that would become available under contract negotiations for the Alaska LNG Project.

MR. DUBLER replied correct, and added that if AGDC participates in the midstream, which would exercise the 40 percent buy-in option for the state, AGDC would have access to that information through the Alaska LNG Project. However, because AGDC would not be an owner in the midstream, but only in the joint venture, AGDC's ability to access data has not been determined.

CO-CHAIR SADDLER then asked what "new" data the state would have access to if there were a declaration of inadequate progress.

MR. DUBLER cautioned a declaration of insufficient progress which caused the project to "wind up" would not necessarily give the state unfettered access to data. The Alaska LNG Project has restrictions on the release of data; thus, as long as the producers think the project is going forward, the data would not be available to be used on a different project.

REPRESENTATIVE SEATON pointed out Amendment 40 would preclude the aforementioned problem, which is that if the project stalls for many years, the state could not use the data it paid for to design another project. The problem right now is that the state would pay for 25 percent of the data, and not wait until FID [to make its investment of \$600 million], but if the project is delayed, the data is unavailable. He acknowledged that the state would not have access to licenses, but would have access to information such as that on compression station spacing, which would be of value to a different project. He warned of a situation where the state has made an investment of 25 percent, but is unable to benefit due to the terms of the Alaska LNG Project. Amendment 40 asserts that each party is a "tenant of the entirety of the data if the project doesn't go forward." Representative Seaton stressed that each party will be able to

use the data. Furthermore, prior agreements have determined what constitutes adequate progress, so Amendment 40 would apply to a situation in which the project languishes, and the state would not have to prove that the project was uneconomic. He reiterated that Amendment 40 establishes tenants by the entirety of the data, only after timelines that have already been agreed upon have been met.

[9:02:41 AM](#)

CO-CHAIR FEIGE observed that there are two elements to Amendment 40. First is the determination by the commissioner [of natural resources] that the project is not making adequate progress, which is a matter of judgment or further definition, and second is that the terms are not more restrictive than the terms of the other parties to the project. He requested the administration's advice on what would constitute not making adequate progress and on the terms for sharing data that are currently under consideration.

COMMISSIONER BALASH, regarding the determination of adequate progress, opined the state is approaching the project through the HOA which has established a stage-gated set of mechanisms. There will be one agreement to advance through Pre-FEED and another to advance through FEED, and at that point there will be a "bundle of work products and deliverables." If parties are not ready to advance at that point on the timeline, the reason must be determined: underlying financial catastrophe; fundamental disruption in the marketplace; or other. He suggested Amendment 40 provides leverage that could be useful, but may cause a problem in getting agreements executed on the front-end because of fear about how the state may use that leverage. He said his view of adequate progress is progressing from each phase or gate into the next as follows: Pre-FEED, FEED, sanction, the deliverables associated with each phase, and the decisions to progress from one to another. Regarding the typical terms applied to data-sharing in the agreements, Commissioner Balash said it is not unusual for each party to have access to the data and deliverables; however, there are limitations as to how the data can be used publically or competitively, and that is where the limitations such as time limits or exclusivity, must be negotiated. The administration remains steadfast in its stance that all of the data associated with the pipeline, and the corridor for the pipeline, is available to the state for its use in the event the project does not go forward. Under these terms, it would not matter what the other parties do, and the state maintains a level of leverage.

9:07:48 AM

REPRESENTATIVE JOHNSON stated that the MOU "bill-package" gives up state ownership and control of state resources. He expressed his belief that at completion, the agreements will subjugate the state to the role of junior partner at best. He remarked:

I use the word clawback [provision that money or benefits need to be returned] because I think that's what it's going to take, to clawback any of that ownership or control, is going to be something that I'm going to have a hard time not supporting. ... This doesn't get us anywhere near where I want to be in terms of either of those ownership or control issues. ... This doesn't get us close to where I think we need to be in terms of recapturing some of that control and ownership, but I think I have to support it just because it's so far the best thing ... to give us even a little bit.

REPRESENTATIVE TARR shared others' concerns about how to move forward after the failure of the project. Noting the five-year clause that is incorporated in the MOU with TransCanada, she observed that it seems reasonable to restrict how one of the parties might move forward in the event of failure. She surmised Amendment 40 gives the administration some direction, and alerts the parties that the state intends to possess and use assets towards a new project.

9:10:04 AM

COMMISSIONER BALASH recalled that part of the reason the administration is comfortable with pursuing parallel paths on two pipelines, ASAP and the Alaska LNG Project, in the Pre-FEED phase, is to have cooperation and a sharing of the costs of gathering data. He stated that AGDC will continue to acquire data and information to move forward with ASAP in the Pre-FEED stage, regardless. However, the major investment that is required to advance into the FEED phase, and the terms and conditions around the use of data in the event of a failure to advance the project further, may inform the decision on whether state resources are available for the ASAP project.

9:12:16 AM

REPRESENTATIVE TARR suggested other language to prevent a similar issue as the five-year provision with TransCanada. Important for her is that the state is not prohibited from taking a new path by a time limitation. She offered the following:

There couldn't be a limitation on the state moving forward on a similar project.

COMMISSIONER BALASH acknowledged that those kinds of conversations have occurred. However, the proprietary value associated with this data and whether it will be used to compete with the other parties is the "sensitivity that we will have to work around." There is no opposition to the state constructing a pipeline to deliver gas to Alaskans, but the problem arises when the state proposes to sell to others. He observed this matter must be left to negotiation and agreement by the parties.

[9:14:06 AM](#)

REPRESENTATIVE KAWASAKI returned attention to Amendment 40 and the issue of the determination of adequate progress by the commissioner [of natural resources]. He posed the scenario of a commissioner determining that there was not adequate progress at a time the state was not in a position to terminate.

COMMISSIONER BALASH expected that the commensurate commitments within the phased agreements will have sufficient definition to provide objective measures. As such, there will be deliverables or a measurable scope of work to be accomplished by the project at each phase. If there is a point where the deliverables are in hand, and the parties are not prepared to proceed, the next steps and decisions to be made will be apparent. On the other hand, the hardest areas to measure will be the progression of the marketing agreements for the sale of LNG, because of the limitations imposed on the parties by anti-trust concerns. This is the one area where measuring progress will be challenging. In further response to Representative Kawasaki, Commissioner Balash said the definition of adequate progress found in the MOU is sufficient for the subjects of data, information, and drawings - which are definable - but commercial areas are harder to measure.

CO-CHAIR SADDLER described the benefits of building the project with and without partners, and asked whether Amendment 40 gives the state access to data that can be used commercially, or whether the data remains subject to contract negotiations.

COMMISSIONER BALASH opined Amendment 40 gives the state access to the data, but does not speak to any limitations on the state's use of the data.

[9:18:50 AM](#)

CO-CHAIR SADDLER asked for the meaning of "tenants of the entirety" and if the principle applies to all of the agreements or solely to the sharing of data in the agreement under discussion.

COMMISSIONER BALASH deferred to the Department of Law.

CHRIS POAG, Assistant Attorney General, Labor and State Affairs Section, Civil Division (Juneau), Department of Law, qualified he is not a property or estate lawyer, and provided an example of tenants in the entirety. He remarked:

The concept would be: The whole is equally owned by each, and if one leaves the party, the other entirely owns it, and we don't have to go fight about ownership interests.

REPRESENTATIVE HAWKER asked whether the "overall construct" of the HOA and the MOU places the parties of the project as joint tenants or as tenants in the entirety.

MR. POAG qualified he was not involved in the drafting of the HOA or the MOU, but expressed his belief that the project is "more of a joint tenancy."

[9:22:16 AM](#)

REPRESENTATIVE TARR referred to previous testimony that the amendment relates to access to the data, but does not address how the data can be used. Her understanding of Amendment 40 is that it directs that when the contract is negotiated, access to data is to be a provision of that contract. She asked what would happen if the amendment was adopted but the other parties refused to include the provision in the contract.

COMMISSIONER BALASH referred to the last sentence of Amendment 40 which read:

Access by the state to the data may not be on terms that are more restrictive than the terms that are

applicable for access by any other party in the North Slope natural gas project.

COMMISSIONER BALASH opined this sentence says that all the parties have to agree to treat each other equally, thus all could agree that all the parties can have a copy of the data, but that would not ensure that the data can be used publicly. He remarked:

That doesn't get us where I believe Representative Seaton wants to go, and so I'm not sure it accomplishes that particular goal in that regard, so, and believe me, that's not something we would seek to achieve or agree to, and I'm not suggesting that that's what any of the parties has talked about, either. But one thing I did just want to say on the point of "joint" versus "entirety," is in this particular phase that we're talking about with regard to Pre-FEED, we're largely talking about information, and I would characterize the conversations there as more of the tenant variety, in terms of cost allocation and ownership of information. But when it comes to things that are indivisible assets - property, land, whatever - those are the things that are going to be more of the "joint" flavor, in terms of who's paid for what and gets what.

[9:24:50 AM](#)

REPRESENTATIVE TARR proposed language for Amendment 40 as follows:

Page 1, line 10, after "financially":
Insert ", without restrictions on how that data could be used."

REPRESENTATIVE TARR explained this addition would put the state closer to its goal, and asked whether this addition would be looked at unfavorably by the other parties.

COMMISSIONER BALASH advised the aforementioned specific language would present a challenge since all of the parties are prepared to advance their share of the costs "and treat each other the same." However, if the state were able to unilaterally use the data, the other parties would be justified in their opposition.

REPRESENTATIVE TARR pointed out that her suggested language would be used in the situation where adequate progress was not being made and the project was stalled.

COMMISSIONER BALASH cautioned that the partners in the project have certain commitments and fidelity to each other with the goal of continuing the progress of a major project. The parties are prepared to share costs and information in a manner that benefits all, but not if their investment can potentially be revealed to their competitors.

[9:27:07 AM](#)

CO-CHAIR SADDLER proposed language for Amendment 40 as follows:

Page 1, line 8, after "access to":
Insert "and commercial use of"

CO-CHAIR SADDLER acknowledged this addition would also give a party the unilateral right to pull out and use the data in a competing commercial project. He agreed with others about the concern that the project could die of neglect, and the state would want the opportunity to make progress on a second project.

REPRESENTATIVE SEATON pointed out that there have been several previous revisions of Amendment 40. He assured the committee the language of the amendment was thoroughly reviewed by the producers and state agencies.

CO-CHAIR SADDLER maintained his objection to Amendment 40.

REPRESENTATIVE SEATON referred to the problem of "subjective standard of decision." He was reluctant to put a deadline for FID in the amendment, as the project should progress naturally. He concluded that if the project fails due to economics, in return for an investment of \$600 million the state should be able to use the data in the same way as the producers.

[9:32:34 AM](#)

A roll call vote was taken. Representatives Johnson, Olson, Seaton, P. Wilson, Tarr, Kawasaki, and Feige voted in favor of Amendment 40, as amended. Representatives Hawker and Saddler voted against it. Therefore, Amendment 40, as amended, was adopted by a vote of 7-2.

[9:33:18 AM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 41, labeled 28-GS2806\I.A.103, Bullock, 4/8/14, 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 on the application of a payment in lieu of property tax. A proposed agreement or contract associated with a North Slope natural gas project may not include a provision that changes a payment in lieu of property tax on property that was previously taxable under AS 43.56."

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 JOHNSON objected for the purpose of discussion.

REPRESENTATIVE SEATON explained Amendment 41 would disallow a provision in an agreement or contract on the Alaska LNG Project that changes a payment in lieu of property tax on property that was previously taxable under AS 43.56. Therefore, the existing oil and gas properties that are paying property taxes to the state and municipalities would not be included in the provision of the bill that allows payment in lieu of taxes.

CO-CHAIR FEIGE surmised payments in lieu of taxes (PILT) would only apply to new infrastructure that directly pertains to a North Slope gas project.

[9:34:53 AM](#)

MR. PAWLOWSKI said the intent of Amendment 41 is good. The intent of the administration is to bring the municipalities together for a public discussion through the [interim advisory board to advise on the municipal involvement provision in the bill]. The consensus recommendation of the advisory [board] will determine "what we bring to the table." The HOA is specific to the Alaska LNG Project, but the amendment "may take things off the table, if a group wishes to discuss those." He assured the committee it is not the intent of the administration to delve into PILT for previously taxable property.

[9:36:08 AM](#)

REPRESENTATIVE JOHNSON asked whether there are any shared facilities related to oil production that may be also related to gas production, and that may garner property tax and PILT. In addition, if the oil and gas projects share assets, there may be an issue about paying double taxes.

MR. PAWLOWSKI clarified that the relative key provision in HOA is the definition of the Alaska LNG Project, which is the new infrastructure including transmission lines from Point Thomson to the gas treatment plant (GTP), and the transmission line from Prudhoe Bay to the GTP, so there really is not the shared infrastructure. Upstream, additional development of Point Thomson, is a little different, but that is not included in the Heads of Agreement here.

CO-CHAIR FEIGE observed that Amendment 41 addresses the concern of some municipalities that the PILT provision [in the bill] would extend to oil property taxes. He stated that the PILT provision would apply specifically to the new infrastructure associated with the Alaska LNG Project or other North Slope pipeline projects.

[9:38:21 AM](#)

REPRESENTATIVE TARR expressed her support for Amendment 41 and related that the mayor of Barrow said local revenue from property taxes is a significant issue for Barrow.

MR. PAWLOWSKI reiterated that changes to property tax are achieved through law and not through a contract; in fact, any changes to property tax must be brought to the legislature for authorization. He advised that Amendment 41 is restrictive to the administration and its ability to execute executive privilege. He remarked:

... the terms need to be authorized, need to be enacted by the legislature prior to inclusion in the contract, we think that's an important distinction from this process and previous processes.

REPRESENTATIVE KAWASAKI expressed his and his constituents' concern that the administration seeks an opportunity to shift the tax burden away from a project in order to favorably affect the economics of said project. He stated his support for Amendment 41. He then asked the sponsor of the amendment whether new and additional structures "might be part of a PILT."

REPRESENTATIVE SEATON reminded the committee that property tax on oil and gas is not a municipal tax but is a state property tax. Amendment 41 directs that state property taxes under AS 43.56 are not to be changed to a different form for the Alaska LNG Project.

[9:42:15 AM](#)

REPRESENTATIVE JOHNSON removed his objection to Amendment 41. There being no further objection, Amendment 41 was adopted.

[9:42:35 AM](#)

CO-CHAIR SADDLER moved to adopt Amendment 42, labeled 28-GS2806\I.A.101, Bullock, 4/7/14 which read:

Page 53, following line 14:

Insert a new bill section to read:

"* **Sec. 58.** The uncodified law of the State of Alaska is amended by adding a new section to read:

AGREEMENTS AND CONTRACTS RELATING TO THE TRANSPORTATION OF NATURAL GAS. (a) An agreement or contract entered into by the state or an agency of the state for the transportation of natural gas may not allow a transporter to have an option to participate in an in-state natural gas pipeline project that is primarily intended to make natural gas, including propane and other hydrocarbons associated with natural gas other than oil, available to Fairbanks, the Southcentral region of the state, and other communities in the state at the lowest rates possible.

(b) In this section, "transporter" means a person providing gas treatment plant processing and natural gas transportation services in natural gas pipelines and gas transmission lines that are components of an Alaska liquefied natural gas project, as that term is defined in AS 31.25.390(7), enacted by sec. 12 of this Act."

Renumber the following bill sections accordingly.

Page 56, line 6:

Delete "61"

Insert "62"

Page 56, line 9:

Delete "secs. 62 and 63"

Insert "secs. 63 and 64"

[9:42:54 AM](#)

CO-CHAIR FEIGE objected for the purpose of discussion.

CO-CHAIR SADDLER explained Amendment 42 seeks to clarify [Key Item 9, Termination Event, Alaska LNG Midstream Services Term Sheet, Exhibit C] in the MOU, which reads [original punctuation provided]:

Shipper's Rights To Terminate (Shipper Termination Event):

Prior to FEED:

Any time provided a 90-day notice is given to Transporter.

From start of FEED through FID:

Within 60 days from the date one or more ANS Producers or Transporter withdraws from the Alaska LNG Project

At any time if Shipper (or the ANS Producers, if the SOA elects RIV) is unable to sign agreements to sell all of its royalty or tax gas on terms acceptable to Shipper.

At FID, for any reason.

Transporter Rights to Terminate (Transporter Termination Event):

Legislature fails to provide statutory authority to DNR/DOR to enter into PAs by June 30, 2014.

Shipper fails to execute the PA within the specified time.

Shipper fails to execute the FTSA by December 31, 2015.

Shipper fails to maintain the standard of Creditworthiness Requirements. Transporter shall provide notice to Shipper of a failure to meet such standards, and Shipper shall have a reasonable period to cure.

At FID, if all Transporter corporate/Board approvals have not been obtained.

Within 3 months from FID, if debt financing has not been secured on terms and conditions satisfactory to Transporter in its sole discretion

Either Transporter or Shipper may terminate:

If term(s) of the FEED Agreement or Definitive Agreements is/are not acceptable to Shipper or Transporter

Within 90 days from the date of issuance of any final regulatory authorizations, certificates, or permits that includes material unacceptable conditions(s) or requirements(s) to Transporter or Shipper

At FID, if not all right-of-ways, easements and land leases have been secured

Conveyance of Transporter Alaska LNG Project Interest to Shipper:

Upon a Termination Event and payment to Transporter of the Development Costs, and the associated AFUDC, as applicable, Transporter shall assign all of its interest in the Pre-FEED JVA or the FEED Agreement, including all of its equity stake in the AKLNG Project, to the Shipper promptly without addition consideration. Any such assignment shall be made on an "as is, where is" basis, without representation or warranty of any kind by Transporter.

Within a period of 5 years of SOA exercising its termination right, if SOA participates in a pipeline project to commercialize North Slope gas that is substantially similar to the Alaska LNG Project, SOA shall offer to Transporter an option to participate in the GTP and Pipelines of such project on terms and conditions consistent with those set forth in this Term Sheet, except the cost of debt and ROE to be negotiated based on conditions existing at the time. The SOA shall not be obligated to offer the foregoing option to the Transporter if:

- i. the Transporter is in material default of the PA or FTSA at the time of the termination, and
- ii. the material default was capable of being remedied, and
- iii. Transporter was offered a reasonable time period to remedy the material default and failed to do so.

[9:43:07 AM](#)

CO-CHAIR SADDLER explained the aforementioned provision directs that if an agreement between TransCanada and the state is terminated, for the next five years TransCanada has the right of first refusal on any gas pipeline project in which the state becomes involved that is substantially similar to the Alaska LNG Project. He said he was looking for a definition of substantially similar that would positively indicate whether a small-diameter, in-state pipeline is similar to a large-diameter pipeline for the export of natural gas. Co-Chair Saddler expressed his concern that if the Alaska LNG Project falters, there would be a threat to ASAP. Amendment 42 would ensure that TransCanada would not use its negotiated right to participate in the in-state line, and that a project with the primary purpose of delivering affordable natural gas for use within the state is

not substantially similar to the Alaska LNG Project. He described previous iterations of Amendment 42 and assured the committee the concerns of the administration were addressed. In the amendment, the in-state pipeline project is defined as one that "has the primary purpose of making natural gas available to Fairbanks, Southcentral, and other communities in the state at the lowest possible rates." Further, the amendment does not bar AGDC from involving TransCanada if desired. He concluded that the amendment protects TransCanada's rights to a large pipeline and protects the state's ability to pursue an in-state pipeline if the large pipeline falters.

[9:45:38 AM](#)

REPRESENTATIVE HAWKER pointed out the difference in the presentation of Amendment 42, during which was stated "primary purpose," and the language in the amendment, which was "primarily intended." He opined that is a material difference. Already in the MOU is the undefined clause "substantially similar" and the amendment complicates the circumstances by the use of substantially similar or primarily intended - a "doubling of the standard of ambiguity." Representative Hawker suggested a different amendment that directs the state to develop its contracts, such as the FTSA, to set a better contractual definition of substantially similar in the business terms that are being negotiated, rather than adding a second vague standard. He said the amendment fails to clarify a vague clause by increasing the density of the fog.

[9:47:48 AM](#)

REPRESENTATIVE TARR suggested using Amendment 42 as the opportunity to define substantially similar. In further response to Co-Chair Saddler, she said the definition would use the language in Amendment 42, beginning on page 1, line 8, after "intended," and paraphrased as follows:

to make natural gas, including propane and other hydrocarbons associated with natural gas other than oil, available to Fairbanks, the Southcentral region of the state, and other communities in the state at the lowest rates possible.

REPRESENTATIVE TARR said this would be the definition of a not substantially similar project.

CO-CHAIR SADDLER deferred to the Department of Law.

REPRESENTATIVE SEATON called attention to Amendment 42, page 1, line 11, which read:

at the lowest rates possible.

REPRESENTATIVE SEATON said this statement makes a problem because to achieve the lowest rates possible the pipeline must be large in diameter and carry the highest number of molecules, which would be a substantially similar pipeline. He suggested Amendment 42 should end at page 1, line 10, which read:

available to Fairbanks, the Southcentral region of the state, and other communities in the state

[9:50:38 AM](#)

CO-CHAIR SADDLER stated the language in Amendment 42 is based on the intent of AGDC's ASAP pipeline. If the large diameter pipeline project fails and ASAP proceeds, ASAP seeks to provide gas to Alaskans at the lowest rates possible.

REPRESENTATIVE KAWASAKI directed attention to page 3, line 13, paragraph 4, of the bill which read:

(4) advance an in-state natural gas pipeline as described in the July 1, 2011, project plan prepared under former AS 38.34.040 by the corporation while a subsidiary of the Alaska Housing Finance Corporation, with modifications determined by the corporation to be appropriate to develop, finance, construct, and operate an in-state natural gas pipeline in a safe, prudent, economical, and efficient manner, for the purpose of making natural gas, including propane and other hydrocarbons associated with natural gas other than oil, available to Fairbanks, the Southcentral region of the state, and other communities in the state at the lowest rates possible;

REPRESENTATIVE KAWASAKI said the abovementioned descriptor would need to be added to Amendment 42.

MR. PAWLOWSKI acknowledged Co-Chair Saddler's many efforts to address this issue. He stressed that the in-state pipeline plan was designed specifically to allow the [AGDC board of directors] to make modifications to the project, thus even while following

the project plan, the board has wide latitude to manage how AGDC would advance the interests of the state.

9:52:34 AM

MR. POAG qualified he did not participate in drafting Exhibit C to the MOU. He directed attention to page 9 of Exhibit C in the MOU [Key Item 9, Termination Event, Alaska LNG Midstream Services Term Sheet] and said the language specifically refers to a project that is substantially similar to the Alaska LNG Project, which is capitalized in the text of the MOU because it is a defined term in Article 1.1 (f). The definition of the Alaska LNG Project in the MOU extends beyond "a pipeline to deliver our gas to our Alaskans" and has many components, including a marine terminal and an LNG facility. Although the term substantially similar is not defined in the MOU, he opined that a project that delivers gas to Alaskans and does not involve marine terminals or liquefaction would not be substantially similar. He noted that the intent of the amendment is to modify existing language, and referred to the Alaska State Constitution, Article 1, Section 15, which read:

Prohibited State Action~No bill of attainder or ex post facto law shall be passed. No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed. No conviction shall work corruption of blood or forfeiture of estate.

MR. POAG explained that the amendment cannot modify a contract that has already been "inked"; however, the amendment would provide guidance to the administration on future contract negotiations and provide clarity about the term substantial similarity. Mr. Poag further advised that an in-state gas pipeline is not substantially similar to the Alaska LNG Project.

9:55:09 AM

CO-CHAIR SADDLER understood that AGDC has the authority to expand the capacity of the ASAP project in size and volume after the AGIA limitation of [500 million cubic feet per day of gas] is terminated. Furthermore, the demand for gas in Alaska is approximately 250 million cubic feet per day of gas, thus other customers are necessary to keep costs low and there will be an economic incentive to expand the scope of ASAP to include liquefaction and export. In this manner, Co-Chair Saddler cautioned that an in-state project could quickly morph into a

project that could be substantially similar to a large [diameter] pipeline. He related his efforts to define substantially similar, and asked DOL for guidance.

MR. POAG said if the legislature wants to provide to the administration language to define what is or is not substantially similar to include in future contracts, DOL will research case law for a definition.

[9:57:10 AM](#)

CO-CHAIR SADDLER asked Mr. Dubler whether the unanswered question of what is substantially similar has an effect on the progress of the ASAP project.

MR. DUBLER advised that the issue of the five-year claw back for TransCanada gives AGDC uncertainty in its search for an owner-builder-operator for the ASAP project. The search is for a firm or a pipeline company - similar to TransCanada - that would build and operate the project on behalf of the state and AGDC. He explained that ASAP would progress only if the Alaska LNG Project fails, and if TransCanada has the right to replace ASAP's designated owner-builder-operator, AGDC would have to negotiate a clause directing that "we would have to make them whole in the event TransCanada comes back in through this five-year clawback." He advised this contingency would not be cheap and described the terms of the five-year provision with TransCanada. Further, Mr. Dubler addressed the possibility of expanding ASAP to a project similar to one that ExxonMobil, ConocoPhillips, and BP deem uneconomic, and said that possibility is "kind of a naïve position, in my opinion If the big three companies that do these projects all over the world, and are very good at it, can't make it happen, the chance that the State of Alaska is going to be able to step in their place and make it, is very, very slim."

[10:00:38 AM](#)

REPRESENTATIVE KAWASAKI remarked to Mr. Dubler:

I think I heard you say that that while you're working on the ASAP line, trying to find an owner-builder-constructor, that if this bill were to pass without this amendment, that somehow AGDC's mission would be completely different, or maybe go away.

MR. DUBLER said no. He clarified that as long as TransCanada has a five-year clawback, AGDC's negotiations with an owner-builder-operator will require a provision to pay the owner-build-operator off, plus AFUDC, in the event they are removed from the project. Further, he cautioned that prospective owner-builder-operator firms may not want to take the risk of working on a project that they may lose.

REPRESENTATIVE KAWASAKI questioned whether AGDC's ability to hire a firm to build the project is lessened without the adoption of Amendment 42.

MR. DUBLER stated:

We've actually spoken quite a bit with the commissioner of DNR and the deputy commissioner of revenue about this and ... we believe through our discussions and the clarification that we got in the letter from TransCanada and the commissioners of DNR and DOR, that it did clear up somewhat, ... the timing of the ... firm transportation agreements. And the ... agreements they've got with TransCanada will make it such that the likelihood that this actually happens is very slim, but it's a policy call ... and that's up to the legislature and the administration.

[10:03:38 AM](#)

MR. PAWLOWSKI reminded the committee of the contents of the Letter of Clarification issued by TransCanada. He said the likelihood of the state choosing to make a multi-million dollar commitment to move through the FEED stage with the Alaska LNG Project, while continuing to progress an alternative ASAP project is minimal. According to the MOU and the Letter of Clarification, the state is fully able to pursue both projects "with no hands being bound" until 12/31/15. Subsequently, with the commitment to proceed to FEED, and with the execution and ratification by the legislature of a firm transportation service agreement, the state's position will be different than it is at this time. Mr. Pawlowski said the purpose of the 90-day termination right to the state, prior to the entry into FEED, was to create the "exit from AGIA, into a commercial relationship where the state has a cooling-off period to work together collaboratively on this project going forward in the state's interest, while maintaining momentum on other options as well, that was the policy call the administration made in advancing both of those"

REPRESENTATIVE SEATON acknowledged there is the concern about "tying the hands of AGDC to go forward." However, the condition is that the projects must be substantially similar; thus, if ASAP is not substantially similar, the five-year provision does not apply. He opined the circumstance of the state building a project substantially similar is remote, and said he is not in favor of changing a negotiated commercial relationship.

CO-CHAIR FEIGE maintained his objection.

[10:07:32 AM](#)

A roll call vote was taken. Representatives Kawasaki, Saddler, P. Wilson, and Tarr voted in favor of Amendment 42. Representatives Seaton, Hawker, Johnson, Olson, and Feige voted against it. Therefore, Amendment 42 failed by a vote of 4-5.

REPRESENTATIVE HAWKER said he is very troubled by Amendment 42, which could be read many different ways. His negative vote on the amendment was not a reflection that he is in favor of the five-year tag provision in the MOU; in fact, the five-year tag provision may be the language that "sinks the entire package of legislation that these folks are asking us to pass"

REPRESENTATIVE JOHNSON agreed, adding "... and my 'no' vote doesn't in any way soften my belief that this is the wrong path for the State of Alaska to follow."

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

[10:09:23 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 10:09 a.m.