

**ALASKA STATE LEGISLATURE**  
**SENATE RESOURCES STANDING COMMITTEE**

February 21, 2014

3:31 p.m.

**MEMBERS PRESENT**

Senator Cathy Giessel, Chair  
Senator Fred Dyson, Vice Chair  
Senator Peter Micciche  
Senator Click Bishop  
Senator Anna Fairclough  
Senator Hollis French

**MEMBERS ABSENT**

Senator Lesil McGuire

**COMMITTEE CALENDAR**

**SENATE BILL NO. 138**

"An Act relating to the purposes of the Alaska Gasline Development Corporation to commissioner of natural resources on the custody and disposition of gas delivered to the advance to develop a large-diameter natural gas pipeline project, including treatment state in kind; relating to the authority of the commissioner of natural resources to and liquefaction facilities; establishing the large-diameter natural gas pipeline project propose modifications to existing state oil and gas leases; making certain information fund; creating a subsidiary related to a large-diameter natural gas pipeline project, provided to the Department of Natural Resources and the Department of Revenue including treatment and liquefaction facilities; relating to the authority of the exempt from inspection as a public record; making certain tax information related to an commissioner of natural resources to negotiate contracts related to North Slope natural election to pay the oil and gas production tax in kind exempt from tax confidentiality gas projects, to enter into confidentiality agreements in support of contract negotiations provisions; relating to establishing under the oil and gas production tax a gross tax rate and implementation, and to take custody of gas delivered to the state under an election for gas after 2021; making the alternate minimum tax on oil and gas produced north of to pay the oil and gas production tax in kind; relating to the sale, exchange, or disposal 68 degrees North latitude after 2021 apply only to oil; relating to apportionment factors of gas delivered

to the state under an election to pay the oil and gas production tax in of the Alaska Net Income Tax Act; authorizing a producer's election to pay the oil and kind; relating to the duties of the commissioner of revenue to direct the disposition of gas production tax in kind for certain gas and relating to the authorization; relating to revenues received from gas delivered to the state in kind and to consult with the monthly installment payments of the oil and gas production tax; relating to interest payments on monthly installment payments of the oil and gas production tax; relating to settlements between producers and royalty owners for oil and gas production tax; relating to annual statements by producers and explorers; relating to annual production tax values; relating to lease expenditures; amending the definition of gross value at the 'point of production' for gas for purposes of the oil and gas production tax; adding definitions related to natural gas terms; clarifying that credit may not be taken against the in-kind levy of the oil and gas production tax for gas for purposes of the exploration incentive credit, the oil or gas producer education credit, and the film production tax credit; 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) RES AT 3:30 PM BUTROVICH 205

#### **WITNESS REGISTER**

JOE BALASH, Commissioner-designee  
Department of Natural Resources (DNR)  
Juneau, Alaska

**POSITION STATEMENT:** Commented on possible oil tax regimes.

#### **ACTION NARRATIVE**

[3:31:42 PM](#)

**CHAIR CATHY GIESSEL** called the Senate Resources Standing Committee meeting to order at 3:31 p.m. Present at the call to order were Senators French and Chair Giessel.

[3:32:03 PM](#)

CHAIR GIESSEL recessed to a call of the chair.

[4:20:37 PM](#)

CHAIR GIESSEL called the meeting back to order; Senators Dyson, Fairclough, Bishop, Micciche, French, and Chair Giessel were present.

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

CHAIR GIESSEL announced SB 138 to be up for consideration; CSSB 138(RES), version 28-GS2806\N, was before the committee.

[4:21:35 PM](#)

SENATOR FRENCH moved Amendment 1, version\N.1.

28-GS2806\N.1  
Bullock

#### **AMENDMENT 1**

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 138(RES), Draft Version "N"

Page 13, line 18, following "party":

Insert

"(A) may not include a provision relating to the tax rate applicable to the oil and gas production tax under AS 43.55 as it relates to the production of oil; and

(B)"

Page 15, line 10, following "party":

Insert

"(A) may not include a provision relating to the tax rate applicable to the oil and gas production tax under AS 43.55 as it relates to the production of oil; and

(B)"

Page 23, line 17, following "project":

Insert "; the commissioner shall ensure that a contract negotiated under this paragraph does not include a provision relating to the tax rate applicable to the oil and gas production tax under AS 43.55 as it relates to the production of oil"

Page 24, line 24, following "project":

Insert "; the commissioner shall ensure that a contract negotiated under this paragraph does not include a provision relating to the tax rate applicable to the oil and gas production tax under AS 43.55 as it relates to the production of oil"

SENATOR FAIRCLOUGH objected.

SENATOR FRENCH explained that Amendment 1 would take oil taxes off the table in this process. It basically inserts at several points in the bill a prohibition on including oil tax terms in a contract developed under the act. It prevents oil taxes from becoming a point of negotiation. And industry was evasive when he talked to them about it. He explained that the CS has a provision that would keep the commissioners from negotiating our royalty rate too low and this is the same idea.

One concern he had about the general approach of this bill was that it's very similar to the general approach taken from 1998 to 2006 under the Stranded Gas Development Act (AS 43.82.010). It was a deeply one-sided contract that didn't even get brought up for a vote in the legislature. He hoped they learned from

that, but he thought the industry would not be able to keep themselves from pressing and potentially winning concessions from the state in the oil tax arena if that's an option. After all, they offered us a dime on the dollar in the Pipeline evaluation case.

SENATOR FAIRCLOUGH asked if there is a reason the state would want to have that flexibility.

[4:24:21 PM](#)

JOE BALASH, Commissioner-designee, Department of Natural Resources (DNR), Juneau, Alaska, said he appreciated the sentiment expressed in Senator French's amendment, but he was concerned that the wording would cast too wide a barrier. He explained that the language reads may not include a provision relating to the tax rate applicable to the tax rate applicable to the oil and gas production tax under AS 43.55 as it relates to the production of oil. So, while he understands the desire is to keep the oil out of the contract in a direct way, there will be some indirect matters that will have to be brought up, particularly as it relates to the manner in which lease expenditures are handled. They are moving to the gross mechanism for gas and yet still going to have lease expenditures available for deduction and the calculation of oil taxes. So, indirectly, if anything is changed by the legislature over the period of the contract that relates to oil some indirect things may occur - and they need to be provided for. And this specific language may cast too wide of a side board and prevent them from taking up those indirect matters.

SENATOR FAIRCLOUGH said the Finance and Resources Committees talked about using a healthy oil industry and providing an incentive to apply credits for gas development against oil production.

MR. BALASH responded that a healthy oil business is needed as part of the this economic model for commercialization of gas; right now all of their economics are being run as if the oil will carry the costs of Prudhoe Bay and Pt. Thomson and the gas production is going to be a revenue stream that will be used in the manufacture of LNG. So the cost of operating those fields will remain deductible on the oil side of the equation. However, maybe 15 years from now maybe the legislature will decide to deduct the tax rate or go to a gross production tax and those kinds of changes will have changes on gas and that's what they need to make sure they don't erect too high of an obstacle to be able to deal with in the contracts to come.

SENATOR FAIRCLOUGH asked if a competitive advantage could be lost by adopting this amendment now or would other language be better.

[4:29:39 PM](#)

COMMISSIONER BALASH said she was correct about our competition in western Canada; they have not developed the fields that will produce the gas that will go into the LNG projects on the west coast of Canada and in that regard we enjoy a certain advantage having the infrastructure in place. But our infrastructure is not cheap to operate and they will need to continue to be borne by oil. The question is what is going to happen over the next many years to the oil business to keep that business healthy and if it will have an indirect effect on the gas business.

SENATOR FRENCH said his concern was having seen the Stranded Gas Development Act keeping the state frozen in a structure for 35 years and he wanted to keep the flexibility to raise or lower, if necessary, oil taxes. Oil is the life blood of the state.

SENATOR FAIRCLOUGH said she and Senator Bishop would take up an analysis of what the state is giving up in the Finance Committee.

[4:33:34 PM](#)

SENATOR MICCICHE noticed the first two sections on page 13, line 17, where this would have been inserted - " 'a, any, the' contract negotiated under this paragraph to which the state is a party is not effective unless the legislature authorizes the governor to execute the contract." And page 15, line 9, the second part of the amendment was going to be added: "'a' contract negotiated under this paragraph - any contract- to which the state is a party is not effective unless the legislature authorizes the governor to execute the contract. If there is any change that is related to an oil tax we would have a look at it before it would be approved.

[4:35:36 PM](#)

SENATOR FAIRCLOUGH upheld her objection and CHAIR GIESSEL asked for a roll call vote: Senator French voted yeah; Senators Bishop, Dyson, Fairclough, Micciche and Chair Giessel voted nay; therefore the Amendment 1 failed.

[4:35:43 PM](#)

SENATOR FRENCH moved Amendment 2, version \N.2.

AMENDMENT 2

OFFERED IN THE SENATE BY SENATOR FRENCH  
TO: CSSB 138(RES), Draft Version "N"  
Page 4, lines 13 - 14:  
Delete "project labor agreements,"

Page 13, line 18, following "party":

Insert

"(A) must include a provision that requires the parties to the contract to negotiate, before construction, a project labor agreement to the maximum extent permitted by law; in this subparagraph, "project labor agreement" means a comprehensive collective bargaining agreement between the licensee or its agent and the appropriate labor representatives to ensure expedited construction with labor stability for the project by qualified residents of the state;

(B)"

Page 15, line 10, following "party":

Insert

"(A) must include a provision that requires the parties to the contract to negotiate, before construction, a project labor agreement to the maximum extent permitted by law; in this subparagraph, "project labor agreement" means a comprehensive collective bargaining agreement between the licensee or its agent and the appropriate labor representatives to ensure expedited construction with labor stability for the project by qualified residents of the state;

(B)"

SENATOR MICCICHE objected.

SENATOR FRENCH explained that it is a simple amendment that inserts into the body of the bill the requirement of a project labor agreement (PLA) (language taken from the AGIA statute). He noted the good words about PLAs in the HOA and in the findings section of the bill, but the best place to put it is in statute. PLAs are the best way to ensure local hire and to ensure the project stays on time and on line and on budget.

[4:37:29 PM](#)

SENATOR MICCICHE said on page 4, line 13, there is a statement about "to the maximum extent permitted by law contract provisions for project labor agreements, employment of Alaska residents, contracts with Alaska businesses and provisions to work with state job centers associated services and job training services" was mentioned. They also talked about changes that bring in language from the HOA for a more exact record of everything that was signed by all the parties into this bill. Again, he said no one at the table favors either union or nonunion workers. This is such a large project that union and non-union Alaskan workers will have all of the opportunities they would ever want to work on this project. It's too early to isolate that language in the bill.

SENATOR FRENCH remarked that if you like the idea in findings you should also like it in statute.

SENATOR MICCICHE upheld his objections and Senator Giessel asked for a roll call vote: Senator French voted yeah; Senators Bishop, Dyson, Fairclough, Micciche and Chair Giessel voted nay; therefore Amendment 2 failed.

[4:40:26 PM](#)

SENATOR FRENCH moved Amendment 3.

28-GS2806\N.3  
Bullock

### AMENDMENT 3

OFFERED IN THE SENATE BY SENATOR FRENCH  
TO: CSSB 138(RES), Draft Version "N"

Page 23, line 17, following "project":

Insert "; the commissioner shall ensure that a contract negotiated under this paragraph does not authorize payments in lieu of taxes to a municipality"

Page 24, line 24, following "project":

Insert "; the commissioner shall ensure that a contract negotiated under this paragraph does not authorize payments in lieu of taxes to a municipality"

SENATOR DYSON objected.

SENATOR FRENCH explained the purpose behind Amendment 3 is similar to Amendment 1, to leave intact the taxing authority of municipalities across whose land the pipeline someday runs. The

idea is to leave them free to tax within statutory boundaries; it's a way to let them deal with the impacts of construction and operating a pipeline. This goes back to the Stranded Gas Development Act and the onerous provisions that tied up not only production taxes, corporate income tax and royalties but also property taxes. A letter from Pedro van Meurs discovered after the Contract collapsed to the Governor's Chief of Staff said he believed the

...Concept of capping municipal taxes of general application is totally unnecessary. Any reasonable evaluation of the municipal taxes in Alaska clearly indicates that the margin that municipalities have to create taxes of general application is limited. The impact of variation in municipal taxes of general application on the project economics is negligible. Therefore, in my opinion, municipalities should be free to tax as they wish and the (producers) should pay these taxes without limit.

Just before this paragraph he had written a sentence that many remember: there's absolutely no need to treat Alaska as a banana republic in order to secure the gas line.

CHAIR GIESSEL offered that the intent language in section 1, (a)(5) speaks to this with the intent that the interests of the state and local governmental entities must be considered in contract negotiations to protect the financial and other interests of the state and those local governmental agencies. They have heard loud and clear from the municipalities that they wish to be part of the negotiations.

[4:43:41 PM](#)

SENATOR MICCICHE said his former job before this one was to be a mayor of a small town and Alaska municipalities that are impacted by the pipeline must retain the ability to tax. He hoped the negotiations were not individual. But he wasn't sure the amendment got there.

SENATOR FAIRCLOUGH said they tried to make this clear to the administration when the municipalities brought the issue to the committee during public testimony. They are trying to develop a process where the municipalities retain that taxing authority in a similar process for each community - not trying to limit their ability but to come together in a group.

SENATOR DYSON maintained his objection and Chair Giessel asked for a roll call vote: Senator French voted yeah; Senators Bishop, Fairclough, Micciche, Dyson and Chair Giessel voted nay; therefore Amendment 3 failed.

[4:47:02 PM](#)

SENATOR FRENCH said he would not offer Amendment 4, labeled \N.4 and offered Amendment 5.

28-GS2806\N.5  
Bullock

#### AMENDMENT 5

OFFERED IN THE SENATE BY SENATOR RENCH  
TO: CSSB 138(RES), Draft Version "N"

Page 13, line 17, following "project;":

Insert "the licensee receiving the license issued under AS 43.90 or an affiliate of the licensee that received the license under AS 43.90 may not, without competitive bidding, be a party to a contract under this paragraph that takes effect after the effective date of this paragraph and provides for the state to acquire an equity interest in a North Slope natural gas project or for the transportation of natural gas received by the state as royalty-in-kind or under AS 43.55.014;"

Page 15, line 9, following "project;":

Insert "the licensee receiving the license issued under AS 43.90 or an affiliate of the licensee that received the license under AS 43.90 may not, without competitive bidding, be a party to a contract under this paragraph that takes effect after the effective date of this paragraph and provides for the state to acquire an equity interest in a North Slope natural gas project or for the transportation of natural gas received by the state as royalty-in-kind or under AS 43.55.014;"

SENATOR DYSON objected for explanation purposes.

SENATOR FRENCH explained that this amendment requires the state to conduct a competitive bid process before TransCanada can be a party to the contract and addresses what he thinks is a quandary in the MOU that grants them a significant role without examining any other option. They need to find out what went wrong with

AGIA before inviting TransCanada into this project. He has no ill will toward TransCanada and was impressed with their competence.

[4:48:59 PM](#)

SENATOR FAIRCLOUGH asked how long that process would take.

SENATOR FRENCH said he didn't have an answer. A week or a month he would hope.

SENATOR FAIRCLOUGH said she was a no vote on the AGIA license. But there was a presentation last night about the question of value of TransCanada to the project. One of the values is trying to reach a market inside of 10 years and time is of essence if we want to compete with other projects that are trying to reach the Asian market. She thought the AGIA process took over a year, and as far as TransCanada's partnership in this issue she was going to be a no vote.

[4:50:37 PM](#)

SENATOR MICCICHE said he wished they would have completed that review process, but no matter what pipeline project they would have built 25 years ago, the time value of money would have made it at a significant savings today; even the wrong choice could have been adjusted.

[4:52:41 PM](#)

SENATOR BISHOP said we all go back over the failed stops and starts. Experts in the room say there are less than a handful of people in the world that can do this project; two have already been "kicked to the curb" and the other three are wondering why they should come to the dance.

SENATOR DYSON maintained his objection and Chair Giessel asked for a roll call vote. Senator French voted yeah; Senators Dyson, Micciche, Bishop, Fairclough and Chair Giessel voted nay and Amendment 5 failed.

[4:54:56 PM](#)

CHAIR GIESSEL moved Amendment 6, labeled \N.6.

28-GS2806\N.6  
Bullock

**AMENDMENT 6**

OFFERED IN THE SENATE

BY SENATOR GIESSEL

TO: CSSB 138(RES), Draft Version "N"

Page 3, line 19:  
Delete "(3)"  
Insert "(4)"

Page 3, line 23:  
Delete "(4)"  
Insert "(5)"

SENATOR MICCICHE objected to lighten the atmosphere and then removed his objection.

CHAIR GIESSEL announced that without further objection, Amendment 6 was adopted. She held SB 138 in committee.

4:55:54 PM

CHAIR GIESSEL found no further business to come before the committee and adjourned the Senate Resources Standing Committee meeting at 4:55 p.m.