

HOUSE FINANCE COMMITTEE
THIRD SPECIAL SESSION
November 1, 2015
1:03 p.m.

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CALL TO ORDER

Co-Chair Neuman called the House Finance Committee meeting to order at 1:03 p.m.

MEMBERS PRESENT

Representative Mark Neuman, Co-Chair
Representative Steve Thompson, Co-Chair
Representative Dan Saddler, Vice-Chair
Representative Les Gara
Representative Lynn Gattis
Representative David Guttenberg
Representative Scott Kawasaki
Representative Cathy Munoz
Representative Lance Pruitt
Representative Tammie Wilson

MEMBERS ABSENT

Representative Bryce Edgmon

ALSO PRESENT

Pete Ecklund, Staff, Representative Mark Neuman; David Teal, Director, Legislative Finance Division; Representative Lora Reinbold, Representative Paul Seaton; Representative Sam Kito III; Representative Andy Josephson; Representative Dave Talerico; Representative Louise Stutes; Representative Gabrielle Ledoux; Representative Shelly Hughes; Representative Dan Ortiz; Representative Mike Chenault.

PRESENT VIA TELECONFERENCE

Daniel Fauske, President, Alaska Gasline Development Corporation; Ken Vassar, General Counsel, Alaska Gasline Development Corporation (AGDC); Joe Dubler, Vice President and Chief Financial Officer, Alaska Gasline Development Corporation.

SUMMARY

HB 3001 APPROP: LNG PROJECT & FUND/AGDC/SUPP.

HB 3001 was HEARD and HELD in committee for further consideration.

#hb3001

HOUSE BILL NO. 3001

"An Act making supplemental appropriations; making appropriations to capitalize funds; making appropriations to the general fund from the budget reserve fund (art. IX, sec. 17, Constitution of the State of Alaska) in accordance with sec. 12(c), ch. 1, SSSLA 2015; and providing for an effective date."

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Co-Chair Thompson MOVED to ADOPT the proposed committee substitute for HB 3001, Work Draft 29-GH3812\E (Wallace/Martin, 11/1/15). There being NO OBJECTION, it was so ordered.

Co-Chair Neuman noted that the committee would not move the bill from committee during the meeting.

PETE ECKLUND, STAFF, REPRESENTATIVE MARK NEUMAN, relayed that the Senate Finance Committee would have an identical bill.

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DAVID TEAL, DIRECTOR, LEGISLATIVE FINANCE DIVISION, addressed the Committee Substitute (CS). He explained the changes in the bill. He pointed to Section 2, which appropriated the \$69 million buyout to acquire the TransCanada interest in the natural gasline project. He noted the to be done by three agencies including the Department of Law (DOL), Department of Natural Resources (DNR), and Department of Revenue (DOR) He noted that the appropriations were tightly worded and there were specific uses the money would go to. The money appropriated to the agencies could not be used for other purposes. He drew attention to fiscal year ending June 30, 2016. The CS made sure that the departments could not enter long-term

contract. The committee substitute appropriated money for work to be completed during 2016. There was some "wiggle room" to allow agencies to use money across different lines.

Co-Chair Neuman asked members to hold questions.

Mr. Ecklund noted that there were updated numbers in Sections 3 and 4 for DNR and DOR.

Co-Chair Neuman asked for the numbers.

Mr. Ecklund detailed that DNR's request was \$1.849 million, and the former number was \$2.126 million. He furthered that DOR's request was \$1.45 million and the former number was \$1.381 million.

Representative Gara asked for a repeat of the numbers.

Mr. Ecklund repeated the numbers.

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Mr. Teal continued with Section 5(a), appropriated to acquire the interest in TransCanada. Sections (c) and (d) were reimbursements by the partners for the funds that Alaska Gasline Development Corporation (AGDC) had not utilized from AGDC itself. He explained that not all of the reimbursement would go to the AKLNG fund, but an additional funds would be available once the money was reimbursed to the funds. He noted that the title was shorter than the governor's initial bill. He explained that HB 2001 had authorized the Constitutional Budget Reserve (CBR) to cover all of the expenditures that had been passed to date. It did not allow any room for supplemental of any kind. Allowing an additional \$500 million, done with the gas line buyout in mind along with some high supplemental funds needed for fire suppression.

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Mr. Ecklund reiterated the supplemental appropriations for DNR, DOR, and LAW, which were all contingent on all parties voting in the affirmative.

Co-Chair Neuman noted the bill was officially described as a work program and budget, so the money would be delegated

appropriately. He remarked that the goal of the committee substitute was to provide a "tight" appropriation bill. He wondered if the committee substitute represented the "tightest" control possible. He also wanted to ensure that the legislature provided enough economy to AGDC in using the funds.

Mr. Teal believed the language was as tight as possible. The language was not "bullet proof", but the intent was clear.

Co-Chair Neuman suspected that members speaking with the administration would make the intent clear.

Mr. Teal added that the bill was a draft. He believed the language should be reviewed carefully by AGDC and administration to ensure all parties were named appropriately.

Representative Gattis asked about the four voting parties. She asked not forcing four parties to vote yes to buyout TransCanada.

Mr. Ecklund agreed that there was no contingency plan for the buyout of TransCanada.

Representative Gattis surmised there was no reason to provide funding if the AGDC did not support the legislature's decision.

Mr. Ecklund replied in the affirmative.

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Co-Chair Neuman believed the concept had been inappropriately termed a "buyout." He shared that approximately \$7 million was intended for services rendered. He stressed that TransCanada had participated to cover Alaska's assets during the gather information to the current time. He wondered if that was an accurate summation.

Mr. Teal replied in the affirmative. He agreed that a payment owed to TransCanada. By taking the action the state was effectively buying TransCanada out of their voting rights.

Co-Chair Neuman clarified that as the money was expended did the Legislative Finance Division (LFD) add codes to track how money was spent.

Mr. Teal replied in the affirmative. He explained that codes were added to the three appropriations to the departments. The other money was intended for the AKLNG fund, which was tracked as it was delivered. He stressed that LFD would track all the money spent. He explained that regular GF could be deposited into the AKLNG. He furthered that there were tracking codes that would follow the AKLNG fund with AGDC.

Co-Chair Neuman asked if the legislature requested for monthly reports from AGDC.

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Mr. Teal replied in the affirmative.

Vice-Chair Saddler looked at the original version of the bill, which described the organization that owned the state's interest as "the TransCanada Alaska Development Incorporation." He further noted that the committee substitute defined it as the "TransCanada Alaska Midstream and Limited Partnership." He wondered when the partnership was created, and whether that was the correct target.

Mr. Teal replied that it was a subsidiary of TransCanada to work on the project. He stressed the need to ensure that the administration and AGDC agree that all of the names were correct.

Representative Guttenberg asked if there was a conflict between the organizations and fiscal years.

Mr. Teal did not believe there was a conflict. He noted that the state's fiscal year ran from July 1 to June 30. He did not believe there was any problem with the calendar year and fiscal year.

Mr. Ecklund looked at page 3, line 5 of the bill. He explained that the appropriations for the work program had a budget should there be a positive vote in December, the appropriations would capitalize the AKLNG fund without lapse.

Co-Chair Neuman believed that under the prior bill the money could be swept. There was concern that agencies could enter into long-term contracts without the legislature's oversight.

Mr. Ecklund referred to testimony in another committee where LAW announced that the full \$10 million would lapse to GF, should the full funding not be utilized. The bill's construction was the result of the allowance for the lapse into GF. He explained that there had been situations when contracts were formulated during the fiscal year that would obligate money, but the work would occur in FY 17. He stressed that the bill was constructed to prevent that possible situation.

Representative Guttenberg noted that there was a reference to the cost accounting edit sourcing from 1241. He wondered if that reference was included in the committee substitute. He felt that there may need to be a subset of cost accounting codes in order to properly track the funds.

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Mr. Teal responded that a numbers portions would include the fund "rollup", which addressed the precise fund code. He shared that the current bill was drafted with language only, so there was no reference to fund code. He stated that the bill shoed that there was an appropriation from GF. He looked at Section 1(a), "it was the intent of the legislature that the appropriations made in Sections 2 through 4, shall be accounted for separately from UGF." He stated that the section gave LFD the authority to create the tracking code. He explained that the 1241 code would be used in the transactions.

Representative Gara thought people were getting close to the same page. He pointed to page 2, line 21. He wondered about the legality of the language. He he understood that the legislature only wanted to pay TransCanada, but felt that it could be a different number. He stated that if it was \$69.3 million, could they give the executive branch that power to change the number.

Mr. Teal replied that it was done frequently with appropriation bills. He stated that appropriation bills sometimes specified, "the amount required to pay according to the formula is appropriated." The reasoning behind

appropriating the maximum number was to ensure that the project had the necessary funds.

Representative Gara understood why it had been included. He stressed that adding \$100 million more, and wondered could they really give the executive branch the power. The alternative would be to designate a number not to be exceeded.

Mr. Teal replied that the committee substitute's was drafted in the traditional formal. He stressed that the appropriation was the necessary amount. He shared that the project would only use the amount necessary.

Representative Gara believed it was correct and would look further into the issue.

Mr. Ecklund replied that Legislative Legal Services had not objected to the language.

Representative Gara wanted to make sure the administration did not spend more than necessary the amount had to be expended by June 30, 2016. He was concerned about spending being limited by dates in the bill.

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Mr. Teal did not have a great deal of concern about the issue. He did not believe agencies were asking for more than they needed. The point of the structure was to specify that agencies received in FY 17 request. The administration did not want money in the bill that carried forward to.

Mr. Ecklund read the language in the bill differently. He explained that the agencies did not have to spend all of the money by the deadline.

Representative Gara suggested removing the language, because there may be fear in the administration that the money would not be available.

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Representative Wilson addressed DNR. She wondered if the agency would be able to go for the marketing lead and analyst positions if they were only funded to June 2016.

Mr. Teal answered that the appropriation currently could fund for FY 16, but was expected to wait to FY 17 to fund the remainder. He stressed that it was up to the legislature to fund FY 17. He announced that no state employees were guaranteed funding for each fiscal year.

Representative Wilson stated that the project was different than standard state projects. She remarked that the three large companies did not run business the same way as the state. She felt that there needed to be a guarantee for the high level positions. She requested that DNR share the funding forecast for the outlying years. She stressed that the AKLNG project was an extremely large project, and she wondered if the project should be dealt in a similar matter to the state agencies.

Mr. Teal replied that it was the position that every state agency was in that they may not be funded in the following year. He believed it was a good question for the agencies.

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Mr. Ecklund added that the legislature had received additional information on the \$840,000 position.

Representative Wilson wondered if the \$500 million would be from the GF or CBR.

Mr. Teal explained that the appropriation in HB 2001 allowed up to \$500 million be removed from the CBR to pay the GF bills after July 1. He explained that the money was still in the CBR, and would remain in the CBR until the GF funds were completely depleted. He stressed that the CBR was never directly used, rather was an over-expenditure of GF backfilled with the CBR.

Representative Kawasaki expressed concern regarding the existing contracts' dates. He announced that Black and Veatch was contracted in September 2014 until June 2016. He felt that contracts were outlined with list of deliverables and a specific date, resulting in recruiting difficulties. He wondered if the language in the bill had been in other appropriation bills in the past.

Mr. Teal replied that the language had not appeared in prior appropriation bills. He announced essentially the entire amount was for contract work. He stated that DOL had

testified that expenditures could be up to \$1 million per month, which was the cause of the language inclusion. Once contracts were signed, the money was obligated, and would not lapse at the end of FY 16. He stressed that the purpose of the language was to ensure a pure FY 16 supplemental, so no money would be carried over into the following fiscal year.

Representative Kawasaki had the concern that contracts typically spanned over years and that the bill was departing from the usual procedure.

Co-Chair Neuman turned the question around and asked what would happen without the language.

Mr. Teal replied that DOL could have a long-term contract, so the appropriation funded possible FY 17 and FY 18 activities. He explained that money had been carried forward from one year to the next on the current project, because of obligations.

Mr. Ecklund noted that the original request did not ask for any lapse extensions for FY 17. He stressed that the request was for FY 16 alone.

Mr. Teal continued that the department could request a lapse date extension to the legislature. He stressed that that language in the bill only prevented a current lapse.

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Vice-Chair Saddler asked for confirmation that the money was designed to get through the pre-FEED (front end engineering and design).

Mr. Ecklund replied that the money was for calendar 2016, and may not get all the way through pre-FEED.

Mr. Teal added that the calendar year 2016 plan was half of 2016 and 2017. The plan showed \$157 million in FY 16 plus \$100 million to AGDC over the next three years and \$100 million to various agencies over the next three years. He stressed that it was a question of how much money the legislature wanted to put in the AKLNG fund.

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RECONVENED

Co-Chair Neuman discussed the plan for the presentation. He listed AGDC staff available to testify via teleconference.

DANIEL FAUSKE, PRESIDENT, ALASKA GASLINE DEVELOPMENT CORPORATION (via teleconference), asked corporate counsel to provide the presentation.

KEN VASSAR, GENERAL COUNSEL, ALASKA GASLINE DEVELOPMENT CORPORATION (AGDC) (via teleconference), provided a PowerPoint presentation titled "Confidentiality" dated November 1, 2015. He explained that AGDC was subject to the public records act.

Mr. Vassar looked at slide 2, "Public Record Disclosures":

AGDC was granted broad confidentiality authority in the corporation's enabling statutes through HB 4 (2013)

AGDC may enter into Confidentiality Agreements (CA) as necessary to carry out its functions [AS 31.25.090]

Confidential information is not subject to the state's public records disclosure laws

Confidential information shared by AGDC with another public agency, are not public records

Mr. Vassar highlighted slide 3, "Public Record Disclosures":

CAs are valid and binding against all parties

Information and trade secrets of the corporation are confidential if disclosure would cause commercial or competitive harm

Information that discloses the particulars of a business or the affairs of a private enterprise is confidential and not subject to public disclosure

SB 138 added provision to ensure that the DNR & DOR Commissioners have access to confidential information related to North Slope natural gas pipeline contracts

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Co-Chair Neuman noted the reason for going into further depth on the issue. He stated that if there was proprietary information, and stressed the availability for legislators to be a part of

Mr. Vassar moved to slide 4, "Confidentiality Agreements":

All AGDC employees sign a standard confidentiality agreement upon employment

Originally all AGDC board members also signed a confidentiality agreement upon appointment

Governor Walker has expressed a desire for more transparency in the corporation's business

New AGDC board members have not signed CAs

Governor Walker notified Alaska LNG partners that Commissioners, the Attorney General and other cabinet officials would not sign CAs

Mr. Vassar addressed slide 5, "Draft Confidentiality Regulations":

AGDC is authorized to adopt regulations to carry out corporate duties and functions

Attorney General has worked with AGDC to draft a set of proposed confidentiality regulations:

Public Hearing held on Oct 15th

30-day public comment period closed Oct 21st

Public comments will be reviewed by AGDC's board

Supplemental public comment period being considered

Board may adopt the regulations as drafted,
modify them or decide to take no action

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Mr. Vassar continued that the corporation could not change the terms for a valid contract it had already entered into.

Co-Chair Neuman communicated that proposed regulations and comments were in members' backup documents.

Mr. Vassar moved to slide 6, "Draft Confidentiality Regulations":

After December 1st, AGDC may only enter into a CA to protect specific categories of information:

- Tax and financial
- Credit related
- Proprietary business information
- Trade secrets
- Sales, marketing and pricing strategies
- Information required to be confidential under state or federal law

Confidentiality Agreements themselves shall not be treated as confidential

Mr. Vassar discussed slide 7, "Draft Confidentiality Regulations":

AGDC shall make its records available to the public pursuant to the Alaska Public Records Act

Board members may meet in executive session to consider confidential matters

Directors, officers, employees and agents of the corporation must preserve the confidentiality of information

Board shall endeavor to limit the amount of information it withholds from the public

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Mr. Vassar turned to slide 8, "Draft Confidentiality Regulations":

Information is assumed to be public, absent clear indication to the contrary

AGDC President shall appoint a committee to periodically conduct a confidentiality review

Upon review, if a need for confidentiality does not still exist, information shall be made public

Board shall make available to the public the entirety of any contract submitted for its approval 10 days prior to meeting to consider the contract

Mr. Vassar stated that information was assumed to be public, absent clear indication to the contrary. He explained that the board shall make available to the public the entirety of any contract submitted for its approval 10 days prior to meeting to consider the contract.

Co-Chair Neuman wondered if there was something wrong with the current confidentiality agreements pertaining to the AKLNG project. He queried any changes.

Mr. Vassar replied that there was nothing wrong with the existing regulations with the exception of public policy. The private industry approach ran into the open and transparent policy of the current administration.

In response to a question from Co-Chair Neuman, Mr. Fauske answered that it had been the governor's desire that board members should not sign confidentiality agreements.

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Mr. Vassar elaborated agreed with his Mr. Fauske. He stressed that AGDC needed to explore a way of addressing confidentiality, and how to address in light of having board members who had not signed confidentiality agreements. There was an existing statute that all board members of corporations were subject to put limitations on how board members put to use the knowledge of confidentiality, like telling board members that what they heard in executive sessions was to remain confidential.

Co-Chair Neuman asked about impacts of regulations.

Mr. Fauske answered that based on public comments it would probably impact the corporation, in its current form. He believed the process would be workable, but much more difficult.

Co-Chair Neuman surmised it was common.

Mr. Fauske stated that it was not up to AGDC to determine what was confidential.

Co-Chair Neuman asked if Mr. Fauske or staff had been required to leave the room because they had not signed confidentiality agreements.

Mr. Fauske replied in the affirmative. He elaborated that it was not uncommon.

Co-Chair Neuman asked if it had interfered with negotiations. Mr. Fauske replied that it had not made things any easier, but it did not make things impossible. He found people were overly cautious.

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Co-Chair Neuman queried the process that the partners would be required to undergo to discuss items deemed confidential members of AGDC who had not signed the confidentiality agreements.

JOE DUBLER, VICE PRESIDENT AND CHIEF FINANCIAL OFFICER, ALASKA GASLINE DEVELOPMENT CORPORATION (via teleconference), replied that there was a current related issue. He shared that there was a proposed technology for the LNG terminal, and AGDC had not yet executed an acceptable non-disclosure agreement to the third-party that owned the proprietary technology. He shared that Fritz Cruzen was currently unable to participate in those discussions.

Co-Chair Neuman stressed that adding more cost to the project enhanced the possibility for project failure. He wondered if the confidentiality issues would cost time and money, because of the proposed regulations.

Mr. Dubler replied that it did not currently cost any time, but did not allow the AGDC representative full access to the data.

Co-Chair Neuman wondered how the AGDC board could make an informed decision on December 4 as to whether to proceed on the AKLNG project without access to the required information.

Mr. Fauske replied that the decision should be positive. He shared that the AGDC had confidence in the information.

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Co-Chair Neuman asked if Mr. Fauske understood Mr. Rigdon Boykin's role and responsibility as a member of the AKLNG gas team.

Mr. Fauske answered in the affirmative. He felt that Mr. Boykin had kept AGDC informed and believed he was an astute chief negotiator and liaison.

Co-Chair Neuman asked if Mr. Boykin was under contract and who paid him.

Mr. Fauske replied that he was under contract and was paid through the AKLNG fund.

Co-Chair Neuman asked if AGDC or the board directed Mr. Boykin's activities.

Mr. Fauske replied that he was Mr. Boykin's boss. He stated the board was apprised of his behavior on a regular basis on his activities.

Co-Chair Neuman asked for verification that that Mr. Boykin was primarily negotiating the commercial agreements.

Mr. Fauske replied in the affirmative.

Co-Chair Neuman observed that there were two issues: commercial negotiations and AKLNG pipeline construction. He wondered why Mr. Boykin was not under contract with DNR.

Mr. Fauske deferred the question to his colleague.

Mr. Dubler replied that there were many commercial agreements relating the AKLNG project, and only some

related directly to the upstream components under the responsibility of DNR. He explained that Mr. Boykin had been responsible for negotiating all agreements including governance, withdrawal, expansion and other aspects affecting AGDC and the overall project.

Co-Chair Neuman queried the types of internal legal services with AGDC.

Mr. Vassar responded that the legal services on the drafting and negotiating AKLNG documents, by statute, was in the province of the attorney general. He explained that the attorney general had appointed an assistant attorney general for that purpose. He furthered that the attorney general had entered into a contract with the law firm, Greenburg and Traurig, to provide assistance in the AKLNG project. He announced that he was the primary legal counsel for AGDC on the side of AGDC not relating to AKLNG.

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Co-Chair Neuman asked how previous legislation, HB 4 establish the necessary legal services, and how had those legal services changed over time.

Mr. Vassar replied that HB 4 authorized AGDC to retain outside legal counsel. He explained that he was under contract with AGDC. He stated that other outside counsel could be utilized based on appropriations available, and the need for counsel. He stated that former legislation, SB 138 put the attorney general in charge of the AKLNG matters.

Co-Chair Neuman asked if there was an attorney/client privilege between AGDC and DOL concerning the proposed confidentiality regulations, would AGDC be able waive the privilege in order to conduct discussions with DOL.

Mr. Vassar answered that the department had already discussed with its board in public on the record the drafting of its regulations. He did not think there was any attorney-client privilege to be waived. There were ethical attorney-client privileges. He stated that the attorney general had not taken the position of general corporate regulations because it had to do with legal representation.

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Co-Chair Thompson wondered why AGDC was proposing to limit its rights under existing law.

Mr. Fauske replied that the proposal was intended to deliver the information to the members.

Mr. Vassar elaborated and referred back to slide 6. He noted that AGDC would still be able to protect the information. He stressed that the list still included protecting trade secrets and proprietary business information. He shared that there was a certain level of battling semantics in the confidentiality agreements.

Co-Chair Thompson asked if AGDC had to enter into a confidentiality agreement every time it came up under the bullets listed on slide 6. Mr. Vassar replied in the negative.

Co-Chair Thompson wondered how the governor had the right to dictate to the ADGC board that it should not sign confidentiality agreements. He believed AGDC was autonomous.

Mr. Vassar replied that the corporation was not autonomous from the governor's office. The corporation was owned by the state.

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Co-Chair Neuman referred to the intent of passed legislation that AGDC should be fully autonomous.

Mr. Fauske replied in the negative. He shared that he had been present during negotiations on HB 4 and stressed that the state had ownership of AGDC. He shared that most board members were appointed by the governor

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Co-Chair Neuman stated that the issue around confidentiality was that AGDC should have the ability to do its work without pressure from legislators, agencies, or other. He stated that the board was supposed to be fully autonomous. He pointed to much concern related to AGDC.

Mr. Fauske understood the concern. He believed that the goal should be to remove the concerns. He was very committed to the project and wanted to make sure that communication and a level of trust was enhanced. He was not aware of any pressure put on board members from the governor.

Co-Chair Neuman hoped to have a successful pipeline.

Co-Chair Thompson spoke to public hearings from October 15. He referred to testimony from multiple people. He read from a typed paper.

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Mr. Fauske answered that the regulations were only proposed and had not yet been adopted. The agency did not want to adopt regulations that would be to its detriment. He stated that the action would go to the board at some point.

Mr. Vassar elaborated that AGDC was currently in the process of reviewing the proposed regulations. The agency did not want to do anything that would result in the state not participating in AKLNG. The board would make the decision, he believed it should be taken seriously. One of the reasons the comment period had been extended due to the great deal of respect for its private industry partners in AKLNG.

Co-Chair Thompson pointed to slide 8 and read the final bullet point. He believed it would be disadvantageous to sign confidentiality agreements for multiple contracts. He thought it was contrary to business. He looked at other questions that had already been addressed.

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Co-Chair Neuman asked if there was enough information on the regulations to know if he supported them.

Mr. Fauske answered that the agency would review the proposed regulations.

Representative Gattis believed the conversation about confidentiality was a good example of why government should not be in business. She wondered if the state was going to

act like a business to make money or if it would act as a governing entity.

Mr. Fauske agreed. He came from the background of Alaska Housing Finance Corporation (AHFC), which had run like a business and did mortgages. He shared that AGDC had to perform in the same way, but also act as a business partner.

Representative Gattis hoped the state would act like its partners and would remain in the room with its partners during discussions.

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Representative Wilson wondered how the legislature could stand in TransCanada's place without a confidentiality agreement.

Mr. Fauske restated the question. He surmised that the question was related to AGDC's ability to have strong confidentiality agreements, and whether TransCanada may have a stronger position than the state.

Representative Wilson agreed with that summation.

Mr. Fauske answered that there was a motivation going forward. He stressed that the product should be focused on an effective system.

Representative Wilson announced that this legislation was an intense decision, and entrusted AGDC to make the best decisions. She wondered if it would be difficult for the state to take TransCanada's seat, should there be a problem with the confidentiality agreements. She queried the approximate date of the signed confidentiality agreements, and the date of the meeting that AGDC was asked to leave the meeting.

Mr. Fauske replied that all employees of the corporation had signed confidentiality agreements. He could not give an exact date of the meeting, but recalled that it was a time that AGDC was heavily involved in ASAP.

Representative Wilson surmised that the state was out of compliance for over a year, and wondered why the regulations were only just being drafted.

Mr. Fauske responded that, as ASAP was not a strong project, there must be a careful system as to how information was utilized. He shared that AGDC developed a plan to benefit both projects.

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Mr. Dubler explained that the ASAP and AKLNG issue was a competition issue that the producers noticed. He stressed that the issue was to keep information confidential between the two projects.

Representative Wilson was concerned that nothing had been done the first time AGDC had been asked to leave a room during discussions due to confidentiality. She thought confidentiality agreements should be signed.

Representative Munoz wondered whether Mr. Boykin had signed a confidentiality agreement. Mr. Fauske replied in the affirmative.

Representative Munoz spoke to the subjective nature of what was deemed to be confidential. Mr. Vassar asked for clarification on the question. Representative Munoz asked how the issue would be resolved.

Mr. Vassar replied that the model that currently was in place. He stated that it was relatively easy, and basically everything was confidential under one umbrella, but one had to think about each item of information. He stressed that it was really up to each individual party whether information was restricted by the confidentiality agreement.

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Representative Munoz wondered if the regulations would add delay and cost to the project. She wondered if the draft regulations were in the best interest of AGDC.

Mr. Vassar stated that the existing confidentiality agreements made his life simple as the attorney for AGDC. Everything was confidential. Had to keep track of what // not a simple matter. He liked things that made his life as simple as possible.

Vice-Chair Saddler provided a summation of testimony by AGDC. He stressed that alignment and low costs were critical to success. He wondered if the regulations would speed or delay progress.

Mr. Fauske answered that the regulations would slow the process.

Vice-Chair Saddler noted that the draft regulations had strict limitations, and queried AGDC's understanding of how the determination would be made.

Mr. Vassar replied that if there was a question it would involve discussion, and stressed the corporation would make the decision.

Vice-Chair Saddler asked what benefits the regulations would bring to achieve gasline progress. Mr. Fauske stated that the regulations would ensure that the process was open and transparent.

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Vice-Chair Saddler asked how openness and transparency would benefit the process. He noted that total transparency would be detrimental.

Mr. Fauske replied that the implied benefit of transparency was to ensure the comfort level between the legislature and the public for greater access to information.

Vice-Chair Saddler asked if other public corporations disclosed their commercial agreements on the basis of transparency implied benefit.

Mr. Vassar answered that he could not address the legal perspective from all public corporations. The confidentiality power the other corporations had, was case by case. He shared that they had the ability to keep things confidential. For example AHFC was in the business of buying mortgage loans.

Representative Kawasaki addressed slide 6. He wondered if there were other categories that were not included in the list.

Mr. Vassar replied that the list was fairly inclusive. He explained that the administration desired to shift the presumption from all things confidential to all things public.

Representative Kawasaki queried the process that counsel at AGDC would be able to filter through the categories.

Mr. Vassar replied that as a practical matter, the discussions occurred in the proprietary business information category. The term was not well-defined, so the drafting of the agreements would address those issues.

Representative Kawasaki asked if AGDC be able to comply should the draft regulations be passed.

Mr. Vassar replied that the regulations would dictate the kinds of agreements the corporation entered into in the future.

Representative Kawasaki asked if AGDC would be able to comply with the proposed regulation.

Mr. Vassar emphasized that nothing in the regulations was intended to be retroactive.

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Representative Kawasaki asked if the attorney general was legal counsel to AKLNG.

Mr. Vassar replied in the affirmative.

Representative Kawasaki wondered who had the authority to procure legal counsel for AKLNG.

Mr. Vassar replied that the attorney general had authority procure the legal counsel for AKLNG, by statute.

Co-Chair Thompson stressed that the security of the state and the partners was not granted under the proposed regulations. He felt that the regulations did not line up with the responsibilities of the CA.

Mr. Vassar answered that if the state entered into a confidentiality agreement under the regulations, the

confidentiality agreement would be the security for the counter party.

Co-Chair Thompson remarked that the partners had sensitive information, and he wanted to ensure that the partners were secure in discussions.

Mr. Vassar responded that the counter parties were not satisfied with the draft regulations.

[3:44:38 PM](#)

Representative Gara asked if Mr. Fauske would make the final decision on the regulations. Mr. Fauske replied in the negative. The board would make the final decision.

Representative Gara outlined the approval process. Mr. Fauske agreed.

Representative Gara wondered if regulations were outlined and then were presented to the board. Mr. Fauske replied in the affirmative.

Representative Gara noted that many statutes had confidentiality rules, so the regulations could not violate the already adopted statutes. Mr. Vassar agreed.

Representative Gara asked for verification that Mr. Vassar's role was to write the regulations in a way that was legal. Mr. Vassar answered yes, but did give assistance in helping to understand ramifications.

Representative Gara remarked that there were times prior to the current administration that limited the attendance of the administration to certain meetings. Mr. Fauske replied in the affirmative.

Representative Gara noted that the AGDC staff were always able to attend meetings, because they had been subject to the confidentiality agreements. He wondered if the proposed regulations attempted to change the opportunity for AGDC to attend meetings. Mr. Fauske responded that the limitations depended on the final adoption of the regulation. He opined that the partners may restrict attendance, should they find the regulations to be too restrictive or not conducive to their satisfaction. He stressed that AGDC could not always determine what the other parties would deem "confidential."

Representative Gara spoke to the governor's goal of transparency, and he looked at slide 6. There were many strategies the state would want to remain confidential. He asked for verification that would maintain confidentiality in the specific outline. Mr. Fauske replied in the affirmative.

[3:50:34 PM](#)

Co-Chair Neuman wondered if there were instances that restricted AGDC because of confidentiality agreements. Mr. Fauske replied in the affirmative.

Representative Guttenberg looked at the list on slide 6. He wondered if he could ask about specific confidential categories.

Mr. Vassar replied that all of the things would be confidential.

Representative Guttenberg asked if he could be told the list of confidential categories, but not the detail of confidentiality.

Mr. Vassar replied that it depended on the confidentiality agreement.

Representative Guttenberg looked at slide 8, which stated, "information is assumed to be public, absent clear indication to the contrary." He remarked that there were situations where information was public, even though it had been published. He expressed frustration, because the person inside the corporate structure could not directly address that issue. He wondered if that situation would be covered under "information assumed to be public."

[3:54:30 PM](#)

Mr. Vassar answered that the bullet on slide 8 was intended to be a policy direction that AGDC would not agree that something was confidential unless the party asking for confidentiality had a reason.

Representative Guttenberg wondered what would occur if a person had signed a confidentiality agreement, what that person could discuss at a legislative meeting.

Mr. Dubler answered that the person could make up a proposed set of slides to share with the legislature in public and took them to the producers, and the producers had agreed.

Representative Guttenberg asked for verification that it was already prescreened by producers. Mr. Dubler replied that it would depend on the question.

Representative Guttenberg asked what would occur during confidential business decisions.

Mr. Dubler replied that AGDC would not provide the information because it did not have it.

[3:59:31 PM](#)

Representative Guttenberg asked if the state was at the point of FEED, but AGDC could not give the legislature about where the pipe was built.

Mr. Dubler replied that AGDC had responded that there were various places that could construct the pipelines.

Co-Chair Neuman had been informed that there was the ability to manufacture 48 inch pipe in the U.S.

Representative Guttenberg stressed that there could be a competitive edge on bidding, should those parties know that they were being considered. He stressed that the legislature could not that general request.

Representative Pruitt asked if AGDC currently had confidentiality agreements signed with the various parties. Mr. Vassar replied in the affirmative.

Representative Pruitt wondered if the proposed regulations allowed for previously agreed upon confidential information be released to the public sans consent of the parties. Mr. Vassar replied in the negative.

Representative Pruitt queried the reasoning for choosing the date December 1. Mr. Vassar replied that the date may be changed.

Co-Chair Neuman asked who would decide on the date's extension.

Mr. Vassar replied that in all likelihood it would be shorter than the original comment period. He stated that AGDC would decide the date.

[4:04:05 PM](#)

Representative Pruitt asked to confirm that the December 4 date had nothing to do with the determination on December 1.

Mr. Vassar replied in the affirmative.

Representative Pruitt wondered if the state was placing the burden of proof be placed on the other parties, when information was not released.

Mr. Vassar answered that the intention was that in negotiating confidentiality agreements, AGDC would not agree to keep something confidential, unless the other party was able to demonstrate the need for confidentiality. He stressed that the confidentiality agreement would dictate exactly the withheld information.

Representative Pruitt asked if it happened in any other situation. Mr. Vassar replied that he was not familiar with other negotiations of confidentiality agreements on that basis.

Representative Pruitt asked if there was something the state felt should be confidential. Mr. Fauske replied in the affirmative.

[4:07:16 PM](#)

Vice-Chair Saddler felt that the regulations would depress the likelihood of success for the AKLNG project, against the rhetorical benefit of transparency. He wondered why 85 percent of the funds for Mr. Boykin's pay came from ASAP.

Mr. Fauske replied that when the contract was originally drafted for Mr. Boykin, it was understood that he would liaison between the two projects. The current allocation methodology was appropriate, because at the time both projects were ongoing.

Vice-Chair Saddler inferred that it was a holdover from the time of the drafting of the contract. He asked if there was a reason it could not be adjusted.

Mr. Fauske agreed that the contract could and probably would be adjusted.

Co-Chair Thompson discussed the agenda for the following day.

HB 3001 was HEARD and HELD in committee for further consideration.

#

ADJOURNMENT

4:12:10 PM

The meeting was adjourned at 4:12 p.m.