HB
302

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 302
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Revision Date/Time (Note if correction):
Title: Alaska Gas Corporation
Sponsor: Representative Whitaker
Requester: House Oil and Gas Committee

Dept. Affected: Revenue
BRU: Administration and Support
Component: Commissioner's Office
Component No. 123

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This legislation directs the Joint Committee on Natural Gas Pipelines to submit a project plan by January 2003 on "whether the construction and operation of a natural gas transmission pipeline project ... by a public corporation is feasible." The plan would include findings, recommendations and conclusions from engineering and consulting firms on a detailed list of gas supply, financial, regulatory, market, local-hire and local-buy matters. If the project is judged feasible, the legislation directs that a new entity within Revenue, the Alaska Gas Corporation, would be responsible for one or more of the following: design, construction, operation and maintenance of the pipeline.

Because a legislative committee would pay for and manage the feasibility study, that portion of this legislation would not effect the department's operating budget.

And because the feasibility of the project, and the state's possible role in construction and/or operation of the project, would be determined by the feasibility study, it is premature at this time for the department to estimate any budgetary needs for the new public corporation.

Prepared by: Larry Persily, Deputy Commissioner — Phone 465-5469
Division: Department of Revenue — Date/Time 4/1/02 7:20 PM
Approved by: Wilson Condon, Commissioner — Date 4/1/2002
Agency: Department of Revenue

Alaska State Legislature

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House of Representatives
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Sponsor Statement
House Bill 302 – Alaska Gas Corporation

Article VIII, Section 2 of the Constitution of the State of Alaska specifies that, "the legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people." For many years, the State of Alaska has relied heavily on the production of oil to foster its livelihood, provide opportunities for its people, and generate revenues to ensure continued prosperity. We have all seen and enjoyed the positive effects of oil development. However, oil price fluctuations and reduced competition resulting in reduced production have adversely affected the State's ability to provide a secure economic future. As we face an enormous budget deficit, we must look beyond our reliance on oil production, budget cutting, and taxation as the only means of ensuring a long-term fiscal solution. It is incumbent upon the leaders of this state to recognize that further resource development is critical in order to secure an additional and substantial revenue stream to the State of Alaska. Conservatively, 100 trillion cubic feet of natural gas is stranded on the North Slope, and the failure to recognize this vital resource as a valuable commodity is in direct conflict with the provisions of the Constitution of the State of Alaska.

In order to facilitate the extraction and sale of natural gas, House Bill 302 establishes the Alaska Gas Corporation. The prime responsibility of the corporation is to provide for a basic commodity transportation system: a natural gas pipeline system; open to all potential competitors, and open to all realistic market access opportunities.

Overcoming a number of impediments is essential in order for a project of this nature to become a reality. We have extensively studied the economics, market viability, financial needs, and regulatory obstacles associated with the construction and operation of this project. However, in order to truly understand the economic viability of the Alaska Gas Corporation, we must turn to professionals in the engineering, financial and market sectors in order to establish absolute economic feasibility, and an associated project plan.

House Bill 302 requires a natural gas pipeline feasibility study and plan be completed and presented to the twenty-third Alaska State Legislature and the Governor. This report shall contain specific information pertaining to technical, financial, regulatory and market access matters relating to the project. The passage of HB 302 is of paramount importance in order to move forward and develop our natural resources in the maximum best interest of the citizens of the State of Alaska.

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MEMORANDUM April 2, 2002

SUBJECT: House Bill 302 -- sectional analysis
(Work Order No. 22-LS1205\C)

TO: Representative Jim Whitaker

FROM: Jack Chenoweth
Assistant Revisor of Statutes

The principal purpose of this measure is to establish the Alaska Gas Corporation as a public corporation and to define the structure, management, responsibilities, and operation of the corporation. The chief mission of the Alaska Gas Corporation is to facilitate the commercial development of the state's North Slope natural gas reserves.

Bill section 1, an uncodified provision, sets out the findings and intent that have influenced development of the legislation.

Bill section 2: These provisions set out in a new chapter of title 41 of the Alaska Statutes (AS 41.41) the corporate structure, powers, and responsibilities of the Alaska Gas Corporation. The chapter is arranged by articles.

Article 1.

The sections identified as AS 41.41.010 - 41.41.130 are set out to define the organization of the corporation:

AS 41.41.010 establishes the corporation, enumerates its purposes, and affirms that it is intended to be a public corporation of the state.

AS 41.41.020 creates the corporation's board of directors, a board composed of six public members. The general qualifications of persons to serve as members are stated, and the corporation's obligation to establish its organization is set out.

AS 41.41.030 sets overlapping four-year terms for the members and authorizes reappointment.

AS 41.41.040 circumscribes the governor's authority to remove members and sets out procedures to be followed relating to removal and filling of the vacancy created.

AS 41.41.050 defines quorum and voting requirements.

AS 41.41.060 prescribes compensation for members and authorizes payment of per diem and travel expenses comparable to those provided to state employees for members.

AS 41.41.070 authorizes the board to employ an executive director who, in turn, is assigned responsibility for selection and employment of additional staff "with the approval of the board." The concluding subsection authorizes the corporation to contract for specialized services.

AS 41.41.080: Provisions of law requiring disclosure of financial and business interests (AS 39.50) are made applicable to members of the board. In addition, provision is made for specific disclosure of information concerning a board member's or employee's involvement in an entity or project "in which assets of the corporation are invested."

AS 41.41.090 sets out the budgetary and financial relationship between the corporation and the state's budget and fiscal procedure acts.

AS 41.41.100 authorizes the Legislative Budget and Audit Committee to undertake post audit and performance evaluation of corporate obligations.

AS 41.41.110 prescribes publication of an annual report of the corporation and the contents of the report.

AS 41.41.120 bars the corporation from using its resources to finance or influence political activities.

AS 41.41.130 defines information in the corporation's possession that is or is not to be treated as a public record under AS 40.25.110 - 40.25.140 and sets limits on the use or disclosure of confidential, non-disclosable information.

Article 2.

The one section in this article, **AS 41.41.200**, enumerates general powers of the corporation.

Article 3.

The sections identified in AS 41.41.300 - 41.41.410 generally bear upon the corporation's issuance of securities (bonds and notes and other evidence of debt). Much of the material

is technical boilerplate and is included so that, as a public corporation, under article IX, section 11 of the state constitution, the corporation enjoys full authority to contract debt based on its ability to repay out of its anticipated future revenues:

AS 41.41.300: This section authorizes issuance of revenue bonds and related evidence of debt, using provisions not unlike those included in chapters establishing other public corporations of the state to facilitate the use of debt obligations.

AS 41.41.310 prescribes permissible covenants that the corporation's board may make in conjunction with issuance of revenue bond debt.

AS 41.41.320 makes the level of the corporation's authorized debt subject to legislative authorization.

AS 41.41.330 permits the board to contract for the services of an independent financial advisor in conjunction with private sale of debt instruments.

AS 41.41.340 describes the nature of the corporation's pledge of its assets or revenues to payment of principal and interest on corporation-issued debt.

AS 41.41.350 details use of "capital reserve funds" to meet repayment obligations in conjunction with the corporation's indebtedness.

AS 41.41.360 addresses remedies available to holders of debt obligations and their representatives to enforce the timely payment of an obligation or a related obligation.

AS 41.41.370 makes the corporation's obligations negotiable instruments.

AS 41.41.380 explicitly makes the corporation's obligations permissible investments for public officers and for others handling surplus funds as identified in the section's text.

AS 41.41.390 authorizes use of refunding bonds as a device to adjust the corporation's bond obligations to obtain the benefit of more advantageous terms and conditions.

AS 41.41.400 affirms that, because the corporation's obligations are revenue-based debt instruments, the credit of the state is not pledged. Liability on the debt instrument is limited to the assets and revenues of the corporation.

AS 41.41.410 releases the corporation's officers from personal liability with reference to action taken by the corporation with respect to a debt obligation.

Article 4.

The one section in this article, **AS 41.41.450**, authorizes the Alaska Gas Corporation to acquire and hold property and interests in property "necessary or convenient for the financing of the [Trans Alaska Gas Pipeline] project."

Article 5.

The article contains general provisions:

AS 41.41.900 reaffirms the blanket immunity from taxation that the Alaska Gas Corporation enjoys and provides a general tax exemption provision: the corporation and its operations and earnings are exempt from taxes and assessments in the state; bonds and security instruments are exempted from taxes and assessments made by the state.

AS 41.41.990 sets out a series of definitions for terms used in the chapter.

Bill section 3 amends AS 39.25 to add employees of the Alaska Gas Corporation as members in the exempt service under the State Personnel Act.

Bill section 4 amends AS 39.50.200 to add the Alaska Gas Corporation's board of directors and executive director as persons who are subject to the state's general conflict of interest law (AS 39.50).

Bill section 5: This uncodified provision directs the preparation and delivery of a "project plan" or feasibility study for planning, design, construction, and operation of a gas transmission pipeline. The specific points that are to be covered or addressed in the feasibility study and a time line for its presentation are set out.

Bill section 6 prescribes initial terms of office for the initially appointed members of the corporation's board of directors in order to establish overlapping terms of office.

JBC:med
02-343.med

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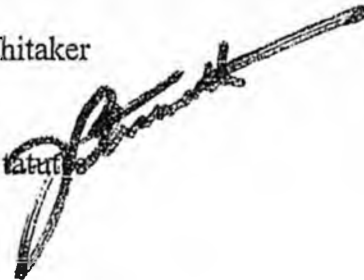
M E M O R A N D U M — January 21, 2002

SUBJECT: Applying the standard applicable under article XI, section 4, Constitution of the State of Alaska, is House Bill 302 ("An Act establishing the Alaska Gas Corporation . . . ") "substantially the same measure" as Initiative 01GSLN ("The All-Alaskan Gasline Initiative")? (Work Order No. 22-LS1205/C)

TO: Representative Jim Whitaker

FROM: Jack Chenoweth
Assistant Revisor of Statutes



Question presented:

You have asked whether House Bill 302, "An Act establishing the Alaska Gas Corporation . . . ", would be found to be "substantially the same measure" as Initiative 01GSLN, the "All-Alaskan Gasline Initiative." A determination that the bill, passed by the current legislature and enacted into law, is substantially the same measure as the initiative would void the initiative petition thereby requiring the lieutenant governor to order the initiative, if properly filed, removed from the November general election ballot.

Short answer:

For the reasons considered and discussed below, in my judgment the differences between the initiative and the bill should not be sufficient to defeat a determination by the lieutenant governor that the bill and the initiative are substantially the same.

Discussion:

The applicable constitutional provision is set out in the last sentence of article XI, section 4 of the state constitution:

> **Initiative Election.** An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. *If, before the election, substantially the same measure has been enacted, the petition is void.*

The provision is supplemented by a statute, AS 15.45.210:

> **Determination of void petition.** If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.

The test for invalidating the petition under the "substantially the same measure" standard is considered by the Alaska Supreme Court in *Warren v. Boucher*, 543 P.2d 731 (Alaska 1975). The nub of the test appears in the following two paragraphs:[1]

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[1] To accommodate analysis in the text of this memo, I want to set out the extent of the court's discussion in its entire context:

> . . . In order to interpret this language [i.e. the meaning of "substantially the same measure"] we must analyze its functional relationship to other constitutional provisions. We must infer the purposes and intentions of the framers from the language of the constitution itself, with careful regard for the apparent aims which the framers had in mind.
>
> The words "substantial" or "substantially" are relative, inexact terms. Their meaning is quite elusive. *Application of Scroggin*, 103 Cal. App. 2d 281, 229 P.2d 489 (1951). The meaning of such terms can be derived only [by] reference to all the circumstances surrounding the context in which they are used. *Atchison, T. & S.F. Ry. v. Kings County Water District*, 47 Cal.2d 140, 302 P.2d 1, 3 (1956). So here, we believe that the term "substantially the same measure" must be viewed against the total structure contemplated in Art. XI of our constitution in the matter of direct legislation.
>
> . . .
>
> . . . By providing that the legislative enactment of substantially the same measure could have the effect of voiding an initiative, the framers empowered the legislature to cut off initiated legislation from consideration and vote by the general public. The manner in which Art. XI, Sec. 4, was amended in the constitutional convention makes this clear. The original proposal at the convention would have required that an initiative could be voided only by legislative enactment of "the measure initiated". Read literally, this would require that the language of both measures be identical. However, as discussed above, the final constitutional language requires merely that "substantially the same

measure" be enacted by the legislature in order to void an initiative petition.

It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.

Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.

. . .

The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital governmental functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.

What is significant to us here is the effect which the amendatory power of the legislature has upon our interpretation of the words "substantially the same measure." For if the legislature has broad power of amendment, it follows that it has broad power to change an initiative by an enactment covering the same subject as the initiated measure. In short, we must interpret Art. XI, Sec. 4, broadly and not narrowly as to the scope of legislative power. . . . .

> It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.
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Warren v. Boucher, 543 P.2d 731, at 736.

Dissimilarities in the statement of findings and intent of the respective measures aside, House Bill 302 differs substantively from the initiative[2] in these significant aspects:

(1) the description of the "services and functions" of the corporation, coupled with the definition of the term "project" and the manner of treatment of the obligation to develop a "project plan";

(2) the size of the board, qualifications of its members, duration of terms of the members' board service, and compensation due members for their services;

(3) the issue of legislative confirmation of board members;

(4) differences in treatment of the corporation's/authority's legal representation;

Warren v. Boucher, 543 P.2d 731, at 735 - 736 (emphasis added; notes omitted).

[2] If the initiative appears on the ballot and is approved by the voters, it has to be codified. Just to have it on record, assuming that the text of the initiative set out on the state Internet entry is accurate, there are several minor editorial matters that need attention: in AS 41.41.310(8), the word "provide" was omitted and should be reinserted before "for"; the section catchline for AS 41.41.410 duplicates the catchline for the preceding section, is inappropriate as to the section's contents, and should be revised to read "Officers not liable."

(5) the matter of the disposition of corporate/authority earnings "in excess of future operating needs";

(6) the explicit handling in the initiative, omitted from the bill, of the subjects of "project term agreements with labor organizations," employment opportunities for state residents, and the use of experienced Alaska businesses; and

(7) the express power given to the authority (but not to the corporation) to "acquire natural gas supplies."

I'll briefly discuss each in order.

1. The description of the "services and functions" of the corporation, coupled with the definition of the term "project" and the manner of treatment of the obligation to develop a "project plan":

The initiative assigns the authority a different mandate than does the bill. In the description of the "services and functions" set out in the initiative's AS 41.41.010, in the initiative's definition of "project" for the new chapter, and in the description of the project plan in an uncodified section at the end of the initiative, the scope of the project incorporates reference to a pipeline system to tidewater and a spur line to southcentral Alaska, and makes reference to gas (as LNG) distribution to Yukon River and coastal communities. The bill, as you know, addresses only the delivery to the interior and then along the Alaska Highway to Canada or to tidewater, or both.

The initiative and the bill both include provisions applicable to early development of a project plan. Though the elements that the plan is to address are not congruent, there is overlap. What differs, of course, is the identity of the entity to undertake the plan--a legislative joint committee under the bill and the new authority under the initiative--and the requirement of the bill that the project plan determine "whether the construction and operation of a natural gas transmission pipeline project by a public corporation is feasible," while the initiative seems to presuppose the project's feasibility and the board of directors of the proposed authority is directed to begin by producing a development plan.

These differences are not insignificant. The bill, clearly, reflects an immediate concern by the legislature that the North Slope's reserves be made available overland to domestic North American and overseas markets, while the initiative omits overland domestic North American market considerations and focuses on overseas shipments and opportunities for instate use. Because of the magnitude of the financing attending construction of one or two pipelines, the legislature is understandably more cautious about the project's feasibility and requires evidence of operational success rather than starting from the assumption, as the initiative does, that the project's success may be inferred.

But, while not insignificant, the differences do not seem to me to be fatal to a determination that the bill is "substantially the same measure" as the initiative. *Warren v. Boucher* acknowledges the opportunity of the legislature to "vary from the particular features of the initiative" while achieving the same general purpose. That, arguably, is exactly what is happening. The approach used in the bill is more conservative in its initial approach and takes cognizance of circumstances (specifically, overland transportation of natural gas to domestic North American markets) that may not have been commercially viable when the initiative was crafted. These differences should not, in my view, be regarded as sufficient to defeat a determination that the bill and the initiative are substantially the same.

2. The size of the board, qualifications of its members, duration of terms of the members' board service, and compensation due members for their services:

Differences between the initiative and the bill relating to six versus seven board members, qualifications of appointees, duration of service, and compensation payable are technical matters and should not, in my judgment, be sufficient to defeat a determination that the bill and the initiative are substantially the same.

3. Legislative confirmation of board members:

The state constitution does not now authorize legislative confirmation of members of public corporations (by whatever name denominated). The initiative requires legislative confirmation of board members; the bill omits the requirement. The bill avoids the constitutional argument and, consistent with language in *Warren v. Boucher* speaking to the authority of the legislature to take corrective action, improves (legally speaking) the content of the initiative on this point. The difference is not, in my judgment, sufficient to defeat a determination that the bill and the initiative are substantially the same.

4. The corporation's/authority's legal representation:

The initiative expressly assigns legal representation to the attorney general; the bill omits the express provision and adds selection of legal counsel as a discretionary power of the board. While, under the bill, the attorney general may nevertheless assert authority to represent the proposed corporation under powers spelled out in AS 44.23.020, the difference in treatment of this issue as between the initiative and the bill is not, in my judgment, sufficient to defeat a determination that the bill and the initiative are substantially the same.

5. The matter of the disposition of corporate/authority earnings "in excess of future operating needs":

The bill, but not the initiative, provides that

> Earnings of the corporation in excess of future operating needs shall accrue and be transferred to the state general fund once each year, not later than January 15, after the first full year of operation.

Its inclusion in the bill is arguably a reflection of the third paragraph of the bill's statement of findings ("the production of oil and gas from state land is an important source of revenue to the state and job opportunities for all people of the state;") and is not inconsistent with inclusion of similar approaches in other chapters establishing and defining the powers and duties of state public corporations requiring disclosure (if not actual transfer) of fund balances in excess of operating requirements. Again, under the analysis of *Warren v. Boucher*, the court acknowledges that the legislature has latitude to vary from the content of an initiative if the subject matter is "necessarily complex". Identifying the corporation's activities as a potential general fund revenue source is surely a matter of more concern to the legislature than to sponsors of the initiative. *Warren v. Boucher* allows this variance, it seems to me, and the difference in treatment of this issue as between the initiative and the bill is not, in my judgment, sufficient to defeat a determination that the bill and the initiative are substantially the same.

6. Explicit handling in the initiative, omitted from the bill, of the subjects of "project term agreements with labor organizations," employment opportunities for state residents, and the use under contract of experienced Alaska businesses:

As between the initiative and the bill, treatment of these matters differ. The initiative adds mandatory no-strike "project term agreements," resident hire, and business contractor and supplier preference provisions; the bill omits mandatory language but does require documentation of compliance or expected compliance with related requirements in conjunction with development of the project plan expected to make a determination that "construction and operation of a natural gas transmission pipeline project . . . is feasible." Moreover, the bill's approach arguably starts from recent legislative experience in this area wherein some substantially similar requirements were not directly addressed in law but were required to be added as contract terms. So, for example, the Stranded Gas Development Act, ch. 104, SLA 1998, directs the commissioner of revenue to address use of Alaska businesses and state residents as a condition of a contract providing incentives under that Act to encourage investment to develop stranded gas resources, while, earlier, legislation authorizing amendment of the Northstar Unit oil and gas leases, ch. 139, SLA 1996, addressed resident employment and instate business contracting requirements by legislative intent statements attending legislative approval of the measure.

Admittedly these differences are also material. In contrast to the mandatory language of the initiative, the legislature's approach is, understandably, relatively more cautious, and may simply reflect its appreciation of the constitutional constraints that do attach to state-initiated mandatory resident hire or local action requirements. To that end, substitution of the approach set out in the bill is defensible under that part of the *Warren v. Boucher* analysis that expresses legislative power to address initiative provisions that were "ill-

advised" or that might be "[legally] impracticable." On that basis, difference in treatment of this issue as between the initiative and the bill should not, in my judgment, be sufficient to defeat a determination that the bill and the initiative are substantially the same.

7. The express power given to the authority (but not to the corporation) to "acquire natural gas supplies."

Both the initiative and the bill permit the corporation/authority to acquire property. The initiative adds, at its AS 41.41.200(6), language by which the board, "in furtherance of its corporate purposes," may "acquire natural gas supplies." If the bill is enacted, presumably the board of the corporation would not have need of this express authority--the bill contemplates operation and maintenance of the natural gas pipeline system would involve third-party contracts. On the other hand, if it becomes clear that the corporation must own natural gas if construction and operation of the project are to be successfully undertaken, the absence of language expressly permitting acquisition of gas supplies should not defeat the exercise of general authority by the corporation to acquire gas supplies as "property." Presumably, the project plan development provisions will provide guidance as to whether or not state intervention and acquisition of gas supplies would be essential to successful development and operation of the completed project.

This provision frames what I believe may be the chief characteristic difference between the approach set out in the initiative and the one proposed in the bill. The initiative sponsors' statement declares that the authority is established for the purpose that it would "acquire and condition North Slope natural gas." In contrast, the bill directs use of third parties for the development and operation of the natural gas pipeline system contemplated. Again, the difference in approach may simply reflect an appreciation that the measure proposed and enacted should reflect the state's role as a project facilitator rather than assuming active development and operational responsibility. The legislature understands--the initiative sponsors may not--that the state Right-of-Way Leasing Act and federal legislation favoring expanded development of a domestic North American natural gas system for Alaska North Slope gas already provide guidance to and incentive for private, not state-directed, design, construction, and operation of either a tidewater delivery system, an overland delivery system, or both. While I recognize that this characteristic difference is important, nothing in the *Warren v. Boucher* analysis compels the conclusion that, as to a matter that is "necessarily complex" and that surely requires "comprehensive treatment," the legislature may not exercise its discretion and "substitute its judgment for that of the proponents of the initiative." As to a project of this size, the legislature surely has latitude to determine the manner in which limited state resources may be committed to achieve the outcome sought by you and the initiative sponsors. Differences in this treatment as between the initiative and the bill should not, in my judgment, be sufficient to defeat a determination that the bill and the initiative are substantially the same.

*

The constitutional provision and statute first cited assign determination of whether or not an enacted bill represents "substantially the same measure" as a valid initiative to the lieutenant governor. My reading of the test and its application to HB 302 and Initiative 01GSLN lead me to conclude that the proposed legislation has the same general purpose as the initiative and is fairly comparable in its choice of means or system to what has been described in the initiative. Some of the differences do not seem to me to be material. Insofar as the differences are material, because the bill's variant provisions arguably serve to sidestep possible legal and practical shortcomings of the initiative as submitted, they should be regarded as consistent with the legislature's authority to substitute its judgment and to take corrective action.

On that basis, then, it is my judgment that differences between the initiative and the bill as introduced should not be sufficient to defeat a determination by the lieutenant governor that the bill and the initiative are substantially the same. Whether or not she would make the determination that the bill and initiative are, under the standard of *Warren v. Boucher*, substantially the same measure is not for me to say.

JBC:med
02-029.med

Walter J. Hickel

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Distributed By
Representative Scott Ogan
District 27

March 23, 2001

The Honorable Scott Ogan
Alaska State House of Representatives
State Capitol (MS 3100)
Juneau, AK 99801-1182

FAX 907-465-3265

Dear Representative Ogan,

While I had hoped to visit you and the House Special Committee on Oil and Gas before the end of March, I'm not able to do so because I'm traveling to Moscow for a meeting of Northern Forum leaders. Nevertheless, I want to compliment you and the Committee on its efforts to understand where Alaska stands in world markets for natural gas.

Any successful gas project requires willing buyers, willing sellers, willing transporters, and financing. My work in this area has been to try to bring those elements together, and I hope your committee can do the same.

If I were there, I would make three points.

First, Alaska has to look out for its own interests. In the late 1970s, an overland project failed – but not before Alaska's efforts helped Canadian reserves get to market. If overland was the best way to go, we would have an oil pipeline to Bellingham today. We don't. Tidewater gives us the most options, and while we can pursue an overland route, we can't allow the tidewater option to be ignored by the state or the producers. We must aggressively pursue Asian markets, and that means ensuring that a gas supply is independently offered for sale. So far, that has not been done. Instead, we're telling the Asian market we're not ready to sell.

Second, I've attached an excerpt from a talk the late Senator Bob Bartlett gave to Alaska's Constitutional Convention. He warned about companies with assets Outside Alaska warehousing assets they acquire in Alaska. Of course, no oil company would admit that they are warehousing gas, or keeping it out of the market because it has other supplies available. But a state owner of such a large resource has to protect itself, because it could happen. It is clear to me we haven't protected ourselves.

What do we do? We must be tough. Our options range from a reserve tax to taking back the resource for non-performance. Neither of these options would

be necessary if a sufficient gas supply to serve the LNG route were committed to an independent marketing effort.

Third, we must learn our lessons from the oil line: Unless structured correctly, a pipeline owned by producers is likely to result in tariff, royalty, and tax disputes because of a conflict in incentives between profits from transportation and profits from wellhead production. Since TAPS began, the state has had to collect close to $10 billion in dispute because of the way the Trans-Alaska Pipeline was structured. Two options could help head off similar disputes on gas. First may be requiring an independent transportation company to carry the gas. Second may be having the state take an ownership interest in the pipeline at least equal to its royalty interest in the gas. Ken Thompson's trading hub idea also has merit in heading off this kind of conflict.

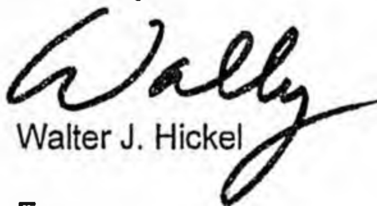
At least two transport companies have invested millions of dollars designing and permitting systems to deliver North Slope gas. The state is doing nothing I'm aware of to help bring these investors together with the producers.

I look forward to further discussion with you on my return. I'm doing what I can, as an individual, to urge producers, transporters, buyers, and financiers to get together. The state must help to do the same.

If this letter is presented to your Committee in my absence, Mead Treadwell – who works with me – can attempt to answer any questions you have.

With best regards.

Sincerely,



Walter J. Hickel

Enc.

Excerpt from

MEETING THE CHALLENGE
By
Delegate E. L. Bartlett

Alaska Constitutional Convention
University of Alaska
November 8, 1955

. . .

The various bills for statehood enabling legislation which have been introduced in the Congress in recent years have uniformly called for large grants of land from the United States public domain to be made to the State of Alaska. The figure mentioned has been in excess of 100 million acres, an area roughly equal to the total land area of the State of California. The 100 million acre figure would appear to be approximately the figure which will finally be adopted.

The State of Alaska would choose almost all this acreage from the lands not included in present federal reservations and withdrawals, or which is otherwise unappropriated. The 100 million plus acres represent a veritable empire, a wealth of land and resources never before conferred on any state, saving only Texas which, upon its entry into the Union, was allowed to retain all its public lands. Alaska will receive also, in addition to the 100 million acre plus grant, an uncounted but tremendous acreage of submerged lands, land which under decisions of the Supreme Court of the United States have been held in trust for the future state. These submerged lands include lands under the beds of navigable rivers, lakes, and streams; the tidelands proper; and the submerged soils of the marginal sea out to the three-mile limit.

. . .

Two very real dangers are present. The first, and most obvious, danger is that of exploitation under the thin disguise of development. The taking of Alaska's mineral resources without leaving some reasonable return for the support of Alaska governmental services and the use of all the people of Alaska will mean a betrayal in the administration of the people's wealth. The second danger is that outside interests, determined to stifle any development in Alaska which might compete with their activities elsewhere, will attempt to acquire great areas of Alaska's public lands in order NOT to develop them until such time as, in their omnipotence and the pursuance of their own interests, they see fit. If large areas of Alaska's patrimony are turned over to such corporations the people of Alaska may be even more the losers than if the lands had been exploited.