

# **Alaska Legislative Digest - *Alaska Journal of Commerce***

## *Special Session Briefing*

————— Report by Bob Tkacz/Mike Bradner - Contact: [mbradner@gci.net](mailto:mbradner@gci.net)

*For more information on the special session go to: [alaskajournal.com](http://alaskajournal.com)*

July 28, 2008

### **Legislature turns toward energy issues**

With a Senate vote on the TransCanada license almost certainly not coming much before the Aug. 2 decision deadline, the House Finance Committee was focused on energy relief issues over the weekend, though most representatives who are not members of the panel left Juneau.

- The Finance Committee reviewed the House Community and Regional Affairs' Committee's rewrite of the administration proposal for a \$1,200 "resource rebate" payment and Sen. Hoffman's bills to expand the Power Cost Equalization Program and expand eligibility and funding for the state and federal Low Income Heating Assistance Program.
- One bill would lift the income limit for LIHEAP assistance to from 225 percent of the federal poverty guideline to 350. This would make a family of four earning up to \$92,000 annually qualify for the program.
- Meyer and Hoffman, cochairmen of the Finance Committees, have both said an omnibus bill including some version of the four major energy proposals would be the most efficient and politically practical way to address the issue. The "four-legged stool" includes the \$1,200 rebate, PCE and LIHEAP changes and the fuel tax suspension. A legal opinion is being requested to determine whether this fits under the constitutional one subject rule.
- Rep. Bill Stoltze, whose solution to any problem is reduction of municipal revenues, said at Friday's House Finance hearing that he would ask Gov. Palin to expand the session call to allow the legislature to impose a moratorium on municipal sales taxes on heating fuel.
- Legislative leaders have attempted to keep debate focused on immediate responses to the energy cost crisis of the coming winter, but lawmakers and others are pressing for additional appropriations to the new alternative energy projects grant fund created by passage of HB 152 during the regular session.
- Rep. Les Gara (D-Anch.) queried how much the state could save from what is now the \$744 million cost of the rebate payment if limited to adults and emancipated minors? This would move payments more towards "the household," and those directing paying utility bills, or those doing so through rents.

**Fuel costs across rural Alaska vary according to who has longer period of cold, degree of temperature, wind, and other factors.**

Analyses by AVEC and six other utilities all found consumer costs would increase. Kohler also asked lawmakers to reinstate the original monthly use limit of 700 kWh, which was reduced in 1999. She noted that the cut resulted in a 22% decrease in energy use, which has not increased over the past decade.

The state's bulk fuel loan program could see a \$3 million shortfall in its funding needs for the coming winter, the House Finance Committee was told. The program loaned \$2.3 million last year and expects a 45 percent increase in the cost of fuel to its borrowers. Those are utilities that don't qualify for Alaska Energy Authority loans. The program could also use an increase in its single-loan cap from \$500,000 to \$750,000, spokesman Dale Conrad said.

**Hoffman wants two-year assistance plan**

Sen. Lyman Hoffman said the legislature should approve a two-year expansion of PCE and LIHEAP assistance to relieve itself of the need to review the issue during the 2009 session when it will be working on the state's long-term energy policy. At Friday's Senate Finance Committee hearing Hoffman repeatedly said changes to PCE and LIHEAP in SB 4005 and SB 4006, respectively, should last two years.

Longer-term assistance programs should be organized the new revenue sharing system, which links payments to municipalities to state revenue levels. Drops in the market price of energy would produce smaller state revenue but also lower consumer prices reducing the need for the assistance program, Hoffman explained.

*Note: The problem with this is that state revenue levels are now a factor of oil price and declining production.*

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July 31, 2008

### **AGIA license bill goes to Senate floor**

The Senate Special Energy Committee, shortly after 9:30 last night (July 30), sent the unamended TransCanada license bill, HB 3001, to the Senate floor on a 7-5 vote. The Senate is scheduled for an 11 a.m. floor session today where the final debate on the bill will begin. When the final floor vote will come is uncertain, but at minimum the bill will advance from second to third reading, be on the floor tomorrow (August 1), and possible reconsideration vote on August 2 (*drop dead day, end of 30 day limited session*).

Wednesday's hearing lasted five hours but consideration of two amendments that were offered and withdrawn by Sen. Lesil McGuire (R-Anch.) took less than an hour. McGuire's first amendment required TransCanada to provide a blanket indemnification for the state against any liability relating to the "withdrawn partners" issue before it could receive any reimbursement payments for the \$500 million subsidy that accompanies the license.

Reading from various legal textbooks, McGuire rejected the advice of administration and legislative attorneys and said approval of the license created a partnership between the state and TransCanada.

*Sen. Bill Wielechowski (D-Anch.), an attorney said he could imagine no scenario in which the state, as a sovereign, could be sued because it issued a license.*

- **Note:** We don't understand this latter statement, the state is a federal sub-sovereign government, a sovereign to the extent other features of the U.S. constitution permits.
- One of the economic centerpieces of the U.S. Constitution is protection of the "right-of-contract." In fact, this is what gives individuals as well as industry a level playing field in this country. For all kinds of business and industry "legal certainty" is essential (*what title insurance is all about*). Fiscal certainty may be desirable, but past a certain point what enterprise is all about is "winging it."
- The underlying issue in the TransCanada deal is that it is a contract, one which binds each party to certain commitments, and in fact does so over an extended period of time (*assigning what many think is obligations of state sovereignty*).

### **Senate Finance Committee revising energy assistance bills**

Cochairman Bert Stedman (R-Sitka) announced last night that the Senate Finance Committee will consider new proposals to help Alaskans with home heating oil costs and "other energy relief items or issues."

"They both need work," Stedman said. He did not specify bill numbers. SB 4006, sponsored by Cochairman Lyman Hoffman, proposed expansion of the existing heating oil assistance program to qualify persons earning up to 350 percent of the federal poverty guideline. Lawmakers have discussed combining the various bills into an omnibus measure. Stedman did not say whether Gov. Sarah Palin's \$1,200 "resource rebate" or SB 4005, Hoffman's Power Cost Equalization bill would be part of his new proposal.

### **Omnibus energy bill expected in House Finance Committee today**

A proposal combining the four energy assistance proposals from the governor and Sen. Hoffman is expected to be considered at this afternoon's House Finance Committee meeting. Cochairman Kevin Meyer (R-Anch.) has indicated his preference to address the measures in a package.

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### **Thursday's schedule**

**9 a.m. Senate Finance Committee on energy bills.**

**11 a.m. Senate Floor Session.**

**4 p.m. House Finance Committee: HB 4001, HB 4001.**

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***Amendments in committee – continued***

The amendment requires indemnification not only in relation to the withdrawn partners issue but also for costs related to delays in pipeline construction, among other causes. McGuire said the state regularly requires indemnification when it enters contracts. Sen. Kim Elton (D-Juneau) noted that under the Petroleum Profits Tax the state pays 20 percent of exploration drilling costs but does not require indemnification or consider it self to be in a "partnership.

**Sen. McGuire on negotiations**

In her second amendment McGuire again tried to force the state and TransCanada in to closed-door negotiation with "parties having control of significant North Slope natural gas reserves." The license would be issued 180 days after the parties agreed to negotiate unless they reached terms that eliminated the need for the license.

**Senate Energy Committee Vote on HB 3001**

- **Voting to report the bill:** Elton, Dyson, Olson, Stevens, Thomas, Wagoner, Wielechowski.
- **Voting against moving the bill:** Green, Hoffman, Huggins, McGuire, Stedman.

**Negotiations TransCanada, producers, and the state**

All the parties probably will, and by all means should, get in a room and talk some time down the road. In such deliberations they must first find the shape of the table, the scope of negotiations, the perimeters of "good faith" discussion. Certainly the state will want to stand behind AGIA, but that being said, if negotiations are to be in good faith, then changes to AGIA have to be at least "discussable."

**If AGIA isn't discussable negotiations will be "non-talk"**

If AGIA is not discussable, then its like management going into wage negotiation with unions and putting a contract with the position of "no changes," leaving discussion only to things not covered. Our concern, given our current volatile politics, is that neither the administration or Legislature seem to have set the latitude for this discussion. Our concern is the administration simply thinks it can blackmail the companies with the Point Thomson project. *We also see things in AGIA that may be fundamentally unacceptable to any major resource corporation, and which would be unacceptable to us if the situation were reversed.*

Can corporate entities pledge their stockholders to advocate positions of a government under future conditions and circumstance unknown and undeterminable? We doubt they can do this, and perhaps we should term it corporate sovereignty. Perhaps this perception of possibility is fueled by the state under AGIA itself doing what a state should not do – giving up its sovereignty by contract to a corporation (TransCanada).

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"They both need work," Stedman said. He did not specify bill numbers. SB 4006, sponsored by Cochairman Lyman Hoffman, proposed expansion of the existing heating oil assistance program to qualify persons earning up to 350 percent of the federal poverty guideline. Lawmakers have discussed combining the various bills into an omnibus measure. Stedman did not say whether Gov. Sarah Palin's \$1,200 "resource rebate" or SB 4005, Hoffman's Power Cost Equalization bill would be part of his new proposal.

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August 1, 2008

### **Senate debates AGIA license today**

In a floor session that lasted less than 20 minutes, the Senate, Thursday, advanced the TransCanada license bill, HB 3001, to its third reading but postponed consideration of amendments until today at 11 a.m. What was supposed to be an 11 a.m. start yesterday was delayed until after a closed-door majority caucus that began after 3 p.m.

### **Like in the House - look for a divided vote in the Senate**

The odds are that the contract will pass the Senate, but like in the House with a divisive margin, one unlikely to give the issue much political comfort. The Senate vote may see some Democrats split off the herd. Sen. Lyman Hoffman, D-Bethel, was a "do not pass" on the HB 3001 report coming out of the super committee, and Sen. Donny Olson, D-Nome, was a "no recommendation." However, signing, "do pass" were Democrats Sen. Kim Elton, D-Juneau, Sen. Joe Thomas, D-Fairbanks, and Sen. Bill Wielechowski, D-Anchorage.

### **Clarifying things for Sen. Wielechowski**

- In our July 31 Bulletin we paraphrased Sen. Wielechowski (D-Anch.), saying: *Sen. Bill Wielechowski (D-Anch.), an attorney said he could imagine no scenario in which the state, as a sovereign, could be sued because it issued a license.*
- *The senator tells us he what he said, and meant, was: I could imagine no scenario in which we could get sued under the withdrawn partners' provision. We agree this makes more legal sense.*

### **Nevertheless – withdrawn partners often not happy campers**

However, "withdrawn partners," means someone is likely unhappy, one partner being "withdrawn from." AGIA involves billions of dollars, but it also involves strategic position to TransCanada. Our concern remains. One can litigate almost anything, and litigation generally equals delay, and delay can be costly, deadly, and used for "negotiation." AGIA also keeps getting referred to as a license, but it is a contract, a binding contract.

The bill estimates a statewide average fuel cost of \$5.51 per gallon but contains no provisions limiting market prices. Fraudulent applications and resale of subsidized fuel would be Class A misdemeanors.

Following the hearing administration spokesman Randy Ruaro, said Gov. Palin continues to view the cash payment to Alaskans as a high priority in any benefit package. Whether that position will prevail over the savings in the new bill is uncertain.

- *The new bill cost is \$172.9 million compared to \$800 million in the governor's original proposal.*

The Alaska Energy Authority would administer the program, but AIDEA presently has no programs operating at the consumer level or that deal with fuel distributors.

- *AIDEA suggested some other agency might be better equipped to do this job.*

### **House Finance Committee building "four-legged stool" – or garbage can!**

A first draft of an omnibus energy assistance bill was reviewed without action by the House Finance Committee Thursday.

- *As proposed HB 4005 includes a \$1,000 per resident "resource rebate," a one-year suspension of the state motor fuel tax.*
- *Proposed changes to the Power Cost Equalization (PCE) and Heating Assistance Programs are far less expansive under the new proposal..*
- *The current 52.5 cents per kWh PCE rate cap would rise to 75 cents in the new bill instead of \$2 as in the original bill.*
- *The new draft allows no new entrants to the PCE program but consumers served by non-PCE utilities would see a five-cent per kWh rate reduction for the first 500 kWh of electricity they use monthly.*
- *Rural lawmakers complained that the proposal would drop Juneau and Anchorage electrical rates to less than 10 cents per kWh up to the 500 kWh/month. Rural residents would pay 15 cents per kWh and then see their rates rocket back to well above 50 cents per kWh.*
- *Changes to the LIHEAP (low income heating) would double the level of assistance the current program provides but also not allow new participants.*

Several lawmakers remain concerned that motorists would not receive much, if any, of the eight-cent per gallon gas tax suspension. Some suggested the provision should be scrapped and the \$40 million in annual tax revenues distributed directly to residents but no specific suggestion was offered.