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110TH CONGRESS }
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SENATE

{ REPORT
{ 110-178

AMEND THE ALASKA NATURAL GAS PIPELINE ACT

SEPTEMBER 17, 2007.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 1089]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1089) to amend the Alaska Natural Gas Pipeline Act to allow the Federal Coordinator for Alaska Natural Gas Transportation Projects to hire employees more efficiently, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. ADMINISTRATION.

Section 106 of the Alaska Natural Gas Pipeline Act (15 U.S.C. 720d) is amended by adding at the end the following:

“(h) ADMINISTRATION.—

“(1) PERSONNEL APPOINTMENTS.—

“(A) IN GENERAL.—The Federal Coordinator may appoint and terminate such personnel as the Federal Coordinator determines to be appropriate.

“(B) AUTHORITY OF FEDERAL COORDINATOR.—Personnel appointed by the Federal Coordinator under subparagraph (A) shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

“(2) COMPENSATION.—

“(A) IN GENERAL.—Subject to subparagraph (B), personnel appointed by the Federal Coordinator under paragraph (1)(A) shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification and General Schedule pay rates).

“(B) MAXIMUM LEVEL OF COMPENSATION.—The rate of pay for personnel appointed by the Federal Coordinator under paragraph (1)(A) shall not exceed the maximum level of rate payable for level III of the Executive Schedule.

“(C) APPLICABILITY OF SECTION 5941.—Section 5941 of title 5, United States Code, shall apply to personnel appointed by the Federal Coordinator under paragraph (1)(A).

“(3) TEMPORARY SERVICES.—

“(A) IN GENERAL.—The Federal Coordinator may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code.

“(B) MAXIMUM LEVEL OF COMPENSATION.—The level of compensation of an individual employed on a temporary or intermittent basis under subparagraph (A) shall not exceed the maximum level of rate payable for level III of the Executive Schedule.

“(4) FEES, CHARGES, AND COMMISSIONS.—

“(A) IN GENERAL.—The Federal Coordinator shall have the authority to establish, change, and abolish reasonable filing and service fees, charges, and commissions, require deposits of payments, and provide refunds as provided to the Secretary of the Interior in section 304 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734), except that the authority shall be with respect to the duties of the Federal Coordinator, as described in this Act.

“(B) AUTHORITY OF SECRETARY OF THE INTERIOR.—Subparagraph (A) shall not affect the authority of the Secretary of the Interior to establish, change, and abolish reasonable filing and service fees, charges, and commissions, require deposits of payments, and provide refunds under section 304 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734).

“(C) USE OF FUNDS.—The Federal Coordinator is authorized to use, without further appropriation, amounts collected under subparagraph (A) to carry out this section.”.

SEC. 2. CLARIFICATION OF AUTHORITY.

Section 107(a) of the Alaska Natural Gas Pipeline Act (15 U.S.C. 720e(a)) is amended by striking paragraph (3) and inserting the following:

“(3) the validity of any determination, permit, approval, authorization, review, or other related action taken under any provision of law relating to a gas transportation project constructed and operated in accordance with section 103, including—

“(A) subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the ‘Administrative Procedure Act’);

“(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

“(D) the National Historic Preservation Act (16 U.S.C. 470 et seq.); and

“(E) the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.).”.

PURPOSE

The purpose of S. 1089 is to amend the Alaska Natural Gas Pipeline Act to allow the Federal Coordinator for Alaska Natural Gas Transportation Projects to hire employees more efficiently.

BACKGROUND AND NEED

The Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects was authorized by the Alaska Natural Gas Pipeline Act (15 U.S.C. 720a–720n). That Act provides a process for approval by the Federal Energy Regulatory Commission of a natural gas pipeline project that would deliver natural gas from Alaska to markets in the lower 48 states. To encourage construction of the nearly 3,000 mile pipeline, the Act includes provisions to reduce the risks of regulatory delays or excessive litigation. These include expedited and streamlined judicial review, required timelines for FERC’s issuance of the certificate of public convenience and the establishment of the Office of the Federal Coordinator (OFC).

The OFC is currently a small office staffed only by the Federal Coordinator. Once a project has been selected the OFC will need

to hire qualified personnel very quickly. S. 1089 provides the OFC with the necessary flexibility to do so. The Office of the Federal Coordinator is a temporary agency that will not be fully staffed until an Alaska natural gas transportation project is selected by the State of Alaska and will terminate one year after the construction of a project. In addition the field of qualified applicants available to the OFC will be limited due to the specialized nature of the project. For these reasons, it will be useful for the OFC to be able to hire and terminate certain staff outside of the regular hiring process.

S. 1089 also allows the Federal Coordinator to impose fees for reviewing federal permits related to the pipeline project. In addition, S. 1089 expands the expedited judicial review provision to include suits filed under the Administrative Procedures Act, the Endangered Species Act, the Historic Preservation Act, and the Alaska National Interest Lands Act.

LEGISLATIVE HISTORY

Senator Murkowski introduced S. 1089, for herself and Senator Stevens, on April 11, 2007. The bill was referred to the Committee on Energy and Natural Resources. On May 22, 2007, the Subcommittee on Energy conducted a hearing on the measure. The Committee on Energy and Natural Resources ordered the bill reported with an amendment in the nature of a substitute on July 25, 2007.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on July 25, 2007, by a voice vote of a quorum present, recommends that the Senate pass S. 1089, if amended as described herein.

SECTION-BY-SECTION ANALYSIS

Section 1 amends section 106 of the Alaska Natural Gas Pipeline Act (15 U.S.C. 720d) by adding a new subsection (h).

Paragraph (1) of the new subsection (h) authorizes the Federal Coordinator to hire and fire personnel as appropriate and without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service.

Paragraph (2) of the new subsection (h) authorizes the Federal Coordinator to pay personnel without regard to the provisions of title 5 of the United States Code governing classification and pay rates, but not in excess of level III of the Executive Schedule. Subparagraph (C) of paragraph (2) provides that the provisions of title 5 permitting cost of living allowances will apply to OFC personnel.

Paragraph (3) of the new subsection (h) authorizes the Federal Coordinator to obtain the temporary services of experts or consultants pursuant to existing authority (5 U.S.C. 3109(b)), and limits the level of compensation paid to temporary experts or consultants to the rate payable for level III of the Executive Schedule.

Paragraph (4) of the new subsection (h) authorizes the Federal Coordinator to establish reasonable filing and service fees and charges and commissions and to require deposits of payments and provide refunds, for its services related to regulatory coordination,

monitoring and oversight of the project. This authority is parallel to authority provided to the Secretary of the Interior under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734).

Section 2 amends section 170(a) of the Alaska Natural Gas Pipeline Act (15 U.S.C. 720e(a)) to give the United States Court of Appeals for the District of Columbia Circuit original and exclusive jurisdiction over additional cases and controversies. Under the current section 170(a), the District of Columbia circuit has original and exclusive jurisdiction over (1) the validity of any final order or action under the Act, (2) the constitutionality of any provision of the Act or decision made or action taken thereunder, and (3) the adequacy of any environmental impact statement relating to an action under the Act. Section 2 extends the District of Columbia Circuit's original and exclusive jurisdiction to actions taken under any provision of law relating to an Alaska natural gas pipeline project constructed and operated under the Act, including actions brought under the Administrative Procedure Act, the Endangered Species Act of 1973, the National Environmental Policy Act of 1969, the National Historic Preservation Act, and the Alaska National Interest Lands Conservation Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

SEPTEMBER 10, 2007.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1089, a bill to amend the Alaska Natural Gas Pipeline Act to allow the Federal Coordinator for Alaska Natural Gas Transportation Projects to hire employees more efficiently, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 1089—A bill to amend the Alaska Natural Gas Pipeline Act to allow the Federal Coordinator for Alaska Natural Gas Transportation Projects to hire employees more efficiently, and for other purposes

The Alaska Natural Gas Pipeline Act, enacted in 1976, established a regulatory and administrative framework for federal consideration of proposals to build a pipeline to transport natural gas from northern Alaska to the continental United States. Under that act, the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects is responsible for coordinating regulatory activities of several federal agencies that have a role in administering such proposals.

S. 1089 would amend current law to provide the coordinator with greater flexibility in hiring staff and retaining services from consultants and temporary workers. The bill also would authorize the

coordinator to establish fees that could be spent, without further appropriation, for activities authorized under current law.

Based on information from the office of the coordinator, CBO estimates that enacting S. 1089 would increase offsetting receipts (a credit against direct spending) from fees paid by sponsors of proposed projects. The magnitude of such fees could vary from less than \$500,000 to a few million dollars annually over several years, depending on the complexity of proposals and the length of time required to administer them. CBO expects, however, that any such fees would be mostly spent in the same year they are collected; therefore, we estimate that any net changes in direct spending under S. 1089 would be negligible for each year. S. 1089 would not affect revenues.

S. 1089 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1089.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1089, as ordered reported.

EXECUTIVE COMMUNICATIONS

The Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects provided the views of the Administration on May 22, 2007. The testimony is attached.

STATEMENT OF DRUE PEARCE, FEDERAL COORDINATOR OFFICE OF THE FEDERAL COORDINATOR FOR ALASKA NATURAL GAS TRANSPORTATION PROJECTS

Thank you Mr. Chairman and Committee Members for this opportunity to speak before the Subcommittee. The Legislation before the Committee has not gone through the Administration's formal interagency policy review process, and therefore I will be presenting the Administration's preliminary views on the bill. However, there are several aspects of the bill that will need technical correction or modification to conform to policies that apply more generally elsewhere in the government and we look forward to working with Committee to address those concerns.

For over thirty years there have been sustained efforts to bring Alaska natural gas to the marketplace both in Alaska and the 48 contiguous states. This effort is more

important than ever to help assure adequate natural gas supplies for the United States as the country develops a comprehensive energy solution to take this great country through the century. Technology and conservation will be an ever important part of managing our energy needs. However, in the interim, certainty of supply is critical. Marketizing the vast Alaskan North Slope natural gas resources is an important step in assuring energy demand is met.

Recently, the State of Alaska has taken an important step in helping to secure a pipeline to transport natural gas to the American people. The State legislature enacted Governor Palin's legislation, the Alaska Gasline Inducement Act (AGIA), providing inducements, including financial contributions, for construction of the pipeline. This is an important complement to the inducements provided by the United States in ANGPA and previously in the Alaska Natural Gas Transportation Act of 1976 (ANGTA).

Despite the fact that efforts have been underway for thirty years to encourage private sector construction of a pipeline project from Alaska through Canada into upper Midwestern markets, timely permitting still remains critical to the success of any project of this magnitude. Estimates now place the cost of one potential project, a nearly 3,000 mile pipeline, at \$30 Billion. Regulatory delays or excessive litigation can spell certain doom in the effort to bring this vast natural gas reserve to domestic markets. First gas will not even be shipped until ten years at the earliest after the initial private investment. Congress recognized these concerns and took several steps to facilitate the permitting process including expedited and streamlined judicial review in the United States Circuit Court of Appeals for the District of Columbia, required timelines for FERC's issuance of the certificate of public convenience and establishment of the Office of the Federal Coordinator.

The Office of the Federal Coordinator has a variety of responsibilities, including coordination of federal participation with the expectation that the federal regulatory process will be streamlined and delay eliminated and, in coordination with the state of Alaska, responsibility for monitoring and oversight of construction. The OFC also is vested with authority for implementation of ANGTA authorities, for which a right of way has been issued and is subject to renewal/expiration in 2010. Other federal agencies also have roles. It is anticipated that no fewer than 18 federal agencies will participate in the decision process. For instance, the Department of Energy is responsible for federal loan guarantee implementation and the Federal Energy Regulatory Commission is responsible for pipeline (National Environmental Protection Act (NEPA) compliance and issuance of the certificate of public convenience.

The OFC currently is a small office permanently staffed only by the Federal Coordinator. The Federal Coordinator has supplemented OFC staff resources by personnel details from the Department of the Interior. The OFC plans to re-

main a small office, with as few as five or six professionals pending selection of a project by the state of Alaska. The composition of the team necessary for proper functioning of the OFC is highly dependent on the nature of the project selected by the state of Alaska. Upon project selection, it is crucial that the OFC be able to quickly hire personnel from the limited pool of individuals with the qualifications necessary to efficiently carry out the functions of the OFC. OFC staff will be concentrated in Washington D.C. and Alaska.

PERSONNEL AUTHORITIES

This amendment provides the OFC authority to appoint and terminate personnel without regard to the provisions of Title 5 of the United States Code governing appointments in the competitive service. The OFC is a temporary agency which sunsets one year after construction of a project. The staffing levels and employee skill sets will vary depending upon the project phases. For instance, the skill sets needed during the permitting phase differ substantially from those necessary during the construction phase. The office will maintain staffing at a core level pending identification of a specific project for construction by the state of Alaska. Not until a project is identified will it be prudent to more fully staff the OFC. Project staff for a pipeline only project may be very different from a project composed of a pipeline and liquefaction facilities. In addition, there is a limited field of qualified applicants available to assist the OFC given the specialized nature of the potential projects and the OFC role. These limitations combined with the need for timely efforts by the OFC make it useful to be able to hire and terminate certain staff outside the regular federal hiring process in order to remain responsive to project demands. The bill would address those concerns with a blanket exemption from standard personnel hiring procedures that apply to most other Federal agencies. While this type of exemption would be advantageous for hiring of certain highly-qualified staff, and is sometimes granted to agencies to fill positions with special skills, it is rare for an exemption to extend to an entire organization.

This authority is sometimes used for small agencies, especially those with limited roles or fixed life spans. For instance, other agencies with this authority include the Denali Commission and the Vietnam Memorial Commission.

This amendment also gives the OFC authority to obtain the temporary or intermittent services of experts or consultants pursuant to already existing authority contained in 5 U.S.C. § 3109(b). This authority allows for the hire of necessary staff resources on a temporary or intermittent basis to deal with short term staffing, particularly with regard to technical matters and short term needs. It is anticipated that a variety of technical and professional services will be required on a temporary or intermittent basis

given the specialized nature of the project to be constructed and the OFC functions.

Personnel hired pursuant to this authority may be compensated at a rate not to exceed the maximum rate of basic pay authorized for senior-level positions under 5 U.S.C. § 5376.

COST REIMBURSEMENT AUTHORITIES

Given the regulatory coordination, monitoring and oversight role of the OFC, it is appropriate to assess costs to the project proponent for these services. This same approach has been adopted by the federal government for other projects, such as with the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. § 1734). Cost reimbursement authority would provide supplemental funds to offset the cost to the federal government of the OFC and reduce costs to the federal taxpayer.

We understand that the intention of the amendment is to grant the OFC discretion to establish or change reasonable filing and service fees, charges and commissions and to allow the OFC to require deposits of payments and provide refunds in the same manner as currently is authorized for the Secretary of the Interior under FLPMA.

We have concerns, however, that the language as drafted would not provide such parallel authority to the OFC but would, in fact, result in stripping the similar authority granted to the Secretary of the Interior in FLPMA. We have developed amended language that will address this issue and will provide it to the Committee. Because we do not want to disrupt the Department of the Interior's land management program under FLPMA, this issue must be addressed.

CLOSING

This concludes my remarks on the proposed amendments to ANSPA. To summarize, the Administration has not completed its full review of the bill and looks forward to further discussions with you and your staff. The preceding comments represent the Administration's preliminary views on the bill. The Office of the Federal Coordinator is open for business and is excited about the prospects for the future of a natural gas pipeline to deliver clean natural gas to domestic markets from Alaska reserves. The Alaska state legislature has taken a big step in assisting by passage of Governor Palin's Alaska Gasline Inducement Act. We anticipate that the Governor will select a project in early 2008. The Office of the Federal Coordinator will play an important role in assuring a timely, safe and environmentally friendly project. Thank you for your interest in this project so important to our Nation's energy infrastructure.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1089, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE ALASKA NATURAL GAS PIPELINE ACT**Division C of Public Law 108–324—Oct. 13, 2004****15 U.S.C. 720–720n**

* * * * *

SEC.106. FEDERAL COORDINATOR.

(a) Establishment.—There is established, as an independent office in the executive branch, the Office of the Federal Coordinator for the Alaska Natural Gas Transportation Project.

* * * * *

(h) *Administration.*—

(1) *PERSONNEL APPOINTMENTS.*—

(A) *IN GENERAL.*—*The Federal Coordinator may appoint and terminate such personnel as the Federal Coordinator determines to be appropriate.*

(B) *AUTHORITY OF FEDERAL COORDINATOR.*—*Personnel appointed by the Federal Coordinator under subparagraph (A) shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.*

(2) *COMPENSATION.*—

(A) *IN GENERAL.*—*Subject to subparagraph (B), personnel appointed by the Federal Coordinator under paragraph (1)(A) shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification and General Schedule pay rates).*

(B) *MAXIMUM LEVEL OF COMPENSATION.*—*The rate of pay for personnel appointed by the Federal Coordinator under paragraph (1) (A) shall not exceed the maximum level of rate payable for level III of the Executive Schedule.*

(C) *APPLICABILITY OF SECTION 5941.*—*Section 5941 of title 5, United States Code, shall apply to personnel appointed by the Federal Coordinator under paragraph (1) (A).*

(3) *TEMPORARY SERVICES.*—

(A) *IN GENERAL.*—*The Federal Coordinator may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code.*

(B) *MAXIMUM LEVEL OF COMPENSATION.*—*The level of compensation of an individual employed on a temporary or intermittent basis under subparagraph (A) shall not exceed the maximum level of rate payable for level III of the Executive Schedule.*

(4) FEES, CHARGES, AND COMMISSIONS.—

(A) *IN GENERAL.*—The Federal Coordinator shall have the authority to establish, change, and abolish reasonable filing and service fees, charges, and commissions, require deposits of payments, and provide refunds as provided to the Secretary of the Interior in section 304 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734), except that the authority shall be with respect to the duties of the Federal Coordinator, as described in this Act.

(B) *AUTHORITY OF SECRETARY OF THE INTERIOR.*—Subparagraph (A) shall not affect the authority of the Secretary of the Interior to establish, change, and abolish reasonable filing and service fees, charges, and commissions, require deposits of payments, and provide refunds under section 304 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734).

(C) *USE OF FUNDS.*—The Federal Coordinator is authorized to use, without further appropriation, amounts collected under subparagraph (A) to carry out this section.

SEC. 107. JUDICIAL REVIEW.

(a) *EXCLUSIVE JURISDICTION.*—Except for review by the Supreme Court on writ of certiorari, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction to determine—

(1) the validity of any final order or action (including a failure to act) of any Federal agency or officer under this subtitle; or

(2) the constitutionality of any provision of this subtitle; or

[(3) the adequacy of any environmental impact statement prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this subtitle.]

(3) *the validity of any determination, permit, approval, authorization, review, or other related action taken under any provision of law relating to a gas transportation project constructed and operated in accordance with section 103, including—*

(A) *Subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”);*

(B) *the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);*

(C) *the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);*

(D) *the National Historic Preservation Act (16 U.S.C. 470 et seq.); and*

(E) *the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.).*