CS FOR SENATE BILL NO. 2004(NGD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE SPECIAL COMMITTEE ON NATURAL GAS DEVELOPMENT

Offered: 6/5/06
Referred: Today’s Calendar
Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to the Alaska Stranded Gas Development Act, including clarifications or provision of additional authority for the development of stranded gas fiscal contract terms; making a conforming amendment to the Revised Uniform Arbitration Act; relating to municipal impact money received under the terms of a stranded gas fiscal contract; relating to determination of full and true value of property and required contributions for education in municipalities affected by stranded gas fiscal contracts; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 09.43.300(a) is amended to read:

(a) AS 09.43.300 - 09.43.595 govern an agreement to arbitrate made on or after January 1, 2005, except as otherwise provided in a contract term developed under AS 43.82.200(a)(5) and (b).

* Sec. 2. AS 43.82.010 is amended to read:
Sec. 43.82.010. Purpose. The purpose of this chapter is to

(1) encourage new investment to develop the state's stranded gas resources by authorizing establishment of fiscal terms related to oil and gas agreements and taxes for a qualified sponsor, the members of a qualified sponsor group, or a related party and related to their oil and gas business activity in the state, including gas pipeline expansion pricing that encourages further gas exploration [THAT NEW INVESTMENT WITHOUT SIGNIFICANTLY ALTERING TAX AND ROYALTY METHODOLOGIES AND RATES ON EXISTING OIL AND GAS INFRASTRUCTURE AND PRODUCTION];

(2) allow the fiscal terms applicable to a qualified sponsor or the members of a qualified sponsor group, or a related party, with respect to a qualified project, to be tailored to the particular economic conditions of the project and to establish those fiscal terms in advance with as much certainty as the Constitution of the State of Alaska allows; and

(3) maximize the benefit to the people of the state of the development of the state's stranded gas resources.

* Sec. 3. AS 43.82.020 is amended to read:

Sec. 43.82.020. Negotiation of contract terms [CONTRACTS FOR PAYMENTS IN LIEU OF OTHER TAXES AND FOR ROYALTY ADJUSTMENTS]. The commissioner may, under this chapter, negotiate terms for inclusion in a proposed contract with a qualified sponsor or qualified sponsor group providing for

(1) periodic payment in lieu of one or more taxes that otherwise would be imposed by the state or a municipality on the qualified sponsor, members of the qualified sponsor group, or a related party; [AS A CONSEQUENCE OF THE SPONSOR'S OR GROUP'S PARTICIPATION IN AN APPROVED QUALIFIED PROJECT UNDER THIS CHAPTER; AND]

(2) certain adjustments regarding oil and gas lease agreements, unit agreements, and other agreements [ROYALTY] under AS 43.82.220; in this paragraph, "oil and gas lease agreements" includes royalty provisions of those agreements; and
(3) payment of the gas production tax under AS 43.55, or payment
in lieu of the gas production tax, by delivery of gas.

* Sec. 4. AS 43.82.200 is amended to read:

Sec. 43.82.200. Contract development. If the commissioner approves an
application and proposed project plan under AS 43.82.140, the commissioner may
develop a contract that may include

(1) terms concerning periodic payment in lieu of one or more taxes on
oil or gas or both as provided in AS 43.82.210, and terms related to credits for
investment in a project that is the subject of a contract developed under this
chapter;

(2) terms developed under AS 43.82.220 concerning oil and gas
leases, unit agreements, and other agreements under AS 38, including terms
relating to

(A) timing and notice of the state's right to take royalty in kind
or in value; and

(B) royalty value;

(3) terms regarding the hiring of Alaska residents and contracting with
Alaska businesses under AS 43.82.230;

(4) terms regarding periodic payment to, or an equity or other interest
in a project for, municipalities under AS 43.82.500;

(5) terms regarding arbitration or alternative dispute resolution
procedures;

(6) terms and conditions for [ADMINISTRATIVE] termination of a
contract [UNDER AS 43.82.445]; and

(7) other terms or conditions that the commissioner determines are

(A) reasonable and promote [NECESSARY TO FURTHER]
the purposes of this chapter, including the implementation of AS 43.82.020 -
43.82.270; or

(B) in the long-term fiscal [BEST] interests of the state.

* Sec. 5. AS 43.82.200 is amended by adding a new subsection to read:

(b) Terms relating to arbitration and alternate dispute resolution may provide
for a waiver, with the concurrence of the attorney general, of the state's immunity from
suit. The waiver may include waiver of the state's sovereign or other immunity and
consent to entrance and enforcement of an arbitration award in any state court in the
United States that has jurisdiction over the State of Alaska. The authority granted in
this subsection is effective only after the arbitration award is entered and enforcement
is sought in the superior court of the state.

* Sec. 6. AS 43.82.210(a) is amended to read:

(a) If the commissioner approves an application and proposed project plan
under AS 43.82.140, the commissioner may develop proposed terms for inclusion in a
contract under AS 43.82.020 for periodic payment in lieu of one or more of the
following taxes that otherwise would be imposed by the state or a municipality on the
qualified sponsor, a member of a qualified sponsor group, or a related party
[AS A CONSEQUENCE OF PARTICIPATING IN AN APPROVED QUALIFIED
PROJECT]:

(1) oil and gas production taxes and oil surcharges under AS 43.55;
(2) oil and gas exploration, production, and pipeline transportation
property taxes under AS 43.56;
(3) [REPEALED]
(4) [5] municipal sales and use tax under AS 29.45.650 - 29.45.710;
(5) [6] municipal property tax under AS 29.45.010 - 29.45.250 or
29.45.550 - 29.45.600;
(6) [7] municipal special assessments under AS 29.46;
(7) [8] a comparable tax or levy imposed by the state or a
municipality after June 18, 1998;
(8) [9] other state or municipal taxes or categories of taxes identified
by the commissioner.

* Sec. 7. AS 43.82.220(a) is amended to read:

(a) Notwithstanding any contrary provisions of AS 38 or regulations adopted
under that title, the commissioner of natural resources, with the concurrence of the
commissioner of revenue and, if necessary, the affected parties holding a state lease or
unit agreement, may develop proposed terms for inclusion in a contract under AS 43.82.020 that modify [THE TIMING AND NOTICE] provisions of the applicable oil and gas leases [AND] unit agreements, and other agreements under AS 38, including provisions

(1) pertaining to the state's rights to receive its royalty on gas in kind or in value if

(A) [(1)] the viability of the approved qualified project depends on long-term gas shipping commitments [PURCHASE AND SALE AGREEMENTS];

(B) [(2)] certainty over time regarding the quantity of royalty gas that the state may be taking in kind is needed to enter into long-term gas shipping commitments or marketing agreements [SECURE THE LONG-TERM PURCHASE AND SALE AGREEMENTS];

(3) THE SPECIFIED PERIOD OF THE STATE'S COMMITMENT TO TAKE ITS ROYALTY SHARE IN VALUE OR IN KIND DOES NOT EXCEED THE TERM OF THE PURCHASE AND SALE AGREEMENTS; and

(C) [(4)] the modification does not impair the ability of the approved qualified project or the state to meet the reasonably foreseeable demand in this state for gas within economic proximity of the project during the term of the contract developed under AS 43.82.020; and

(2) relating to lease or unit expenses for separation, cleaning, dehydration, gathering, salt water disposal, and preparation for transportation on or off the lease.

* Sec. 8. AS 43.82.220(c) is amended to read:

(c) The commissioner of revenue shall include any proposed terms [RELATING TO ROYALTY] developed in accordance with this section in the proposed contract under AS 43.82.400.

* Sec. 9. AS 43.82.220 is amended by adding a new subsection to read:

(e) An agreement by the state to take royalty gas in kind as part of a contract developed under this chapter that satisfies (a)(1)(A) - (C) of this section is not subject to the provisions of AS 38, or regulations adopted under that title, relating to decisions
to take royalty in kind.

* Sec. 10. AS 43.82.250 is amended to read:

**Sec. 43.82.250. Term of contract; effective date.** The term of a contract developed under AS 43.82.020 [MAY BE FOR NO LONGER THAN IS NECESSARY TO DEVELOP THE STRANDED GAS THAT IS SUBJECT TO THE CONTRACT; HOWEVER, THE TERM OF THE CONTRACT] may not exceed 35 years from the commencement of commercial operations of the approved qualified project, **excluding suspensions of contract obligations that are covered by the force majeure terms of any contract developed under this chapter.** However, the term of contract may not exceed 45 years from the effective date of a contract approved under AS 43.82.435.

* Sec. 11. AS 43.82 is amended by adding a new section to read:

**Sec. 43.82.255. Terms of contract provisions related to oil.** (a) The provisions of this section apply to a contract developed under AS 43.82.020 that provides for periodic payment in lieu of taxes on oil under AS 43.55.

(b) For the period of the contract term beginning immediately after the date of full project funding or the date of issuance of a certificate of public convenience and necessity for construction and initial operation of the Alaska Natural Gas Pipeline, whichever date is later, and ending 14 years after that date, the commissioner may modify those terms of the contract relating to payments in lieu of the taxes on oil set out in AS 43.55. For the period of the contract term covered by this subsection, the payments in lieu of taxes may be established with as much certainty as the Constitution of the State of Alaska allows.

(c) For the period of the contract term beginning immediately after the period described in (b) of this section, and ending on a date not later than 25 years after the effective date of the contract, the amount of the payment in lieu of tax on oil under AS 43.55 must be equal to the amount of the tax levied by law. However, the commissioner may develop a contract term that, in the event of a material change in the taxes enacted after the effective date of the contract, establishes a procedure for restoring the parties to substantially the same economic position they had as of the end of the period described in (b) of this section immediately before the change.
(d) Implementation of a contract provision authorized in (c) of this section may be made subject to the dispute resolution procedures of the contract.

* Sec. 12. AS 43.82.270 is amended to read:

Sec. 43.82.270. Project plans and work commitments. A contract under AS 43.82.020 must include provisions for implementation of the qualified project plan approved under AS 43.82.140, as may be modified as a result of the development of a contract under this chapter, and provisions for updating the plan at reasonable intervals until the commencement of commercial operations of the approved qualified project. The commissioner of revenue, in consultation with the commissioner of natural resources, may, as a term in a contract under AS 43.82.020, include work commitments or other obligations in the contract to be accomplished before the commencement of commercial operations of the approved qualified project.

* Sec. 13. AS 43.82.410 is amended to read:

Sec. 43.82.410. Notice and comment regarding the contract. The commissioner shall

(1) give reasonable public notice of the preliminary findings and determination made under AS 43.82.400;

(2) make copies of the proposed contract, the commissioner's preliminary findings and determination, and, to the extent the information is not required to be kept confidential under AS 43.82.310, the supporting financial, technical, and market data, including the work papers, analyses, and recommendations of any independent contractors used under AS 43.82.240 available to the public and to

(A) the presiding officer of each house of the legislature;

(B) the chairs of the finance and resources committees of the legislature; and

(C) the chairs of the special committees on oil and gas, if any, of the legislature;

(3) offer to appear before the Legislative Budget and Audit Committee to provide the committee a review of the commissioner’s preliminary findings and determination, the proposed contract, and the supporting financial, technical, and market data; if the Legislative Budget and Audit Committee accepts the
commissioner's offer, the committee shall give notice of the committee's meeting to
the public and all members of the legislature; if the financial, technical, and market
data that is to be provided must be kept confidential under AS 43.82.310, the
commissioner may not release the confidential information during a public portion of
a committee meeting; and

(4) establish a period of at least 60 [30] days for the public and
members of the legislature to comment on the proposed contract and the preliminary
findings and determination made under AS 43.82.400.

* Sec. 14. AS 43.82.500 is amended to read:

Sec. 43.82.500. Obligation to share payments with municipalities. If the
commissioner develops a contract under AS 43.82.020 that includes terms that exempt
a qualified sponsor, the members of a qualified sponsor group, or a related
party to the contract, and the property, gas, products, and activities associated with the
approved qualified project that is subject to the contract, from a municipal tax or
assessment in accordance with AS 29.45.810 or AS 29.46.010(b), or AS 43.82.200
and 43.82.210, the commissioner shall include a term in the contract that provides for
[THE PARTY PAY] a portion of the periodic payments to be made payable [DUE
UNDER THE CONTRACT] to the revenue-affected municipality.

* Sec. 15. AS 43.82.505 is amended to read:

Sec. 43.82.505. Payments to economically affected municipalities. If the
commissioner executes a contract under AS 43.82.020 that will produce one or more
economically affected municipalities, the commissioner shall include a term in the
contract that provides for [A PORTION OF THE] periodic impact payments to the
state that may be appropriated to the Alaska natural gas pipeline construction
impact fund established in (c) of this section to benefit the economically affected
municipalities under the principles in AS 43.82.520.

* Sec. 16. AS 43.82.505 is amended by adding new subsections to read:

(b) A special account is established in the general fund into which the
Department of Revenue shall deposit impact payments received by the state under (a)
of this section.

(c) The Alaska natural gas pipeline construction impact fund is established in
the Department of Commerce, Community, and Economic Development. The legislature may appropriate money deposited in the special account established in (b) of this section, as well as any additional money considered necessary, to the Alaska natural gas pipeline construction impact fund to address the economic and social impacts incurred by an economically affected municipality, or incurred by a nonprofit organization serving the unorganized borough, during the construction of a project that is the subject of a proposed contract developed under this chapter.

(d) The Department of Commerce, Community, and Economic Development shall adopt regulations under which economically affected municipalities and nonprofit organizations may apply for and be eligible to receive grants to alleviate impact caused by construction of a gas pipeline. The department shall give priority in the allocation of grants to municipalities and organizations that are experiencing or will experience the most direct or severe impact from gas pipeline construction. The department shall finance, under (e) of this section, all meritorious grant applications each year, to the extent money is available in the Alaska natural gas pipeline construction impact fund. Within 10 days after the convening of each regular session of the legislature, the department shall submit to the legislature a list of all municipalities and organizations that have received grants, a list of all municipalities and organizations determined by the department to be eligible for further grants, a recommendation of the amount of money to be granted for those additional applications, and written justification of each past and potential grant.

(e) The commissioner of commerce, community, and economic development, in consultation with the relevant municipal advisory group established under AS 43.82.510, shall use money appropriated to the Alaska natural gas pipeline construction impact fund to make grants to municipalities, and to nonprofit organizations serving the unorganized borough, for impacts on transportation, infrastructure, law enforcement, emergency services, health and human services, education, the labor force, population, wages, and subsistence and for socio-cultural impacts, brought about by the construction of the gas pipeline. In determining whether an expenditure or proposed expenditure by a municipality or nonprofit organization is eligible for a grant under this subsection and in allocating available money among...
grant proposals, the commissioner shall consider the recommendations of the relevant municipal advisory group established under AS 43.82.510 and whether the proposed expenditure meets the purposes of this section.

(f) Before making awards of grants under this section for a fiscal year, the commissioner of commerce, community, and economic development shall provide reasonable public notice of all grant applications received, the recommendations of the relevant municipal advisory group, preliminary determinations made concerning the eligibility of each municipality or organization for a grant, the eligibility of each expenditure or proposed expenditure for a grant, and the proposed allocation of available money among grant proposals. The public notice must specify a time and place for a public hearing during which the commissioner will receive comments concerning the preliminary determinations and allocations of the department. The commissioner shall give reasonable public notice of the final awards of grants made under this section. Thirty days after such public notice is given, final awards take effect and may be paid to the grantees according to procedures established by regulation.

(g) Grant money received under this section may not be used for the retirement of municipal debt.

(h) Amounts appropriated to the Alaska natural gas pipeline construction impact fund under (c) of this section for a fiscal year that are not used for grants to municipalities and organizations under (d) and (e) of this section shall be retained in the Alaska natural gas pipeline construction impact fund and remain available for distribution as grants under this section in succeeding fiscal years.

(i) Nothing in this chapter exempts money deposited into the special account in the general fund established in (b) of this section from the requirements of AS 37.07 (Executive Budget Act) or dedicates that money, or money appropriated to the Alaska natural gas pipeline construction impact fund, for a specific purpose.

(j) In this section, "direct or severe impact" means a clearly demonstrable effect on a community that proximately contributes to a material change to transportation, infrastructure, law enforcement, emergency services, health and human services, education, the labor force, population, wages, subsistence, or for socio-
cultural impacts brought about by the construction of a gas pipeline.

* Sec. 17. AS 43.82.510(c) is amended to read:

(c) Each municipal advisory group serves until the later of 90 days after final distribution of impact payment money under AS 43.82.505, or commencement of operations of the qualified project. Expenses of a municipal advisory group are eligible for reimbursement under a grant made under AS 43.82.505 [A FINAL ACTION IS TAKEN ON THE APPLICATION FOR WHICH THE GROUP WAS APPOINTED].

* Sec. 18. AS 43.82 is amended by adding a new section to article 7 to read:

Sec. 43.82.650. Calculations of education funding. To determine the amount of required local contribution under AS 14.17.410(b)(2) and (c) for a school district in a revenue-affected municipality, and to perform its duties under AS 14.17.510, the Department of Commerce, Community, and Economic Development shall adopt regulations. The regulations must establish assessment standards for any property that would have been assessed under AS 43.56 but is instead generating a payment to a revenue-affected municipality in lieu of a municipal property tax as provided in a contract developed under this chapter. The regulations must ensure that the property is included in the full and true value of the city or borough school district for the purpose of determining required local contributions for education funding under AS 14.17.410(b)(2) and (c).

* Sec. 19. AS 43.82.900 is amended by adding a new paragraph to read:

(14) "related party" means an entity, including a limited liability company or similar incorporated or unincorporated entity, that

(A) is affiliated with a qualified sponsor or qualified sponsor group;

(B) owns or operates a qualified project or any segment of a qualified project; and

(C) is an intended beneficiary of the fiscal terms included in a contract developed under this chapter.

* Sec. 20. AS 43.82.445 is repealed.

* Sec. 21. The uncodified law of the State of Alaska is amended by adding a new section to
read:

REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the section heading of AS 43.82.220 from "Contract terms relating to royalty" to "Contract terms relating to oil and gas lease, royalty provisions, and other agreements."

* Sec. 22. The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY. (a) Sections 2 - 14 and 17 - 20 of this Act are retroactive to January 1, 2004.

(b) Section 1 of this Act is retroactive to January 1, 2005.

* Sec. 23. This Act takes effect immediately under AS 01.10.070(c).