Public Testimony Opposing SB 180 with suggestions
Presented to the Alaska State Legislature – April 2025
By: Susan Allmeroth

Opening Statement:

Madam Chair, Members of the Committee,

Thank you for the opportunity to testify. I rise in strong opposition to Senate Bill 180. This bill, which repeals a key regulatory oversight provision under AS 42.05.711(v), threatens to undermine public interest protections, increase foreign dependence, and destabilize Alaska's energy sovereignty. At a time when our communities are facing energy insecurity, environmental degradation, and economic uncertainty, SB 180 removes critical safeguards from the Regulatory Commission of Alaska (RCA) — the very agency tasked with balancing consumer protection, fair competition, and transparent infrastructure development.

This bill does not promote energy security. It weakens it.

Legal and Constitutional Breakdown of SB 180:

1. Loopholes Created:

• By repealing AS 42.05.711(v), SB 180 eliminates RCA oversight for liquefied natural gas (LNG) import facilities, creating a regulatory vacuum with no public rate review, facility safety enforcement, or environmental accountability.

2. Overlaps and Conflicts:

• Repeal causes jurisdictional confusion between state-level RCA and federal FERC (Federal Energy Regulatory Commission), especially in coastal zones and marine terminals, which often involve concurrent state and federal jurisdiction under the Coastal Zone Management Act and Clean Water Act.

3. Constitutional Issues:

• Alaska Constitution, Article VIII, Sections 1 & 2 (Public Resources and Common Use): The public's interest in LNG facilities is constitutionally protected; removing oversight violates the duty to manage these resources for the maximum benefit of Alaskans.

• Equal Protection Clause (Art. I, Sec. 1): Creates unequal treatment between in-state public utilities and private LNG importers who will now operate without the same level of scrutiny.

4. Federal Law Implications:

• Natural Gas Act (15 U.S.C. § 717 et seq.): The act assigns roles to both federal and state regulators. SB 180 disrupts this balance and may violate federal-state coordination requirements.

• NEPA (42 U.S.C. § 4321): Reduced state oversight undermines environmental review and public participation required under federal law for LNG infrastructure.

• Marine Mammal Protection Act & Endangered Species Act: LNG import operations pose documented risks to marine mammals and listed species; removing state-level review increases the threat of noncompliance with these statutes.

5. International Trade Risks:

• LNG import facilities could allow unchecked foreign contracts, potentially with adversarial nations, without scrutiny under Alaska's state public interest test or international transparency rules such as those governed by the WTO or USMCA.

• Foreign ownership or involvement in critical energy infrastructure without RCA oversight raises national security concerns.

6. Corporate Accountability and Monopoly Risk:

• Removes checks on potential price gouging, environmental negligence, and infrastructure safety failures by private LNG importers.

• Allows foreign or out-of-state private actors to control critical infrastructure without consumer rate hearings or public accountability.

7. Tribal Sovereignty Impacts:

• LNG facilities often affect coastal lands and waters that are adjacent to or claimed by Alaska Native Tribes.

• Repealing regulatory oversight bypasses tribal consultation obligations under federal law (e.g., EO 13175), and could violate treaty rights and subsistence protections guaranteed under ANCSA and other federal mandates.

8. Environmental Justice and Health Impacts:

• LNG import facilities often bring increased tanker traffic, emissions, noise pollution, and industrial activity that disproportionately harm rural, low-income, and Indigenous communities.

• Removing RCA oversight undermines local input, health protections, and cumulative impact assessments.

9. Lack of Public Process and Transparency:

• No mandate for public hearings, environmental impact disclosure, or independent review before facilities begin operation.

• Contravenes open government principles and due process rights under the Alaska Constitution.

10. Risk of Foreign Corporate Overreach:

• Facilitates backdoor entry of foreign energy conglomerates into Alaska's gas markets without state review, opening the door to infrastructure ownership by corporations tied to authoritarian regimes or trade adversaries.

Conclusion:

SB 180 is not a pro-Alaska bill. It is a corporate giveaway that removes the last remaining line of defense between the public and unregulated energy imports. We cannot afford to erode Alaska's regulatory integrity, constitutional protections, and environmental sovereignty — especially at the cost of public health, Indigenous rights, and long-term energy justice.

I urge the committee to vote NO on SB 180 and preserve the role of the Regulatory Commission of Alaska in protecting our communities. Or you could make the following suggested changes down below.

The Regulatory Commission of Alaska (RCA) generally does not regulate foreign trade directly, but certain decisions and deregulations—like SB 180, which repeals RCA oversight of LNG import facilities—can indirectly affect foreign trade and raise legal or constitutional concerns in the following ways:

1. Preemption by Federal Law (Foreign Commerce Clause)

The U.S. Constitution grants Congress authority over foreign commerce (Art. I, Sec. 8, Cl. 3).

LNG imports and exports typically fall under the jurisdiction of the Federal Energy Regulatory Commission (FERC) and the U.S. Department of Energy.

If Alaska deregulates LNG import facilities via SB 180, foreign trade decisions could shift entirely to private actors, possibly violating federal oversight structures—or creating gaps in accountability.

2. International Trade Agreements

The U.S. is party to treaties and trade agreements (e.g., USMCA, WTO, bilateral trade pacts) that govern LNG trade.

Without RCA regulation, state-level oversight of contracts, safety, or rate fairness could be weakened, risking violations of:

Most Favored Nation (MFN) clauses,

National Treatment standards, or obligations related to environmental and indigenous rights.

3. Impacts on Alaska's Sovereignty in Trade

Deregulation may empower foreign-owned LNG infrastructure companies (like those backed by Chinese or Japanese investors) without state checks.

This could result in Alaska:

Losing leverage in LNG pricing or exports,

Being bound by investor-state dispute resolution (ISDS) mechanisms from trade deals.

4. Tribal and Subsistence Rights

Foreign trade through deregulated LNG infrastructure may undermine tribal consultation, required under Executive Order 13175 and various federal statutes (e.g., NEPA, NHPA).

Maritime LNG infrastructure affects marine ecosystems vital to subsistence rights protected by ANILCA and federal-tribal trust obligations.

Failure to uphold those protections could trigger litigation or treaty violations.

Legal Memorandum: Constitutional and Legal Analysis of SB 180

Subject: SB 180 - An Act relating to the regulation of liquefied natural gas import facilities by the Regulatory Commission of Alaska (RCA).

Date: April 30, 2025

Prepared for: Public Testimony and Legal Review

I. Executive Summary

SB 180 seeks to repeal AS 42.05.711(v), effectively removing Regulatory Commission of Alaska (RCA) oversight from liquefied natural gas (LNG) import facilities. This memo analyzes the bill's legal, constitutional, and international implications. It raises serious concerns regarding:

• Federal preemption under the Foreign Commerce Clause,

• Conflict with international trade agreements,

• Erosion of tribal and subsistence rights,

• Undermining environmental protections,

• Implications for foreign influence in state infrastructure,

• Legal standing and state accountability gaps.

II. Constitutional Analysis

A. Federal Preemption (Supremacy Clause & Foreign Commerce Clause) The U.S. Constitution vests authority over foreign commerce in Congress (Art. I, Sec. 8, Cl. 3). LNG imports are regulated federally through the Department of Energy and the Federal Energy Regulatory Commission (FERC). SB 180 could create legal ambiguity by:

• Allowing LNG infrastructure to operate without adequate state-level scrutiny,

• Encouraging private or foreign actors to fill regulatory gaps,

• Undermining uniform national policies on energy security and trade.

B. Dormant Commerce Clause Concerns If Alaska's deregulation affects interstate LNG trade (e.g., allowing discriminatory practices or monopolistic behavior), it could violate the Dormant Commerce Clause. Courts have struck down state laws that impede the free flow of commerce across state or national borders.

C. Tribal Sovereignty and Treaty Rights LNG infrastructure construction and maritime activity can impact coastal and subsistence resources. Alaska Native communities are protected by:

• The Alaska Native Claims Settlement Act (ANCSA),

• The Alaska National Interest Lands Conservation Act (ANILCA),

• Federal trust responsibility obligations,

• Executive Order 13175 (tribal consultation).

Removing RCA oversight opens the door to infrastructure decisions that bypass tribal consultation and environmental review, violating constitutional due process and federal-tribal trust principles.

III. Trade Agreement Violations

A. USMCA and WTO Obligations LNG import facilities may be subject to fair competition rules and environmental standards under trade agreements. Deregulation may:

• Create investor-state disputes under ISDS provisions,

• Violate national treatment clauses by privileging foreign investors without adequate oversight,

• Undermine labor and environmental standards required by USMCA.

B. Maritime Law Conflicts As LNG terminals often involve maritime infrastructure, the Jones Act (46 U.S. Code § 55102) and MARPOL treaty obligations (pollution prevention) may be implicated. The absence of state oversight increases legal exposure.

IV. Environmental and Subsistence Impacts

• Endangered Species Act (ESA): Maritime construction may affect marine mammals such as beluga whales, seals, and polar bears.

• Marine Mammal Protection Act (MMPA): LNG terminals often require ship traffic through sensitive marine areas.

• NEPA Violations: Repeal may lead to environmental reviews being bypassed or inadequately conducted.

These issues intersect with tribal fishing, hunting, and subsistence rights, increasing litigation risk.

V. Foreign Influence and State Accountability Gaps

• Without RCA oversight, foreign-backed companies could operate with little transparency.

• Risk of pricing manipulation, service discrimination, or rate unfairness may increase.

• State residents and tribal entities would lack formal channels to challenge decisions impacting their rights or environment.

VI. Conclusion and Recommendations

SB 180 creates substantial constitutional and legal vulnerabilities. To address these:

• Retain RCA oversight or establish a joint tribal-state commission for LNG facility oversight.

• Mandate tribal consultation and environmental review before any deregulation.

• Require compliance with all federal energy, trade, and environmental laws.

• Conduct a federal consistency review under the Coastal Zone Management Act.

Without such changes, SB 180 likely violates federal law, undermines Alaska Native sovereignty, and exposes the state to legal, trade, and environmental challenges.

References

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To fix SB 180 and address the legal, constitutional, environmental, and trade-related issues, here's a comprehensive step-by-step legislative revision plan:

1. Restore Regulatory Oversight

Fix: Reinstate or rephrase AS 42.05.711(v) to allow limited exemptions only with clear conditions, and require full Regulatory Commission of Alaska (RCA) oversight for all LNG import facilities.
Why: Eliminating this oversight risks federal preemption, trade violations, and environmental harm.

2. Add Tribal Sovereignty Protections

Fix: Include a clause mandating consultation with Alaska Native tribes and corporations in accordance with Executive Order 13175 and UNDRIP Articles 18–19.
Why: Prevents legal challenges based on failure to consult sovereign governments and protects tribal subsistence rights.

3. Strengthen Environmental Protections

Fix: Require that all import facilities comply with NEPA, the Marine Mammal Protection Act, and the Endangered Species Act, including mandatory environmental impact statements.
Why: Ensures compliance with federal law and protects marine life and ecosystems, particularly endangered species in Alaskan waters.

4. Require International Trade Compliance Review

Fix: Include a section mandating review of all LNG import contracts for consistency with USMCA and WTO rules, and require reporting to the Department of Commerce and International Trade Administration.
Why: Prevents foreign state-owned entities from gaining an unfair advantage and protects U.S. trade policy alignment.

5. Public Transparency and Accountability

Fix: Require public hearings, RCA comment periods, and local government consultation before any import facility approval.
Why: Ensures democratic participation, prevents regulatory capture, and allows local communities to protect public interests.

6. Mandate Financial Disclosure and Penalty Clauses

Fix: Add provisions for disclosing foreign ownership, subsidies, or influence in any LNG import facility, and implement strict penalties for noncompliance.
Why: Blocks corruption, foreign interference, and backdoor deals that can undermine Alaska's economy and security.

7. Protect State and Local Revenues

Fix: Require that LNG imports be taxed comparably to in-state production and that revenues support the Permanent Fund and local infrastructure.
Why: Prevents loss of state income and ensures a level playing field for Alaskan producers.

Thank you for your time and consideration.
Susan Allmeroth
Two Rivers