

Dear House Resource Committee Members:

Among the many questions and concerns regarding the Alaska LNG Project, I am particularly concerned about what terms will be in any "project-enabling" contracts negotiated by the Administration, how much pressure there will be on the legislature to authorize one or more contracts next year, and the level of public participation in the decision-making process.

Under the Heads of Agreement, Article 4, the Alaska LNG Parties will continue Pre-FEED work through to completion "provided Enabling Legislation acceptable to the Parties is passed and other support referenced in Article 10 is maintained or progressed."

Under Article 7, in addition to providing for a confidential negotiation process, acceptable Enabling Legislation will allow for the negotiation of project-enabling contract terms that could address a wide range of topics, from state participation to upstream costs and lease expenditures to any other terms the Parties consider necessary to advance the project. Some of these contract terms are addressed as principles in the HOA, but many of the terms under Article 7 are yet to be negotiated.

Among other things, Article 10 calls for State support of use of eminent domain rights to facilitate the LNG project; appropriations, permitting and legislation for the construction of infrastructure; and unspecified support for a "healthy, long-term oil business." The list is non-inclusive so there could be more.

At least some of the State support for Article 10 items is likely to be included as terms in a project-enabling contract. Since the HOA indicates that continuation of Pre-FEED work to completion is contingent on State support, there could be enormous pressure on the legislature to ratify a proposed contract with such terms.

SB 138 is the Enabling Legislation and gives the commissioner of the Department of Natural Resources full discretion to negotiate any terms for inclusion in the proposed contracts. Though the Administration has testified they will keep the legislature informed on a confidential basis as negotiations progress, there is nothing in SB 138 to assure consultation occurs or any requirement for involving the public. That means that Alaskans will not see a proposed project-enabling contract until the contract is brought to the legislature for an up or down vote, with little opportunity to comment.

Similar to what was required under the Stranded Gas Development Act, it is reasonable to include in SB 138 a requirement for a best interest findings and determination for a proposed contract that would be subject to public review and comment and legislative consultation. Reasons to support such a requirement include:

- State participation in the LNG project and associated obligations is a significant public policy decision with long-term consequences to the fiscal future of the state. Alaskans have the right to know the basis for the Administration's decisions and the right to weigh in on these decisions.
- The public comment period will give legislators advance opportunity to consider contract terms and to hear from their constituents before a contract is formally presented to the legislature for ratification.
- There was a findings and determination with a public comment period prepared for the Stranded Gas Fiscal Contract so we know it is doable.

A draft amendment is attached for your consideration.

CSSB 138(FIN) am
Best Interest Findings Amendment

AS 38.05 is amended by adding new sections to read:

[Sec. 1]. Preliminary findings and determination for a North Slope natural gas project contract.

(a) If the commissioner develops a proposed contract under AS 38.05.020(b)(11) – (12), the commissioner shall make preliminary findings and a determination that the proposed contract terms are in the best interest of the state.

(b) In making the preliminary findings and determination required by (a) of this section, the commissioner shall address the reasonably foreseeable effects of the proposed contract on the public revenue and public services, and shall describe the principal factors upon which the determination made under (a) of this section is based.

[Sec. 2]. Notice and comment regarding the contract.

The commissioner shall

(1) give reasonable public notice of the preliminary findings and determination made under [Sec. 1].

(2) make available to the public 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 38.05.020(b)(12), the supporting financial, technical, and market data, including the work papers, analyses, and recommendations of any independent contractors used by the state during development of the contract;

(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 38.05.020(b)(12), the commissioner may not release the confidential information during a public portion of a committee meeting; and

(4) establish a period of at least 30 days for the public and members of the legislature to comment on the proposed contract and the preliminary findings and determination made under [Sec. 1].

[Sec. 3]. Coordination of public and legislative review.

To the extent practicable, the commissioner shall coordinate the public comment opportunity provided under [Sec. 3](4) with a review by the Legislative Budget and Audit Committee under [Sec. 3](3).

[Sec. 4]. Final findings, determination, and proposed amendments; execution of the contract.

(a) Within 30 days after the close of the public comment period under [Sec. 3](4), the commissioner of natural resources shall

(1) prepare a summary of the public comments received in response to the proposed contract and the preliminary findings and determination;

(2) after consultation with the commissioner of revenue, prepare a list of proposed amendments, if any, to the proposed contract that the commissioner of natural resources determines are necessary to respond to public comments;

(3) make final findings and a determination as to whether the proposed contract, including any proposed amendments prepared under (2) of this subsection, is in the best interest of the state.

(b) After considering the material described in (a) of this section and securing the agreement of the other parties to the proposed contract regarding any proposed amendments prepared under (a) of this section, if the commissioner determines that the contract is in the best interest of the state, the commissioner shall submit the contract to the governor.

(c) The commissioner's final findings and determination under (a) of this section are final agency decisions.

[Sec. 5]. Legislative authorization.

The governor may transmit a contract developed under AS 38.05.020(b)(11) – (12) to the legislature together with a request for authorization to execute the contract. A contract developed under AS 38.05.020(b)(11) – (12) is not binding upon or enforceable against the state or other parties to the contract unless the governor is authorized to execute the contract by law. The state and the other parties to the contract may execute the contract within 60 days after the effective date of the law authorizing the contract.