

HOUSE BILL NO. 393

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/11/98

Referred: House Special Committee on Oil and Gas, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to contracts with the state establishing payments in lieu of
2 other taxes by a qualified sponsor or qualified sponsor group for projects to
3 develop stranded gas resources in the state; providing for the inclusion in such
4 contracts of terms making certain adjustments regarding royalty value and the
5 timing and notice of the state's right to take royalty in kind or in value from
6 such projects; relating to the effect of such contracts on municipal taxation; and
7 providing for an effective date."

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

9 * **Section 1. FINDINGS.** The legislature finds that

10 (1) a vast quantity of gas in Alaska is stranded from commercial development
11 because of the cost associated with providing access to markets for that gas; on the North
12 Slope alone, between the Colville and Canning Rivers, approximately 35 trillion cubic feet of
13 discovered gas resources are stranded in this way;

1 (2) because of the high cost of providing access to markets for North Slope
2 gas, exploration efforts there have historically focused on oil; if the infrastructure needed to
3 provide market access for North Slope gas were economically available, it is possible that new
4 gas exploration efforts would be initiated, which could lead to the discovery and development
5 of significantly greater gas resources than have been discovered so far;

6 (3) maintaining production operations, whether for oil, gas, or both, enhances
7 the opportunities for oil and gas exploration and development on the North Slope;

8 (4) on the North Slope, in the absence of an economic development
9 opportunity, gas produced along with oil has been used for pressure maintenance and enhanced
10 oil recovery, resulting in greater ultimate hydrocarbon recovery and higher rates of oil
11 production, to the benefit of the people of Alaska;

12 (5) in the Cook Inlet area, which is Alaska's other currently producing oil and
13 gas area, oil and gas exploration and development activities historically also have focused
14 more on oil than gas, although there has been a relatively greater degree of exploration for and
15 commercial development of gas in the Cook Inlet area than there has been on the North Slope;

16 (6) large areas of Alaska, encompassing a number of geologic provinces and
17 basins, do not have oil and gas production and still remain largely unexplored for oil and gas;
18 exploration for gas in some of these areas might be facilitated if infrastructure was
19 economically available to provide access for such gas to markets;

20 (7) it is unlikely that markets will develop within Alaska that would need more
21 than a relatively small proportion of the volume of stranded gas already discovered on the
22 North Slope; therefore, the primary need for gas infrastructure for at least the next decade will
23 be to provide access to markets outside the state;

24 (8) although developing technology may offer other alternatives, such as gas-
25 to-liquids (GTL), currently the principal mode anticipated for stranded North Slope gas to
26 access markets outside the state is a gas pipeline to an ice-free Alaska port where the gas
27 would be turned into liquefied natural gas (LNG) and exported using specially designed
28 marine tankers;

29 (9) the gas pipeline required by a North Slope LNG project would be 800
30 miles long and expensive, with some estimates placing the construction cost for the project
31 as a whole as high as \$15 billion; at that cost, given the prevailing price levels in the East

1 Asian LNG market and the fact that most of the pipeline system costs must be incurred before
2 any gas is delivered to that market, the project is not economic;

3 (10) in addition, the size of the capital expenditure needed to get North Slope
4 gas to market via an LNG project requires long-term contracts for an enormous volume of gas,
5 on the order of 14 million metric tons per year of LNG; that volume of gas represents
6 approximately one-quarter of the entire East Asian LNG market today and probably cannot
7 be placed into that market all at once; to be successful, a North Slope LNG project needs to
8 reach this full annual volume in not more than six years from the commencement of
9 commercial operations (the "ramp up" period), which means that the project must secure most,
10 if not all, of the projected growth in demand for LNG in the East Asian market over the ramp
11 up period;

12 (11) for a North Slope LNG project to become economically viable and
13 competitive, the estimated costs of constructing such a project must be reduced significantly;
14 reducing the financial risk associated with the project would also improve its chances of
15 becoming economically viable and competitive;

16 (12) although the state can do little now to reduce expected construction costs,
17 the state can reduce some of the financial risk associated with a North Slope LNG project, or
18 other stranded gas development projects, by specifying with as much certainty as possible the
19 state taxes and royalties that would apply to such a project throughout its life;

20 (13) the state may also improve a stranded gas development project's
21 economics and competitiveness by adjusting the timing of the state's receipt of its share of
22 such a project's economic rent; for example, Alaska's present fiscal regime is "front-end
23 loaded," which means that the state and local governments take a significant part of their share
24 of a project's economic rent early in the project's life, even before such a project starts to
25 generate an income stream; the state and local governments may improve the economics of
26 a stranded gas development project by taking more of their share of a project's economic rent
27 later in the project's life;

28 (14) the state's present fiscal regime, as it would apply to a stranded gas
29 development project, also is regressive to the extent that it is insensitive to changes in a
30 project's profitability, so that in times of low profitability the state and local governments may
31 take an excessive amount of a project's economic rent, and in times of high profitability they

1 may take an inadequate amount of a project's economic rent; the state and local governments
2 may improve the economics of a stranded gas development project by making the overall
3 fiscal system less regressive and more responsive to the relative profitability of a project;

4 (15) establishing a fiscal regime applicable to a specific stranded gas
5 development project under a long-term contract with the state, where payments would be made
6 in lieu of other taxes, would enable the state to create a less "front-end loaded" and less
7 regressive fiscal regime for a project without rewriting the tax laws for gas already being
8 developed and produced; it would also enable the state to customize the timing and burden
9 of its fiscal regime to fit the economic circumstances of a particular stranded gas development
10 project; finally, it would reduce the financial risk of such a project by reducing uncertainty
11 about the fiscal terms applicable to the project;

12 (16) authorizing the state, through the executive branch, to enter into a contract
13 establishing the fiscal regime that would apply to a qualified project if it was built is an
14 exercise of the legislature's taxing power that is consistent with art. IX, sec. 1, of the
15 Constitution of the State of Alaska;

16 (17) authorizing the state, through the executive branch, to enter into a contract
17 establishing a fiscal regime that reduces the risks and improves the economics of a stranded
18 gas development project is an exercise of the legislature's power under art. IX, sec. 4, of the
19 Constitution of the State of Alaska to create tax exemptions by general law and is consistent
20 with the legislature's responsibility under art. VIII, sec. 2, of the Constitution of the State of
21 Alaska to provide for the utilization, development, and conservation of all natural resources
22 belonging to the state for the maximum benefit of its people;

23 (18) stranded gas development projects are a matter of statewide interest
24 because they are an important potential source of revenue to the state, job opportunities for
25 the people of the state, and gas for use by communities throughout the state;

26 (19) to the extent permissible under the United States Constitution and the
27 Constitution of the State of Alaska, the legislature intends that state residents and businesses
28 share in, and not be excluded from, the opportunities stemming from the development of the
29 state's gas resources; and

30 (20) good faith efforts by qualified sponsors and qualified sponsor groups that
31 have entered into a contract with the state under this Act, and their contractors, to undertake

1 voluntary actions to achieve employment of Alaska residents and Alaska businesses are in the
2 long-term interests of the state.

3 * **Sec. 2.** INTENT. (a) The legislature intends that contracts entered into under this Act
4 provide stable fiscal terms that encourage the development of stranded gas projects that
5 otherwise might not be developed under the prevailing tax and royalty regime. The legislature
6 further intends, however, that any fiscal terms agreed to in a contract under this Act in lieu
7 of other taxes will fully and fairly compensate the people of the State of Alaska for the
8 severance, production, and sale of natural resources belonging to the people of the state, the
9 negative effects and risks that a project may impose upon the state, and the value of the
10 infrastructure that may be provided by the state to a project, including all the advantages of
11 civilized society that may be provided by the state to the sponsors of a project.

12 (b) The legislature intends that a qualified sponsor or qualified sponsor group that
13 enters into a contract relating to a stranded gas project under this Act, and its contractors, will,
14 with respect to the project, voluntarily

15 (1) undertake reasonable measures to hire Alaska residents to perform work
16 that they are qualified to perform on a competitive basis;

17 (2) assist Alaska residents who are capable of being qualified and who make
18 a good faith effort to obtain the requisite training required for employment; and

19 (3) use reasonable efforts to contract with qualified Alaska businesses
20 whenever their performance is competitive with regard to price, quality, and availability.

21 * **Sec. 3.** AS 43 is amended by adding a new chapter to read:

22 **Chapter 82. Development of Alaska Stranded Gas.**

23 **Article 1. Contracts for Payments in Lieu of Other Taxes.**

24 **Sec. 43.82.010. Purpose.** The purpose of this chapter is to

25 (1) encourage new investment to develop the state's stranded gas
26 resources by authorizing establishment of fiscal terms related to that new investment
27 without significantly altering tax and royalty methodologies and rates upon existing oil
28 and gas infrastructure and production;

29 (2) allow the fiscal terms applicable to a qualified sponsor or the
30 members of a qualified sponsor group, with respect to a qualified project, to be tailored
31 to the project's particular economic conditions and to establish those fiscal terms in

1 advance and with as much certainty as the Constitution of the State of Alaska allows;
2 and

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

5 **Sec. 43.82.020. Contracts for payments in lieu of other taxes and for**
6 **royalty adjustments.** The commissioner may, under this chapter, enter into a contract
7 with a qualified sponsor or qualified sponsor group providing for (1) periodic payment
8 in lieu of one or more taxes that otherwise would be imposed by the state or a
9 municipality upon the qualified sponsor or members of the qualified sponsor group as
10 a consequence of the sponsor's or group's participation in an approved qualified
11 project under this chapter; and (2) certain adjustments regarding royalty under
12 AS 43.82.220.

13 **Article 2. Qualification and Application Procedures.**

14 **Sec. 43.82.100. Qualified project.** Based on information available to the
15 commissioner, the commissioner may determine that a proposal for new investment is
16 a qualified project under this chapter only if the project

17 (1) would produce at least 500 billion cubic feet of stranded gas within
18 20 years from the commencement of commercial operations; and

19 (2) is capable, subject to applicable commercial regulation and technical
20 and economic considerations, of making gas available to meet reasonably foreseeable
21 demand in this state for gas within proximity of the project.

22 **Sec. 43.82.110. Qualified sponsor or qualified sponsor group.** The
23 commissioner may determine that a person or group is a qualified sponsor or qualified
24 sponsor group if the person or a member of the group

25 (1) intends to own an equity interest in a qualified project or commit
26 gas that it owns to a qualified project; and

27 (2) meets one or more of the following criteria:

28 (A) owns a working interest in at least 10 percent of the
29 stranded gas proposed to be developed by a qualified project;

30 (B) has the right to purchase at least 10 percent of the stranded
31 gas proposed to be developed by a qualified project;

1 (C) has the right to acquire, control, or market at least 10
2 percent of the stranded gas proposed to be developed by a qualified project;

3 (D) holds the permits that the department determines are
4 essential to construct and operate a qualified project;

5 (E) has a net worth equal to at least 33 percent of the estimated
6 cost of constructing a qualified project;

7 (F) has an unused line of credit equal to at least 25 percent of
8 the estimated cost of constructing a qualified project.

9 **Sec. 43.82.120. Applications.** (a) A qualified sponsor or qualified sponsor
10 group may submit to the department an application for a contract under AS 43.82.020
11 evidencing that the requirements of AS 43.82.100 - 43.82.110 are met. The application
12 must be submitted in the manner and form, and contain the information, required by
13 the department.

14 (b) Along with an application submitted under (a) of this section, an applicant
15 shall submit a proposed project plan for a qualified project that contains the following
16 information based upon the information known to the applicant at the time of
17 application:

18 (1) a description of the work accomplished as of the date of the
19 application to further the project;

20 (2) a schedule of proposed development activity leading to the
21 projected commencement of commercial operations of the project;

22 (3) a description of the development activity proposed to be
23 accomplished under the proposed project plan;

24 (4) a description of each lease or property that the applicant believes
25 to contain the stranded gas that would be developed if the project was built;

26 (5) a description of the methods and terms under which the applicant
27 is prepared to make gas available to meet reasonably foreseeable demand in this state
28 for gas within proximity of the project during the term of the proposed contract,
29 including proposed pipeline transportation and expansion rules if pipeline transportation
30 is a part of the proposed project;

31 (6) other information that the commissioner of revenue, in consultation

1 with the commissioner of natural resources, considers necessary to make a
2 determination that

3 (A) the work accomplished as of the date of application, the
4 schedule of proposed development activity, and the development activity
5 proposed to be accomplished under the proposed project plan reflect a proposal
6 for diligent development on the part of the applicant;

7 (B) the proposed project plan does not materially conflict with
8 the obligations of a lessee to the state under a lease or under a pool, unit, or
9 other agreement with the state; and

10 (C) the proposed project plan describes satisfactory methods and
11 terms for accommodating reasonably foreseeable demand for gas in this state
12 within proximity of the project during the term of the proposed contract.

13 (c) The requirements of (b) of this section do not diminish the obligations of
14 a qualified sponsor or member of a qualified sponsor group to the state, or restrict the
15 authority of the commissioner of revenue or the commissioner of natural resources,
16 under any other law or agreement relating to a plan of development for a lease, pool,
17 or unit.

18 **Sec. 43.82.130. Qualified project plan.** A proposed project plan submitted
19 under AS 43.82.120 may be approved as a qualified project plan under AS 43.82.140
20 if the proposed project plan

21 (1) reflects a proposal for diligent development of the project on the
22 part of the applicant;

23 (2) does not materially conflict with the obligations of a lessee to the
24 state under a lease or under a pool, unit, or other agreement with the state; and

25 (3) describes satisfactory methods and terms for making gas available
26 to meet reasonably foreseeable demand in this state for gas within the proximity of the
27 project during the term of the proposed contract.

28 **Sec. 43.82.140. Review of applications and determination of qualifications.**

29 (a) The commissioner of revenue shall review an application submitted under
30 AS 43.82.120 to determine whether the provisions of AS 43.82.100 concerning a
31 qualified project and AS 43.82.110 concerning a qualified sponsor or qualified sponsor

1 group have been met. The commissioner of revenue may approve an application only
2 if those provisions have been met.

3 (b) If the commissioner of revenue approves an application under (a) of this
4 section, the commissioner of revenue and the commissioner of natural resources shall
5 review the proposed project plan submitted with the application to determine whether
6 the provisions of AS 43.82.130 have been met. The commissioner of revenue may
7 approve the proposed project plan as a qualified project plan only if the commissioner
8 of natural resources concurs in the approval.

9 (c) The commissioner of revenue shall send to the applicant written notice of
10 and the reasons for the determinations made under (a) and (b) of this section.

11 **Sec. 43.82.150. Actions challenging determinations on applications.** (a)
12 Only an applicant under AS 43.82.120 who is aggrieved by a determination of the
13 commissioner of revenue or the commissioner of natural resources under AS 43.82.140
14 has standing to seek judicial review of the determination.

15 (b) The only grounds for judicial review of a determination made under
16 AS 43.82.140 are

17 (1) failure to follow the qualification and application procedures set out
18 in AS 43.82.100 - 43.82.180; or

19 (2) abuse of discretion that is so capricious, arbitrary, or confiscatory
20 as to constitute a denial of due process.

21 **Sec. 43.82.160. Multiple applications for similar or competing qualified**
22 **projects.** Nothing in this chapter prohibits different qualified sponsors or different
23 qualified sponsor groups from submitting applications under AS 43.82.120 relating to
24 similar or competing qualified projects, or prohibits the commissioner of revenue or
25 the commissioner of natural resources from reviewing and approving applications and
26 proposed project plans under AS 43.82.140 relating to similar or competing qualified
27 projects.

28 **Sec. 43.82.170. Application deadline.** The commissioner of revenue or the
29 commissioner of natural resources may not act on an application for a contract
30 submitted under AS 43.82.120 unless the application is received by the Department of
31 Revenue no later than June 30, 2004.

1 **Sec. 43.82.180. Withdrawal of applications.** Subject to the terms of a
 2 reimbursement agreement under AS 43.82.240 or other agreement with the Department
 3 of Revenue, the Department of Natural Resources, the commissioner of revenue, or the
 4 commissioner of natural resources affecting the withdrawal of an application, a
 5 qualified sponsor or qualified sponsor group may withdraw an application submitted
 6 under AS 43.82.120 at any time before the date that the commissioner of revenue
 7 enters into a contract under AS 43.82.430 without further obligation under this chapter.

8 **Article 3. Contract Development.**

9 **Sec. 43.82.200. Contract development.** If the commissioner of revenue
 10 approves an application and proposed project plan under AS 43.82.140, the
 11 commissioner may develop a contract under AS 43.82.020 that may include

12 (1) terms concerning periodic payment in lieu of one or more taxes as
 13 provided in AS 43.82.210;

14 (2) terms developed under AS 43.82.220 relating to

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

17 (B) royalty value;

18 (3) terms regarding Alaska hire and Alaska contracting under
 19 AS 43.82.230;

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

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

24 (6) terms and conditions for administrative termination of a contract
 25 under AS 43.82.440; and

26 (7) other terms or conditions that are

27 (A) necessary to further the purposes of this chapter; or

28 (B) in the best interests of the state.

29 **Sec. 43.82.210. Contract terms relating to payment in lieu of one or more**
 30 **taxes.** (a) If the commissioner of revenue approves an application and proposed
 31 project plan under AS 43.82.140, the commissioner may develop proposed terms, for

1 inclusion in a contract under AS 43.82.020, for periodic payment in lieu of one or
2 more of the following taxes that otherwise would be imposed by the state or a
3 municipality upon the qualified sponsor or a member of the qualified sponsor group
4 as a consequence of participating in an approved qualified project:

- 5 (1) oil and gas production taxes and oil surcharges under AS 43.55;
- 6 (2) oil and gas exploration, production, and pipeline transportation
7 property taxes under AS 43.56;
- 8 (3) oil and gas conservation tax under AS 43.57;
- 9 (4) Alaska net income tax under AS 43.20;
- 10 (5) municipal sales and use tax under AS 29.45.650 - 29.45.680 or
11 29.45.700 - 29.45.710;
- 12 (6) municipal property tax under AS 29.45.010 - 29.45.250 or
13 29.45.550 - 29.45.600;
- 14 (7) municipal special assessments under AS 29.46;
- 15 (8) a comparable tax or levy imposed by the state or a municipality
16 after the effective date of this bill section;
- 17 (9) other state or municipal taxes or categories of taxes identified by
18 the commissioner.

19 (b) If the commissioner chooses to develop proposed terms under (a) of this
20 section, the commissioner shall, if practicable and consistent with the long-term fiscal
21 interests of the state, develop the terms in a manner that attempts to balance the
22 following principles:

- 23 (1) the terms should, in conjunction with other factors such as cost
24 reduction of the project, cost overrun risk reduction of the project, and increased fiscal
25 certainty and successful marketing, improve the competitiveness of the approved
26 qualified project in relation to other development efforts aimed at supplying the same
27 market;
- 28 (2) the terms should accommodate the interests of the state, the affected
29 municipalities, and the project sponsors under a wide range of economic conditions,
30 potential project structures, and marketing arrangements;
- 31 (3) the state's and affected municipalities' combined share of the

1 approved qualified project's economic rent under the contract should be relatively
2 progressive; that is, the state's and affected municipalities' combined annual share of
3 the approved qualified project's economic rent generally should not increase when
4 there are decreases in project profitability, or decrease when there are increases in
5 project profitability;

6 (4) the state's and affected municipalities' combined share of the
7 approved qualified project's economic rent under the contract should be relatively
8 lower in the earlier years than in the later years of the approved qualified project;

9 (5) the terms should allow the project sponsors to retain a share of the
10 approved qualified project's economic rent that is sufficient to compensate the sponsors
11 for risks under a range of economic circumstances;

12 (6) the terms should provide the state and affected municipalities with
13 a significant share of the approved qualified project's economic rent, when discounted
14 to present value, under favorable price and cost conditions;

15 (7) the method for calculating the periodic payment in lieu of certain
16 taxes under the contract should be clear and unambiguous; and

17 (8) while cost calculations for the approved qualified project under the
18 contract should be based on amounts that closely approximate actual costs, agreed-
19 upon formulas reflecting reasonable economic assumptions should be used if possible
20 to promote administrative certainty and efficiency.

21 (c) Except as provided in (b) of this section, the commissioner's discretion
22 under this section in developing proposed terms for a contract under AS 43.82.020 is
23 not limited to consideration of the approved qualified project's economic rent.

24 **Sec. 43.82.220. Contract terms relating to royalty.** (a) Notwithstanding any
25 contrary provisions of AS 38, the commissioner of natural resources, with the
26 concurrence of the commissioner of revenue and the affected parties holding a state
27 lease or unit agreement, may develop proposed terms, for inclusion in a contract under
28 AS 43.82.020, that modify the timing and notice provisions of the applicable oil and
29 gas leases and unit agreements pertaining to the state's rights to receive its royalty in
30 kind or in value, if

31 (1) the viability of the approved qualified project depends upon long-

1 term gas purchase and sale agreements;

2 (2) certainty over time regarding the quantity of royalty gas that the
3 state may be taking in kind is needed to secure the long-term purchase and sale
4 agreements;

5 (3) the specified period of the state's commitment to take its royalty
6 share in value or in kind does not exceed the term of the purchase and sale
7 agreements; and

8 (4) the modification does not impair the ability of the approved
9 qualified project to meet the reasonably foreseeable demand in this state for gas within
10 proximity of the project during the term of the contract entered into under
11 AS 43.82.020.

12 (b) Notwithstanding any contrary provisions of AS 38, the commissioner of
13 natural resources, with the concurrence of the commissioner of revenue and the
14 affected parties holding a state lease or unit agreement, may develop proposed terms,
15 for inclusion in a contract under AS 43.82.020, that establish a valuation method for
16 the state's royalty share of the gas production from an approved qualified project.

17 (c) The commissioner of revenue shall include any proposed terms relating to
18 royalty developed in accordance with this section in the proposed contract under
19 AS 43.82.400.

20 **Sec. 43.82.230. Contract terms relating to Alaska hire and Alaska**
21 **contracting.** (a) The commissioner shall include in every contract under
22 AS 43.82.020 a term requiring the qualified sponsor or qualified sponsor group, and
23 its contractors, to comply with all valid federal, state, and municipal laws in hiring
24 Alaska residents and contracting with Alaska businesses to work in the state on the
25 approved qualified project, and to not discriminate against Alaska residents or Alaska
26 businesses. Within the constraints of law, the commissioner shall also include in a
27 contract under AS 43.82.020 a term that requires the qualified sponsor or qualified
28 sponsor group, and its contractors, to employ Alaska residents and Alaska businesses
29 to work in the state on the approved qualified project to the extent they are available,
30 competitively priced, and qualified.

31 (b) The commissioner shall include a term in every contract under

1 AS 43.82.020 requiring the qualified sponsor or qualified sponsor group, and its
2 contractors, to

3 (1) advertise for available positions in newspapers in the location where
4 the work is to be performed and in other publications distributed throughout the state,
5 including in rural areas; and

6 (2) use Alaska job service organizations located throughout the state
7 and not just in the location where the work is to be performed, in order to notify
8 Alaskans of work opportunities on the approved qualified project.

9 (c) This section does not create or abridge individual rights and does not create
10 a private right of action for any person.

11 (d) For purposes of this section,

12 (1) "Alaska business" means a firm or contractor that

13 (A) has held an Alaska business license for the preceding 12
14 months;

15 (B) maintains, and has maintained for the preceding 12 months,
16 a place of business within the state that competently and professionally deals
17 in the supplies, services, or construction of the nature required for the approved
18 qualified project; and

19 (C) is

20 (i) a sole proprietorship and the proprietor is an Alaska
21 resident;

22 (ii) a partnership and more than 50 percent of the
23 partnership interest is held by Alaska residents;

24 (iii) a limited liability company and more than 50
25 percent of the membership interest is held by Alaska residents;

26 (iv) a corporation that has been incorporated in the state
27 or is authorized to do business in the state; or

28 (v) a joint venture and a majority of the joint venturers
29 qualify as Alaska businesses under this paragraph;

30 (2) "Alaska job service organizations" means those offices maintained
31 by the state and recommended by the Department of Labor whose functions are to aid

1 the unemployed or underemployed in finding employment;

2 (3) "Alaska resident" means a natural person who

3 (A) receives a permanent fund dividend under AS 43.23; or

4 (B) has any two of the following:

5 (i) current Alaska voter registration card;

6 (ii) current Alaska resident fishing, hunting, or trapping
7 license under AS 16;

8 (iii) current Alaska driver's license; or

9 (iv) current Alaska motor vehicle registration;

10 (4) "available," as applied to an Alaska resident or Alaska business,
11 means that the resident or business is available for employment at the time required
12 and is located anywhere in the state, not just in the area of the state where the work
13 is to be performed;

14 (5) "qualified," as applied to an Alaska resident or Alaska business,
15 means that the resident or business possesses the requisite education, training, skills,
16 certification, or experience to perform the work necessary for a particular position or
17 to perform a particular service.

18 **Sec. 43.82.240. Use of an independent contractor.** (a) The commissioner
19 may use an independent contractor to assist in the evaluation of an application or in
20 the development of contract terms under AS 43.82.200. The commissioner may
21 condition the development of a contract under AS 43.82.020 upon an agreement by the
22 applicant to reimburse the state for the expenses of an independent contractor under
23 this section.

24 (b) An independent contractor selected under this section must sign an
25 agreement regarding confidentiality and disclosures, consistent with the determinations
26 made under AS 43.82.310, before the contractor may review information that is
27 determined confidential under that section.

28 (c) Selection of an independent contractor under this section is not subject to
29 AS 36.30.

30 **Sec. 43.82.250. Term of contract; effective date.** (a) A contract under
31 AS 43.82.020 may be entered into for a term no longer than is necessary to develop

1 the stranded gas that is subject to the contract; however, the term of the contract may
2 not exceed 35 years from the commencement of commercial operations of the
3 approved qualified project.

4 (b) The effective date of a contract under AS 43.82.020 is the date the
5 commissioner executes the contract unless another date is set out in the contract. The
6 commissioner may condition the effective date of a contract under AS 43.82.020 upon
7 the enactment of a federal law that improves the economic feasibility or
8 competitiveness of stranded gas projects in this state.

9 **Sec. 43.82.260. Change of parties to an application or a contract;
10 assignment of interests.** (a) A qualified sponsor or member of a qualified sponsor
11 group may assign an interest in an application under AS 43.82.120 or a contract under
12 AS 43.82.020, or add or withdraw a party to such an application or contract only if the
13 commissioner has

14 (1) made a finding that the assignment, addition, or withdrawal is
15 consistent with the requirements of AS 43.82.110; and

16 (2) given prior written approval for the assignment, addition, or
17 withdrawal.

18 (b) Upon being added to an application or contract under this section, a party
19 becomes a qualified sponsor or a member of a qualified sponsor group, as appropriate,
20 for the relevant project.

21 (c) The commissioner may not unreasonably withhold approval under (a) of
22 this section, but may condition the approval in any way reasonably necessary to protect
23 the fiscal interests of the state and further the purposes of this chapter.

24 (d) For purposes of this section, an assignment includes a transfer of stock or
25 a partnership interest in a manner that changes control of a qualified sponsor or
26 member of a qualified sponsor group.

27 **Sec. 43.82.270. Project plans and work commitments.** A contract under
28 AS 43.82.020 must include the qualified project plan approved under AS 43.82.140
29 and provisions for updating the plan at reasonable intervals until the commencement
30 of commercial operations of the approved qualified project. The commissioner of
31 revenue, in consultation with the commissioner of natural resources, may, as a

1 condition of a contract under AS 43.82.020, include work commitments or other
2 obligations in the contract to be accomplished before the commencement of
3 commercial operations of the approved qualified project.

4 **Article 4. Requests for Information; Confidentiality; Disclosure of Information.**

5 **Sec. 43.82.300. Requests for information.** The commissioner of revenue or
6 the commissioner of natural resources may request from an applicant information that
7 the respective commissioner determines is necessary to perform the respective
8 commissioner's responsibilities under AS 43.82.140. If the application is approved
9 under AS 43.82.140, the respective commissioner shall require the successful applicant
10 to provide financial, technical, and market information regarding the qualified project
11 that the respective commissioner determines is necessary for the purpose of developing
12 contract terms for the qualified project under AS 43.82.200. If requested information
13 is not provided, the commissioner of revenue may not continue to review the
14 application under AS 43.82.140 or develop the contract under AS 43.82.200 -
15 43.82.270, as applicable.

16 **Sec. 43.82.310. Disclosure of information; confidentiality.** (a) An applicant
17 may request confidential treatment of information that the applicant provides under
18 AS 43.82.300 by clearly identifying the information and the reasons supporting the
19 request for confidential treatment. The commissioner receiving the request shall keep
20 the information confidential until the commissioner determines whether the
21 requirements of (b) of this section are met. If the commissioner has not made a
22 determination under (b) of this section within 14 days after receiving a request, the
23 request is considered denied. If the commissioner determines that the information does
24 not meet the requirements of (b) of this section, or fails to make a determination
25 within 14 days, the commissioner shall return the information and any copies of it at
26 the request of the applicant that provided the information. If a commissioner returns
27 information under this subsection, the commissioner shall cease review of the
28 application or cease contract development under AS 43.82.200 - 43.82.270, as
29 applicable, unless the commissioner determines that the returned information is
30 unnecessary to make a determination on the application or to develop contract terms
31 under AS 43.82.200 - 43.82.270.

1 (b) If requested by the applicant, information provided to the commissioner of
2 revenue or the commissioner of natural resources under AS 43.82.300 shall be kept
3 confidential if the commissioner receiving the information determines, upon an
4 adequate showing by the applicant, that the information

5 (1) is a trade secret or other proprietary research, development, or
6 commercial information that the applicant treats as confidential;

7 (2) affects the applicant's competitive position; and

8 (3) has commercial value that may be significantly diminished by
9 public disclosure.

10 (c) Information determined to be confidential under (b) of this section is
11 confidential under that subsection only so long as is necessary to protect the
12 competitive position of the applicant and to prevent the significant diminution of the
13 commercial value of the information. A commissioner may not release information
14 that the commissioner has previously determined to be confidential under (b) of this
15 section without providing the applicant notice and an opportunity to be heard.

16 (d) Notwithstanding the release of information limitation of (c) of this section,
17 the Department of Revenue and the Department of Natural Resources may provide to
18 one another, to the Department of Law, and to the Office of the Governor any
19 information provided under AS 43.82.300 relevant to the implementation of this
20 chapter or to the enforcement of state or federal laws. Information that is exchanged
21 under this subsection that was determined to be confidential under (b) of this section
22 remains confidential except as provided in (c) of this section. The portions of the
23 records and files of the Department of Revenue, Department of Natural Resources,
24 Department of Law, and the Office of the Governor that reflect, incorporate, or analyze
25 information that was determined to be confidential under (b) of this section are not
26 public records except as provided in (c) of this section.

27 (e) Notwithstanding the release of information limitation of (c) of this section,
28 information that was determined to be confidential under (b) of this section may be
29 disclosed by the commissioner of revenue, the commissioner of natural resources, or
30 the attorney general to a legislator; to the legislative auditor in the division of
31 legislative audit; and, as directed by the chair or vice-chair of the Legislative Budget

1 and Audit Committee, to the director of the division of legislative finance, to the
 2 permanent employees of those divisions who are responsible for evaluating a contract
 3 made under AS 43.82.020, and to agents or contractors of the legislative auditor or the
 4 director of legislative finance who are engaged to evaluate such a contract.

5 Information that was determined to be confidential under (b) of this section also may
 6 be disclosed by the commissioner of revenue or the commissioner of natural resources
 7 to an independent contractor under AS 43.82.240. Before confidential information is
 8 disclosed under this subsection, the person receiving the information must sign an
 9 appropriate confidentiality agreement.

10 (f) If the commissioner of revenue chooses to develop a contract under
 11 AS 43.82.020, the portions of the records and files of the Department of Revenue, the
 12 Department of Natural Resources, and the Department of Law that reflect, incorporate,
 13 or analyze information that is relevant to the development of a commissioner's position
 14 or strategy with respect to any particular provision that may be incorporated into the
 15 contract are not public records until the commissioner of revenue gives public notice
 16 under AS 43.82.410 of the commissioner's preliminary findings and determination
 17 under AS 43.82.400. Nothing in this subsection (1) makes a record or file of the
 18 Department of Revenue, the Department of Natural Resources, or the Department of
 19 Law a public record that otherwise would not be a public record under AS 09.25.100 -
 20 09.25.220; (2) affects the confidentiality provisions of (a) - (e) of this section; or (3)
 21 abridges a privilege recognized under the laws of this state, whether at common law
 22 or by statute.

23 **Article 5. Contract Review, Approval, and Termination.**

24 **Sec. 43.82.400. Preliminary findings and determination regarding the**
 25 **contract.** (a) If the commissioner develops a proposed contract under AS 43.82.200 -
 26 43.82.270, the commissioner

27 (1) must make preliminary findings and a determination that the
 28 proposed contract terms are in the long-term fiscal interests of the state and further the
 29 purposes of this chapter; and

30 (2) shall prepare a proposed contract that includes those terms and shall
 31 announce that, under AS 43.82.020, the commissioner intends to enter into the

1 proposed contract.

2 (b) To make the preliminary findings and determination required by (a)(1) of
 3 this section, the commissioner shall compare the projected public revenue anticipated
 4 from the approved qualified project with the estimated operating and capital costs of
 5 the additional state and municipal services anticipated to arise from the construction
 6 and operation of the approved qualified project. The commissioner shall address the
 7 reasonably foreseeable effects of the proposed contract on the public revenue.

8 (c) In conjunction with the making of preliminary findings and determination
 9 required by (a)(1) of this section, the commissioner shall describe the principal factors,
 10 including the projected price of gas, projected production rate or volume of gas, and
 11 projected recovery, development, construction, and operating costs, upon which the
 12 determination made under (a)(1) of this section is based. If the commissioner has
 13 previously entered into a contract under AS 43.82.020 relating to another approved
 14 qualified project that is similar to or would compete with the approved qualified
 15 project that is the subject of the commissioner's preliminary findings and
 16 determination, the commissioner shall describe any material differences between the
 17 terms of the existing contract and the proposed contract.

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

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

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

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

29 (B) the chairs of the legislature's standing committees on
 30 finance and resources; and

31 (C) the chairs of the legislature's special committees on oil and

1 gas, if any;

2 (3) establish a period of at least 30 days for the public to comment on
3 the proposed contract and the preliminary findings and determination made under
4 AS 43.82.400; and

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

13 **Sec. 43.82.420. Coordination of public and legislative review.** To the extent
14 practicable, the commissioner shall coordinate the public comment opportunity
15 provided under AS 43.82.410(3) with any proposed review by the Legislative Budget
16 and Audit Committee of the contract and the preliminary findings and determination
17 under AS 43.82.410(4).

18 **Sec. 43.82.430. Final findings, determination, and proposed amendments;
19 execution of the contract.** (a) Within 30 days after the close of the public comment
20 period under AS 43.82.410(3), the commissioner shall

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

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

26 (3) make final findings and a determination as to whether the proposed
27 contract and any proposed amendments prepared under (2) of this subsection meet the
28 requirements and purposes of this chapter.

29 (b) After considering the material described in (a) of this section and securing
30 the agreement of the other parties to the proposed contract regarding any proposed
31 amendments prepared under (a) of this section, the commissioner may execute the

1 contract if the commissioner determines that the contract is in the long-term fiscal
2 interests of the state.

3 (c) The commissioner's final findings and determination under (a) of this
4 section, and decision regarding whether to execute the contract under (b) of this
5 section, are final agency decisions under this chapter.

6 **Sec. 43.82.440. Administrative termination of a contract.** (a) The
7 commissioner may terminate a party's rights under a contract under AS 43.82.020 if
8 the procedures and conditions set out in this section are met and the party has

9 (1) ceased to meet the requirements of AS 43.82.110 as a qualified
10 sponsor or as a qualified sponsor group;

11 (2) intentionally or fraudulently misrepresented, in whole or in part,
12 material facts or circumstances upon which the contract was made;

13 (3) failed to comply with a condition or material term of the contract
14 or a provision of this chapter; or

15 (4) failed to comply with the approved qualified project plan or any
16 updated project plan.

17 (b) Before administrative termination of a contract under this section, the
18 commissioner shall give notice to the parties of the commissioner's intent to terminate
19 and an opportunity to be heard. Additionally, the commissioner may provide the
20 parties an opportunity to cure any deficiency that is the basis for the termination if the
21 commissioner determines that curing the deficiency is appropriate under the
22 circumstances.

23 (c) Notwithstanding (a) and (b) of this section, the commissioner may not
24 administratively terminate a contract after the party has committed full project funding
25 except as provided in (e) of this section.

26 (d) A party to the contract who is affected by the commissioner's action to
27 terminate under (a) of this section may file an appeal with the superior court under the
28 Alaska Rules of Appellate Procedure.

29 (e) The commissioner may provide terms and conditions in a contract entered
30 into under AS 43.82.020 upon which a party's rights under the contract may be
31 administratively terminated after the party commits full project funding.

1 **Article 6. Payment to Municipalities; Equity or**
 2 **Other Participation by Municipalities.**

3 **Sec. 43.82.500. Payment to municipalities; equity or other participation by**
 4 **municipalities.** (a) If the commissioner executes a contract under AS 43.82.020 that
 5 includes terms that exempt a party to the contract, and the property, gas, products, and
 6 activities associated with the approved qualified project that is subject to the contract,
 7 from a municipal tax in accordance with AS 29.45.810, AS 29.46.010(b),
 8 AS 43.82.200, and 43.82.210, the commissioner shall require, as a condition of the
 9 contract, that the party instead make periodic payment to the affected municipality in
 10 a fair and reasonable amount as determined by the commissioner under (b) of this
 11 section.

12 (b) After consultation with the affected municipality, the commissioner shall
 13 determine the amount of payment due under (a) of this section. In making the
 14 determination required by this subsection, the commissioner shall

15 (1) estimate the total operating and capital costs of additional services
 16 and construction that would be provided and paid for by that municipality during the
 17 term of the contract under AS 43.82.020 as a result of the construction and operation
 18 in the municipality of the approved qualified project that is subject to the contract; and

19 (2) amortize the total costs estimated under (1) of this section over the
 20 term of the contract or a portion of the term of the contract.

21 (c) In lieu of payments under (a) of this section, the commissioner, with the
 22 concurrence of the municipality, may include a term in a contract under AS 43.82.020
 23 that provides the municipality with an equity or other interest in the approved qualified
 24 project that is subject to the contract.

25 **Article 7. Miscellaneous Provisions.**

26 **Sec. 43.82.600. Governing law.** If a provision of this chapter conflicts with
 27 another provision of state or municipal law, the provision of this chapter governs.

28 **Sec. 43.82.610. Regulations.** The commissioner of revenue, the commissioner
 29 of natural resources, and the commissioner of labor may adopt regulations to carry out
 30 their respective duties under this chapter.

31 **Sec. 43.82.620. Procedures for collection of amounts due; security.** (a)

1 The commissioner may adopt procedures for the collection of amounts due the state
 2 under a contract entered into under AS 43.82.020, including the collection of interest
 3 and penalties.

4 (b) The commissioner may require a party to a contract under AS 43.82.020
 5 to provide security sufficient to guarantee amounts due under the contract.

6 **Sec. 43.82.630. Reports and audits.** The commissioner may require periodic
 7 reports from, and may at reasonable intervals conduct audits and inspect the books of,
 8 a party that has entered into a contract under AS 43.82.020 to ensure compliance with
 9 the provisions of this chapter and the regulations adopted under it and of the terms of
 10 the contract.

11 **Sec. 43.82.640. Annual report of the commissioner of labor.** On an annual
 12 basis, the commissioner of labor shall prepare and present to the legislature a
 13 comprehensive report on each party to a contract with the state under AS 43.82.020,
 14 and its contractors, regarding the state residency of the employees working in this state
 15 on the approved qualified project that is subject to the contract. The commissioner of
 16 labor shall use state databases, including data from the quarterly reports by a party to
 17 the contract under AS 43.82.020 and its contractors for unemployment insurance
 18 purposes, to determine state residency of employees regarding compliance with
 19 AS 43.82.230.

20 **Article 8. General Provisions.**

21 **Sec. 43.82.900. Definitions.** In this chapter, unless the context requires
 22 otherwise,

23 (1) "commencement of commercial operations" means the start of
 24 regular deliveries of marketable products from an approved qualified project;

25 (2) "cubic foot of gas" means the quantity of gas contained in a volume
 26 of one cubic foot at a standard temperature of 60° Fahrenheit and a standard absolute
 27 pressure of 14.65 pounds per square inch;

28 (3) "economic rent" means the estimated total gross revenue less
 29 estimated total costs for a qualified project over the term of a contract under
 30 AS 43.82.020, measured in undiscounted nominal dollars; for purposes of this
 31 paragraph, "total costs" do not include a rate of return on capital, financing costs, or

1 any payments to governments;

2 (4) "full project funding" means the date that a party to a contract
3 under AS 43.82.020 gives full approval for the expenditure of the capital necessary for
4 construction and operation of the approved qualified project that is subject to the
5 contract;

6 (5) "gas" has the meaning given that term in AS 43.55.900;

7 (6) "group" means two or more persons;

8 (7) "lease or property" has the meaning given that term in
9 AS 43.55.900;

10 (8) "municipality" has the meaning given that term in AS 29.71.800;

11 (9) "periodic payment" means payment made in lieu of one or more
12 other taxes under a contract under AS 43.82.020;

13 (10) "stranded gas" means gas that is uneconomic or uncompetitive to
14 develop as determined by the commissioner for a particular project.

15 **Sec. 43.82.990. Short title.** This chapter may be cited as the Alaska Stranded
16 Gas Development Act.

17 * **Sec. 4.** AS 29.10.200 is amended by adding new paragraphs to read:

18 (54) AS 29.45.810 (exemption from municipal taxation);

19 (55) AS 29.46.010(b) (exemption from municipal assessment).

20 * **Sec. 5.** AS 29.45 is amended by adding a new section to read:

21 **Sec. 29.45.810. Exemption from municipal taxation.** (a) A party to a
22 contract with the Department of Revenue under AS 43.82.020, and the property, gas,
23 products, and activities associated with the approved qualified project that is subject
24 to the contract, are exempt, as specified in the contract, from all taxes identified in the
25 contract that would be levied and collected by a municipality under state law as a
26 consequence of the participation by the party in the approved qualified project.

27 (b) This section applies to home rule and general law municipalities.

28 * **Sec. 6.** AS 29.46.010 is amended by adding a new subsection to read:

29 (b) Notwithstanding (a) of this section, a party to a contract with the
30 Department of Revenue under AS 43.82.020 is exempt, as specified in the contract,
31 from assessment under this chapter against real property associated with the approved

1 qualified project that is subject to the contract.

2 * **Sec. 7.** AS 36.30.850(b) is amended by adding a new paragraph to read:

3 (38) contracts between the commissioner of revenue and an independent
4 contractor under AS 43.82.240.

5 * **Sec. 8.** AS 43.20.072 is amended by adding a new subsection to read:

6 (h) A taxpayer that has signed a contract under AS 43.82.020 with the
7 commissioner providing for payments in lieu of the tax under this chapter, and that has
8 nexus with the state solely as the result of its participation in the approved qualified
9 project that is subject to the contract or, but for such participation, would not be
10 engaged in the production of oil or gas from a lease or property in this state or
11 engaged in the transportation of oil or gas by pipeline in this state, is not required to
12 file a return under this section unless required to do so by the contract.

13 * **Sec. 9.** AS 43.20.073 is amended by adding a new subsection to read:

14 (h) A corporation that has signed a contract with the commissioner under
15 AS 43.82.020 providing for payments in lieu of the tax under this chapter, and that has
16 nexus with the state solely as the result of its participation in the approved qualified
17 project that is subject to the contract is not required to file a return under this section
18 unless required to do so by the contract.

19 * **Sec. 10.** SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the
20 application of a provision of this Act to any person or circumstance, is held invalid, the
21 remainder of this Act and the application to other persons or circumstances is not affected.

22 * **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).