

SENATE BILL NO. 360

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced: 4/10/02

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing additional requirements for the consideration of applications
2 under the Right-of-Way Leasing Act for an Alaska North Slope natural gas project,
3 authorizing expeditious priority treatment of all applications under that Act and under
4 other relevant state laws for issuance of a right-of-way lease for that project, authorizing
5 the commissioner of natural resources to act to modify the terms of certain state oil and
6 gas leases related to the project and to act, with legislative approval, to waive, reduce, or
7 defer the collection of royalties due the state, and authorizing the commissioner of
8 revenue to act, with legislative approval, to waive, reduce, or defer the levy and
9 collection of taxes by the state and municipalities under the oil and gas exploration,
10 production, and pipeline transportation property tax related to the project, authorizing
11 the Alaska Railroad Corporation to provide financing for the acquisition, construction,
12 improvement, maintenance, equipping, operation, or expansion of the project and

1 related facilities for the transportation of natural gas within and outside the state by
 2 others and the corporation's issuance of its bonds to finance the project and facilities,
 3 and limiting consideration of judicial challenges to decisions made with respect to that
 4 project under this Act; and providing for an effective date."

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

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
 7 to read:

8 SHORT TITLE. This Act may be cited as the Alaska Natural Gas Project Act.

9 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
 10 read:

11 LEGISLATIVE FINDINGS WITH RESPECT TO BILL SECTIONS AMENDING
 12 THE RIGHT-OF-WAY LEASING ACT (AS 38.35) AND RELATED PROVISIONS. The
 13 legislature finds that

14 (1) expediting the development, production, and transportation of northern
 15 Alaska natural gas is a matter of statewide significance because of its vital importance to the
 16 state's economy;

17 (2) the best interests of the state would be served by a North Slope natural gas
 18 pipeline project following a route that parallels the Trans Alaska Pipeline System and the
 19 Alaska Highway to the Canadian border or a project from the North Slope to tidewater in
 20 southcentral Alaska;

21 (3) in accordance with 15 U.S.C. 719 - 729o (the Alaska Natural Gas
 22 Transportation Act of 1976), in a series of actions and decisions that recognize the critical
 23 importance of the project, the President and the Congress have approved and authorized
 24 completion of a North Slope natural gas pipeline project;

25 (4) under a portion of pending federal legislation referred to as the "Alaska
 26 Natural Gas Pipeline Project of 2002," another North Slope natural gas project may be
 27 approved and authorized;

28 (5) under the Alaska Natural Gas Transportation Act of 1976, Yukon Pacific
 29 Corporation has received a presidential waiver to export Alaska natural gas, and holds several

1 permits, authorizations, and licenses to construct and operate a North Slope natural gas project
2 to tidewater;

3 (6) other entities have expressed interest in constructing various North Slope
4 natural gas projects;

5 (7) the maximum benefit for Alaskans from the commercialization of northern
6 Alaska natural gas lies in market exposure for the gas, opportunities for in-state use of the gas,
7 participation by Alaskans in construction, maintenance, and operation of the project, and
8 competition in the exploration, development, and production of additional reserves of
9 northern Alaska natural gas;

10 (8) 15 U.S.C. 719k(b) (section 13(b), Alaska Natural Gas Transportation Act
11 of 1976) provides that the "State of Alaska is authorized to ship its gas on the approved
12 transportation system for use within Alaska . . . and . . . to withdraw such gas from the
13 interstate market for use within Alaska; the Federal Power Commission shall issue all
14 authorizations necessary to effectuate such shipment and withdrawal subject to review by the
15 Commission only of the justness and reasonableness of the rate charged for such
16 transportation";

17 (9) the President's decision in support of his choice of the route approved
18 under the Alaska Natural Gas Transportation Act of 1976 recognized that Alaska gas could
19 "supply the energy base required for long-term economic development" within the state and it
20 could supply natural gas to communities within the state along the route and to other
21 communities through local distribution lines;

22 (10) it is vital for the continued exploration and development of natural gas
23 resources in northern Alaska that oil and gas companies that do not have an ownership interest
24 in the project have access to it on a fair and reasonable basis and have the ability to seek the
25 pipeline's expansion when economically and technically feasible;

26 (11) it is vital to the economic development of the state that Alaskans and
27 Alaska businesses have access to gas from a North Slope natural gas pipeline project;

28 (12) it has the constitutional responsibility set out in art. VIII, sec. 2,
29 Constitution of the State of Alaska, to provide for the utilization, development, and
30 conservation of the state's natural resources for the maximum benefit of the people; and

31 (13) because of the magnitude and complexity of the development of a

1 project, issuance of a right-of-way lease under the Alaska Right-of-Way Leasing Act and of
 2 permits, certificates, authorizations, and similar actions to be taken by state agencies in
 3 connection with the development of a project implicates unique legal and administrative
 4 considerations.

5 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
 6 read:

7 FINDINGS, INTENT, AND PURPOSE RELATING TO AMENDMENTS TO THE
 8 ALASKA RAILROAD CORPORATION ACT (AS 42.40). (a) The Alaska State Legislature
 9 finds that

10 (1) the Alaska Railroad Corporation is uniquely suited to serve essential
 11 functions of the state by providing financing for an Alaska North Slope natural gas project;

12 (2) providing financing for the project furthers the purposes of both the state
 13 and the Alaska Railroad Corporation by assuring that the state's northern Alaska natural gas
 14 resources will be transported to their appropriate markets, thus creating revenue for the
 15 Alaska Railroad Corporation and for the state and providing employment opportunities for
 16 residents of the state;

17 (3) the project also will enhance and improve the state's ability to develop and
 18 transport other natural resources of the state, including oil and gas resources located off the
 19 North Slope of this state; and

20 (4) these results are essential purposes of the state, and the achievement of
 21 these purposes is critical to the health and welfare of the state.

22 (b) A purpose of the amendments made by secs. 6 - 9 and 13 of this Act is to clarify
 23 the statutory functions and powers of the Alaska Railroad Corporation by expressly including
 24 the power to provide financing for transportation facilities as described in this Act.

25 (c) It is the intent of the legislature that

26 (1) secs. 6 - 9 and 13 of this Act be construed broadly to permit the Alaska
 27 Railroad Corporation the greatest flexibility to accomplish the purpose described in (b) of this
 28 section within the limitations set out in this Act; and

29 (2) other provisions of AS 42.40 in existence before the enactment of this Act
 30 be similarly construed to complement the provisions of this Act.

31 * **Sec. 4.** AS 38.05.180 is amended by adding a new subsection to read:

1 (ee) In conjunction with the development and construction of an Alaska North
 2 Slope natural gas project, as defined by AS 38.35.259, that requires the grant of a
 3 right-of-way lease under AS 38.35 for which the project applicant has complied with
 4 AS 38.35.240 and obtained all certificates described in that section, the commissioner
 5 may

6 (1) with the consent of the lessee,

7 (A) modify any provision of an oil and gas lease entered into
 8 under this section, except a provision described in (B) of this paragraph, that
 9 impedes development of the project; and

10 (B) waive, reduce, or defer the payment of all or any portion of
 11 the royalty due the state under this chapter; a waiver, reduction, or deferral of
 12 the royalty due made by the commissioner under this subparagraph is not
 13 effective unless approved by the legislature; the legislature may approve a
 14 waiver, reduction, or deferral of royalty under this subparagraph only by
 15 enacting legislation;

16 (2) take an action described in (1)(B) of this subsection only if

17 (A) the commissioner has considered whether other
 18 jurisdictions in which the project will be located have granted financial
 19 incentives;

20 (B) the project applicant, or a lessee that has contracted with
 21 the applicant to ship natural gas through the project, shows, by clear and
 22 convincing evidence, that construction and operation of the project would not
 23 otherwise be economically feasible; and

24 (C) the commissioner and the project applicant have entered
 25 into an agreement to begin construction of the project by a date certain.

26 * **Sec. 5.** AS 38.35 is amended by adding new sections to read:

27 **Sec. 38.35.235. Purpose of AS 38.35.235 - 38.35.259.** It is the purpose of
 28 AS 38.35.235 - 38.35.259

29 (1) to expedite the approval, construction, and operation of a project
 30 while ensuring that the maximum benefits consistent with the Constitutions of the
 31 United States and Alaska are achieved for the people of the state;

1 (2) to ensure access to the project by oil and gas companies that do not
 2 have an ownership interest in the project on an equal and nondiscriminatory basis, and
 3 to promote competition in the exploration, development, and production of northern
 4 Alaska natural gas;

5 (3) to ensure access to state royalty gas in the project for Alaskans and
 6 Alaska businesses; and

7 (4) to ensure employment of Alaskans and the use of Alaska firms in
 8 the construction and operation of the project.

9 **Sec. 38.35.240. Applicability to Alaska North Slope natural gas project.**

10 (a) The provisions of AS 38.35.235 - 38.35.259 apply to an applicant for a right-of-
 11 way lease under this chapter for an Alaska North Slope natural gas project that
 12 submits a written plan and study, as appropriate, and obtains the certificates described
 13 in (b) - (d) of this section.

14 (b) Based upon the applicant's written plan, if the commissioner of labor and
 15 workforce development is satisfied that the plan fulfills the requirements of this
 16 subsection and makes an appropriate finding, the commissioner may certify that

17 (1) consistent with law, the applicant will use the applicant's best
 18 efforts to train and employ state residents and, whenever feasible, will contract with
 19 firms in this state for the construction and operation of the project; and

20 (2) the applicant's plan maximizes the opportunities for training and
 21 employment of state residents and for the use of Alaska firms in the state for the
 22 construction and operation of the project consistent with the Constitutions of the
 23 United States and Alaska and AS 38.35.235(4); the commissioner may not make a
 24 finding under this paragraph unless the commissioner conducts at least one public
 25 hearing on the plan.

26 (c) Based upon the applicant's written plan and study, if the Regulatory
 27 Commission of Alaska is satisfied that the plan and study fulfill the requirements of
 28 this subsection and makes an appropriate finding, the commission may certify that the
 29 applicant

30 (1) has completed a study examining in-state demand for northern
 31 Alaska natural gas and, with the completed study, has submitted a plan demonstrating

1 that the applicant's plan will maximize the opportunities for access to state royalty gas
 2 transported in the project to meet the reasonably projected in-state demand identified
 3 in the study and is consistent with AS 38.35.235(3);

4 (2) has completed a study of the potential supply of northern Alaska
 5 gas, including known and discovered reserves and undiscovered resources, and the
 6 applicant has submitted a plan demonstrating how the applicant's plan and design of
 7 the project will maximize the opportunities for access to initial and expansion capacity
 8 on the project consistent with AS 38.35.235(2); the commission may not make a
 9 finding under this paragraph unless the commission conducts at least one public
 10 hearing on the study and plan; and

11 (3) agrees to complete for review by the commission updated studies
 12 and plans consistent with (1) and (2) of this subsection at a date that is 10 years after
 13 the construction commencement date of the project.

14 (d) Based upon the application submitted under this chapter, if the
 15 commissioner is satisfied that the application meets all other requirements of law and
 16 fulfills the requirements of this subsection and makes an appropriate finding, the
 17 commissioner may certify that the applicant agrees to provisions of the lease
 18 stipulating that the applicant will

19 (1) provide access to the project to the state or its designee to ship the
 20 state's royalty gas for use within the state; and

21 (2) use the applicant's best efforts to seek and obtain

22 (A) all authorizations necessary to carry out the shipment and
 23 withdrawal described in 15 U.S.C. 719k(b) (section 13(b), Alaska Natural Gas
 24 Transportation Act of 1976) or other appropriate federal law from the Federal
 25 Energy Regulatory Commission or any other applicable governmental agency
 26 to ensure that access; and

27 (B) authorization from the Federal Energy Regulatory
 28 Commission or any other applicable governmental agency to expand the
 29 project if the Regulatory Commission of Alaska, upon application by an entity
 30 seeking to ship Alaska natural gas through the project, determines that
 31 expansion is in the best interests of the state and is in accordance with this

1 section and finds that

2 (i) the rates for expansion of the natural gas
3 transportation service will ensure the recovery, on an incremental or
4 rolled-in basis, of the costs of the facilities necessary for expansion,
5 including a reasonable rate of return on the applicant's investment;

6 (ii) the rates do not require the then-existing shippers of
7 North Slope natural gas in the project to subsidize the use of the project
8 by expansion shippers;

9 (iii) facilities necessary for expansion will not adversely
10 affect the operation of the project or diminish the contract rights of
11 then-existing shippers to previously certificated capacity;

12 (iv) all necessary environmental reviews have been
13 completed; and

14 (v) the expansion is required by the present and future
15 public convenience.

16 (e) Each authority that may issue a certificate under (b) or (c) of this section
17 shall act within 90 days after receiving a request for a certificate. The commissioner
18 shall act under (d) of this section not later than 90 days after the commissioner
19 receives from the applicant the stipulations described in that subsection.

20 **Sec. 38.35.245. Treatment of Alaska North Slope natural gas project lease**
21 **application by commissioner.** In the commissioner's consideration of an application
22 under this chapter for a lease for the Alaska North Slope natural gas project, when the
23 applicant has complied with requirements of AS 38.35.240 and obtained all
24 certificates described in that section, the commissioner may limit the scope of review,
25 analysis, and finding for the applicant's proposed lease application under this chapter
26 to a particular phase of the project if, in the judgment of the commissioner, the project
27 is capable of proceeding in discrete phases and

28 (1) the uses and activities involving the project on the land for which
29 the approval is to be granted are part of that discrete phase;

30 (2) before the next phase of the project may proceed, the commissioner
31 gives public notice and opportunity for comment about that phase, unless the use or

1 activity to be approved is subject to a consistency determination under AS 46.40 and
2 public notice and the opportunity to comment are provided under AS 46.40.096(c);

3 (3) the commissioner's approval is required before the next phase of
4 the project may proceed; and

5 (4) the commissioner sets out the reasons for proceeding on the
6 application in discrete phases.

7 **Sec. 38.35.250. Expeditious priority treatment by state officials and**
8 **agencies in support of development and construction of Alaska North Slope**
9 **natural gas project under this chapter.** (a) In the development and construction of
10 an Alaska North Slope natural gas project that requires the grant of a right-of-way
11 lease under this chapter for which the project applicant has complied with
12 AS 38.35.240 and obtained all certificates described in that section, every state official
13 and agency shall give full cooperation to the commissioner, or to any official to whom
14 delegation of the authority of the commissioner is made by or under law,

15 (1) by assembling and furnishing all requested information;

16 (2) consistent with the provisions of the law administered by the
17 official or agency, by issuing or granting necessary permits, certificates,
18 authorizations, and similar actions required to be taken at the earliest practicable date,
19 on an expedited basis and, notwithstanding any other provision of law, with
20 precedence over any like matter pending before the official or agency; and

21 (3) consistent with the provisions of the law administered by the
22 official or agency, with respect to any previously issued or granted permit, certificate,
23 authorization, or similar action as to which the official or agency may exercise
24 discretion, by adding to, amending, or abrogating any term or condition as necessary
25 to further the purposes set out in AS 38.35.235 except

26 (A) changing or altering the basic nature or general route of an
27 Alaska North Slope natural gas project to which the federal government has
28 agreed; or

29 (B) otherwise significantly preventing or impairing the
30 expeditious construction and operation of an Alaska North Slope natural gas
31 project.

1 **Sec. 38.35.255. Waiver of law.** If the governor finds that any provision of
 2 law applicable to actions to be undertaken by a state agency or official with respect to
 3 any authorization necessary for a right-of-way lease or any other authorization
 4 necessary for a project under this chapter or any action to be taken in the exercise of
 5 rights conferred by that lease constitutes an obstacle to the expeditious construction
 6 and initial operation of an Alaska North Slope natural gas project for which the project
 7 applicant has complied with AS 38.35.240 and obtained all certificates described in
 8 that section, the governor may submit a measure for the legislature's consideration to
 9 provide by law for the waiver of the provision.

10 **Sec. 38.35.257. Judicial review.** Notwithstanding AS 38.35.200 and
 11 notwithstanding any other provision of law, with respect to a decision made or action
 12 taken bearing upon the development, construction, and operation of an Alaska North
 13 Slope natural gas project for which the project applicant has complied with
 14 AS 38.35.240 and obtained all certificates described in that section, a person may seek
 15 judicial review of a decision of the commissioner under AS 38.35.100 or
 16 AS 38.35.235 - 38.35.259 or of any agency or employee relating to the project only on
 17 the grounds provided in AS 38.35.200(b). The claim for judicial review may be
 18 brought only within 60 days after the making of the decision or taking of the action.

19 **Sec. 38.35.259. Definitions.** In AS 38.35.235 - 38.35.259,

20 (1) "Alaska North Slope natural gas project" or "project" means a
 21 North Slope natural gas pipeline, as defined in AS 38.35.120, and related facilities,
 22 including extraction and petrochemical plants, liquefaction plants, regasification
 23 plants, and conditioning plants, and the expansion of that pipeline and those related
 24 facilities, constructed to transport northern Alaska natural gas following a route that
 25 parallels the Trans Alaska Pipeline System and the Alaska Highway to the Canadian
 26 border or that initially parallels the Trans Alaska Pipeline System and then turns south
 27 to tidewater in southcentral Alaska;

28 (2) "northern Alaska natural gas" means natural gas from the area of
 29 the state lying north of 64 degrees North latitude.

30 * **Sec. 6.** AS 42.40.250 is amended by adding a new paragraph to read:

31 (31) provide financing for the acquisition, construction, improvement,

1 maintenance, equipping, operation, and expansion of an Alaska North Slope natural
 2 gas project, as that term is defined in AS 38.35.259, within and outside the state
 3 without regard to whether the project or facilities are or will be owned in whole or in
 4 part by the corporation or located on land owned by the corporation.

5 * **Sec. 7.** AS 42.40 is amended by adding a new section to read:

6 **Sec. 42.40.605. Public purpose of bonds.** Bonds of the corporation issued to
 7 finance the project and related facilities described in AS 42.40.250(31) are issued by a
 8 public corporation and an instrumentality of the state for an essential public and
 9 governmental purpose.

10 * **Sec. 8.** AS 42.40.630 is amended by adding a new subsection to read:

11 (b) Before issuing bonds to provide the financing described in
 12 AS 42.40.250(31) for a facility related to the Alaska North Slope natural gas project to
 13 be owned in whole or in part by an entity other than the corporation, the corporation
 14 shall enter into a contract, lease, or other form of agreement that will, in the judgment
 15 of the corporation, provide sufficient consideration to

16 (1) pay the principal of and interest on the bonds as they become due;

17 (2) create and maintain the reserves for the payments that the
 18 corporation considers necessary or desirable; and

19 (3) pay all costs necessary to service or additionally secure the bonds,
 20 including trustee's fees and bond insurance premiums, unless these costs are to be paid
 21 by a party other than the corporation.

22 * **Sec. 9.** AS 42.40 is amended by adding a new section to read:

23 **Sec. 42.40.695. Alaska North Slope natural gas project bonds.** (a) In
 24 conjunction with the development and construction of an Alaska North Slope natural
 25 gas project that require the grant of a right-of-way lease under AS 38.35 for which the
 26 project applicant has complied with AS 38.35.240 and obtained all certificates
 27 described in that section, and subject to the requirements of AS 42.40.630(b), the
 28 corporation is authorized to issue bonds under the power granted to it in this chapter to
 29 finance the construction of a natural gas pipeline and related facilities for the
 30 transportation of natural gas recovered from the North Slope of this state.

31 (b) The maximum principal amount of bonds that the corporation may issue

1 under this section is \$18,000,000,000.

2 (c) The corporation

3 (1) shall negotiate with an applicant as the corporation considers
4 appropriate and shall enter into agreements with the applicant to provide revenue
5 sufficient to accomplish the purposes described in AS 42.40.630; and

6 (2) may issue the bonds in a single issuance or in several issuances,
7 without limitation as to number of issuances or timing, and as the corporation
8 determines best furthers the purpose of financing the project and related facilities.

9 (d) The proceeds of the bonds described in this section shall be used only for
10 an Alaska North Slope natural gas project and related facilities that are owned by one
11 or more entities other than the corporation.

12 (e) In this section, "Alaska North Slope natural gas project" has the meaning
13 given in AS 38.35.259.

14 * **Sec. 10.** AS 43.56 is amended by adding a new section to read:

15 **Sec. 43.56.185. Commissioner may waive, reduce, or defer application of**
16 **certain tax laws with legislative approval.** (a) In conjunction with the development
17 and construction of an Alaska North Slope natural gas project, as defined by
18 AS 38.35.259, that requires the grant of a right-of-way lease under AS 38.35 for which
19 the project applicant has complied with AS 38.35.240 and obtained all certificates
20 described in that section, the commissioner may waive, reduce, or defer the payment
21 of all or any portion of the tax levied by the state or a municipality of the state under
22 this chapter. The commissioner may take an action described in this subsection only if

23 (1) the commissioner has consulted with any affected municipality, has
24 considered and prepared a report on the socioeconomic effects of the project on any
25 affected municipality, and has considered whether other jurisdictions in which the
26 project will be located have granted financial incentives;

27 (2) the project applicant shows, by clear and convincing evidence, that
28 construction and operation of the project would not otherwise be economically
29 feasible; and

30 (3) the commissioner and the project applicant have entered into an
31 agreement to begin construction of the project by a date certain.

1 (b) A waiver, reduction, or deferral of tax made by the commissioner under (a)
2 of this section is not effective until approved by the legislature. The legislature may
3 approve a waiver, reduction, or deferral of tax under this section only by enacting
4 legislation.

5 * **Sec. 11.** AS 46.40.094 is amended by adding a new subsection to read:

6 (d) Notwithstanding any other provision of this section, for a natural gas
7 pipeline project from the Alaska North Slope following a route that parallels the Trans
8 Alaska Pipeline System and the Alaska Highway to the Canadian border or a route
9 that runs south to Alaska tidewater for which the project applicant has complied with
10 AS 38.35.240 and obtained all certificates described in that section, any agency
11 responsible for the consistency determination with respect to proposed uses or
12 activities involved in the project may, in its discretion, conduct the review and make
13 the consistency determination in separate phases in a manner that promotes review of
14 proposed uses and activities based upon the project's design, construction sequence,
15 and schedule.

16 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 **LIMITATION OF CERTAIN ACTIONS.** A legal proceeding may not be initiated to
19 challenge the constitutionality of sec. 2 of this Act or the constitutionality of AS 38.35.235 -
20 38.35.259, added by sec. 5 of this Act, more than 60 days after the effective date of this Act.

21 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 **LEGISLATIVE AUTHORIZATION AND APPROVAL.** AS 42.40.695, added by
24 sec. 9 of this Act, and this section constitute the approval required by AS 42.40.285 for the
25 issuance of the bonds described in AS 42.40.695.

26 * **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).