

**CS FOR SENATE BILL NO. 360(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/18/02  
Referred: Finance

Sponsor(s): SENATE RESOURCES COMMITTEE

**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 natural gas royalties due the state, and authorizing the  
8 commissioner of revenue to act, with legislative approval, to waive, reduce, or defer the  
9 levy and collection of taxes by the state and municipalities under the oil and gas  
10 exploration, production, and pipeline transportation property tax related to the project,  
11 authorizing the Alaska Railroad Corporation to provide financing for the acquisition,  
12 construction, improvement, maintenance, equipping, operation, or expansion of the

1 **project and related facilities for the transportation of natural gas within and outside the**  
 2 **state by others and the corporation's issuance of its bonds to finance the project and**  
 3 **facilities, and limiting consideration of judicial challenges to decisions made with respect**  
 4 **to that 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 exploration, development, production, and transportation of  
 15 northern Alaska natural gas is a matter of statewide significance because of its vital  
 16 importance to the 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, production, and transportation of additional  
9 reserves of 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 new subsections 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 (1) may, notwithstanding any contrary provision in this chapter,  
 6 negotiate, with the consent of the lessee,

7 (A) to 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) to waive, reduce, or defer the payment of all or any portion  
 11 of the natural gas royalty due the state under this chapter; a waiver, reduction,  
 12 or deferral of the natural gas royalty due may be made by the commissioner  
 13 only if the project applicant, or a lessee that has contracted with the applicant  
 14 to ship natural gas through the project, shows, by clear and convincing  
 15 evidence, that construction and operation of the project would not otherwise be  
 16 economically feasible; and

17 (2) shall transmit to the commissioner of revenue any proposed terms  
 18 relating to the lease and natural gas royalty developed under this subsection that  
 19 should be included in a contract developed under AS 43.56.185.

20 (ff) The commissioner may request from an applicant or lessee any  
 21 information and records that the commissioner determines may be necessary to carry  
 22 out a duty under (ee) of this section. Information and records requested by the  
 23 commissioner, and working documents that analyze or incorporate the requested  
 24 information and records that are prepared by the commissioner

25 (1) shall, notwithstanding any other provision of law, be kept  
 26 confidential until the commissioner of revenue makes and publishes preliminary  
 27 findings and a preliminary determination under AS 43.56.185(c) if the information,  
 28 records, or working documents contain sensitive, proprietary, or privileged  
 29 information and the applicant or lessee requests that the information, records, or  
 30 working documents be kept confidential;

31 (2) are public records when the commissioner of revenue makes and

1 publishes preliminary findings and a preliminary determination under  
2 AS 43.56.185(c).

3 (gg) The commissioner may not negotiate or take other action under (ee) of  
4 this section unless the project applicant has met all requirements of AS 38.35.240 and  
5 obtained all certificates described in that section not later than June 30, 2005.

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

7 **Sec. 38.35.235. Purpose of AS 38.35.235 - 38.35.259.** It is the purpose of  
8 AS 38.35.235 - 38.35.259

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

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

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

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

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

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

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

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

31 (2) the applicant's plan maximizes the opportunities for training and

1 employment of state residents and for the use of Alaska firms in the state for the  
 2 construction and operation of the project consistent with the Constitutions of the  
 3 United States and Alaska and AS 38.35.235(4); the commissioner may not make a  
 4 finding under this paragraph unless the commissioner conducts at least one public  
 5 hearing on the plan.

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

10 (1) has completed a study examining in-state demand for northern  
 11 Alaska natural gas and, with the completed study, has submitted a plan demonstrating  
 12 that the applicant's plan will maximize the opportunities for access to state royalty gas  
 13 transported in the project to meet the reasonably projected in-state demand identified  
 14 in the study and is consistent with AS 38.35.235(3);

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

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

25 (d) Based upon the application submitted under this chapter, if the  
 26 commissioner is satisfied that the application meets all other requirements of law and  
 27 fulfills the requirements of this subsection and makes an appropriate finding, the  
 28 commissioner may certify that the applicant agrees to provisions of the lease  
 29 stipulating that the applicant will

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

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

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

7 (B) authorization from the Federal Energy Regulatory  
8 Commission or any other applicable governmental agency to expand the  
9 project if the Regulatory Commission of Alaska, upon application by the state  
10 or an entity seeking to ship Alaska natural gas through the pipeline portion of  
11 the project, determines that expansion is in the best interests of the state and is  
12 in accordance with this section and finds that

13 (i) the rates for expansion service are designed to ensure  
14 the recovery, on an incremental or rolled-in basis, of the cost associated  
15 with the expansion, including a reasonable rate of return on the  
16 investment;

17 (ii) the rates do not require the existing shippers on the  
18 pipeline portion of the project to subsidize expansion shippers;

19 (iii) the proposed shipper will comply with, and the  
20 proposed expansion and the expansion of service will be undertaken  
21 and implemented based on, terms that are consistent with the then-  
22 effective tariff of the pipeline portion of the project;

23 (iv) the proposed facilities will not adversely affect the  
24 financial or economic viability of the pipeline portion of the project;

25 (v) the proposed facilities will not adversely affect the  
26 overall operations of the pipeline portion of the project;

27 (vi) the proposed facilities will not diminish the  
28 contract rights of existing shippers to previously subscribed certificated  
29 capacity;

30 (vii) all necessary environmental reviews have been  
31 completed; and

1 (viii) the expansion is required by the present and future  
2 public convenience.

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

7 **Sec. 38.35.245. Treatment of Alaska North Slope natural gas project lease**  
8 **application by commissioner.** (a) In the commissioner's consideration of an  
9 application under this chapter for a lease for the Alaska North Slope natural gas  
10 project, when the applicant has complied with requirements of AS 38.35.240 and  
11 obtained all certificates described in that section, the commissioner may limit the  
12 scope of review, analysis, and finding for the applicant's proposed lease application  
13 under this chapter to a particular phase of the project if, in the judgment of the  
14 commissioner, the project is capable of proceeding in discrete phases and

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

17 (2) before the next phase of the project may proceed, the commissioner  
18 gives public notice and opportunity for comment about that phase, unless the use or  
19 activity to be approved is subject to a consistency determination under AS 46.40 and  
20 public notice and the opportunity to comment are provided under AS 46.40.096(c);

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

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

25 (b) For the purpose of determining under (a) of this section that, in an  
26 application pending on the effective date of this Act for a lease under this chapter for  
27 an Alaska North Slope natural gas project, an applicant has complied with the  
28 requirements of AS 38.35.240 by obtaining all certificates described in  
29 AS 38.35.240(b) - (d), the commissioner

30 (1) shall consider the application to be in compliance with the  
31 requirements of that section if the applicant has filed for all certificates described in

1 AS 38.35.240(b) - (d) and has included, with or as part of the filing for the certificates,  
2 the applicable plans, studies, and stipulations described in that section; and

3 (2) may not decide that an application determined to be in compliance  
4 under (1) of this subsection is no longer in compliance with the requirements of  
5 AS 38.35.240 unless a certificate described in AS 38.35.240(b) - (d) is denied by the  
6 applicable authority.

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 new subsections 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 (c) The corporation may retain any consideration in excess of the  
 23 consideration necessary to meet the payments and to maintain the reserves that are  
 24 required by (b) of this section.

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

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

1 finance the construction of a natural gas pipeline and related facilities for the  
2 transportation of natural gas recovered from the North Slope of this state.

3 (b) The maximum principal amount of bonds that the corporation may issue  
4 under this section is \$18,000,000,000.

5 (c) The corporation

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

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

12 (d) Except as provided in AS 42.40.630(c), the proceeds of the bonds  
13 described in this section shall be used only for an Alaska North Slope natural gas  
14 project and related facilities that are owned by one or more entities other than the  
15 corporation.

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

18 \* **Sec. 10.** AS 43.56 is amended by adding a new section to read

19 **Sec. 43.56.185. Action by the commissioner to develop a contract covering**  
20 **certain tax laws; submission to governor for action; legislative action.** (a) In  
21 conjunction with the development and construction of an Alaska North Slope natural  
22 gas project, as defined by AS 38.35.259, that requires the grant of a right-of-way lease  
23 under AS 38.35 for which the project applicant or a lessee that has contracted to ship  
24 natural gas through the project has complied with AS 38.35.240 and obtained all  
25 certificates described in that section, the commissioner may negotiate terms for  
26 inclusion in a contract to

27 (1) waive, reduce, or defer the payment of all or any portion of the tax  
28 levied by the state or a municipality of the state under this chapter;

29 (2) make certain adjustments regarding the oil and gas lease under  
30 AS 38.05.180(ee); and

31 (3) make or amend other terms and conditions that are necessary to

1 carry out the purposes of AS 38.35.235 or that are in the best interests of the state.

2 (b) The commissioner may develop a proposed contract described in (a) of this  
3 section only if

4 (1) the commissioner has consulted with any affected municipality, has  
5 considered and prepared a report on the socioeconomic effects of the project on any  
6 affected municipality, and has considered how any affected communities will provide  
7 services required by the project;

8 (2) the commissioner has considered whether other jurisdictions in  
9 which the project will be located have granted financial incentives;

10 (3) the project applicant shows, by clear and convincing evidence, that  
11 construction and operation of the project would not otherwise be economically  
12 feasible;

13 (4) the commissioner and the project applicant have entered into an  
14 agreement to begin construction of the project by a date certain; and

15 (5) the commissioner has incorporated into the contract

16 (A) any proposed terms relating to the oil and gas lease and  
17 natural gas royalty developed under AS 38.05.180(ee); and

18 (B) for a contract that waives, reduces, or defers natural gas  
19 royalty or tax payments, a mechanism to recapture all or any portion of the  
20 natural gas royalty or tax payments that are waived, reduced, or deferred by the  
21 operation of a contract provision if the price of natural gas increases above the  
22 projected price of natural gas upon which the findings and determination made  
23 under (c) of this section are based;

24 (c) If the commissioner develops a proposed contract under (a) and (b) of this  
25 section, the commissioner shall

26 (1) make preliminary findings and a preliminary determination that the  
27 proposed contract is in the long-term fiscal interests of the state, furthers the purposes  
28 of AS 38.35.235, and is in the best interest of the state, including a description of the  
29 principal factors, such as the projected price of gas, projected production rate or  
30 volume of gas, projected recovery, and projected development, construction, and  
31 operating costs, upon which the findings are based;

1                   (2) give reasonable public notice of the preliminary findings and  
2 determination, conduct a public hearing, and give a reasonable opportunity of at least  
3 30 days, for receipt of public comment on the preliminary findings and determination;

4                   (3) make copies of the proposed contract, the commissioner's  
5 preliminary findings and determination, and the supporting financial, technical, and  
6 market data available to the public and to

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

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

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

12                   (4) if the legislature is not in session, offer to appear before the  
13 Legislative Budget and Audit Committee to provide the committee a review of the  
14 commissioner's preliminary findings and determination, the proposed contract, and the  
15 supporting financial, technical, and market data; if the Legislative Budget and Audit  
16 Committee accepts the commissioner's offer, the committee shall give notice of the  
17 committee's meeting to the public and all members of the legislature;

18                   (5) within 30 days after the close of the public comment period under  
19 (2) of this subsection,

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

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

27                                (C) make final findings and a determination as to whether the  
28 proposed contract and any proposed amendments prepared under (B) of this  
29 paragraph meet the requirements and purposes of AS 38.35.235; and

30                                (D) after considering the material described in (A) - (C) of this  
31 paragraph and securing the agreement of the other parties to the proposed

1 contract regarding any proposed amendments prepared under (B) of this  
2 paragraph, issue final findings and a final determination; and

3 (6) transmit the proposed contract to the governor, who may transmit  
4 the contract to the legislature together with a request for authorization to execute the  
5 contract.

6 (d) A contract developed under this section is not binding upon or enforceable  
7 against the state or other parties to the contract unless the governor is authorized to  
8 execute the contract by law. The state and the other parties to the contract may  
9 execute the contract within 60 days after the effective date of the law authorizing the  
10 contract.

11 (e) A person may not bring an action challenging the constitutionality of a law  
12 authorizing a contract enacted under this section or the enforceability of a contract  
13 executed under a law authorizing a contract enacted under this section unless the  
14 action is commenced within 120 days after the date that the contract was executed by  
15 the state and the other parties to the contract.

16 (f) The commissioner may request from a project applicant or from a lessee  
17 affected by AS 38.05.180(ee) and (ff) and this section any information and records  
18 that the commissioner determines may be necessary to carry out a duty under this  
19 section. Information and records requested by the commissioner, and working  
20 documents that analyze or incorporate the requested information and records that are  
21 prepared by the commissioner

22 (1) shall, notwithstanding any other provision of law, be kept  
23 confidential until the commissioner makes and publishes preliminary findings and a  
24 preliminary determination under (c) of this section if the information, records, or  
25 working documents contain sensitive, proprietary, or privileged information and the  
26 applicant or lessee requests that the information, records, or working documents be  
27 kept confidential;

28 (2) are public records when the commissioner makes and publishes  
29 preliminary findings and a preliminary determination under (c) of this section.

30 (g) The commissioner may not negotiate or take other action to develop a  
31 contract under this section unless the project applicant, or lessee if applicable, has met

1 all requirements of AS 38.35.240 and obtained all certificates described in that section  
2 not later than June 30, 2005.

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

4 (d) Notwithstanding any other provision of this section, for a natural gas  
5 pipeline project from the Alaska North Slope following a route that parallels the Trans  
6 Alaska Pipeline System and the Alaska Highway to the Canadian border or a route  
7 that runs south to Alaska tidewater for which the project applicant has complied with  
8 AS 38.35.240 and obtained all certificates described in that section, any agency  
9 responsible for the consistency determination with respect to proposed uses or  
10 activities involved in the project may, in its discretion, conduct the review and make  
11 the consistency determination in separate phases in a manner that promotes review of  
12 proposed uses and activities based upon the project's design, construction sequence,  
13 and schedule. For the purpose of determining under (a) of this section that, in an  
14 application pending on the effective date of this Act for a lease under this chapter for  
15 an Alaska North Slope natural gas project, an applicant has complied with the  
16 requirements of AS 38.35.240 by obtaining all certificates described in  
17 AS 38.35.240(b) - (d), the commissioner

18 (1) shall consider the application to be in compliance with the  
19 requirements of that section if the applicant has filed for all certificates described in  
20 AS 38.35.240(b) - (d) and has included, with or as part of the filing for the certificates,  
21 the applicable plans, studies, and stipulations described in that section; and

22 (2) may not decide that an application determined to be in compliance  
23 under (1) of this subsection is no longer in compliance with the requirements of  
24 AS 38.35.240 unless a certificate described in AS 38.35.240(b) - (d) is denied by the  
25 applicable authority.

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

28 **LIMITATION OF CERTAIN ACTIONS.** A legal proceeding may not be initiated to  
29 challenge the constitutionality of sec. 2 of this Act or the constitutionality of AS 38.35.235 -  
30 38.35.259, added by sec. 5 of this Act, more than 60 days after the effective date of this Act.

31 \* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 LEGISLATIVE AUTHORIZATION AND APPROVAL. AS 42.40.695, added by  
3 sec. 9 of this Act, and this section constitute the approval required by AS 42.40.285 for the  
4 issuance of the bonds described in AS 42.40.695.

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