

HOUSE BILL NO. 2004

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 5/31/06

Referred: Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Stranded Gas Development Act, including clarifications
2 or provision of additional authority for the development of stranded gas fiscal contract
3 terms; making a conforming amendment to the Revised Uniform Arbitration Act;
4 relating to municipal impact money received under the terms of a stranded gas fiscal
5 contract; and providing for an effective date."

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

7 * **Section 1.** AS 43.82.010 is amended to read:

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

9 (1) encourage new investment to develop the state's stranded gas resources by
10 authorizing establishment of fiscal terms related to oil and gas agreements and taxes
11 for a qualified sponsor, the members of a qualified sponsor group, or a related
12 party and related to their oil and gas business activity in the state [THAT NEW
13 INVESTMENT WITHOUT SIGNIFICANTLY ALTERING TAX AND ROYALTY

1 METHODOLOGIES AND RATES ON EXISTING OIL AND GAS
2 INFRASTRUCTURE AND PRODUCTION];

3 (2) allow the fiscal terms applicable to a qualified sponsor, [OR] the
4 members of a qualified sponsor group, **or a related party**, with respect to a qualified
5 project, to be tailored to the particular economic conditions of the project and to
6 establish those fiscal terms in advance with as much certainty as the Constitution of
7 the State of Alaska allows; and

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

10 * **Sec. 2.** AS 43.82.020 is amended to read:

11 **Sec. 43.82.020. Negotiation of contract terms** [CONTRACTS FOR
12 **PAYMENTS IN LIEU OF OTHER TAXES AND FOR ROYALTY**
13 **ADJUSTMENTS].** The commissioner may, under this chapter, negotiate terms for
14 inclusion in a proposed contract with a qualified sponsor or qualified sponsor group
15 providing for

16 (1) periodic payment in lieu of one or more taxes that otherwise would
17 be imposed by the state or a municipality on the qualified sponsor, [OR] members of
18 the qualified sponsor group, **or a related party**; [AS A CONSEQUENCE OF THE
19 SPONSOR'S OR GROUP'S PARTICIPATION IN AN APPROVED QUALIFIED
20 PROJECT UNDER THIS CHAPTER; AND]

21 (2) certain adjustments regarding **oil and gas lease agreements, unit**
22 **agreements, and other agreements** [ROYALTY] under AS 43.82.220; **in this**
23 **paragraph, "oil and gas lease agreements" includes royalty provisions of those**
24 **agreements**;

25 (3) **payment of gas production tax under AS 43.55, or payment in**
26 **lieu of gas production tax, by delivery of gas; and**

27 (4) **acquisition by the state of an ownership interest in the project**
28 **that is the subject of the proposed contract, and terms relating to collateral**
29 **agreements authorized under AS 43.82.437.**

30 * **Sec. 3.** AS 43.82.200 is amended to read:

31 **Sec. 43.82.200. Contract development.** If the commissioner approves an

1 application and proposed project plan under AS 43.82.140, the commissioner may
2 develop a contract that may include

3 (1) terms concerning **modifications of taxes on oil and gas, including**
4 **terms providing for** periodic payment in lieu of one or more taxes as provided in
5 AS 43.82.210, **and terms related to credits for investment in a project that is the**
6 **subject of a contract developed under this chapter;**

7 (2) terms developed under AS 43.82.220 **concerning oil and gas**
8 **leases, unit agreements, and other agreements under AS 38, including terms**
9 relating to

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

12 (B) royalty value;

13 (3) terms regarding the hiring of Alaska residents and contracting with
14 Alaska businesses under AS 43.82.230;

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

17 (5) terms regarding arbitration or alternative dispute resolution
18 procedures;

19 (6) terms and conditions for [ADMINISTRATIVE] termination of a
20 contract [UNDER AS 43.82.445]; and

21 (7) other terms or conditions that **the commissioner determines** are

22 (A) **reasonable and promote** [NECESSARY TO FURTHER]
23 the purposes of this chapter, **including the implementation of AS 43.82.020 -**
24 **43.82.270;** or

25 (B) in the **long-term fiscal** [BEST] interests of the state.

26 * **Sec. 4.** AS 43.82.200 is amended by adding a new subsection to read:

27 (b) Terms relating to arbitration and alternate dispute resolution may provide
28 for a waiver, with the concurrence of the attorney general, of the state's immunity from
29 suit. The waiver may include waiver of the state's sovereign or other immunity and
30 consent to entrance and enforcement of an arbitration award in any state court in the
31 United States that has jurisdiction over the state. The authority granted in this

1 subsection is effective only after the arbitration award is entered and enforcement is
2 sought in the superior court of the state.

3 * **Sec. 5.** AS 43.82.210(a) is amended to read:

4 (a) If the commissioner approves an application and proposed project plan
5 under AS 43.82.140, the commissioner may develop proposed terms for inclusion in a
6 contract under AS 43.82.020 for periodic payment in lieu of one or more of the
7 following taxes that otherwise would be imposed by the state or a municipality on the
8 qualified sponsor, [OR] member of a qualified sponsor group, **or a related party** [AS
9 A CONSEQUENCE OF PARTICIPATING IN AN APPROVED QUALIFIED
10 PROJECT]:

11 (1) oil and gas production taxes and oil surcharges under AS 43.55;

12 (2) oil and gas exploration, production, and pipeline transportation
13 property taxes under AS 43.56;

14 (3) [REPEALED

15 (4)] Alaska net income tax under AS 43.20;

16 **(4)** [(5)] municipal sales and use tax under AS 29.45.650 - 29.45.710;

17 **(5)** [(6)] municipal property tax under AS 29.45.010 - 29.45.250 or
18 29.45.550 - 29.45.600;

19 **(6)** [(7)] municipal special assessments under AS 29.46;

20 **(7)** [(8)] a comparable tax or levy imposed by the state or a
21 municipality after June 18, 1998;

22 **(8)** [(9)] other state or municipal taxes or categories of taxes identified
23 by the commissioner.

24 * **Sec. 6.** AS 43.82.220(a) is amended to read:

25 (a) Notwithstanding any contrary provisions of AS 38, **or regulations**
26 **adopted under that title,** the commissioner of natural resources, with the concurrence
27 of the commissioner of revenue and, **if necessary,** the affected parties holding a state
28 lease or unit agreement, may develop proposed terms for inclusion in a contract under
29 AS 43.82.020 that modify [THE TIMING AND NOTICE] provisions of the applicable
30 oil and gas leases, [AND] unit agreements, **and other agreements under AS 38,**
31 **including provisions**

1 **(1)** pertaining to the state's rights to receive its royalty on gas in kind
2 or in value if

3 **(A)** [(1)] the viability of the approved qualified project depends
4 on long-term gas **shipping commitments** [PURCHASE AND SALE
5 AGREEMENTS];

6 **(B)** [(2)] certainty over time regarding the quantity of royalty
7 gas that the state may be taking in kind is needed to **enter into long-term gas**
8 **shipping commitments or marketing agreements** [SECURE THE LONG-
9 TERM PURCHASE AND SALE AGREEMENTS];

10 [(3) THE SPECIFIED PERIOD OF THE STATE'S COMMITMENT
11 TO TAKE ITS ROYALTY SHARE IN VALUE OR IN KIND DOES NOT EXCEED
12 THE TERM OF THE PURCHASE AND SALE AGREEMENTS;] and

13 **(C)** [(4)] the modification does not impair the ability of
14 the approved qualified project or the state to meet the reasonably
15 foreseeable demand in this state for gas within economic proximity of
16 the project during the term of the contract developed under
17 AS 43.82.020; **and**

18 **(2) relating to lease or unit expenses for separation, cleaning,**
19 **dehydration, gathering, salt water disposal, and preparation for transportation**
20 **on or off the lease.**

21 * **Sec. 7.** AS 43.82.220(c) is amended to read:

22 (c) The commissioner of revenue shall include any proposed terms
23 [RELATING TO ROYALTY] developed in accordance with this section in the
24 proposed contract under AS 43.82.400.

25 * **Sec. 8.** AS 43.82.220 is amended by adding a new subsection to read:

26 (e) An agreement by the state to take royalty gas in kind as part of a contract
27 developed under this chapter that satisfies (a)(1)(A) - (C) of this section is not subject
28 to the provisions of AS 38, or regulations adopted under that title, relating to decisions
29 to take royalty in kind.

30 * **Sec. 9.** AS 43.82.250 is amended to read:

31 **Sec. 43.82.250. Term of contract; effective date.** The term of a contract

1 developed under AS 43.82.020 [MAY BE FOR NO LONGER THAN IS
 2 NECESSARY TO DEVELOP THE STRANDED GAS THAT IS SUBJECT TO THE
 3 CONTRACT; HOWEVER, THE TERM OF THE CONTRACT] may not exceed 35
 4 years from the commencement of commercial operations of the approved qualified
 5 project, excluding suspensions of contract obligations that are covered by the
 6 force majeure terms of any contract developed under this chapter. However, the
 7 term of contract may not exceed 45 years from the effective date of a contract
 8 approved under AS 43.82.435.

9 * **Sec. 10.** AS 43.82.270 is amended to read:

10 **Sec. 43.82.270. Project plans and work commitments.** A contract under
 11 AS 43.82.020 must include provisions for implementation of the qualified project
 12 plan approved under AS 43.82.140, as may be modified as a result of the
 13 development of a contract under this chapter, and provisions for updating the plan
 14 at reasonable intervals until the commencement of commercial operations of the
 15 approved qualified project. The commissioner of revenue, in consultation with the
 16 commissioner of natural resources, may, as a term in a contract under AS 43.82.020,
 17 include work commitments or other obligations in the contract to be accomplished
 18 before the commencement of commercial operations of the approved qualified project.

19 * **Sec. 11.** AS 43.82 is amended by adding a new section to read:

20 **Sec. 43.82.437. Collateral agreements.** (a) The commissioner of revenue,
 21 with the concurrence of the commissioner of natural resources, may negotiate
 22 collateral agreements that are required to implement the state's acquisition of an
 23 ownership interest in the project that is the subject of a proposed contract developed
 24 under this chapter. The authority of the commissioner of revenue to negotiate
 25 collateral agreements on behalf of the state lapses 180 days after the effective date of
 26 the law authorizing the contract under AS 43.82.435.

27 (b) A collateral agreement negotiated by the commissioner on behalf of a
 28 public corporation that is established by law to enter into agreements to acquire an
 29 ownership interest in the project to be developed under the authorized contract may be
 30 executed and implemented by the board of directors of the public corporation.
 31 Notwithstanding any other provision of law, the commissioner members of the board

1 constitute a quorum for doing the business of the corporation for the first 120 days
 2 following the effective date of a law establishing the public corporation. During this
 3 transition period, actions by the board must be approved (A) by unanimous
 4 commissioner member approval, or (B) if some or all of the public members of the
 5 board have been appointed at the time of the action, by a majority of all the board
 6 members existing as of the date the action is taken.

7 (c) A collateral agreement executed by the members of the board of a public
 8 corporation under (b) of this section is binding only on the public corporation and does
 9 not make the state a party to the collateral agreement.

10 (d) Except as provided in this section and in AS 43.82.310, a collateral
 11 agreement necessary to implement a contract that has been authorized by the
 12 legislature under the terms of AS 43.82.435 is not subject to any of the provisions of
 13 this chapter.

14 (e) In this section, "collateral agreement" includes agreements between either
 15 the state or entities established by the state, and a qualified sponsor or qualified
 16 sponsor group, or affiliates of those entities, to form limited liability companies,
 17 limited liability partnerships, or any other recognized form of business association,
 18 whether incorporated or unincorporated, that would own or operate any portion of the
 19 project that is the subject of a proposed contract developed under this chapter.

20 * **Sec. 12.** AS 43.82.500 is amended to read:

21 **Sec. 43.82.500. Obligation to share payments with municipalities.** If the
 22 commissioner develops a contract under AS 43.82.020 that includes terms that exempt
 23 a **qualified sponsor, the members of a qualified sponsor group, or a related** party
 24 to the contract, and the property, gas, products, and activities associated with the
 25 approved qualified project that is subject to the contract, from a municipal tax or
 26 assessment in accordance with AS 29.45.810 or AS 29.46.010(b), or AS 43.82.200
 27 and 43.82.210, the commissioner shall include a term in the contract that **provides for**
 28 **[THE PARTY PAY] a portion of the periodic payments to be made payable [DUE**
 29 **UNDER THE CONTRACT] to the revenue-affected municipality.**

30 * **Sec. 13.** AS 43.82.505 is amended to read:

31 **Sec. 43.82.505. Payments to economically affected municipalities.** If the

1 commissioner executes a contract under AS 43.82.020 that will produce one or more
 2 economically affected municipalities, the commissioner shall include a term in the
 3 contract that provides for [A PORTION OF THE] periodic **impact** payments to **the**
 4 **state that may be appropriated to the Alaska Natural Gas Pipeline Construction**
 5 **Impact Fund established in (c) of this section to benefit** the economically affected
 6 municipalities under the principles in AS 43.82.520.

7 * **Sec. 14.** AS 43.82.505 is amended by adding new subsections to read:

8 (b) A special account is established in the general fund into which the
 9 Department of Revenue shall deposit impact payments received by the state under (a)
 10 of this section.

11 (c) The Alaska Natural Gas Pipeline Construction Impact Fund is established
 12 in the Department of Commerce, Community, and Economic Development. The
 13 legislature may appropriate money deposited in the special account established in (b)
 14 of this section, as well as any additional money considered necessary, to the Alaska
 15 Natural Gas Pipeline Construction Impact Fund to address the economic and social
 16 impacts incurred by an economically affected municipality, or incurred by a nonprofit
 17 organization serving the unorganized borough, during the construction of a project that
 18 is the subject of a proposed contract developed under this chapter.

19 (d) The Department of Commerce, Community, and Economic Development
 20 shall adopt regulations under which economically affected municipalities and
 21 nonprofit organizations may apply for and be eligible to receive grants to alleviate
 22 impact caused by construction of a gas pipeline. The department shall give priority in
 23 the allocation of grants to municipalities and organizations that are experiencing or
 24 will experience the most direct or severe impact from gas pipeline construction. The
 25 department shall finance under (e) of this section all meritorious grant applications
 26 each year, to the extent money is available in the Alaska Natural Gas Pipeline
 27 Construction Impact Fund. Within 10 days after the convening of each regular session
 28 of the legislature, the department shall submit to the legislature a list of all
 29 municipalities and organizations that have received grants, a list of all municipalities
 30 and organizations determined by the department to be eligible for further grants, a
 31 recommendation of the amount of money to be granted for those additional

1 applications, and written justification of each past and potential grant.

2 (e) The commissioner of commerce, community, and economic development,
 3 in consultation with the relevant municipal advisory group established under
 4 AS 43.82.510, shall use money appropriated to the Alaska Natural Gas Pipeline
 5 Construction Impact Fund to make grants to municipalities, and to nonprofit
 6 organizations serving the unorganized borough, for impacts on transportation,
 7 infrastructure, law enforcement, emergency services, health and human services,
 8 education, labor force, population, wages, and subsistence, and for socio-cultural
 9 impacts, brought about by the construction of the gas pipeline. In determining whether
 10 an expenditure or proposed expenditure by a municipality or nonprofit organization is
 11 eligible for a grant under this subsection, and in allocating available money among
 12 grant proposals, the commissioner shall consider the recommendations of the relevant
 13 municipal advisory group established under AS 43.82.510 and whether the proposed
 14 expenditure meets the purposes of this section.

15 (f) Grant money received under this section may not be used for the retirement
 16 of municipal debt.

17 (g) Amounts appropriated to the Alaska Natural Gas Pipeline Construction
 18 Impact Fund under (c) of this section for a fiscal year that are not used for grants to
 19 municipalities and organizations under (d) and (e) of this section shall be retained in
 20 the Alaska Natural Gas Pipeline Construction Impact fund and remain available for
 21 distribution as grants under this section in succeeding fiscal years.

22 (h) Nothing in this chapter exempts money deposited into the special account
 23 in the general fund established in (b) of this section from the requirements of AS 37.07
 24 (Executive Budget Act) or dedicates that money, or money appropriated to the Alaska
 25 Natural Gas Pipeline Construction Impact Fund, for a specific purpose.

26 * **Sec. 15.** AS 43.82.510(c) is amended to read:

27 (c) Each municipal advisory group serves until **the later of 90 days after**
 28 **final distribution of impact payment money under AS 43.82.505, or**
 29 **commencement of operations of the qualified project. Expenses of a municipal**
 30 **advisory group are eligible for reimbursement under a grant made under**
 31 **AS 43.82.505** [A FINAL ACTION IS TAKEN ON THE APPLICATION FOR

1 WHICH THE GROUP WAS APPOINTED].

2 * **Sec. 16.** AS 43.82.900 is amended by adding a new paragraph to read:

3 (14) "related party" means an entity, including a limited liability
4 company or similar incorporated or unincorporated entity, that

5 (A) is affiliated with a qualified sponsor or qualified sponsor
6 group;

7 (B) owns or operates a qualified project or any segment of a
8 qualified project; and

9 (C) is an intended beneficiary of the fiscal terms included in a
10 contract developed under this chapter.

11 * **Sec. 17.** AS 09.43.300(a) is amended to read:

12 (a) AS 09.43.300 - 09.43.595 govern an agreement to arbitrate made on or
13 after January 1, 2005, **except as otherwise provided in a contract term developed**
14 **under AS 43.82.200(a)(5) and (b).**

15 * **Sec. 18.** AS 43.82.445 is repealed.

16 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the
19 section heading of AS 43.82.220 from "Contract terms relating to royalty" to "Contract terms
20 relating to oil and gas lease, royalty provisions, and other agreements."

21 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 RETROACTIVITY. (a) Sections 1 - 12, 15, 16, and 18 of this Act are retroactive to
24 January 1, 2004.

25 (b) Section 17 of this Act is retroactive to January 1, 2005.

26 * **Sec. 21.** This Act takes effect immediately under AS 01.10.070(c).