

CS FOR SENATE BILL NO. 2004(NGD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE SPECIAL COMMITTEE ON NATURAL GAS DEVELOPMENT

Offered: 6/5/06

Referred: Today's Calendar

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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; relating to determination of full and true value of property and required**
6 **contributions for education in municipalities affected by stranded gas fiscal contracts;**
7 **and providing for an effective date."**

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

9 * **Section 1.** AS 09.43.300(a) is amended to read:

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

13 * **Sec. 2.** AS 43.82.010 is amended to read:

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

2 (1) encourage new investment to develop the state's stranded gas
3 resources by authorizing establishment of fiscal terms related to **oil and gas**
4 **agreements and taxes for a qualified sponsor, the members of a qualified sponsor**
5 **group, or a related party and related to their oil and gas business activity in the**
6 **state, including gas pipeline expansion pricing that encourages further gas**
7 **exploration** [THAT NEW INVESTMENT WITHOUT SIGNIFICANTLY
8 ALTERING TAX AND ROYALTY METHODOLOGIES AND RATES ON
9 EXISTING OIL AND GAS INFRASTRUCTURE AND PRODUCTION];

10 (2) allow the fiscal terms applicable to a qualified sponsor or the
11 members of a qualified sponsor group, **or a related party**, with respect to a qualified
12 project, to be tailored to the particular economic conditions of the project and to
13 establish those fiscal terms in advance with as much certainty as the Constitution of
14 the State of Alaska allows; and

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

17 * **Sec. 3.** AS 43.82.020 is amended to read:

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

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

28 (2) certain adjustments regarding **oil and gas lease agreements, unit**
29 **agreements, and other agreements** [ROYALTY] under AS 43.82.220; **in this**
30 **paragraph, "oil and gas lease agreements" includes royalty provisions of those**
31 **agreements; and**

1 **(3) payment of the gas production tax under AS 43.55, or payment**
 2 **in lieu of the gas production tax, by delivery of gas.**

3 * **Sec. 4.** AS 43.82.200 is amended to read:

4 **Sec. 43.82.200. Contract development.** If the commissioner approves an
 5 application and proposed project plan under AS 43.82.140, the commissioner may
 6 develop a contract that may include

7 (1) terms concerning periodic payment in lieu of one or more taxes **on**
 8 **oil or gas or both** as provided in AS 43.82.210, **and terms related to credits for**
 9 **investment in a project that is the subject of a contract developed under this**
 10 **chapter;**

11 (2) terms developed under AS 43.82.220 **concerning oil and gas**
 12 **leases, unit agreements, and other agreements under AS 38, including terms**
 13 relating to

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

16 (B) royalty value;

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

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

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

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

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

26 (A) **reasonable and promote** [NECESSARY TO FURTHER]
 27 the purposes of this chapter, **including the implementation of AS 43.82.020 -**
 28 **43.82.270;** or

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

30 * **Sec. 5.** AS 43.82.200 is amended by adding a new subsection to read:

31 (b) Terms relating to arbitration and alternate dispute resolution may provide

1 for a waiver, with the concurrence of the attorney general, of the state's immunity from
 2 suit. The waiver may include waiver of the state's sovereign or other immunity and
 3 consent to entrance and enforcement of an arbitration award in any state court in the
 4 United States that has jurisdiction over the State of Alaska. The authority granted in
 5 this subsection is effective only after the arbitration award is entered and enforcement
 6 is sought in the superior court of the state.

7 * **Sec. 6.** AS 43.82.210(a) is amended to read:

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

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

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

18 (3) [REPEALED

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

20 (4) [(5)] municipal sales and use tax under AS 29.45.650 - 29.45.710;

21 (5) [(6)] municipal property tax under AS 29.45.010 - 29.45.250 or
 22 29.45.550 - 29.45.600;

23 (6) [(7)] municipal special assessments under AS 29.46;

24 (7) [(8)] a comparable tax or levy imposed by the state or a
 25 municipality after June 18, 1998;

26 (8) [(9)] other state or municipal taxes or categories of taxes identified
 27 by the commissioner.

28 * **Sec. 7.** AS 43.82.220(a) is amended to read:

29 (a) Notwithstanding any contrary provisions of AS 38 or regulations adopted
 30 under that title, the commissioner of natural resources, with the concurrence of the
 31 commissioner of revenue and, if necessary, the affected parties holding a state lease or

1 unit agreement, may develop proposed terms for inclusion in a contract under
 2 AS 43.82.020 that modify [THE TIMING AND NOTICE] provisions of the applicable
 3 oil and gas leases, [AND] unit agreements, **and other agreements under AS 38,**
 4 **including provisions**

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

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

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

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

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

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

24 * **Sec. 8.** AS 43.82.220(c) is amended to read:

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

28 * **Sec. 9.** AS 43.82.220 is amended by adding a new subsection to read:

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

1 to take royalty in kind.

2 * **Sec. 10.** AS 43.82.250 is amended to read:

3 **Sec. 43.82.250. Term of contract; effective date.** The term of a contract
 4 developed under AS 43.82.020 [MAY BE FOR NO LONGER THAN IS
 5 NECESSARY TO DEVELOP THE STRANDED GAS THAT IS SUBJECT TO THE
 6 CONTRACT; HOWEVER, THE TERM OF THE CONTRACT] may not exceed 35
 7 years from the commencement of commercial operations of the approved qualified
 8 project, excluding suspensions of contract obligations that are covered by the
 9 force majeure terms of any contract developed under this chapter. However, the
 10 term of contract may not exceed 45 years from the effective date of a contract
 11 approved under AS 43.82.435.

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

13 **Sec. 43.82.255. Terms of contract provisions related to oil.** (a) The
 14 provisions of this section apply to a contract developed under AS 43.82.020 that
 15 provides for periodic payment in lieu of taxes on oil under AS 43.55.

16 (b) For the period of the contract term beginning immediately after the date of
 17 full project funding or the date of issuance of a certificate of public convenience and
 18 necessity for construction and initial operation of the Alaska Natural Gas Pipeline,
 19 whichever date is later, and ending 14 years after that date, the commissioner may
 20 modify those terms of the contract relating to payments in lieu of the taxes on oil set
 21 out in AS 43.55. For the period of the contract term covered by this subsection, the
 22 payments in lieu of taxes may be established with as much certainty as the
 23 Constitution of the State of Alaska allows.

24 (c) For the period of the contract term beginning immediately after the period
 25 described in (b) of this section, and ending on a date not later than 25 years after the
 26 effective date of the contract, the amount of the payment in lieu of tax on oil under
 27 AS 43.55 must be equal to the amount of the tax levied by law. However, the
 28 commissioner may develop a contract term that, in the event of a material change in
 29 the taxes enacted after the effective date of the contract, establishes a procedure for
 30 restoring the parties to substantially the same economic position they had as of the end
 31 of the period described in (b) of this section immediately before the change.

1 (d) Implementation of a contract provision authorized in (c) of this section
 2 may be made subject to the dispute resolution procedures of the contract.

3 * **Sec. 12.** AS 43.82.270 is amended to read:

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

13 * **Sec. 13.** AS 43.82.410 is amended to read:

14 **Sec. 43.82.410. Notice and comment regarding the contract.** The
 15 commissioner shall

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

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

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

24 (B) the chairs of the finance and resources committees of the
 25 legislature; and

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

28 (3) offer to appear before the Legislative Budget and Audit Committee
 29 to provide the committee a review of the commissioner's preliminary findings and
 30 determination, the proposed contract, and the supporting financial, technical, and
 31 market data; if the Legislative Budget and Audit Committee accepts the

1 commissioner's offer, the committee shall give notice of the committee's meeting to
 2 the public and all members of the legislature; if the financial, technical, and market
 3 data that is to be provided must be kept confidential under AS 43.82.310, the
 4 commissioner may not release the confidential information during a public portion of
 5 a committee meeting; and

6 (4) establish a period of at least **60** [30] days for the public and
 7 members of the legislature to comment on the proposed contract and the preliminary
 8 findings and determination made under AS 43.82.400.

9 * **Sec. 14.** AS 43.82.500 is amended to read:

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

19 * **Sec. 15.** AS 43.82.505 is amended to read:

20 **Sec. 43.82.505. Payments to economically affected municipalities.** If the
 21 commissioner executes a contract under AS 43.82.020 that will produce one or more
 22 economically affected municipalities, the commissioner shall include a term in the
 23 contract that provides for [A PORTION OF THE] periodic **impact** payments to **the**
 24 **state that may be appropriated to the Alaska natural gas pipeline construction**
 25 **impact fund established in (c) of this section to benefit** the economically affected
 26 municipalities under the principles in AS 43.82.520.

27 * **Sec. 16.** AS 43.82.505 is amended by adding new subsections to read:

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

31 (c) The Alaska natural gas pipeline construction impact fund is established in

1 the Department of Commerce, Community, and Economic Development. The
2 legislature may appropriate money deposited in the special account established in (b)
3 of this section, as well as any additional money considered necessary, to the Alaska
4 natural gas pipeline construction impact fund to address the economic and social
5 impacts incurred by an economically affected municipality, or incurred by a nonprofit
6 organization serving the unorganized borough, during the construction of a project that
7 is the subject of a proposed contract developed under this chapter.

8 (d) The Department of Commerce, Community, and Economic Development
9 shall adopt regulations under which economically affected municipalities and
10 nonprofit organizations may apply for and be eligible to receive grants to alleviate
11 impact caused by construction of a gas pipeline. The department shall give priority in
12 the allocation of grants to municipalities and organizations that are experiencing or
13 will experience the most direct or severe impact from gas pipeline construction. The
14 department shall finance, under (e) of this section, all meritorious grant applications
15 each year, to the extent money is available in the Alaska natural gas pipeline
16 construction impact fund. Within 10 days after the convening of each regular session
17 of the legislature, the department shall submit to the legislature a list of all
18 municipalities and organizations that have received grants, a list of all municipalities
19 and organizations determined by the department to be eligible for further grants, a
20 recommendation of the amount of money to be granted for those additional
21 applications, and written justification of each past and potential grant.

22 (e) The commissioner of commerce, community, and economic development,
23 in consultation with the relevant municipal advisory group established under
24 AS 43.82.510, shall use money appropriated to the Alaska natural gas pipeline
25 construction impact fund to make grants to municipalities, and to nonprofit
26 organizations serving the unorganized borough, for impacts on transportation,
27 infrastructure, law enforcement, emergency services, health and human services,
28 education, the labor force, population, wages, and subsistence and for socio-cultural
29 impacts, brought about by the construction of the gas pipeline. In determining whether
30 an expenditure or proposed expenditure by a municipality or nonprofit organization is
31 eligible for a grant under this subsection and in allocating available money among

1 grant proposals, the commissioner shall consider the recommendations of the relevant
2 municipal advisory group established under AS 43.82.510 and whether the proposed
3 expenditure meets the purposes of this section.

4 (f) Before making awards of grants under this section for a fiscal year, the
5 commissioner of commerce, community, and economic development shall provide
6 reasonable public notice of all grant applications received, the recommendations of the
7 relevant municipal advisory group, preliminary determinations made concerning the
8 eligibility of each municipality or organization for a grant, the eligibility of each
9 expenditure or proposed expenditure for a grant, and the proposed allocation of
10 available money among grant proposals. The public notice must specify a time and
11 place for a public hearing during which the commissioner will receive comments
12 concerning the preliminary determinations and allocations of the department. The
13 commissioner shall give reasonable public notice of the final awards of grants made
14 under this section. Thirty days after such public notice is given, final awards take
15 effect and may be paid to the grantees according to procedures established by
16 regulation.

17 (g) Grant money received under this section may not be used for the
18 retirement of municipal debt.

19 (h) Amounts appropriated to the Alaska natural gas pipeline construction
20 impact fund under (c) of this section for a fiscal year that are not used for grants to
21 municipalities and organizations under (d) and (e) of this section shall be retained in
22 the Alaska natural gas pipeline construction impact fund and remain available for
23 distribution as grants under this section in succeeding fiscal years.

24 (i) Nothing in this chapter exempts money deposited into the special account
25 in the general fund established in (b) of this section from the requirements of AS 37.07
26 (Executive Budget Act) or dedicates that money, or money appropriated to the Alaska
27 natural gas pipeline construction impact fund, for a specific purpose.

28 (j) In this section, "direct or severe impact" means a clearly demonstrable
29 effect on a community that proximately contributes to a material change to
30 transportation, infrastructure, law enforcement, emergency services, health and human
31 services, education, the labor force, population, wages, subsistence, or for socio-

1 cultural impacts brought about by the construction of a gas pipeline.

2 * **Sec. 17.** AS 43.82.510(c) is amended to read:

3 (c) Each municipal advisory group serves until **the later of 90 days after**
 4 **final distribution of impact payment money under AS 43.82.505, or**
 5 **commencement of operations of the qualified project. Expenses of a municipal**
 6 **advisory group are eligible for reimbursement under a grant made under**
 7 **AS 43.82.505** [A FINAL ACTION IS TAKEN ON THE APPLICATION FOR
 8 WHICH THE GROUP WAS APPOINTED].

9 * **Sec. 18.** AS 43.82 is amended by adding a new section to article 7 to read:

10 **Sec. 43.82.650. Calculations of education funding.** To determine the amount
 11 of required local contribution under AS 14.17.410(b)(2) and (c) for a school district in
 12 a revenue-affected municipality, and to perform its duties under AS 14.17.510, the
 13 Department of Commerce, Community, and Economic Development shall adopt
 14 regulations. The regulations must establish assessment standards for any property that
 15 would have been assessed under AS 43.56 but is instead generating a payment to a
 16 revenue-affected municipality in lieu of a municipal property tax as provided in a
 17 contract developed under this chapter. The regulations must ensure that the property is
 18 included in the full and true value of the city or borough school district for the purpose
 19 of determining required local contributions for education funding under
 20 AS 14.17.410(b)(2) and (c).

21 * **Sec. 19.** AS 43.82.900 is amended by adding a new paragraph to read:

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

24 (A) is affiliated with a qualified sponsor or qualified sponsor
 25 group;

26 (B) owns or operates a qualified project or any segment of a
 27 qualified project; and

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

30 * **Sec. 20.** AS 43.82.445 is repealed.

31 * **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

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

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

7 RETROACTIVITY. (a) Sections 2 - 14 and 17 - 20 of this Act are retroactive to
8 January 1, 2004.

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

10 * **Sec. 23.** This Act takes effect immediately under AS 01.10.070(c).