

CS FOR SENATE BILL NO. 104(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/2/07

Referred: Judiciary, Finance

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline**
2 **Inducement Act matching contribution fund; providing for an Alaska Gasline**
3 **Inducement Act coordinator; making conforming amendments; and providing for an**
4 **effective date."**

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

6 * **Section 1.** AS 43 is amended by adding a new chapter to read:

7 **Chapter 90. Alaska Gasline Inducement Act.**

8 **Article 1. Inducement to Construction of a Natural Gas Pipeline in this State.**

9 **Sec. 43.90.010. Purpose.** The purpose of this chapter is to encourage
10 expedited construction of a natural gas pipeline that

11 (1) facilitates commercialization of North Slope gas resources in the
12 state;

13 (2) promotes exploration and development of oil and gas resources on
14 the North Slope in the state;

1 (3) maximizes benefits to the people of this state of development of oil
2 and gas resources in this state; and

3 (4) encourages state oil and gas lessees and other persons to commit
4 natural gas from the North Slope of this state to a gas pipeline system for
5 transportation to markets in this state or elsewhere.

6 **Article 2. Alaska Gasline Inducement Act License.**

7 **Sec. 43.90.100. Gas project.** (a) The commissioners may award an Alaska
8 Gasline Inducement Act license as provided in this chapter. The person awarded a
9 license under this chapter is entitled to the inducement set out in AS 43.90.110.

10 (b) Nothing in this section precludes a person's pursuing a gas pipeline
11 independently from this chapter.

12 **Sec. 43.90.110. Natural gas pipeline project construction inducement.**

13 Subject to the limitations of this chapter, a license issued under this chapter entitles the
14 licensee or its designated affiliate to receive

15 (1) state matching contributions in an amount not to exceed
16 \$500,000,000, paid in total to the licensee over a five-year period; the payment period
17 may be extended by the commissioners under an amendment or modification of the
18 project plan under AS 43.90.220; the payment period commences on the date of the
19 issuance of the license; payments under this paragraph shall be made according to the
20 following:

21 (A) on or before the close of the first binding open season, the
22 state shall match the licensee's qualified expenditures at the level specified in
23 the license; however, the state's matching contribution may not be more than
24 50 percent of the qualified expenditures incurred before the close of the first
25 binding open season;

26 (B) after the close of the first binding open season, the state
27 shall match the licensee's qualified expenditures at a level specified in the
28 license; however, the state's matching contribution may not be greater than 80
29 percent of the qualified expenditures incurred after the close of the first
30 binding open season;

31 (C) qualified expenditures are costs that are incurred after the

1 license is issued under this chapter by the licensee or the licensee's designated
 2 affiliate, and are directly and reasonably related to obtaining a certificate of
 3 public convenience and necessity from the Federal Energy Regulatory
 4 Commission or the Regulatory Commission of Alaska, as appropriate, for
 5 development of the project; in this subparagraph, "qualified expenditures" does
 6 not include overhead costs, litigation costs, assets, or work product predating
 7 the issuance of the license, or civil or criminal penalties or fines; and

8 (2) the benefit of an Alaska Gasline Inducement Act coordinator who
 9 has the authority prescribed in AS 43.90.400.

10 **Sec. 43.90.120. Abandonment of project.** (a) If the commissioners and the
 11 licensee agree that the project is uneconomic and should be abandoned, inducement
 12 provided for in AS 43.90.110 terminates, and, except for requirements imposed on the
 13 licensee under (d) of this section and AS 43.90.230, the state and the licensee no
 14 longer have any obligations under this chapter with respect to the license.

15 (b) If the commissioners or the licensee independently determines that the
 16 project is uneconomic and should be abandoned, but the other party does not agree,
 17 the disagreement shall be settled by arbitration administered by the American
 18 Arbitration Association under its Commercial Arbitration Rules, and judgment on the
 19 award rendered by the arbitrators may be entered in any court having jurisdiction
 20 thereof. In the event of arbitration, each party shall select an arbitrator, and the two
 21 arbitrators shall appoint a third arbitrator from the American Arbitration Association's
 22 National Roster who shall serve as the chair of the three-member arbitration panel. If
 23 the arbitration panel determines that the project is

24 (1) uneconomic and should be abandoned, the state and the licensee no
 25 longer have any obligations under this chapter with respect to the license, except for
 26 requirements imposed on the licensee under (d) of this section and AS 43.90.230;

27 (2) not uneconomic and should not be abandoned, the project may not
 28 be abandoned, and the obligations of the licensee and the state continue as provided
 29 under this chapter and the license.

30 (c) If the state makes a payment to the licensee under AS 43.90.540, the
 31 license is considered abandoned, and the state and the licensee no longer have any

1 obligations under this chapter with respect to the license, except that the licensee must
2 comply with the

3 (1) requirements imposed on the licensee under AS 43.90.230
4 regarding state money received by the licensee before the license was considered
5 abandoned; and

6 (2) requirements of AS 43.90.540.

7 (d) If the licensee and the state agree or if a licensee prevails in an arbitration
8 in establishing that the project is uneconomic and should be abandoned, the licensee
9 shall assign to the state or the state's designee all engineering designs, contracts,
10 permits, and other data related to the project that are acquired by the licensee during
11 the term of the license upon reimbursement by the state to the licensee of the licensee's
12 net costs.

13 **Sec. 43.90.130. Request for applications for the license.** (a) The
14 commissioners shall commence a public process to request applications for a license
15 under this chapter within three months after the effective date of this chapter.

16 (b) The commissioners may use independent contractors to assist in
17 developing the provisions for the application for a license and in evaluating
18 applications received under this chapter.

19 (c) The provisions of AS 36.30 do not apply to requests for applications under
20 this chapter, but the commissioners shall adopt regulations that provide protest and
21 appeal procedures relating to the solicitation of applications and award of a license
22 that are substantially similar to the procedures in AS 36.30.550 - 36.30.699.

23 **Sec. 43.90.140. Application requirements.** An application for a license must
24 be consistent with the terms of the request for applications under AS 43.90.130 and
25 must

26 (1) be filed by the deadline established by the commissioners in the
27 request for applications;

28 (2) provide a detailed description of a proposed natural gas pipeline
29 project for transporting natural gas from the North Slope of this state to market,
30 including

31 (A) the route proposed for the natural gas pipeline;

1 (B) receipt and delivery points and the size and design capacity
2 of the proposed natural gas pipeline at the proposed receipt and delivery points,
3 except that this information is not required for in-state delivery points unless
4 the application proposes specific in-state delivery points;

5 (C) an analysis demonstrating the project's economic and
6 technical viability as required in the request for applications;

7 (D) an economically and technically viable work plan, timeline,
8 and associated budget for developing the proposed project, including how the
9 applicant will perform field work, environmental studies, design, and
10 engineering, and how the applicant will comply with all applicable state,
11 federal, and international regulatory requirements that affect the proposed
12 project; the work plan must address the following:

13 (i) if the proposed project involves a pipeline into or
14 through Canada, a description in detail of the applicant's plan to obtain
15 necessary rights-of-way and authorizations in Canada; a description of
16 the transportation services to be provided and a description of rate-
17 making methodologies the applicant will propose to the regulatory
18 agencies; and an estimate of rates and charges for all services;

19 (ii) if the proposed project involves marine
20 transportation of liquefied natural gas, a description of the marine
21 transportation services to be provided and a description of proposed
22 rate-making methodologies; an estimate of rates and charges for all
23 services by third parties; a detailed description of all access and tariff
24 terms the applicant would propose for liquefaction services or, if third
25 parties would perform liquefaction services, identify the third parties
26 and the terms they would offer; a complete description of the proposed
27 ownership, control, and cost of liquefied natural gas tankers, the
28 management of shipping services, liquefied natural gas export,
29 destination, re-gasification facilities, and pipeline facilities needed for
30 transport to market destinations, and the entity or entities that would be
31 required to obtain necessary export permits or a certificate of public

1 convenience and necessity from the Federal Energy Regulatory
 2 Commission for the transportation of liquefied natural gas in interstate
 3 commerce if United States markets are proposed; and all rights-of-way
 4 or authorizations required from a foreign country;

5 (3) commit that if the proposed project is within the jurisdiction of the
 6 Federal Energy Regulatory Commission, the applicant will

7 (A) conclude, by a date certain that is not later than 36 months
 8 after the date the license is issued, a binding open season that is consistent with
 9 the requirements of Subpart B of 18 C.F.R. Part 157 (Open Seasons for Alaska
 10 Natural Gas Transportation Projects) and 18 C.F.R. 157.30 - 157.39;

11 (B) apply for Federal Energy Regulatory Commission approval
 12 to use the pre-filing procedures set out in 18 C.F.R. 157.21 by a date certain,
 13 and use those procedures before filing an application for a certificate of public
 14 convenience and necessity; and

15 (C) apply for a Federal Energy Regulatory Commission
 16 certificate of public convenience and necessity to authorize the construction
 17 and operation of the proposed project described in this section by a date
 18 certain;

19 (4) commit that if the proposed project is within the jurisdiction of the
 20 Regulatory Commission of Alaska, the applicant will

21 (A) conclude, by a date certain that is not later than 36 months
 22 after the date the license is issued, a binding open season that is consistent with
 23 the requirements of AS 42.06; and

24 (B) apply for a certificate of public convenience and necessity
 25 to authorize the construction and operation of the proposed project by a date
 26 certain;

27 (5) commit that after the first binding open season, the applicant will
 28 assess the market demand for additional pipeline capacity at least every two years
 29 through public nonbinding solicitations or similar means;

30 (6) commit to expand the proposed project in reasonable engineering
 31 increments and on commercially reasonable terms that encourage exploration and

1 development of gas resources in this state; in this paragraph,

2 (A) "commercially reasonable terms" means that, subject to the
3 provisions of (7)(A) of this section, revenue from transportation contracts
4 covers the cost of the expansion, including increased fuel costs and a
5 reasonable return on capital as authorized by the Federal Energy Regulatory
6 Commission or the Regulatory Commission of Alaska, as applicable, and there
7 is no impairment of the proposed project's ability to recover the costs of
8 existing facilities;

9 (B) "reasonable engineering increments" means the amount of
10 additional capacity that could be added by compression or a pipe addition
11 using a compressor size or pipe size, as applicable, that is substantially similar
12 to the original compressor size and pipe size;

13 (7) commit that the applicant

14 (A) will propose and support recovery of mainline capacity
15 expansion costs from all mainline system users through rolled-in rates if the
16 recovery of all expansion costs through rolled-in rates would increase existing
17 shippers' rates by not more than 15 percent of the initial maximum recourse
18 rates from the North Slope to the proposed project's downstream terminus; if
19 rolled-in expansion costs would increase existing shippers' rates from the
20 North Slope to the project's downstream terminus by more than 15 percent, the
21 applicant will propose and support the partial roll-in of mainline expansion
22 costs from all mainline system users to the extent that existing shippers' rates
23 would not be increased by more than 15 percent of the initial maximum
24 recourse rates from the North Slope to the proposed project's downstream
25 terminus; in this subparagraph, "initial maximum recourse rates" means the
26 highest cost-based rates for any specific transportation service set by the
27 Federal Energy Regulatory Commission, the Regulatory Commission of
28 Alaska, or the National Energy Board of Canada, as appropriate, at the time of
29 the initial regulatory approval of the proposed project;

30 (B) may propose any combination of incremental or rolled-in
31 rates for recovery of costs of mainline capacity expansion that exceeds the 15

1 percent level described in (A) of this paragraph;

2 (C) agrees not to enter into negotiated rate agreements that
3 would preclude the applicant from collecting from any shipper, including
4 shippers with negotiated rate agreements, the rolled-in rates that are required to
5 be proposed and supported by the applicant under (A) of this paragraph; in this
6 subparagraph, "negotiated rate agreements" means transportation service
7 agreements that are subject to rates that vary from the otherwise applicable
8 cost-based rates, or recourse rates, set out in a gas pipeline's tariff approved by
9 the Federal Energy Regulatory Commission, the Regulatory Commission of
10 Alaska, or the National Energy Board of Canada, as appropriate;

11 (8) state how the applicant proposes to deal with a North Slope gas
12 treatment plant, regardless of whether that plant is part of the applicant's proposal, and,
13 to the extent that that plant will be owned entirely or in part by the applicant, commit
14 to seek certificate authority from the Federal Energy Regulatory Commission if the
15 proposed project is engaged in interstate commerce, or from the Regulatory
16 Commission of Alaska if the project is not engaged in interstate commerce, for a
17 North Slope gas treatment plant that will be owned entirely or in part by the applicant
18 and, for rate-making purposes, commit to value previously used assets that are part of
19 the gas treatment plant at net book value; describe the gas treatment plant, including
20 its design, engineering, construction, ownership, and plan of operation; the identity of
21 any third party that will participate in the ownership or operation of the gas treatment
22 plant; and the means by which the applicant will work to minimize the effect of the
23 costs of the facility on the tariff;

24 (9) propose a percentage and total dollar amount for the state's
25 matching contribution under AS 43.90.110(1)(A) and (B) to be specified in the
26 license;

27 (10) commit that the applicant will propose and support rates for the
28 proposed project and for any North Slope gas treatment plant that the applicant may
29 own, in whole or in part, that are based on a capital structure for rate-making that
30 consists of not less than 70 percent debt;

31 (11) describe the means by which the applicant plans to manage

1 overruns in costs of the proposed project, if any, and the measures that the applicant
2 proposes to mitigate the effects of any overruns;

3 (12) commit to provide for a minimum of five delivery points of
4 natural gas in this state;

5 (13) commit to offer firm transportation service to delivery points in
6 this state as part of the tariff regardless of whether any shippers bid successfully in a
7 binding open season for firm transportation service to delivery points in this state, and
8 commit to offer distance-sensitive rates to delivery points in this state consistent with
9 18 C.F.R. 157.34(c)(8);

10 (14) commit to establish a local headquarters in this state for the
11 proposed project;

12 (15) commit to hire qualified residents from throughout this state for
13 management, engineering, construction, operations, maintenance, and other positions
14 on the proposed project and to contract with businesses located in this state to the
15 extent permitted by law;

16 (16) commit to negotiate, before construction, a project labor
17 agreement, to ensure expedited construction and labor stability for the project by
18 qualified residents of the state;

19 (17) commit that the state matching contribution received by a licensee
20 may not be included in the applicant's rate base, and shall be used as a credit against
21 licensee's cost of service; and

22 (18) otherwise demonstrate that the applicant is ready and able to
23 perform the activities specified in the application, including the detailed work plan,
24 timeline, and associated budget.

25 **Sec. 43.90.150. Initial application review; additional information requests;**
26 **complete applications.** (a) The commissioners shall review each application
27 submitted under AS 43.90.130 to determine whether it is consistent with the terms of
28 the request for applications and meets the requirements of AS 43.90.140. The
29 commissioners shall reject any application that does not meet those terms and
30 requirements.

31 (b) To evaluate an application not rejected under (a) of this section, the

1 commissioners may request from an applicant additional information relating to the
2 application.

3 (c) If, within the time specified by the commissioners, an applicant fails to
4 provide the additional information requested under (b) of this section, or submits
5 additional information that is not responsive, the application will be rejected.

6 (d) For an application not rejected under (a) or (c) of this section, the
7 commissioners shall make a determination that the application, including any
8 requested additional information, is complete.

9 **Sec. 43.90.160. Proprietary information and trade secrets.** (a) At the
10 request of the applicant, information submitted under this chapter that the applicant
11 identifies and demonstrates is proprietary or is a trade secret is confidential and not
12 subject to public disclosure under AS 40.25, unless the applicant is granted a license
13 under this chapter. After a license is awarded, all information submitted by the
14 licensee shall be made public.

15 (b) If the commissioners determine that the information submitted by the
16 applicant is not proprietary or a trade secret, the commissioners shall notify the
17 applicant and return the information on request of the applicant.

18 (c) An applicant that challenges the award of a license or the process for
19 making the award shall be considered to have consented to the disclosure of all the
20 information submitted under this chapter by the applicant making the challenge,
21 including information held confidential under (a) of this section.

22 (d) In this section, "proprietary" means that the information is treated by the
23 applicant as confidential and the public disclosure of that information would adversely
24 affect the competitive position of the applicant or materially diminish the commercial
25 value of the information to the applicant.

26 **Sec. 43.90.170. Notice, review, and comment.** (a) The commissioners shall
27 publish notice and provide a 60-day period for public review and comment on all
28 applications determined complete under AS 43.90.150.

29 (b) Applications received under this chapter are not public records and are not
30 subject to public disclosure under AS 40.25 until the commissioners publish notice
31 under this section. However, information that the commissioners have determined is

1 confidential under AS 43.90.160 may not be made public even after the notice is
2 published under (a) of this section, except as otherwise provided by AS 43.90.160. If
3 information is held confidential under this subsection, the applicant shall provide a
4 summary that is satisfactory to the commissioners, and the commissioners shall make
5 the summary of the information available to the public.

6 **Sec. 43.90.180. Application evaluation and ranking.** (a) The commissioners
7 shall evaluate all applications determined to be complete under AS 43.90.150,
8 consider public comments received under AS 43.90.170(a), and rank each application
9 according to the net present value of the anticipated cash flow to the state from the
10 applicant's project proposal using the factors in (b) of this section and weighted by the
11 project's likelihood of success based on the commissioners' assessment of the factors
12 listed in (c) of this section.

13 (b) When evaluating the net present value of anticipated cash flow to the state
14 from the applicant's project proposal, the commissioners shall use an undiscounted
15 value and, at a minimum, discount rates of two, six, and eight percent, and consider

16 (1) how quickly the applicant proposes to begin construction of the
17 proposed project and how quickly the project will commence commercial operation;

18 (2) the net back value of the gas determined by the destination market
19 value of the gas and estimated transportation and treatment costs;

20 (3) the ability of the applicant to prevent or reduce project cost
21 overruns that would increase the tariff;

22 (4) the initial design capacity of the applicant's project and the extent
23 to which the design can accommodate low-cost expansion; and

24 (5) other factors found by the commissioners to be relevant to the
25 evaluation of the net present value of the anticipated cash flow to the state.

26 (c) When evaluating the project's likelihood of success, the commissioners
27 shall consider

28 (1) the reasonableness, specificity, and feasibility of the applicant's
29 work plan, timeline, and budget required to be submitted under AS 43.90.140,
30 including the applicant's plan to manage cost overruns, insulate shippers from the
31 effect of cost overruns, and encourage shippers to participate in the first binding open

1 season;

2 (2) the financial resources of the applicant;

3 (3) the ability of the applicant to comply with the proposed
4 performance schedule;

5 (4) the applicant's organization, experience, accounting and operational
6 controls, technical skills or the ability to obtain them, necessary equipment or the
7 ability to obtain the necessary equipment;

8 (5) the applicant's record of

9 (A) performance on projects not licensed under this chapter;

10 (B) integrity and good business ethics; and

11 (6) other evidence and factors found by the commissioners to be
12 relevant to the evaluation of the project's likelihood of success.

13 (d) In this section, "net present value" means the discounted value of a future
14 stream of cash flow.

15 **Sec. 43.90.190. Notice to the legislature of intent to issue license; denial of**
16 **license.** (a) If, after consideration of public comments received under AS 43.90.170
17 and evaluation of complete applications under AS 43.90.180, the commissioners
18 determine that an application would sufficiently maximize the benefits to the people of
19 this state and merits issuance of a license under this chapter, the commissioners shall

20 (1) issue a determination, with written findings addressing the basis for
21 the determination; the determination becomes a final agency action in accordance with
22 AS 43.90.200;

23 (2) publish notice of intent to issue a license under this chapter with
24 written findings addressing the basis for the determination; and

25 (3) forward the notice under (2) of this subsection, along with the
26 findings, supporting documentation, and determination under (1) of this subsection, to
27 the legislature for action as provided in AS 43.90.200.

28 (b) If, after evaluation of complete applications under AS 43.90.180, the
29 commissioners determine that no application sufficiently maximizes the benefits to the
30 people of this state and merits issuance of a license under this chapter, the
31 commissioners shall issue a written finding that addresses the basis for that

1 determination.

2 (c) The commissioners' determination under (b) of this section is a final
3 agency action for purposes of appeal to the court under the Alaska Rules of Appellate
4 Procedure.

5 **Sec. 43.90.200. Legislative approval; issuance of license.** (a) After receiving
6 a determination from the commissioners under AS 43.90.190, the legislature shall
7 introduce a resolution in their respective chambers that provides for the approval of
8 the license proposed to be issued by the commissioners.

9 (b) If a resolution approving the issuance of the license is approved by both
10 houses of the legislature within 60 calendar days immediately following the date
11 notice is received from the commissioners under AS 43.90.190(a), the commissioners
12 may issue the license as soon as practicable after the passage of the resolution. The
13 issuance of the license approved by the legislature is a final administrative action on
14 the date the license is issued for purposes of appeal to the superior court.

15 (c) If a resolution approving the issuance of the license does not pass both
16 houses of the legislature within the time specified in (b) of this section, the
17 commissioners may request new applications for a license under AS 43.90.130.

18 **Sec. 43.90.210. Certification by regulatory authority and project sanction.**

19 (a) A licensee that is awarded a certificate of public convenience and necessity for the
20 project by the Federal Energy Regulatory Commission if the project is engaged in
21 interstate commerce, or the Regulatory Commission of Alaska if the project is not
22 engaged in interstate commerce, shall accept the certificate when all rights of
23 administrative appeal relating to the certificate have expired.

24 (b) If the licensee has credit support sufficient to finance construction of the
25 project through ownership of rights to produce and market gas resources, firm
26 transportation commitments, or government financing, the licensee shall sanction the
27 project within one year after the effective date of the certificate of public convenience
28 and necessity issued by the Federal Energy Regulatory Commission or the Regulatory
29 Commission of Alaska, as applicable.

30 (c) If the licensee does not have credit support sufficient to finance
31 construction of the project through ownership of rights to produce and market gas

1 resources, firm transportation commitments, or government financing, the licensee
 2 shall sanction the project within five years after the effective date of the certificate of
 3 public convenience and necessity issued by the Federal Energy Regulatory
 4 Commission or the Regulatory Commission of Alaska, as applicable.

5 (d) If the licensee fails to sanction the project timely as required under this
 6 section, the licensee shall, upon request by the state,

7 (1) seek approval from the Federal Energy Regulatory Commission or
 8 Regulatory Commission of Alaska, as appropriate, to abandon and transfer the
 9 certificate to the state or the state's designee; and

10 (2) assign to the state's designee all engineering designs, contracts,
 11 permits, and other data related to the project that are acquired by the licensee as of the
 12 date of the abandonment or transfer.

13 (e) The transfer of any certificate or material as a result of failure to comply
 14 with (a) or (b) of this section is at no cost to the state or the state's designee. A transfer
 15 under (c) of this section is at the licensee's net cost.

16 (f) For purposes of this section, the effective date of the certificate of public
 17 convenience and necessity issued by the Federal Energy Regulatory Commission or
 18 the Regulatory Commission of Alaska is the date when all rights of administrative
 19 appeal relating to the certificate have expired.

20 **Sec. 43.90.220. Amendment of or modification to the project plan.** Subject
 21 to the approval of the commissioners, a licensee may amend or modify its project plan
 22 if the amendments or modifications are necessary as a result of changed circumstances
 23 outside the licensee's control and not reasonably foreseeable before the license was
 24 issued. An amendment or modification approved under this section must be consistent
 25 with the requirements of AS 43.90.140 and may not diminish the value to the state of
 26 the project or the project's likelihood of success.

27 **Sec. 43.90.230. Records, reports, conditions, and audit requirements.** (a) A
 28 licensee shall maintain complete and accurate records of all expenditures and
 29 commitments of state money received under this chapter, including receipts and
 30 records showing the payment or cost of purchased items and services, the names and
 31 addresses of the sellers and service providers, and the dates of service or delivery.

1 (b) Upon reasonable notice, the commissioners may audit the records, books,
2 and files of the entity receiving the state money or making the expenditures and
3 commitments of money received from the state under this chapter.

4 (c) The commissioners may do the following with respect to information
5 relating to the project: conduct hearings or other investigative inquiries; compel the
6 attendance of witnesses and production of documents; and require the licensee to
7 furnish information in paper copy or electronic format.

8 (d) After a license has been issued and until commencement of commercial
9 operations of a natural gas pipeline, the licensee shall allow the commissioners to have
10 a representative present at all meetings of the licensee's governing body and equity
11 holders that relate to the project, to receive all relevant notices and information sent to
12 the governing body and equity holders, to receive the same access to information
13 about the licensee as the governing body members and equity owners receive, and to
14 receive additional relevant reports or information from the licensee that the
15 commissioners reasonably request.

16 (e) A licensee shall maintain the records and reports required under this
17 section for seven years from the date the licensee receives state money under this
18 chapter.

19 **Sec. 43.90.240. License violations; damages.** (a) A licensee is in violation of
20 the license if the commissioners determine that the licensee has

21 (1) committed state money received under this chapter for purposes
22 other than those set out in AS 43.90.110(1);

23 (2) substantially departed from the specifications set out in the
24 application without state approval of a project plan amendment or modification under
25 AS 43.90.220;

26 (3) violated any provision of this chapter or any other provision of
27 state or federal law material to the license; or

28 (4) otherwise violated a material term of the license.

29 (b) The commissioners shall provide written notice to the licensee identifying
30 a license violation. The commissioners and the licensee have 90 days after the date the
31 notice is issued to resolve the violation informally.

1 (c) The commissioners may suspend disbursement of state matching
 2 contributions to the licensee beginning on the date that the notice of violation issued
 3 under (b) of this section is sent to the licensee. The commissioners may resume
 4 disbursement on the date that the commissioners determine that the violation is cured.

5 (d) If the commissioners and the licensee are unable to resolve the violation
 6 within the time specified in (b) of this section, the commissioners shall, after providing
 7 the licensee with notice and opportunity to be heard, make a written determination
 8 regarding the violation. The written determination made under this subsection is the
 9 final agency action for purposes of appeal to the court under the Alaska Rules of
 10 Appellate Procedure.

11 (e) If the determination issued under (d) of this section finds an unresolved
 12 violation, the commissioners may impose one or more of the following remedies:

- 13 (1) discontinuation of state matching contributions under this chapter;
- 14 (2) recoupment of state money that the licensee has received under this
 15 chapter to date, with interest, regardless of whether the licensee has expended or
 16 committed that money;
- 17 (3) license revocation;
- 18 (4) assignment to the state or the state's designee of all engineering
 19 designs, contracts, permits, and other data related to the project that are acquired by
 20 the licensee during the term of the license; and
- 21 (5) any other remedies provided by law or in equity.

22 **Article 3. Resource Inducement; Alaska Gasline Inducement Act Coordinator.**

23 **Sec. 43.90.300. Qualification for resource inducement.** Notwithstanding any
 24 contrary provision of law, a lessee or other person that demonstrates to the
 25 commissioners' satisfaction that the person has committed to acquire firm
 26 transportation capacity in the first binding open season of the project is qualified to
 27 receive the resource inducement set out in AS 43.90.310 and 43.90.320 for the gas
 28 shipped in firm transportation capacity acquired in the first binding open season of the
 29 project. The inducements set out in AS 43.90.310 and 43.90.320 are contractual.

30 **Sec. 43.90.310. Royalty inducement.** (a) Before the beginning of the first
 31 binding open season to be conducted by the licensee, the commissioner of natural

1 resources shall adopt regulations to establish a method to determine the monthly value
 2 of the state's royalty share of gas production and establish terms under which the state
 3 will exercise its right to switch between taking its royalty in value or in kind for gas
 4 committed for firm transportation in the first binding open season of the project. The
 5 regulations must

6 (1) minimize retroactive adjustments to the monthly value of the state's
 7 royalty share of gas production;

8 (2) contain provisions to establish a fair market value for each
 9 component of the state's royalty gas that are based on pricing data from reliable and
 10 widely available industry trade publications and use appropriate adjustments to reflect

11 (A) deductions for actual and reasonable transportation costs
 12 for the state's royalty gas, including a fair share of the costs associated with
 13 unused capacity commitments on pipelines from the North Slope of this state
 14 to the first destination market with reasonable market liquidity;

15 (B) location differentials between the destination markets
 16 where North Slope gas could be sold;

17 (C) reasonable and actual costs for gas processing; and

18 (D) deductions permitted under the 1980 Royalty Settlement
 19 Agreement for Prudhoe Bay gas; and

20 (3) establish terms under which the state will exercise its authority to
 21 switch between taking its royalty gas in value and in kind to ensure that the state's
 22 actions do not unreasonably

23 (A) cause the lessee or other person to bear disproportionate
 24 transportation costs with respect to the state's royalty gas;

25 (B) interfere with the lessee's or other person's long-term
 26 marketing of its production.

27 (b) If a lessee or other person qualified for resource inducement under
 28 AS 43.90.300 agrees under (c) of this section, the lessee or other person is entitled to
 29 elect

30 (1) to calculate its gas royalty obligation under the regulations adopted
 31 under (a) of this section for natural gas transported on a firm contract negotiated

1 during the project's first binding open season or under the methodology set out in the
2 existing leases from which the gas is produced, and

3 (A) upon the request of the lessee, the commissioner of natural
4 resources shall contractually amend the existing lease to reflect the election
5 under this paragraph and incorporate into the lease, the terms of the relevant
6 regulations as fixed contract terms; and

7 (B) the election under this subsection remains in effect until
8 new regulations are adopted as a result of a review under (d) of this section, at
9 which time, a lessee or other person qualified under AS 43.90.300 may change
10 its election under this paragraph; upon the request of the lessee, the
11 commissioner of natural resources shall contractually amend the lease to
12 incorporate as fixed contract terms the relevant revised regulatory provisions;

13 (2) to enter a contract with the state that amends the existing lease
14 terms by extending the required period of notice that the state must provide before
15 exercising the state's right to switch between taking its royalty in value or in kind for
16 gas committed for firm transportation in the first binding open season of the project.

17 (c) To claim the inducement under (b) of this section, a lessee or other
18 qualified person shall agree, on an application form provided by the Department of
19 Natural Resources, that the lessee or person, and the lessee's or person's affiliates,
20 successors, assigns, and agents, will not protest or appeal a filing by the licensee to
21 roll in expansion costs of the mainline up to a level that is required in AS 43.90.140(7)
22 if the Federal Energy Regulatory Commission does not have a rebuttable presumption
23 in effect that rolled-in rate treatment applies to the cost of the expansion of the project.
24 The agreement not to protest may not preclude the lessee or other qualified person, or
25 the lessee's or other person's affiliates, successors, assigns, and agents from protesting
26 a filing to roll in mainline expansion costs that licensee is not required to propose and
27 support under AS 43.90.140(7).

28 (d) The commissioner of natural resources shall provide for review of the
29 regulations adopted under (a) of this section at least every two years after the
30 commencement of commercial operations of the project to determine whether the
31 regulations continue to meet the requirements of (a)(1) of this section under current

1 conditions, and shall amend the regulations when the requirements are not being met.

2 (e) No provision of this chapter precludes the election set out in (b) of this
3 section, nor may the commissioner of natural resources assert any provision of any
4 existing lease or unit agreement as precluding the elections set out in (b) of this
5 section.

6 **Sec. 43.90.320. Gas production tax exemption.** (a) If a person qualified for
7 resource inducement under AS 43.90.300 agrees under (c) of this section, the person is
8 entitled to an annual exemption from the state's gas production tax in an amount equal
9 to the difference between the amount of the person's gas production tax obligation
10 calculated under the gas production tax in effect during that tax year and the amount of
11 the person's gas production tax obligation calculated under the gas production tax in
12 effect at the conclusion of the first binding open season held under this chapter. If the
13 difference is less than zero, the gas production tax exemption is zero.

14 (b) The commissioner of revenue shall issue the exemption under this section
15 in a certificate signed by the person and the commissioner, and the certificate
16 constitutes a contract between the person and the state; the certificated exemption may
17 be applied within 10 years immediately following commencement of commercial
18 operations of the project only to production taxes that are levied on North Slope gas
19 shipped through firm transportation capacity the person acquired during the first
20 binding open season.

21 (c) The exemption certificate issued under (b) of this section shall contain a
22 contractual commitment that the person, and the person's affiliates, successors,
23 assigns, and agents, will not protest or appeal a filing by the licensee to roll in
24 mainline expansion costs up to the level that the licensee is required to propose and
25 support under AS 43.90.140(7) if the Federal Energy Regulatory Commission does
26 not have a rebuttable presumption in effect that rolled-in rate treatment applies to the
27 cost of the expansion of the project. The contractual commitment required under this
28 subsection may not preclude the person, or the person's affiliates, successors, assigns,
29 and agents, from protesting a filing to roll in mainline expansion costs that the licensee
30 is not required to propose and support under AS 43.90.140(7).

31 **Article 4. Alaska Gasline Inducement Act Coordinator; Expedited Agency Review;**

1 **Alaska Job Development Program.**

2 **Sec. 43.90.400. Alaska Gasline Inducement Act coordinator.** (a) The
3 governor shall appoint, subject to legislative confirmation, an Alaska Gasline
4 Inducement Act coordinator. The Alaska Gasline Inducement Act coordinator
5 terminates one year after commencement of commercial operations of the project.

6 (b) The Alaska Gasline Inducement Act coordinator shall

7 (1) coordinate expeditious performance of all activities by state
8 agencies with respect to the project;

9 (2) ensure compliance by state agencies with the provisions of this
10 chapter; and

11 (3) coordinate with the federal coordinator for natural gas
12 transportation projects in this state.

13 **Sec. 43.90.410. Expedited review and action by state agencies.** (a) All
14 reviews conducted and actions taken by a state agency relating to a project shall be
15 expedited in a manner consistent with the completion of the necessary approvals in
16 accordance with this chapter.

17 (b) Notwithstanding any contrary provision of law, a state agency may not
18 include in any project certificate, right-of-way, permit, or other authorization issued to
19 the licensee any term or condition that is not required by law if the Alaska Gasline
20 Inducement Act coordinator determines that the term or condition would prevent or
21 impair in any significant respect the expeditious construction and operation or
22 expansion of the project.

23 (c) Unless required by law, a state agency may not add to, amend, or abrogate
24 any certificate, right-of-way, permit, or other authorization issued to a licensee if the
25 Alaska Gasline Inducement Act coordinator determines that the action would prevent
26 or impair in any significant respect the expeditious construction, operation, or
27 expansion of the project.

28 **Sec. 43.90.420. State pipeline employment development.** The commissioner
29 of labor and workforce development shall develop a job training program that will
30 provide training for Alaskans in gas pipeline project management, construction,
31 operations, maintenance, and other gas pipeline-related positions.

1 **Article 5. Miscellaneous Provisions.**

2 **Sec. 43.90.500. Alaska Gasline Inducement Act matching contribution**
 3 **fund; disbursements; audits.** (a) There is established in the general fund an Alaska
 4 Gasline Inducement Act matching contribution fund. The fund consists of money
 5 appropriated to it by the legislature for disbursement to pay the state's matching
 6 contributions under AS 43.90.110. Appropriations to the fund do not lapse under
 7 AS 37.25.010, but remain in the fund for future disbursements.

8 (b) The Department of Revenue shall manage the fund, and may invest money
 9 in the fund so as to yield competitive market rates as provided in AS 37.10.071.
 10 Interest received on money in the fund shall be accounted for separately and may be
 11 appropriated to the fund annually.

12 (c) The commissioners shall adopt regulations that provide for application to
 13 receive matching contributions for qualified expenditures as provided under
 14 AS 43.90.110, and that provide for periodic audits of the use of money disbursed as
 15 matching contributions under this chapter.

16 (d) Within 10 days after the convening of each regular session of the
 17 legislature, the commissioners shall submit to the legislature a report that lists all the
 18 disbursements from the fund in the preceding year with a written justification of each
 19 disbursement and the projected amount of money that will be needed for matching
 20 contributions in each of the next three fiscal years.

21 **Sec. 43.90.510. Regulations.** The commissioners may jointly adopt
 22 regulations for the purpose of implementing the provisions of this chapter. The
 23 commissioner of revenue may change regulations adopted under existing authority in
 24 this title as necessary to implement the provisions of this chapter. The commissioner
 25 of natural resources may change regulations adopted under existing authority in AS 38
 26 as necessary to implement the provisions of this chapter.

27 **Sec. 43.90.520. Statute of limitations.** A person may not bring a judicial
 28 action challenging the constitutionality of this chapter or a license unless the action is
 29 commenced in a court of proper jurisdiction in this state within 90 days after the date
 30 that a license was issued.

31 **Sec. 43.90.530. Interest.** When a payment due to the state under this chapter

1 becomes delinquent, the payment bears interest in a calendar quarter at the annual rate
 2 of five percentage points above the annual rate charged member banks for advances by
 3 the 12th Federal Reserve District as of the first day of that calendar quarter, or at the
 4 annual rate of 11 percent, whichever is greater, compounded quarterly as of the last
 5 day of that quarter.

6 **Sec. 43.90.540. Licensed project assurances.** Except as otherwise provided in
 7 this chapter, the state grants a licensee assurances that the licensee has exclusive
 8 enjoyment of the inducement provided under this chapter before the commencement
 9 of commercial operation of the project. If, before the commencement of commercial
 10 operation of the project, the state extends to another person preferential royalty, tax, or
 11 monetary treatment for the purpose of facilitating the construction of a competing
 12 natural gas pipeline project in this state, and if the licensee is in compliance with the
 13 requirements of the license and with the requirements of state and federal statutes and
 14 regulations relevant to the project, the licensee is entitled to payment from the state of
 15 an amount equal to three times the total of the reasonable costs that the licensee has
 16 incurred in developing the licensee's project as of the date that the state first extended
 17 preferential treatment to another person. Upon payment by the state of the amount
 18 owed under this section, the licensee shall, at no cost to the state, assign to the state or
 19 the state's designee all engineering designs, contracts, permits, and other data related
 20 to the project that are acquired by the licensee during the term of the license. In this
 21 section, "competing natural gas pipeline project" means a project designed to
 22 accommodate throughput of more than 500,000,000 cubic feet a day of North Slope
 23 gas.

24 **Sec. 43.90.550. Assignments.** (a) A licensee may transfer all or part of the
 25 license, including the rights and obligations arising under the license, if

26 (1) the transfer is approved in writing in advance by the
 27 commissioners; and

28 (2) the transfer does not increase or diminish the obligations created by
 29 the license or diminish the likelihood of success of the project or the value of the
 30 license to the state.

31 (b) Notwithstanding the commissioners' approval of a transfer of all or part of

1 a license under (a) of this section, the transferor of the license remains subject to the
 2 requirements of AS 43.90.230 regarding all state money received by the licensee
 3 before the effective date of the transfer.

4 (c) A person may transfer that person's rights to the royalty inducement under
 5 AS 43.90.310 and the gas production tax exemption under AS 43.90.320 only in
 6 connection with a sale or merger that results in transfer of all the person's assets in the
 7 North Slope of this state, including the firm transportation capacity contracts in the
 8 project.

9 **Sec. 43.90.560. Conflicting laws.** Nothing in this chapter shall be construed to
 10 repeal or abrogate the administrative, regulatory, or statutory procedures and functions
 11 of state and federal law governing the development and oversight of a project.

12 **Sec. 43.90.570. Severability.** Under AS 01.10.030, if any provision of this
 13 chapter, or the application of it to any person or circumstance, is held invalid, the
 14 remainder of this chapter and the application of it to other persons or circumstances
 15 are not affected.

16 **Article 6. General Provisions.**

17 **Sec. 43.90.900. Definitions.** In this chapter, unless the context otherwise
 18 requires,

19 (1) "affiliate" means another person that controls, is controlled by, or is
 20 under common control with a person; "affiliate" includes a division that operates as a
 21 functional unit;

22 (2) "Alaska Gasline Inducement Act coordinator" means the person
 23 appointed under AS 43.90.400;

24 (3) "commencement of commercial operations" means the first flow of
 25 gas in the project that generates revenue to the owners;

26 (4) "commissioners" means the commissioner of revenue and the
 27 commissioner of natural resources, acting jointly;

28 (5) "control" means the possession of ownership interest or authority
 29 sufficient to, directly or indirectly, and whether acting alone or in conjunction with
 30 others, direct or cause the direction of the management or policies of a company, and
 31 is rebuttably presumed if the voting interest held is 10 percent or more;

- 1 (6) "equity holder" means the
 2 (A) stockholders of a corporation;
 3 (B) members of a limited liability company;
 4 (C) partners of a partnership;
 5 (D) joint venturers of a joint venture;
 6 (E) members of a governmental authority and similar persons;
 7 or
 8 (F) holders of any other entity or person;
- 9 (7) "gas processing" means post-production treatment of gas to extract
 10 natural gas liquids;
- 11 (8) "governing body" means a corporation's board of directors, a
 12 limited liability company's managing members, a partnership's general partners, a joint
 13 venturer's joint venturers, a governmental authority's board or council members, and
 14 similar entities;
- 15 (9) "lease" means an oil and gas, or gas, lease issued by this state;
- 16 (10) "lessee" means a person that holds a working interest in an oil and
 17 gas, or gas, lease issued by this state;
- 18 (11) "license" means a license issued under this chapter;
- 19 (12) "licensee" means the holder of a license issued under this chapter
 20 and all affiliates, successors, assigns, and agents of the holder;
- 21 (13) "North Slope" means the area of Alaska north of 68 degrees North
 22 latitude;
- 23 (14) "project" means a natural gas pipeline project authorized under a
 24 license issued under this chapter;
- 25 (15) "recourse rates" means cost-based rates with a minimum and
 26 maximum range that are approved by the Federal Energy Regulatory Commission, the
 27 Regulatory Commission of Alaska, or the National Energy Board of Canada, as
 28 appropriate, and set out in the pipeline's tariff; "recourse rates" includes only those
 29 rates that the pipeline must make available to all shippers;
- 30 (16) "sanction" means financial commitments to go forward with the
 31 project as evidenced by entering into financial commitments of at least

1 \$1,000,000,000 with third parties;

2 (17) "under common control with" has the meaning given "control" in
3 this section;

4 (18) "unit agreement" means an agreement executed by the working
5 interest owners and royalty owners creating the unit.

6 **Sec. 43.90.990. Short title.** This chapter may be cited as the Alaska Gasline
7 Inducement Act.

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

9 (45) contracts for an arbitration panel to determine abandonment of a
10 project under AS 43.90.120, and contracts for the development of application
11 provisions for licensure and for the evaluation of those applications under AS 43.90.

12 * **Sec. 3.** AS 39.25.110 is amended by adding a new paragraph to read:

13 (41) the Alaska Gasline Inducement Act coordinator appointed under
14 AS 43.90.400.

15 * **Sec. 4.** AS 40.25.120(a) is amended to read:

16 (a) Every person has a right to inspect a public record in the state, including
17 public records in recorders' offices, except

18 (1) records of vital statistics and adoption proceedings, which shall be
19 treated in the manner required by AS 18.50;

20 (2) records pertaining to juveniles unless disclosure is authorized by
21 law;

22 (3) medical and related public health records;

23 (4) records required to be kept confidential by a federal law or
24 regulation or by state law;

25 (5) to the extent the records are required to be kept confidential under
26 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure
27 or retain federal assistance;

28 (6) records or information compiled for law enforcement purposes, but
29 only to the extent that the production of the law enforcement records or information

30 (A) could reasonably be expected to interfere with enforcement
31 proceedings;

1 (B) would deprive a person of a right to a fair trial or an
2 impartial adjudication;

3 (C) could reasonably be expected to constitute an unwarranted
4 invasion of the personal privacy of a suspect, defendant, victim, or witness;

5 (D) could reasonably be expected to disclose the identity of a
6 confidential source;

7 (E) would disclose confidential techniques and procedures for
8 law enforcement investigations or prosecutions;

9 (F) would disclose guidelines for law enforcement
10 investigations or prosecutions if the disclosure could reasonably be expected to
11 risk circumvention of the law; or

12 (G) could reasonably be expected to endanger the life or
13 physical safety of an individual;

14 (7) names, addresses, and other information identifying a person as a
15 participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the
16 advance college tuition savings program under AS 14.40.803 - 14.40.817;

17 (8) public records containing information that would disclose or might
18 lead to the disclosure of a component in the process used to execute or adopt an
19 electronic signature if the disclosure would or might cause the electronic signature to
20 cease being under the sole control of the person using it;

21 (9) reports submitted under AS 05.25.030 concerning certain
22 collisions, accidents, or other casualties involving boats;

23 (10) records or information pertaining to a plan, program, or
24 procedures for establishing, maintaining, or restoring security in the state, or to a
25 detailed description or evaluation of systems, facilities, or infrastructure in the state,
26 but only to the extent that the production of the records or information

27 (A) could reasonably be expected to interfere with the
28 implementation or enforcement of the security plan, program, or procedures;

29 (B) would disclose confidential guidelines for investigations or
30 enforcement and the disclosure could reasonably be expected to risk
31 circumvention of the law; or

1 (C) could reasonably be expected to endanger the life or
2 physical safety of an individual or to present a real and substantial risk to the
3 public health and welfare;

4 (11) the written notification regarding a proposed regulation provided
5 under AS 24.20.105 to the Department of Law and the affected state agency and
6 communications between the Legislative Affairs Agency, the Department of Law, and
7 the affected state agency under AS 24.20.105;

8 **(12) records that are**

9 **(A) proprietary or a trade secret in accordance with**
10 **AS 43.90.160;**

11 **(B) applications that are received under AS 43.90 until**
12 **notice is published under AS 43.90.170.**

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