

HEB

302

HFIN

FILE

Amendment 1A

Adopted
4/18/02

Offered in the House

HB 302 Version 22-LS1205\C"

By: _____

Page 15, line 4 Delete "Twenty-Second"
 Insert "Twenty-Third"

Page 15, line 6 Delete "First"
 Insert "Second"

Adopted

22-LS1205\C.1
Chenoweth
4/18/02

AMENDMENT 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE WHITAKER

TO: HB 302

1 Page 16, line 13, following "DIRECTORS.":

2 Insert

3 "(a) The governor shall appoint the initial members of the board of directors of the
4 Alaska Gas Corporation under AS 41.41.020, added by sec. 2 of this Act, not later than 30
5 days after the date of submission of the report to the governor under sec. 5(a) of this Act and
6 only if the report that is submitted to the governor concludes that construction and operation
7 of a natural gas transmission pipeline project, as defined in AS 41.41.990, added by sec. 2 of
8 this Act, by a public corporation is feasible.

9 (b)"

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MEMORANDUM

April 19, 2002

SUBJECT: CSSB 302 (Finance) (Work Order No. 22-LS1205\F)

TO: Representative Bill Williams, Co-Chair
House Finance Committee
Attn: Mike Tibbles

FROM: Jack Chenoweth
Assistant Revisor of Statutes 

In the committee-adopted final that accompanies this memo, I have made as many of the committee-requested amendments as possible. However, I did not make the change of reference to the Joint Committee on Natural Gas Pipelines at page 15 of the draft committee substitute that the committee considered exactly as the committee directed. That joint committee, established under 2001 Legislative Resolve 32, terminates (as provided in that resolution) at the convening of the 23rd Legislature, next January 21st. So it is not in order simply to substitute "Twenty-Third" for "Twenty-Second" at page 15, line 4 of the draft the committee had under consideration. Because it is also at least legally questionable that one legislature may exercise authority by resolution to establish a committee structure that extends the life of a legislative committee into a following legislature, I hesitate to suggest that the life or duration of the joint committee be extended by adoption of a further resolve.

Instead, this committee substitute should be amended to do what I understand the committee contemplates. That amendment would authorize continuation of the joint committee for one year as a matter of uncodified statute. The text of the amendment would read substantially as follows:

Amendment to CSHB 302 (Fin):

Page 15, line 4, following "Resolve 32)", insert:
", as extended by this subsection,"

Page 15, line 10, following "feasible", insert:

"Notwithstanding the termination date of that joint committee described in the concurrent resolution by which it is established, the existence and authority of the joint committee is extended until January 31, 2004. The joint committee, as extended, has the organization, powers, and duties described in the concurrent resolution by which the joint committee is

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established and as described in this section. At the convening of the First Regular Session of the Twenty-Third Alaska State Legislature, the presiding officers of the respective houses of the legislature may reconstitute the membership of the joint committee."

*

This responds to the immediate drafting question. Even so, I need to caution that having a *joint legislative committee*, through contract, take responsibility for preparation of a report the content of which would give effect to the permanent law provisions of this bill (see CSHB 302 (Finance), page 16, lines 16 - 18) raises two significant delegation questions. The first calls up legislative branch involvement in carrying out the execution of laws otherwise committed to or the responsibility of the executive branch (delegation of executive branch authority to the legislative branch),¹ while the second raises the question of whether the legislature may, by law, delegate legislative authority to one of its own committees. Further, the committee's addition of the limitation on removal of members of the board of the corporation only for cause further implicates the separation of power. The Alaska Supreme Court has interpreted article III, section 26, Constitution of the State of Alaska, as setting the outside boundaries of the legislature's authority with respect to appointments.² The power to appoint carries with it, implicitly, the power to remove. Since this is a public corporation, not treated as a "section 26" board, it is doubtful that the legislature may curtail the governor's ability to remove the board members.

To expedite further action on CSHB 302 (Finance), at this point, I can only warn that these questions arise out of the committee's action in amending this bill and do not here propose to discuss them.

cc: Representative Jim Whitaker, bill sponsor (memo only)

Representative Eldon Mulder, House Finance Committee co-chair (memo only)

JBC:lmb

02-071.lmb

Enclosure

¹ There are trial court decisions concluding that the legislature cannot use money for the routine execution of the law. *Legislature v. Hammond*, 1-JU-80-1163 Civil, Superior Court, First Judicial District (holding invalid an appropriation to the Legislative Council for a feasibility study involving the Yukon-Kuskokwim Crossing); *Compact v. Faiks*, 3-AN-88-8459 Civil (legislature may not make money available by transfer to the Municipality of Anchorage for a Navy home port feasibility study).

² *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

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MEMORANDUM

April 2, 2002

SUBJECT: House Bill 302 -- sectional analysis
(Work Order No. 22-LS1205(C))

TO: Representative Jim Whitaker

FROM: Jack Chenoweth
Assistant Revisor of Statutes

The principal purpose of this measure is to establish the Alaska Gas Corporation as a public corporation and to define the structure, management, responsibilities, and operation of the corporation. The chief mission of the Alaska Gas Corporation is to facilitate the commercial development of the state's North Slope natural gas reserves.

Bill section 1, an uncodified provision, sets out the findings and intent that have influenced development of the legislation.

Bill section 2: These provisions set out in a new chapter of title 41 of the Alaska Statutes (AS 41.41) the corporate structure, powers, and responsibilities of the Alaska Gas Corporation. The chapter is arranged by articles.

Article 1.

The sections identified as AS 41.41.010 - 41.41.130 are set out to define the organization of the corporation:

AS 41.41.010 establishes the corporation, enumerates its purposes, and affirms that it is intended to be a public corporation of the state.

AS 41.41.020 creates the corporation's board of directors, a board composed of six public members. The general qualifications of persons to serve as members are stated, and the corporation's obligation to establish its organization is set out.

AS 41.41.030 sets overlapping four-year terms for the members and authorizes reappointment.

AS 41.41.040 circumscribes the governor's authority to remove members and sets out procedures to be followed relating to removal and filling of the vacancy created.

AS 41.41.050 defines quorum and voting requirements.

AS 41.41.060 prescribes compensation for members and authorizes payment of per diem and travel expenses comparable to those provided to state employees for members.

AS 41.41.070 authorizes the board to employ an executive director who, in turn, is assigned responsibility for selection and employment of additional staff "with the approval of the board." The concluding subsection authorizes the corporation to contract for specialized services.

AS 41.41.080: Provisions of law requiring disclosure of financial and business interests (AS 39.50) are made applicable to members of the board. In addition, provision is made for specific disclosure of information concerning a board member's or employee's involvement in an entity or project "in which assets of the corporation are invested."

AS 41.41.090 sets out the budgetary and financial relationship between the corporation and the state's budget and fiscal procedure acts.

AS 41.41.100 authorizes the Legislative Budget and Audit Committee to undertake post audit and performance evaluation of corporate obligations.

AS 41.41.110 prescribes publication of an annual report of the corporation and the contents of the report.

AS 41.41.120 bars the corporation from using its resources to finance or influence political activities.

AS 41.41.130 defines information in the corporation's possession that is or is not to be treated as a public record under AS 40.25.110 - 40.25.140 and sets limits on the use or disclosure of confidential, non-disclosable information.

Article 2.

The one section in this article, AS 41.41.200, enumerates general powers of the corporation.

Article 3.

The sections identified in AS 41.41.300 - 41.41.410 generally bear upon the corporation's issuance of securities (bonds and notes and other evidence of debt). Much of the material

is technical boilerplate and is included so that, as a public corporation, under article IX, section 11 of the state constitution, the corporation enjoys full authority to contract debt based on its ability to repay out of its anticipated future revenues:

AS 41.41.300: This section authorizes issuance of revenue bonds and related evidence of debt, using provisions not unlike those included in chapters establishing other public corporations of the state to facilitate the use of debt obligations.

AS 41.41.310 prescribes permissible covenants that the corporation's board may make in conjunction with issuance of revenue bond debt.

AS 41.41.320 makes the level of the corporation's authorized debt subject to legislative authorization.

AS 41.41.330 permits the board to contract for the services of an independent financial advisor in conjunction with private sale of debt instruments.

AS 41.41.340 describes the nature of the corporation's pledge of its assets or revenues to payment of principal and interest on corporation-issued debt.

AS 41.41.350 details use of "capital reserve funds" to meet repayment obligations in conjunction with the corporation's indebtedness.

AS 41.41.360 addresses remedies available to holders of debt obligations and their representatives to enforce the timely payment of an obligation or a related obligation.

AS 41.41.370 makes the corporation's obligations negotiable instruments.

AS 41.41.380 explicitly makes the corporation's obligations permissible investments for public officers and for others handling surplus funds as identified in the section's text.

AS 41.41.390 authorizes use of refunding bonds as a device to adjust the corporation's bond obligations to obtain the benefit of more advantageous terms and conditions.

AS 41.41.400 affirms that, because the corporation's obligations are revenue-based debt instruments, the credit of the state is not pledged. Liability on the debt instrument is limited to the assets and revenues of the corporation.

AS 41.41.410 releases the corporation's officers from personal liability with reference to action taken by the corporation with respect to a debt obligation.

Article 4.

The one section in this article, AS 41.41.450, authorizes the Alaska Gas Corporation to acquire and hold property and interests in property "necessary or convenient for the financing of the [Trans Alaska Gas Pipeline] project."

Article 5.

The article contains general provisions:

AS 41.41.900 reaffirms the blanket immunity from taxation that the Alaska Gas Corporation enjoys and provides a general tax exemption provision: the corporation and its operations and earnings are exempt from taxes and assessments in the state; bonds and security instruments are exempted from taxes and assessments made by the state.

AS 41.41.990 sets out a series of definitions for terms used in the chapter.

Bill section 3 amends AS 39.25 to add employees of the Alaska Gas Corporation as members in the exempt service under the State Personnel Act.

Bill section 4 amends AS 39.50.200 to add the Alaska Gas Corporation's board of directors and executive director as persons who are subject to the state's general conflict of interest law (AS 39.50).

Bill section 5: This uncodified provision directs the preparation and delivery of a "project plan" or feasibility study for planning, design, construction, and operation of a gas transmission pipeline. The specific points that are to be covered or addressed in the feasibility study and a time line for its presentation are set out.

Bill section 6 prescribes initial terms of office for the initially appointed members of the corporation's board of directors in order to establish overlapping terms of office.

JBC:med
02-343.med

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MEMORANDUM

January 21, 2002

SUBJECT: Applying the standard applicable under article XI, section 4, Constitution of the State of Alaska, is House Bill 302 ("An Act establishing the Alaska Gas Corporation . . . ") "substantially the same measure" as Initiative 01GSLN ("The All-Alaskan Gasline Initiative")? (Work Order No. 22-LS1205/C)

TO: Representative Jim Whitaker

FROM: Jack Chenoweth
Assistant Revisor of Statute



Question presented:

You have asked whether House Bill 302, "An Act establishing the Alaska Gas Corporation . . . ", would be found to be "substantially the same measure" as Initiative 01GSLN, the "All-Alaskan Gasline Initiative." A determination that the bill, passed by the current legislature and enacted into law, is substantially the same measure as the initiative would void the initiative petition thereby requiring the lieutenant governor to order the initiative, if properly filed, removed from the November general election ballot.

Short answer:

For the reasons considered and discussed below, in my judgment the differences between the initiative and the bill should not be sufficient to defeat a determination by the lieutenant governor that the bill and the initiative are substantially the same.

Discussion:

The applicable constitutional provision is set out in the last sentence of article XI, section 4 of the state constitution:

Initiative Election. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. *If, before the election, substantially the same measure has been enacted, the petition is void.*

The provision is supplemented by a statute, AS 15.45.210:

Determination of void petition. If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.

The test for invalidating the petition under the "substantially the same measure" standard is considered by the Alaska Supreme Court in *Warren v. Boucher*, 543 P.2d 731 (Alaska 1975). The nub of the test appears in the following two paragraphs:¹

¹ To accommodate analysis in the text of this memo, I want to set out the extent of the court's discussion in its entire context:

. . . In order to interpret this language [i.e. the meaning of "substantially the same measure"] we must analyze its functional relationship to other constitutional provisions. We must infer the purposes and intentions of the framers from the language of the constitution itself, with careful regard for the apparent aims which the framers had in mind.

The words "substantial" or "substantially" are relative, inexact terms. Their meaning is quite elusive. *Application of Scroggin*, 103 Cal. App. 2d 281, 229 P.2d 489 (1951). The meaning of such terms can be derived only [by] reference to all the circumstances surrounding the context in which they are used. *Atchison, T. & S.F. Ry. v. Kings County Water District*, 47 Cal.2d 140, 302 P.2d 1, 3 (1956). So here, we believe that the term "substantially the same measure" must be viewed against the total structure contemplated in Art. XI of our constitution in the matter of direct legislation.

. . . By providing that the legislative enactment of substantially the same measure could have the effect of voiding an initiative, the framers empowered the legislature to cut off initiated legislation from consideration and vote by the general public. The manner in which Art. XI, Sec. 4, was amended in the constitutional convention makes this clear. The original proposal at the convention would have required that an initiative could be voided only by legislative enactment of "the measure initiated". Read literally, this would require that the language of both measures be identical. However, as discussed above, the final constitutional language requires merely that "substantially the same

measure" be enacted by the legislature in order to void an initiative petition.

It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.

Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.

...

The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital governmental functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.

What is significant to us here is the effect which the amendatory power of the legislature has upon our interpretation of the words "substantially the same measure." For if the legislature has broad power of amendment, it follows that it has broad power to change an initiative by an enactment covering the same subject as the initiated measure. In short, we must interpret Art. XI, Sec. 4, broadly and not narrowly as to the scope of legislative power. . . .

It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.

Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.

Warren v. Boucher, 543 P.2d 731, at 736.

Dissimilarities in the statement of findings and intent of the respective measures aside, House Bill 302 differs substantively from the initiative² in these significant aspects:

- (1) the description of the "services and functions" of the corporation, coupled with the definition of the term "project" and the manner of treatment of the obligation to develop a "project plan";
- (2) the size of the board, qualifications of its members, duration of terms of the members' board service, and compensation due members for their services;
- (3) the issue of legislative confirmation of board members;
- (4) differences in treatment of the corporation's/authority's legal representation;

Warren v. Boucher 543 P.2d 731, at 735 - 736 (emphasis added; notes omitted).

² If the initiative appears on the ballot and is approved by the voters, it has to be codified. Just to have it on record, assuming that the text of the initiative set out on the state Internet entry is accurate, there are several minor editorial matters that need attention: in AS 41.41.310(8), the word "provide" was omitted and should be reinserted before "for"; the section catchline for AS 41.41.410 duplicates the catchline for the preceding section, is inappropriate as to the section's contents, and should be revised to read "Officers not liable."

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(5) the matter of the disposition of corporate/authority earnings "in excess of future operating needs";

(6) the explicit handling in the initiative, omitted from the bill, of the subjects of "project term agreements with labor organizations," employment opportunities for state residents, and the use of experienced Alaska businesses; and

(7) the express power given to the authority (but not to the corporation) to "acquire natural gas supplies."

I'll briefly discuss each in order.

1. The description of the "services and functions" of the corporation, coupled with the definition of the term "project" and the manner of treatment of the obligation to develop a "project plan":

The initiative assigns the authority a different mandate than does the bill. In the description of the "services and functions" set out in the initiative's AS 41.41.010, in the initiative's definition of "project" for the new chapter, and in the description of the project plan in an uncodified section at the end of the initiative, the scope of the project incorporates reference to a pipeline system to tidewater and a spur line to southcentral Alaska, and makes reference to gas (as LNG) distribution to Yukon River and coastal communities. The bill, as you know, addresses only the delivery to the interior and then along the Alaska Highway to Canada or to tidewater, or both.

The initiative and the bill both include provisions applicable to early development of a project plan. Though the elements that the plan is to address are not congruent, there is overlap. What differs, of course, is the identity of the entity to undertake the plan--a legislative joint committee under the bill and the new authority under the initiative--and the requirement of the bill that the project plan determine "whether the construction and operation of a natural gas transmission pipeline project by a public corporation is feasible," while the initiative seems to presuppose the project's feasibility and the board of directors of the proposed authority is directed to begin by producing a development plan.

These differences are not insignificant. The bill, clearly, reflects an immediate concern by the legislature that the North Slope's reserves be made available overland to domestic North American and overseas markets, while the initiative omits overland domestic North American market considerations and focuses on overseas shipments and opportunities for instate use. Because of the magnitude of the financing attending construction of one or two pipelines, the legislature is understandably more cautious about the project's feasibility and requires evidence of operational success rather than starting from the assumption, as the initiative does, that the project's success may be inferred.

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But, while not insignificant, the differences do not seem to me to be fatal to a determination that the bill is "substantially the same measure" as the initiative. *Warren v. Boucher* acknowledges the opportunity of the legislature to "vary from the particular features of the initiative" while achieving the same general purpose. That, arguably, is exactly what is happening. The approach used in the bill is more conservative in its initial approach and takes cognizance of circumstances (specifically, overland transportation of natural gas to domestic North American markets) that may not have been commercially viable when the initiative was crafted. These differences should not, in my view, be regarded as sufficient to defeat a determination that the bill and the initiative are substantially the same.

2. The size of the board, qualifications of its members, duration of terms of the members' board service, and compensation due members for their services:

Differences between the initiative and the bill relating to six versus seven board members, qualifications of appointees, duration of service, and compensation payable are technical matters and should not, in my judgment, be sufficient to defeat a determination that the bill and the initiative are substantially the same.

3. Legislative confirmation of board members:

The state constitution does not now authorize legislative confirmation of members of public corporations (by whatever name denominated). The initiative requires legislative confirmation of board members; the bill omits the requirement. The bill avoids the constitutional argument and, consistent with language in *Warren v. Boucher* speaking to the authority of the legislature to take corrective action, improves (legally speaking) the content of the initiative on this point. The difference is not, in my judgment, sufficient to defeat a determination that the bill and the initiative are substantially the same.

4. The corporation's/authority's legal representation:

The initiative expressly assigns legal representation to the attorney general; the bill omits the express provision and adds selection of legal counsel as a discretionary power of the board. While, under the bill, the attorney general may nevertheless assert authority to represent the proposed corporation under powers spelled out in AS 44.23.020, the difference in treatment of this issue as between the initiative and the bill is not, in my judgment, sufficient to defeat a determination that the bill and the initiative are substantially the same.

5. The matter of the disposition of corporate/authority earnings "in excess of future operating needs":

The bill, but not the initiative, provides that

Earnings of the corporation in excess of future operating needs shall accrue and be transferred to the state general fund once each year, not later than January 15, after the first full year of operation.

Its inclusion in the bill is arguably a reflection of the third paragraph of the bill's statement of findings ("the production of oil and gas from state land is an important source of revenue to the state and job opportunities for all people of the state;") and is not inconsistent with inclusion of similar approaches in other chapters establishing and defining the powers and duties of state public corporations requiring disclosure (if not actual transfer) of fund balances in excess of operating requirements. Again, under the analysis of *Warren v. Boucher*, the court acknowledges that the legislature has latitude to vary from the content of an initiative if the subject matter is "necessarily complex". Identifying the corporation's activities as a potential general fund revenue source is surely a matter of more concern to the legislature than to sponsors of the initiative. *Warren v. Boucher* allows this variance, it seems to me, and the difference in treatment of this issue as between the initiative and the bill is not, in my judgment, sufficient to defeat a determination that the bill and the initiative are substantially the same.

6. Explicit handling in the initiative, omitted from the bill, of the subjects of "project term agreements with labor organizations," employment opportunities for state residents, and the use under contract of experienced Alaska businesses:

As between the initiative and the bill, treatment of these matters differ. The initiative adds mandatory no-strike "project term agreements," resident hire, and business contractor and supplier preference provisions; the bill omits mandatory language but does require documentation of compliance or expected compliance with related requirements in conjunction with development of the project plan expected to make a determination that "construction and operation of a natural gas transmission pipeline project . . . is feasible." Moreover, the bill's approach arguably starts from recent legislative experience in this area wherein some substantially similar requirements were not directly addressed in law but were required to be added as contract terms. So, for example, the Stranded Gas Development Act, ch. 104, SLA 1998, directs the commissioner of revenue to address use of Alaska businesses and state residents as a condition of a contract providing incentives under that Act to encourage investment to develop stranded gas resources, while, earlier, legislation authorizing amendment of the Northstar Unit oil and gas leases, ch. 139, SLA 1996, addressed resident employment and in-state business contracting requirements by legislative intent statements attending legislative approval of the measure.

Admittedly these differences are also material. In contrast to the mandatory language of the initiative, the legislature's approach is, understandably, relatively more cautious, and may simply reflect its appreciation of the constitutional constraints that do attach to state-initiated mandatory resident hire or local action requirements. To that end, substitution of the approach set out in the bill is defensible under that part of the *Warren v. Boucher* analysis that expresses legislative power to address initiative provisions that were "ill-

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advised" or that might be "[legally] impracticable." On that basis, difference in treatment of this issue as between the initiative and the bill should not, in my judgment, be sufficient to defeat a determination that the bill and the initiative are substantially the same.

7. The express power given to the authority (but not to the corporation) to "acquire natural gas supplies."

Both the initiative and the bill permit the corporation/authority to acquire property. The initiative adds, at its AS 41.41.200(6), language by which the board, "in furtherance of its corporate purposes," may "acquire natural gas supplies." If the bill is enacted, presumably the board of the corporation would not have need of this express authority--the bill contemplates operation and maintenance of the natural gas pipeline system would involve third-party contracts. On the other hand, if it becomes clear that the corporation must own natural gas if construction and operation of the project are to be successfully undertaken, the absence of language expressly permitting acquisition of gas supplies should not defeat the exercise of general authority by the corporation to acquire gas supplies as "property." Presumably, the project plan development provisions will provide guidance as to whether or not state intervention and acquisition of gas supplies would be essential to successful development and operation of the completed project.

This provision frames what I believe may be the chief characteristic difference between the approach set out in the initiative and the one proposed in the bill. The initiative sponsors' statement declares that the authority is established for the purpose that it would "acquire and condition North Slope natural gas." In contrast, the bill directs use of third parties for the development and operation of the natural gas pipeline system contemplated. Again, the difference in approach may simply reflect an appreciation that the measure proposed and enacted should reflect the state's role as a project facilitator rather than assuming active development and operational responsibility. The legislature understands--the initiative sponsors may not--that the state Right-of-Way Leasing Act and federal legislation favoring expanded development of a domestic North American natural gas system for Alaska North Slope gas already provide guidance to and incentive for private, not state-directed, design, construction, and operation of either a tidewater delivery system, an overland delivery system, or both. While I recognize that this characteristic difference is important, nothing in the *Warren v. Boucher* analysis compels the conclusion that, as to a matter that is "necessarily complex" and that surely requires "comprehensive treatment," the legislature may not exercise its discretion and "substitute its judgment for that of the proponents of the initiative." As to a project of this size, the legislature surely has latitude to determine the manner in which limited state resources may be committed to achieve the outcome sought by you and the initiative sponsors. Differences in this treatment as between the initiative and the bill should not, in my judgment, be sufficient to defeat a determination that the bill and the initiative are substantially the same.

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The constitutional provision and statute first cited assign determination of whether or not an enacted bill represents "substantially the same measure" as a valid initiative to the lieutenant governor. My reading of the test and its application to HB 302 and Initiative 01GSLN lead me to conclude that the proposed legislation has the same general purpose as the initiative and is fairly comparable in its choice of means or system to what has been described in the initiative. Some of the differences do not seem to me to be material. Insofar as the differences are material, because the bill's variant provisions arguably serve to sidestep possible legal and practical shortcomings of the initiative as submitted, they should be regarded as consistent with the legislature's authority to substitute its judgment and to take corrective action.

On that basis, then, it is my judgment that differences between the initiative and the bill as introduced should not be sufficient to defeat a determination by the lieutenant governor that the bill and the initiative are substantially the same. Whether or not she would make the determination that the bill and initiative are, under the standard of *Warren v. Boucher*, substantially the same measure is not for me to say.

JBC:med

02-029.med

Walter J. Hickel

Box 101700
Anchorage, Alaska 99510-1700
907-276-7400

Distributed By
Representative Scott Ogan
District 27

March 23, 2001

The Honorable Scott Ogan
Alaska State House of Representatives
State Capitol (MS 3100)
Juneau, AK 99801-1182

FAX 907-465-3265

Dear Representative Ogan,

While I had hoped to visit you and the House Special Committee on Oil and Gas before the end of March, I'm not able to do so because I'm traveling to Moscow for a meeting of Northern Forum leaders. Nevertheless, I want to compliment you and the Committee on its efforts to understand where Alaska stands in world markets for natural gas.

Any successful gas project requires willing buyers, willing sellers, willing transporters, and financing. My work in this area has been to try to bring those elements together, and I hope your committee can do the same.

If I were there, I would make three points.

First, Alaska has to look out for its own interests. In the late 1970s, an overland project failed – but not before Alaska's efforts helped Canadian reserves get to market. If overland was the best way to go, we would have an oil pipeline to Bellingham today. We don't. Tidewater gives us the most options, and while we can pursue an overland route, we can't allow the tidewater option to be ignored by the state or the producers. We must aggressively pursue Asian markets, and that means ensuring that a gas supply is independently offered for sale. So far, that has not been done. Instead, we're telling the Asian market we're not ready to sell.

Second, I've attached an excerpt from a talk the late Senator Bob Bartlett gave to Alaska's Constitutional Convention. He warned about companies with assets Outside Alaska warehousing assets they acquire in Alaska. Of course, no oil company would admit that they are warehousing gas, or keeping it out of the market because it has other supplies available. But a state owner of such a large resource has to protect itself, because it could happen. It is clear to me we haven't protected ourselves.

What do we do? We must be tough. Our options range from a reserve tax to taking back the resource for non-performance. Neither of these options would

be necessary if a sufficient gas supply to serve the LNG route were committed to an independent marketing effort.

Third, we must learn our lessons from the oil line: Unless structured correctly, a pipeline owned by producers is likely to result in tariff, royalty, and tax disputes because of a conflict in incentives between profits from transportation and profits from wellhead production. Since TAPS began, the state has had to collect close to \$10 billion in dispute because of the way the Trans-Alaska Pipeline was structured. Two options could help head off similar disputes on gas. First may be requiring an independent transportation company to carry the gas. Second may be having the state take an ownership interest in the pipeline at least equal to its royalty interest in the gas. Ken Thompson's trading hub idea also has merit in heading off this kind of conflict.

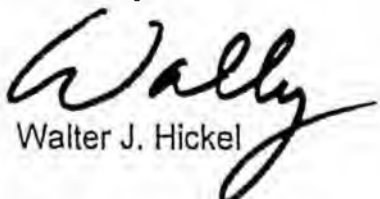
At least two transport companies have invested millions of dollars designing and permitting systems to deliver North Slope gas. The state is doing nothing I'm aware of to help bring these investors together with the producers.

I look forward to further discussion with you on my return. I'm doing what I can, as an individual, to urge producers, transporters, buyers, and financiers to get together. The state must help to do the same.

If this letter is presented to your Committee in my absence, Mead Treadwell – who works with me – can attempt to answer any questions you have.

With best regards.

Sincerely,


Walter J. Hickel

Enc.

Excerpt from

MEETING THE CHALLENGE

By

Delegate E. L. Bartlett

Alaska Constitutional Convention

University of Alaska

November 8, 1955

...
The various bills for statehood enabling legislation which have been introduced in the Congress in recent years have uniformly called for large grants of land from the United States public domain to be made to the State of Alaska. The figure mentioned has been in excess of 100 million acres, an area roughly equal to the total land area of the State of California. The 100 million acre figure would appear to be approximately the figure which will finally be adopted.

The State of Alaska would choose almost all this acreage from the lands not included in present federal reservations and withdrawals, or which is otherwise unappropriated. The 100 million plus acres represent a veritable empire, a wealth of land and resources never before conferred on any state, saving only Texas which, upon its entry into the Union, was allowed to retain all its public lands. Alaska will receive also, in addition to the 100 million acre plus grant, an uncounted but tremendous acreage of submerged lands, land which under decisions of the Supreme Court of the United States have been held in trust for the future state. These submerged lands include lands under the beds of navigable rivers, lakes, and streams; the tidelands proper; and the submerged soils of the marginal sea out to the three-mile limit.

...
Two very real dangers are present. The first, and most obvious, danger is that of exploitation under the thin disguise of development. The taking of Alaska's mineral resources without leaving some reasonable return for the support of Alaska governmental services and the use of all the people of Alaska will mean a betrayal in the administration of the people's wealth. The second danger is that outside interests, determined to stifle any development in Alaska which might compete with their activities elsewhere, will attempt to acquire great areas of Alaska's public lands in order NOT to develop them until such time as, in their omnipotence and the pursuance of their own interests, they see fit. If large areas of Alaska's patrimony are turned over to such corporations the people of Alaska may be even more the losers than if the lands had been exploited.

Alaska State Legislature

Representative Jim Whitaker
House of Representatives
District 31



Session
Capitol Building, Room 411
Juneau, Alaska 99801
Phone: (907) 465-3004
Fax: (907) 465-2070

Interim
119 N. Cushman St. Suite 213
Fairbanks, AK 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Sponsor Statement House Bill 302 – Alaska Gas Corporation

Article VIII, Section 2 of the Constitution of the State of Alaska specifies that, "the legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people." For many years, the State of Alaska has relied heavily on the production of oil to foster its livelihood, provide opportunities for its people, and generate revenues to ensure continued prosperity. We have all seen and enjoyed the positive effects of oil development. However, oil price fluctuations and reduced competition resulting in reduced production have adversely affected the State's ability to provide a secure economic future. As we face an enormous budget deficit, we must look beyond our reliance on oil production, budget cutting, and taxation as the only means of ensuring a long-term fiscal solution. It is incumbent upon the leaders of this state to recognize that further resource development is critical in order to secure an additional and substantial revenue stream to the State of Alaska. Conservatively, 100 trillion cubic feet of natural gas is stranded on the North Slope, and the failure to recognize this vital resource as a valuable commodity is in direct conflict with the provisions of the Constitution of the State of Alaska.

In order to facilitate the extraction and sale of natural gas, House Bill 302 establishes the Alaska Gas Corporation. The prime responsibility of the corporation is to provide for a basic commodity transportation system: a natural gas pipeline system; open to all potential competitors, and open to all realistic market access opportunities.

Overcoming a number of impediments is essential in order for a project of this nature to become a reality. We have extensively studied the economics, market viability, financial needs, and regulatory obstacles associated with the construction and operation of this project. However, in order to truly understand the economic viability of the Alaska Gas Corporation, we must turn to professionals in the engineering, financial and market sectors in order to establish absolute economic feasibility, and an associated project plan.

House Bill 302 requires a natural gas pipeline feasibility study and plan be completed and presented to the twenty-third Alaska State Legislature and the Governor. This report shall contain specific information pertaining to technical, financial, regulatory and market access matters relating to the project. The passage of HB 302 is of paramount importance in order to move forward and develop our natural resources in the maximum best interest of the citizens of the State of Alaska.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 302
 (H) Publish Date: 4/8/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Alaska Gas Corporation BRU Administration and Support
 Component Commissioner's Office
 Sponsor Representative Whitaker
 Requester House Oil and Gas Committee Component No. 123

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation directs the Joint Committee on Natural Gas Pipelines to submit a project plan by January 2003 on "whether the construction and operation of a natural gas transmission pipeline project ... by a public corporation is feasible." The plan would include findings, recommendations and conclusions from engineering and consulting firms on a detailed list of gas supply, financial, regulatory, market, local-hire and local-buy matters. If the project is judged feasible, the legislation directs that a new entity within Revenue, the Alaska Gas Corporation, would be responsible for one or more of the following: design, construction, operation and maintenance of the pipeline.

Because a legislative committee would pay for and manage the feasibility study, that portion of this legislation would not effect the department's operating budget.

And because the feasibility of the project, and the state's possible role in construction and/or operation of the project, would be determined by the feasibility study, it is premature at this time for the department to estimate any budgetary needs for the new public corporation.

Prepared by: Larry Persily, Deputy Commissioner Phone 465-5469
 Division Department of Revenue Date/Time 4/1/02 7:20 PM
 Approved by: Wilson Condon, Commissioner Date 4/1/2002
 Agency Department of Revenue

Amended pg
3

HOUSE BILL NO. 302

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

BY REPRESENTATIVE WHITAKER

Introduced: 1/14/02

Referred: House Special Committee on Oil and Gas, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Alaska Gas Corporation, a public corporation, and providing
2 for its structure, management, responsibilities, and operation, and requiring the
3 development of a project plan to evaluate whether construction and operation of a
4 natural gas transmission pipeline project by the corporation is feasible."

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

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

8 FINDINGS AND INTENT. (a) The legislature finds that

9 (1) art. VIII, sec. 1, Constitution of the State of Alaska, provides that it is the
10 policy of the state to encourage the settlement of its land and the development of its resources
11 by making them available for maximum use consistent with the public interest;

12 (2) art. VIII, sec. 2, Constitution of the State of Alaska, requires the legislature
13 to provide for the utilization, development, and conservation of all natural resources
14 belonging to the state, including land and waters, for the maximum benefit of its people;

1 (3) the production of oil and gas from state land is an important source of
2 revenue to the state and job opportunities for all the people of the state;

3 (4) natural gas located on the North Slope is a valuable resource to the state
4 that has not been produced for sale in the market place;

5 (5) the amount of natural gas located on the North Slope is substantial and, if
6 sold, will generate significant revenue to the state and opportunities and benefits to its people
7 for many years into the future;

8 (6) maximum benefit to the people of the State of Alaska by the sale of North
9 Slope natural gas may be realized only through public ownership of a corporate entity that
10 performs the essential government function of providing transportation infrastructure that
11 otherwise may not be provided; and

12 (7) failure to produce and sell the natural gas resource located in the state for
13 the maximum benefit of its people is in direct conflict with the provisions of the Constitution
14 of the State of Alaska.

15 (b) The intent of this Act is to

16 (1) provide the people of the state the maximum benefit possible through
17 extraction of natural resources as required by the Constitution of the State of Alaska;

18 (2) foster and promote the long-term economic growth and development of the
19 state;

20 (3) recognize that the production, ownership, and sale of natural gas is in the
21 long-term and maximum best interest of the citizens of the state;

22 (4) establish a means by which the state can bring North Slope natural gas
23 resources to market;

24 (5) create a public corporation with the powers, duties, and functions
25 necessary to facilitate the ownership of transportation infrastructure required for the sale of
26 North Slope natural gas;

27 (6) require the corporation to contract with private sector entities for the
28 following services and functions in order to bring natural gas from the North Slope to market:

29 (A) the design and construction of the natural gas pipeline system; and

30 (B) the operation and maintenance of the natural gas pipeline system.

31 * **Sec. 2.** AS 41 is amended by adding a new chapter to read:

1 **Chapter 41. Alaska Gas Corporation.**

2 **Article 1. Establishment of the Corporation.**

3 **Sec. 41.41.010. Establishment of the corporation.** (a) There is established
4 the Alaska Gas Corporation, the purpose of which is to provide one or more of the
5 following services and functions in order to bring natural gas from the North Slope to
6 market:

7 (1) the design and construction of the project; and

8 (2) the operation and maintenance of the project.

9 (b) The corporation is a public corporation and an instrumentality of the state
10 within the Department of Revenue.

11 (c) The corporation has a legal existence independent of and separate from the
12 state.

13 (d) The transportation of natural gas from the North Slope by the Alaska Gas
14 Corporation is an essential government function of the state.

15 (e) The corporation may not be terminated as long as it has bonds, notes, or
16 other obligations outstanding.

17 **Sec. 41.41.020. Corporation governing body.** (a) The corporation shall be
18 governed by a board of directors consisting of six members appointed by the governor
19 from the public, who may not hold another state or federal office, position, or
20 employment, either elective or appointive, except as a member of the armed forces of
21 either the United States or this state.

22 (b) The members of the board must have recognized competence and wide
23 experience in finance, business management, and gas industry-related endeavors.

24 (c) The board shall annually elect a chair, and may elect other officers, from
25 among its members.

26 **Sec. 41.41.030. Term of office.** The members of the board shall be appointed
27 for terms of four years, and they may be reappointed. The terms of the members shall
28 be staggered so that no more than two terms of members expire each year.

29 **Sec. 41.41.040. Removal and vacancies.** (a) The governor may remove a
30 member of the board from office ^{for cause.} A removal by the governor must be in writing and
31 must state the reason for the removal. A member who is removed by the governor

1 may not participate in board business and may not be counted for purposes of
2 establishing a quorum after the member receives written notice of removal from the
3 governor. A member who is removed by the governor is not entitled to honoraria, per
4 diem, or travel expenses authorized under AS 44.41.060 for work performed after the
5 member receives the written notice of removal.

6 (b) The governor shall promptly fill a vacancy on the board by appointment.
7 An appointee to a vacancy shall hold office for the balance of the term for which the
8 appointee's predecessor on the board was appointed.

9 (c) A vacancy on the board does not impair the authority of a quorum of the
10 board to exercise all the powers and perform all the duties of the board.

11 **Sec. 41.41.050. Quorum and voting.** Four members of the board constitute a
12 quorum for the transaction of business and the exercise of the powers and duties of the
13 board. Action may be taken only upon the affirmative vote of a majority of the full
14 membership of the board.

15 **Sec. 41.41.060. Compensation of board members; per diem and travel**
16 **expenses.** (a) Members of the board receive an honorarium of \$400 for each day
17 spent at a meeting of the board or at a meeting of a subcommittee of the board or at a
18 public meeting as a representative of the board.

19 (b) Members of the board are entitled to per diem and travel expenses
20 authorized for boards and commissions under AS 39.20.180.

21 **Sec. 41.41.070. Corporation staff.** (a) The board may employ and determine
22 the salary of an executive director.

23 (b) The executive director may, with the approval of the board, select and
24 employ additional staff as necessary.

25 (c) An employee of the corporation, including the executive director, may not
26 be a member of the board. The executive director and the other employees of the
27 board are in the exempt service under AS 39.25.110.

28 (d) In addition to its employees, the corporation may contract for and engage
29 the services of bond counsel, legal counsel, consultants, experts, and financial advisors
30 the corporation considers necessary for the purpose of developing information,
31 furnishing advice, or conducting studies, investigations, hearings, or other

1 proceedings.

2 **Sec. 41.41.080. Conflicts of interest.** (a) Members of the board and the
3 executive director of the corporation are subject to the provisions of AS 39.50.

4 (b) If a member of the board or an employee of the corporation acquires,
5 owns, or controls an interest, direct or indirect, in an entity or project in which assets
6 of the corporation are invested, the member shall immediately disclose the interest to
7 the board. The disclosure is a matter of public record and shall be included in the
8 minutes of the board meeting next following the disclosure.

9 **Sec. 41.41.090. Corporation budget.** (a) The revenue earned by corporate
10 operations must be identified as the source of the operating budget of the corporation
11 in the state's operating budget under AS 37.07 (Executive Budget Act).

12 (b) Earnings of the corporation in excess of future operating needs shall accrue
13 and be transferred to the state general fund once each year, not later than January 15,
14 after the first full year of operation.

15 **Sec. 41.41.100. Audits.** The Legislative Budget and Audit Committee may
16 provide for an annual post audit and annual operational and performance evaluations
17 of the corporation's operations and budget.

18 **Sec. 41.41.110. Reports and publications.** (a) By September 30 of each
19 year, the board shall publish a report of the corporation for distribution to the governor
20 and the public. The board shall notify the legislature that the report is available.

21 (b) The report must include financial statements audited by independent
22 outside auditors and a statement of the amount of money received by the corporation
23 from its operations during the period covered.

24 **Sec. 41.41.120. Political activities.** The resources of the corporation may not
25 be used to finance or influence political activities.

26 **Sec. 41.41.130. Public access to information.** (a) Information in the
27 possession of the corporation is a public record, except that information that discloses
28 the particulars of the business or affairs of a private enterprise or investor is
29 confidential and is not a public record for purposes of AS 40.25.110 - 40.25.140.
30 Confidential information may be disclosed only for the purposes of an official law
31 enforcement investigation or when its production is required in a court proceeding.

1 (b) The restrictions of (a) of this section do not prohibit the publication of
 2 statistics presented in a manner that prevents the identification of particular reports,
 3 items, persons, or enterprises.

4 **Article 2. Powers of the Corporation.**

5 **Sec. 41.41.200. Powers of the corporation.** In furtherance of corporate
 6 purposes, in addition to other powers, the corporation may

- 7 (1) sue and be sued;
- 8 (2) adopt a seal;
- 9 (3) adopt, amend, and repeal bylaws and regulations;
- 10 (4) make and execute contracts and other instruments;
- 11 (5) in its own name acquire property, lease, rent, convey, or acquire
 12 real and personal property; a project site or part of a project site may be acquired by
 13 eminent domain;
- 14 (6) issue bonds and otherwise incur indebtedness in accordance with
 15 AS 41.41.300 - 41.41.410 in order to pay the cost of a project;
- 16 (7) accept gifts, grants, or loans from and enter into contracts or other
 17 transactions regarding gifts, grants, or loans with a federal agency or an agency or
 18 instrumentality of the state, a municipality, private organization, or other source;
- 19 (8) enter into contracts or agreements with a federal agency, agency or
 20 instrumentality of the state, municipality, or public or private individual or entity, with
 21 respect to the exercise of its powers;
- 22 (9) charge fees or other forms of remuneration for use of properties
 23 and facilities of the corporation;
- 24 (10) defend and indemnify a current or former member of the board or
 25 an employee or agent of the authority against the costs, expenses, judgments, and
 26 liabilities as a result of actions taken in good faith on behalf of the authority; and
- 27 (11) purchase insurance to protect its assets, services, and employees
 28 against liabilities that may arise from authority operations and activities.

29 **Article 3. Revenue Bonds and Notes.**

30 **Sec. 41.41.300. Bonds and notes of the corporation.** (a) The corporation,
 31 by resolution, may issue revenue bonds and bond anticipation notes in order to provide

1 funds to carry out the purposes set out in AS 41.41.010(a).

2 (b) The principal and interest on the revenue bonds or notes authorized and
3 issued under (a) of this section are payable from corporation funds. Bond anticipation
4 notes may be payable from the proceeds of the sale of bonds or from the proceeds of
5 the sale of other bond anticipation notes or, in the event bond or bond anticipation note
6 proceeds are not available, the notes may be paid from other funds or assets of the
7 corporation.

8 (c) Bonds or notes may be additionally secured by a pledge of a grant or
9 contribution from the federal government, or a corporation, association, institution, or
10 person, or a pledge of money, income, or revenues of the corporation from any source.

11 (d) Bonds or bond anticipation notes of the corporation may be issued in one
12 or more series and shall be dated, bear interest at the rate or rates per year or within the
13 maximum rate, be in the denomination, be in the form, either coupon or registered,
14 carry the conversion or registration provisions, have the rank or priority, be executed
15 in the manner and form, be payable at the times, from the sources, and in the medium
16 of payment and place or places within or outside the state, be subject to authentication
17 by a trustee or fiscal agent, and be subject to the terms of redemption with or without
18 premium, as the resolution of the corporation may provide. Bond anticipation notes
19 shall mature at the time or times that are determined by the corporation. Bonds shall
20 mature at a time not exceeding a number of years from their date that is determined by
21 the corporation. Before the preparation of definitive bonds or bond anticipation notes,
22 the corporation may issue interim receipts or temporary bonds or bond anticipation
23 notes, with or without coupons, exchangeable for bonds or bond anticipation notes
24 when these definitive bonds or bond anticipation notes have been executed and are
25 available for delivery.

26 (e) Bonds or bond anticipation notes may be sold in the manner and on the
27 terms the corporation determines.

28 (f) If an officer whose signature or a facsimile of whose signature appears on a
29 bond, note, or coupon attached to them ceases to be an officer before the delivery of
30 the bond, note, or coupon, the signature or facsimile is valid the same as if the officer
31 had remained in office until delivery.

1 **Sec. 41.41.310. Covenants.** (a) In a resolution of the corporation authorizing
2 or relating to the issuance of bonds or bond anticipation notes, the corporation has
3 power by provisions in the resolution that will constitute covenants of the corporation
4 and contracts with the holders of the bonds or bond anticipation notes to

5 (1) pledge to a payment or purpose all or a part of its revenues to
6 which its right then exists or may thereafter come into existence, and the money
7 derived from the revenues, and the proceeds of bonds or notes;

8 (2) covenant as to the use and disposition of payments of principal or
9 interest received by the corporation on loans or other investments held by the
10 corporation;

11 (3) covenant as to establishment of reserves or sinking funds and the
12 making of provision for and the regulation and disposition of the reserves or sinking
13 funds;

14 (4) covenant with respect to or against limitations on a right to sell or
15 otherwise dispose of property of any kind;

16 (5) covenant as to bonds and notes to be issued, and their limitations,
17 terms, and conditions, and as to the custody, application, and disposition of the
18 proceeds of the bonds and notes;

19 (6) covenant as to the issuance of additional bonds or notes, or as to
20 limitations on the issuance of additional bonds or notes and the incurring of other
21 debts;

22 (7) covenant as to the payment of the principal of or interest on the
23 bonds or notes, as to the sources and methods of the payment, as to the rank or priority
24 of the bonds or notes with respect to a lien or security, or as to the acceleration of the
25 maturity of the bonds or notes;

26 (8) provide for the replacement of lost, stolen, destroyed, or mutilated
27 bonds or notes;

28 (9) covenant as to the redemption of bonds or notes and privileges of
29 their exchange for other bonds or notes of the corporation;

30 (10) covenant to create or authorize the creation of special funds of
31 money to be held in pledge or otherwise for operating expenses, payment or

1 redemption of bonds or notes, reserves, or other purposes;

2 (11) establish the procedure, if any, by which the terms of a contract or
3 covenant with or for the benefit of the holders of bonds or notes may be amended or
4 abrogated, the amount of bonds or notes the holders of which must consent to
5 amendment or abrogation, and the manner in which the consent may be given;

6 (12) covenant as to the custody of property or investments, their
7 safekeeping and insurance, and the use and disposition of insurance money;

8 (13) agree with a corporate trustee that may be a trust company or
9 bank having the powers of a trust company within or outside the state as to the
10 pledging or assigning of revenue or funds to which or in which the corporation has
11 rights or an interest; the agreement may further provide for other rights and remedies
12 exercisable by the trustee as may be proper for the protection of the holders of a bond
13 or note of the corporation and not otherwise in violation of law and may provide for
14 the restriction of the rights of an individual holder of bonds or notes of the
15 corporation;

16 (14) appoint and provide for the duties and obligations of a paying
17 agent or paying agents or other fiduciaries as the resolution may provide within or
18 outside the state;

19 (15) limit the rights of the holders of a bond or note to enforce a pledge
20 or covenant securing the bonds or notes;

21 (16) make covenants other than and in addition to the covenants
22 expressly authorized in this section of like or different character, and to make
23 covenants to do or refrain from doing acts and things as may be necessary or
24 convenient and desirable in order to better secure bonds or notes or that, in the
25 absolute discretion of the corporation, will tend to make bonds or notes more
26 marketable, notwithstanding that the covenants, acts, or things may not be enumerated
27 in this section.

28 **Sec. 41.41.320. Limitations of issuance of bonds.** (a) The corporation may
29 not issue bonds in an amount that exceeds the amount of bonds authorized to be issued
30 by the legislature.

31 (b) This section does not apply to the issuance by the corporation of refunding

1 bonds or to the issuance by the corporation of bonds the proceeds of which are
2 intended to be used to refinance the loans held by the corporation.

3 **Sec. 41.41.330. Independent financial advisor.** In negotiating the private
4 sale of bonds or bond anticipation notes to an underwriter, the corporation may retain
5 a financial advisor. A financial advisor retained under this section must be
6 independent from the underwriter.

7 **Sec. 41.41.340. Validity of pledge.** (a) The pledge of assets or revenue of the
8 corporation to the payment of the principal or interest on an obligation of the
9 corporation is valid and binding from the time the pledge is made, and the assets or
10 revenue are immediately subject to the lien of the pledge without physical delivery or
11 further act. The lien of a pledge is valid and binding against all parties having claims
12 in tort, contract, or otherwise against the corporation, irrespective of whether those
13 parties have notice of the lien of the pledge.

14 (b) This section does not prohibit the corporation from selling assets subject to
15 a pledge, except that a sale may be restricted by the trust agreement or resolution
16 providing for the issuance of the obligations.

17 **Sec. 41.41.350. Capital reserve funds.** (a) For the purpose of securing one
18 or more issues of its obligations, the corporation may establish one or more special
19 funds, called "capital reserve funds," and shall pay into those capital reserve funds (1)
20 money appropriated and made available by the state for the purpose of those funds, (2)
21 proceeds of the sale of its obligations, to the extent provided in the resolution or
22 resolutions of the corporation authorizing their issuance, and (3) other money that may
23 be made available to the corporation for the purposes of those funds from another
24 source. All money held in a capital reserve fund, except as provided in this section,
25 shall be used as required solely for the payment of the principal of obligations or of
26 the sinking fund payments with respect to those obligations; the purchase or
27 redemption of obligations; the payment of interest on obligations; or the payment of a
28 redemption premium required to be paid when those obligations are redeemed before
29 maturity. However, money in a fund may not be withdrawn from that fund at any time
30 in an amount that would reduce the amount of that fund to less than the capital reserve
31 requirement set out in (b) of this section, except for the purpose of making, with

1 respect to those obligations, payment, when due, of principal, interest, redemption
2 premiums, and the sinking fund payments for the payment of which other money of
3 the corporation is not available. Income or interest earned by, or increment to, a
4 capital reserve fund due to the investment of the fund or other amounts in it may be
5 transferred by the corporation to other funds or accounts of the corporation to the
6 extent that the transfer does not reduce the amount of the capital reserve fund below
7 the capital reserve fund requirement.

8 (b) If the corporation decides to issue obligations secured by a capital reserve
9 fund, the obligations may not be issued if the amount in the capital reserve fund is less
10 than a percent, not exceeding 10 percent of the principal amount of all of those
11 obligations secured by that capital reserve fund then to be issued and then outstanding
12 in accordance with their terms, as may be established by resolution of the corporation,
13 called the "capital reserve fund requirement," unless the corporation, at the time of
14 issuance of the obligations, deposits in the capital reserve fund from the proceeds of
15 the obligations to be issued or from other sources an amount that, together with the
16 amount then in the fund, will not be less than the capital reserve fund requirement.

17 (c) In computing the amount of a capital reserve fund for the purpose of this
18 section, securities in which all or a portion of the funds are invested shall be valued at
19 par or, if purchased at less than par, at amortized costs as the term is defined by
20 resolution of the corporation authorizing the issue of the obligations or by some other
21 reasonable method established by the corporation by resolution. Valuation on a
22 particular date must include the amount of interest earned or accrued to that date.

23 (d) To assure the continued operation and solvency of the corporation for the
24 carrying out of its corporate purposes, provision is made in (a) of this section for the
25 accumulation in capital reserve funds of an amount equal to their capital reserve fund
26 requirement.

27 (e) The chair of the corporation shall annually, no later than January 2, make
28 and deliver to the governor and chairs of the house and senate finance committees a
29 certificate stating the sum, if any, required to restore a capital reserve fund to the
30 capital reserve fund requirement. The legislature may appropriate that sum, and all
31 sums appropriated during the current fiscal year by the legislature for the restoration

1 shall be deposited by the corporation in the appropriate capital reserve fund.

2 (I) Nothing in this section creates a debt or liability of the state.

3 **Sec. 41.41.360. Remedies.** A holder of obligations or coupons attached to
4 them issued under the provisions of this chapter, and a trustee under a trust agreement
5 or resolution authorizing the issuance of the obligations, except as restricted by a trust
6 agreement or resolution, either at law or in equity, may enforce all rights granted
7 hereunder or under the trust agreement or resolution, or under another contract
8 executed by the corporation under this chapter, and may enforce and compel the
9 performance of all duties required by this chapter or by the trust agreement or
10 resolution to be performed by the corporation or by an officer of it.

11 **Sec. 41.41.370. Negotiable instruments.** All obligations and interest
12 coupons attached to them are negotiable instruments under the laws of this state,
13 subject only to applicable provisions for registration.

14 **Sec. 41.41.380. Obligations eligible for investment.** Obligations issued
15 under the provisions of this chapter are securities in which all public officers and
16 public bodies of the state and its political subdivisions, all insurance companies, trust
17 companies, banking associations, investment companies, executors, administrators,
18 trustees, and other fiduciaries may properly and legally invest funds, including capital
19 in their control or belonging to them. These obligations may be deposited with a state
20 or municipal officer of an agency or political subdivision of the state for a purpose for
21 which the deposit of bonds, notes, or obligations of the state is authorized by law.

22 **Sec. 41.41.390. Refunding bonds.** (a) The corporation may provide for the
23 issuance of refunding bonds for the purpose of refunding an obligation then
24 outstanding that have been issued under the provisions of this chapter, including the
25 payment of redemption premium on them and interest accrued or to accrue to the date
26 of redemption of the obligations. The issuance of the bonds, the maturities and other
27 details of them, the rights of the holders of them, and the rights, duties, and obligations
28 of the corporation in respect of them are governed by the provisions of this chapter
29 that relate to the issuance of obligations insofar as those provisions may be
30 appropriate.

31 (b) Refunding bonds may be sold or exchanged for outstanding bonds issued

1 under this chapter, and, if sold, the proceeds may be applied, in addition to another
 2 authorized purpose, to the purchase, redemption, or payment of the outstanding
 3 obligations. Pending the application of the proceeds of refunding bonds, with any
 4 other available funds, to the payment of the principal, accrued interest, and redemption
 5 premium on the obligations being refunded, and, if so provided or permitted in the
 6 resolution authorizing the issuance of the refunding bonds or in the trust agreement
 7 securing them, to the payment of any interest on the refunding bonds and expenses in
 8 connection with the refunding, the proceeds may be invested in direct obligations of,
 9 or obligations the principal of and the interest on which are unconditionally
 10 guaranteed by, the United States that mature or that will be subject to redemption, at
 11 the option of the holders of them, not later than the respective dates when the
 12 proceeds, together with the interest accruing on them, will be required for the purposes
 13 intended.

14 **Sec. 41.41.400. Credit of state not pledged.** (a) Obligations issued under
 15 the provisions of this chapter do not constitute a debt, liability, or obligation of the
 16 state or of a political subdivision of the state or a pledge of the faith and credit of the
 17 state or of a political subdivision of the state but are payable solely from the revenue
 18 or assets of the corporation. Each obligation issued under this chapter must contain on
 19 its face a statement that the corporation is not obligated to pay it or the interest on it
 20 except from the revenue or assets of the corporation and that neither the faith and
 21 credit nor the taxing power of the state or of a political subdivision of the state is
 22 pledged to the payment of the principal of or the interest on the obligation.

23 (b) Expenses incurred by the corporation in carrying out the provisions of this
 24 chapter are payable from funds provided under this chapter, and liability may not be
 25 incurred by the corporation in excess of these funds.

26 **Sec. 41.41.410. Officers not liable.** A board member or other officer of the
 27 corporation is not subject to personal liability or accountability by reason of having
 28 executed or issued an obligation.

29 **Article 4. Property of the Corporation.**

30 **Sec. 41.41.450. Property of the corporation.** The corporation may acquire,
 31 by purchase, lease, or gift, upon terms that it considers proper, land, structures, real or

1 personal property rights, rights-of-way, franchises, easements, and other interests in
 2 land it considers necessary or convenient for the financing of the project or a part of
 3 the project.

4 **Article 5. General Provisions.**

5 **Sec. 41.41.900. Tax exemption.** (a) The exercise of the powers granted by
 6 this chapter will be in all respects for the benefit of the people of the state, for their
 7 well-being and prosperity, and for the improvement of their social and economic
 8 conditions. The corporation is not required to pay a tax or assessment on property
 9 owned by the corporation under the provisions of this chapter or on the income from
 10 it.

11 (b) All obligations issued under this chapter are declared to be issued by a
 12 body corporate and public of the state and for an essential public and governmental
 13 purpose, and the obligations, and the interest and income on and from the obligations,
 14 and all fees, charges, funds, revenues, income, and other money pledged or available
 15 to pay or secure the payment of the obligations, or interest on the obligations, are
 16 exempt from state taxation except for transfer, inheritance, and estate taxes.

17 **Sec. 41.41.990. Definitions.** In this chapter,

18 (1) "board" means the board of directors of the Alaska Gas
 19 Corporation;

20 (2) "corporation" means the Alaska Gas Corporation;

21 (3) "project" means the gas transmission pipeline, together with all
 22 related property and facilities, to extend from the Prudhoe Bay area on the North Slope
 23 of Alaska to the interior of Alaska and from there either along a route proximate to the
 24 Alaska Highway to interconnect with a gas transmission pipeline in Canada or to
 25 tidewater at a point on Prince William Sound, or both, and includes planning, design,
 26 and construction of the pipeline and related facilities.

27 * **Sec. 3.** AS 39.25.110(11) is amended by adding a new subparagraph to read:

28 (G) Alaska Gas Corporation;

29 * **Sec. 4.** AS 39.50.200(b) is amended by adding a new paragraph to read:

30 (57) the board of directors and executive director of the Alaska Gas
 31 Corporation (AS 41.41.020).

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

3 DEVELOPMENT OF PROJECT PLAN. (a) The Joint Committee on Natural Gas
4 Pipelines of the Twenty-Second Alaska State Legislature (Legislative Resolve 32) shall
5 submit a report to the governor, the speaker of the house, and the president of the senate no
6 later than the first day of the First Regular Session of the Twenty-Third Alaska State
7 Legislature based on conclusions drawn by qualified engineering, consulting, and other
8 entities considered appropriate as to whether the construction and operation of a natural gas
9 transmission pipeline project, as defined in AS 41.41.990, added by sec. 2 of this Act, by a
10 public corporation is feasible.

11 (b) The feasibility study must be a general description of the requirements and current
12 status of the requirements set out in (a) of this section with respect to gas supply, engineering,
13 technical, financial, regulatory, and market access matters relating to the project. In addition,
14 the plan must include the following specific items and findings and recommendations on each
15 item:

16 (1) the proposed methods and procedures by which the project will be
17 financed, including the amounts and times of issuance of bonds by the corporation;

18 (2) the method of securing the bonds;

19 (3) projected debt service requirements of the bonds;

20 (4) projected revenues, for the period of time during which reasonable
21 projections can be made, that will be available to the corporation to meet debt service
22 requirement;

23 (5) documentation that contractors have undertaken

24 (A) to use their best efforts to advertise for, recruit, and employ
25 qualified residents of the state;

26 (B) to subcontract with existing licensed Alaska firms within the state
27 and, in subcontracting with those firms, to encourage the contractors to employ and,
28 when necessary, train existing state residents;

29 (C) to enter into contracts with Alaska-licensed vendors, contractors,
30 and suppliers for the provision of supplies and services; and

31 (D) to conduct quarterly audits of the performance of the contractors

1 under (A) - (C) of this paragraph and to report the results of these audits to the
2 legislature and other interested state officials in a timely manner;

3 (6) the estimated number of Alaska workers who will be employed under the
4 provisions of (5) of this subsection, the estimated total number of workers to be employed on
5 the project during construction, the estimated dollar volume of contracts that will be let to
6 Alaska contractors or firms under the provisions of (5) of this subsection, and the estimated
7 total dollar volume of contracts that will be let for the project during construction; and

8 (7) documentation that the necessary documents and exhibits have been filed
9 before the appropriate federal regulatory agencies.

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

12 INITIAL APPOINTMENTS OF MEMBERS OF ALASKA GAS CORPORATION
13 BOARD OF DIRECTORS. Of the members first appointed under AS 41.41.020(a), enacted
14 by sec. 2 of this Act,

15 (1) two members shall be appointed to four-year terms;

16 (2) one member shall be appointed to a three-year term;

17 (3) two members shall be appointed to two-year terms; and

18 (4) one member shall be appointed to a one-year term.