

**SB**

**316**

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 4/13/06

FURTHER:

Date of 5-Day Notice: \_\_\_\_\_  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: \_\_\_\_\_

Judiciary Committee considered                      SENATE BILL NO. 316

### SB 316 COURT REVIEW OF STRANDED GAS DECISION

"An Act amending the Alaska Stranded Gas Development Act to eliminate the opportunity for judicial review of the findings and determination of the commissioner of revenue on which are based legislative review for a proposed contract for payments in lieu of taxes and for the other purposes described in that Act; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**CS Senate Bill:**  
 Same Title  
 New Title

**SCS House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Mitchell</i>			X	
<i>[Signature]</i>			X	
<i>[Signature]</i>	X			
<i>[Signature]</i>			X	
CHAIR: <i>[Signature]</i>	✓			

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
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## MEMORANDUM

April 28, 2006

**SUBJECT:** CSSB 316(Judiciary) (Work Order No. 24-LS1842X)

**TO:** Senator Ralph Seekins  
Chair of the Senate Judiciary Committee

**FROM:** Jack Chenoweth  
Assistant Revisor

Of the committee's two amendments to the earlier draft, I made only the title insertion. The designation of existing AS 43.82.440 (bill section 7) as subsection (a) (because of addition of a new subsection (b) by bill section 8) is handled editorially, as an instruction given by the revisor of statutes to the publisher. In the Legislative Drafting Manual, it is clear that the revisor of statutes, under authority given in AS 01.05.031(b), is to automatically designate the previous language of an existing section as "subsection (a)" when additional material in the form of new subsections is added to that section.

JBC:lmb  
06-154.lmb

Enclosure

24-LS1842S  
Chenoweth  
4/28/06

**CS FOR SENATE BILL NO. 316(JUD)**

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

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATE JUDICIARY COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act amending provisions of the Alaska Stranded Gas Development Act relating to  
2 establishing when records and files relevant to development of a contract for payments  
3 in lieu of taxes and for the other purposes described in that Act become public records,  
4 to the content of the preliminary and final findings and determinations that apply to a  
5 proposed contract negotiated under that Act, to legislative review of, and authorization  
6 to execute, a proposed contract negotiated under that Act, to vesting of rights under a  
7 contract negotiated under that Act, and to judicial review of the final findings and  
8 recommendation *#1 at least* that support a proposed contract, of its authorization, and of its  
9 enforceability; extending to 60 days the period during which the public and members of  
10 the legislature may comment on a proposed contract under that Act; and providing for  
11 an effective date."

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

1     \* **Section 1.** AS 43.82.310(f) is amended to read:

2             (f) If the commissioner of revenue chooses to develop a contract under  
3             AS 43.82.020, the portions of the records and files of the Department of Revenue, the  
4             Department of Natural Resources, the Department of Law, and a municipal advisory  
5             group established under AS 43.82.510 that reflect, incorporate, or analyze information  
6             that is relevant to the development of the position or strategy of the commissioner of  
7             revenue, the commissioner of natural resources, or the attorney general with respect to  
8             a particular provision that may be incorporated into the contract are [NOT] public  
9             records after [UNTIL] the commissioner of revenue gives public notice under  
10            AS 43.82.410 of the commissioner's preliminary findings and determination under  
11            AS 43.82.400. Nothing in this subsection

12                     (1) makes a record or file of the Department of Revenue, the  
13                     Department of Natural Resources, or the Department of Law a public record that  
14                     otherwise would not be a public record under AS 40.25.100 - 40.25.220;

15                     (2) affects the confidentiality provisions of (a) - (e) of this section; or

16                     (3) abridges a privilege recognized under the laws of this state,  
17                     whether at common law or by statute or by court rule.

18     \* **Sec. 2.** AS 43.82.400(a) is amended to read:

19             (a) If the commissioner develops a proposed contract under AS 43.82.200 -  
20             43.82.270, the commissioner shall

21                     (1) make preliminary findings and a determination that the proposed  
22                     contract terms are in the long-term fiscal interests of the state and whether the  
23                     contract meets the requirements and [FURTHER THE] purposes of this chapter;  
24                     and

25                     (2) prepare a proposed contract that includes those terms and shall  
26                     submit the contract to the governor.

27     \* **Sec. 3.** AS 43.82.410 is amended to read:

28             **Sec. 43.82.410. Notice and comment regarding the contract.** The  
29             commissioner shall

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

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

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

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

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

11 (3) offer to appear before the Legislative Budget and Audit Committee  
12 to provide the committee a review of the commissioner's preliminary findings and  
13 determination, the proposed contract, and the supporting financial, technical, and  
14 market data; if the Legislative Budget and Audit Committee accepts the  
15 commissioner's offer, the committee shall give notice of the committee's meeting to  
16 the public and all members of the legislature; if the financial, technical, and market  
17 data that is to be provided must be kept confidential under AS 43.82.310, the  
18 commissioner may not release the confidential information during a public portion of  
19 a committee meeting; and

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

23 \* Sec. 4. AS 43.82.430(a) is amended to read:

24 (a) Within 30 days after the close of the public comment period under  
25 AS 43.82.410(4), the commissioner of revenue shall

26 (1) prepare a summary of the public comments received in response to  
27 the proposed contract and the preliminary findings and determination;

28 (2) after consultation with the commissioner of natural resources, if  
29 appropriate, and with the pertinent municipal advisory group established under  
30 AS 43.82.510, prepare a list of proposed amendments, if any, to the proposed contract  
31 that the commissioner of revenue determines are necessary to respond to public

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comments;

(3) make final findings and a determination as to whether the proposed contract and any proposed amendments prepared under (2) of this subsection meet the requirements and purposes of this chapter and findings and determination that the proposed contract is in the long-term fiscal interests of the state.

\* Sec. 5. AS 43.82.430(b) is amended to read:

(b) After considering the material described in (a) of this section and securing the agreement of the other parties to the proposed contract regarding any proposed amendments prepared under (a) of this section, and after [IF] the commissioner determines that the contract is in the long-term fiscal interests of the state, the commissioner shall submit the contract to the governor.

\* Sec. 6. AS 43.82.435 is repealed and reenacted to read:

**Sec. 43.82.435. Legislative authorization.** (a) The governor may transmit a contract developed under this chapter to the legislature together with a request for authorization to execute the contract.

(b) Concurrent with transmittal of the contract and request for authorization under (a) of this section, the governor shall

(1) submit to the legislature the commissioner's final findings and determination and the financial, technical, and market data, including the work papers, analyses, and recommendations of any independent contractors used under AS 43.82.240, that were considered by the commissioner to make the findings and determination; and

(2) make available to the public copies of the proposed contract and, to the extent a record or information is not required to be kept confidential under AS 43.82.310, the material described in (1) of this subsection.

(c) After considering the material described in (b)(1) of this section and other information that the legislature considers relevant that it has requested from the governor and state agencies and received, the legislature may, by law, authorize the state to execute the contract transmitted by the governor.

(d) A contract developed under this chapter is not binding on or enforceable against the state or other parties to the contract unless the governor is authorized to

1 execute the contract by law.

2 (e) The state and the other parties to the contract may execute the contract  
3 within 60 days after the effective date of the law authorizing the contract.

4 \* Sec. 7. AS 43.82.440 is amended to read:

5 Sec. 43.82.440. **Judicial review; delayed vesting of rights in contracts.**

6 #2  
7 (g)

8 **Notwithstanding any other provision of law, a [A] person may not bring an action**  
9 **challenging a final agency decision of the commissioner of revenue made under**  
10 **AS 43.82.430(c), the constitutionality of a law authorizing a contract enacted under**  
11 **AS 43.82.435, or the enforceability of a contract executed under a law authorizing a**  
12 **contract enacted under this chapter until that contract has been executed and**  
13 **[AS 43.82.435] unless the action is commenced within 120 days after the date that the**  
14 **contract was executed by the state and the other parties to the contract.**

13 \* Sec. 8. AS 43.82.440 is amended by adding a new subsection to read:

14 (b) Rights under a contract entered into under this chapter may not vest until  
15 the day after the deadline to bring an action under (a) of this section.

16 \* Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

24-LS1842L  
Chenoweth  
4/27/06

**CS FOR SENATE BILL NO. 316( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SENATE JUDICIARY COMMITTEE**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act amending provisions of the Alaska Stranded Gas Development Act relating to**  
2 **establishing when records and files relevant to development of a contract for payments**  
3 **in lieu of taxes and for the other purposes described in that Act become public records,**  
4 **to the content of the preliminary and final findings and determinations that apply to a**  
5 **proposed contract negotiated under that Act, to legislative review of, and authorization**  
6 **to execute, a proposed contract negotiated under that Act, and to judicial review of the**  
7 **final findings and recommendation that support a proposed contract, its authorization,**  
8 **and its enforceability; and providing for an effective date."**

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

10 **\* Section 1. AS 43.82.310(f) is amended to read:**

11 **(f) If the commissioner of revenue chooses to develop a contract under**  
12 **AS 43.82.020, the portions of the records and files of the Department of Revenue, the**

1 Department of Natural Resources, the Department of Law, and a municipal advisory  
2 group established under AS 43.82.510 that reflect, incorporate, or analyze information  
3 that is relevant to the development of the position or strategy of the commissioner of  
4 revenue, the commissioner of natural resources, or the attorney general with respect to  
5 a particular provision that may be incorporated into the contract are [NOT] public  
6 records after [UNTIL] the commissioner of revenue gives public notice under  
7 AS 43.82.410 of the commissioner's preliminary findings and determination under  
8 AS 43.82.400. Nothing in this subsection

9 (1) makes a record or file of the Department of Revenue, the  
10 Department of Natural Resources, or the Department of Law a public record that  
11 otherwise would not be a public record under AS 40.25.100 - 40.25.220;

12 (2) affects the confidentiality provisions of (a) - (e) of this section; or

13 (3) abridges a privilege recognized under the laws of this state,  
14 whether at common law or by statute or by court rule.

15 \* Sec. 2. AS 43.82.400(a) is amended to read:

16 (a) If the commissioner develops a proposed contract under AS 43.82.200 -  
17 43.82.270, the commissioner shall

18 (1) make preliminary findings and a determination that the proposed  
19 contract terms are in the long-term fiscal interests of the state and whether the  
20 contract meets the requirements and [FURTHER THE] purposes of this chapter;  
21 and

22 (2) prepare a proposed contract that includes those terms and shall  
23 submit the contract to the governor.

24 \* Sec. 3. AS 43.82.430(a) is amended to read:

25 (a) Within 30 days after the close of the public comment period under  
26 AS 43.82.410(4), the commissioner of revenue shall

27 (1) prepare a summary of the public comments received in response to  
28 the proposed contract and the preliminary findings and determination;

29 (2) after consultation with the commissioner of natural resources, if  
30 appropriate, and with the pertinent municipal advisory group established under  
31 AS 43.82.510, prepare a list of proposed amendments, if any, to the proposed contract

1 that the commissioner of revenue determines are necessary to respond to public  
2 comments:

3 (3) make final findings and a determination as to whether the proposed  
4 contract and any proposed amendments prepared under (2) of this subsection meet the  
5 requirements and purposes of this chapter and findings and determination that the  
6 proposed contract is in the long-term fiscal interests of the state.

7 \* Sec. 4. AS 43.82.430(b) is amended to read:

8 (b) After considering the material described in (a) of this section and securing  
9 the agreement of the other parties to the proposed contract regarding any proposed  
10 amendments prepared under (a) of this section, and after [IF] the commissioner  
11 determines that the contract is in the long-term fiscal interests of the state, the  
12 commissioner shall submit the contract to the governor.

13 \* Sec. 5. AS 43.82.435 is repealed and reenacted to read:

14 **Sec. 43.82.435. Legislative authorization.** (a) The governor may transmit a  
15 contract developed under this chapter to the legislature together with a request for  
16 authorization to execute the contract.

17 (b) Concurrent with transmittal of the contract and request for authorization  
18 under (a) of this section, the governor shall

19 (1) submit to the legislature the commissioner's final findings and  
20 determination and the financial, technical, and market data, including the work papers,  
21 analyses, and recommendations of any independent contractors used under  
22 AS 43.82.240, that were considered by the commissioner to make the findings and  
23 determination; and

24 (2) make available to the public copies of the proposed contract and  
25 the material described in (1) of this subsection.

26 (c) After considering the material described in (b)(1) of this section and other  
27 information that the legislature considers relevant that it has requested from the  
28 governor and state agencies and received, the legislature may, by law, authorize the  
29 state to execute the contract transmitted by the governor.

30 (d) A contract developed under this chapter is not binding on or enforceable  
31 against the state or other parties to the contract unless the governor is authorized to

*To the extent the  
info is not required  
to be kept  
under AS 43.82.312*

#3

1 execute the contract by law.

2 (e) The state and the other parties to the contract may execute the contract  
3 within 60 days after the effective date of the law authorizing the contract.

4 \* Sec. 6. AS 43.82.440 is amended to read:

5 **Sec. 43.82.440. Judicial review. Notwithstanding any other provision of**  
6 **law, a [A] person may not bring an action challenging the final findings and**  
7 **determinations of the commissioner of revenue made under AS 43.82.430(a), the**  
8 **constitutionality of a law authorizing a contract enacted under AS 43.82.435, or the**  
9 **enforceability of a contract executed under a law authorizing a contract enacted under**  
10 **AS 43.82.440 until that contract has been executed and** unless the action is  
11 commenced within 120 days after the date that the contract was executed by the state  
12 and the other parties to the contract.

#5  
this chapter

13 ~~\* Sec. 7. AS 43.82.430(c) is repealed.~~

14 \* Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

#4 and no rights shall be vested in any  
party to the contract ~~within~~ 120 days following the  
until the day after the  
deadline to bring action

AMENDMENT #2

OFFERED IN THE SENATE

BY SENATOR THERRIAULT

TO: CSSB 316( ), Draft Version "I"

1 Page 1, line 6, following "enforceability".

2 Insert "extending to 90 days the period during which the public and members of  
3 the legislature may comment on a proposed contract under that Act;"

4  
5 Page 2, following line 12:

6 Insert a new bill section to read:

7 "\* Sec. 2. AS 43.82.410 is amended to read:

8 Sec. 43.82.410. Notice and comment regarding the contract. The  
9 commissioner shall

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

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

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

18 (B) the chairs of the finance and resources committees of the  
19 legislature; and

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

22 (3) offer to appear before the Legislative Budget and Audit Committee  
23 to provide the committee a review of the commissioner's preliminary findings and

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

8 (4) establish a period of at least 90 [30] days for the public and  
9 members of the legislature to comment on the proposed contract and the preliminary  
10 findings and determination made under AS 43.82.400."

11

12 Renumber the following bill sections accordingly.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR THERRIAULT

FO: CSSB 316( ), Draft Version "I"

1 Page 1, line 6, following "**enforceability**":

2 Insert "**extending to 90 days the period during which the public and members of**  
3 **the legislature may comment on a proposed contract under that Act;**"

4  
5 Page 2, following line 12:

6 Insert a new bill section to read:

7 "**\* Sec. 2.** AS 43.82.410 is amended to read:

8 **Sec. 43.82.410. Notice and comment regarding the contract.** The  
9 commissioner shall

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

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

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

18 (B) the chairs of the finance and resources committees of the  
19 legislature; and

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

22 (3) offer to appear before the Legislative Budget and Audit Committee  
23 to provide the committee a review of the commissioner's preliminary findings and

1 determination, the proposed contract, and the supporting financial, technical, and  
2 market data; if the Legislative Budget and Audit Committee accepts the  
3 commissioner's offer, the committee shall give notice of the committee's meeting to  
4 the public and all members of the legislature; if the financial, technical, and market  
5 data that is to be provided must be kept confidential under AS 43.82.510, the  
6 commissioner may not release the confidential information during a public portion of  
7 a committee meeting; and

8 (4) establish a period of at least 90 [30] days for the public and  
9 members of the legislature to comment on the proposed contract and the preliminary  
10 findings and determination made under AS 43.82.400."

11  
12 Renumber the following bill sections accordingly.

24-LS1842V  
Chenoweth  
4/27/06

**CS FOR SENATE BILL NO. 316( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SENATE JUDICIARY COMMITTEE**

**A BILL.**

**FOR AN ACT ENTITLED**

1 **"An Act amending provisions of the Alaska Stranded Gas Development Act relating to**  
2 **establishing when records and files relevant to development of a contract for payments**  
3 **in lieu of taxes and for the other purposes described in that Act become public records,**  
4 **to legislative review of, and authorization to execute, a proposed contract negotiated**  
5 **under that Act, and to judicial review of the findings and recommendation that support**  
6 **a proposed contract, its authorization, and its enforceability, and providing for an**  
7 **effective date."**

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

9 **\* Section 1. AS 43.82.310(f) is amended to read:**

10 (f) If the commissioner of revenue chooses to develop a contract under  
11 AS 43.82.020, the portions of the records and files of the Department of Revenue, the  
12 Department of Natural Resources, the Department of Law, and a municipal advisory  
13 group established under AS 43.82.510 that reflect, incorporate, or analyze information

1 that is relevant to the development of the position or strategy of the commissioner of  
2 revenue, the commissioner of natural resources, or the attorney general with respect to  
3 a particular provision that may be incorporated into the contract are [NOT] public  
4 records after [UNTIL] the commissioner of revenue gives public notice under  
5 AS 43.82.410 of the commissioner's preliminary findings and determination under  
6 AS 43.82.400. Nothing in this subsection

7 (1) makes a record or file of the Department of Revenue, the  
8 Department of Natural Resources, or the Department of Law a public record that  
9 otherwise would not be a public record under AS 40.25.100 - 40.25.220;

10 (2) affects the confidentiality provisions of (a) - (e) of this section; or

11 (3) abridges a privilege recognized under the laws of this state,  
12 whether at common law or by statute or by court rule.

13 \* **Sec. 2.** AS 43.82.435 is repealed and reenacted to read:

14 **Sec. 43.82.435. Legislative authorization.** (a) The governor may transmit a  
15 contract developed under this chapter to the legislature together with a request for  
16 authorization to execute the contract.

17 (b) Concurrent with transmittal of the contract and request for authorization  
18 under (a) of this section, the governor shall

19 (1) submit to the legislature the commissioner's final findings and  
20 determination and the records and files that are relevant to those findings and that  
21 determination, including those that, under AS 43.82.310(a) and (b), were determined  
22 to be confidential and that, under AS 43.82.310(f), become public records; and

23 (2) make available to the public copies of the proposed contract and  
24 the material described in (1) of this subsection.

25 (c) After considering the material described in (b)(1) of this section and other  
26 information that the legislature considers relevant that it has requested from the  
27 governor and state agencies and received, the legislature may, by law, authorize the  
28 state to execute the contract transmitted by the governor.

29 (d) A contract developed under this chapter is not binding on or enforceable  
30 against the state or other parties to the contract unless the governor is authorized to  
31 execute the contract by law.

1 (e) The state and the other parties to the contract may execute the contract  
2 within 60 days after the effective date of the law authorizing the contract.

3 \* Sec. 3. AS 43.82.440 is amended to read:

4 Sec. 43.82.440. Judicial review. Notwithstanding any other provision of  
5 law, a [A] person may not bring an action challenging the findings and  
6 determinations relied on by the legislature to authorize the execution of a  
7 contract developed under this chapter, the constitutionality of a law authorizing a  
8 contract enacted under AS 43.82.435, or the enforceability of a contract executed  
9 under a law authorizing a contract enacted under AS 43.82.435 until that contract  
10 has been executed and unless the action is commenced within 120 days after the date  
11 that the contract was executed by the state and the other parties to the contract.

12 \* Sec. 4. AS 43.82.430(c) is repealed.

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

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 316( ), Draft Version "Y"

1 Page 1, line 3, following "records,":

2 Insert "to the content of the preliminary and final findings and determination that  
3 apply to a proposed contract negotiated under that Act,"

4

5 Page 2, following line 12:

6 Insert new bill sections to read:

7 \*\* Sec. 2. AS 43.82.400(a) is amended to read:

8 (a) If the commissioner develops a proposed contract under AS 43.82.200 -  
9 43.82.270, the commissioner shall

10 (1) make preliminary findings and a determination that the proposed  
11 contract terms are in the long-term fiscal interests of the state and meet the  
12 requirements and [FURTHER THE] purposes of this chapter; and <sup>whether the</sup>  
<sub>how the</sub>

13 (2) prepare a proposed contract that includes those terms and shall  
14 submit the contract to the governor.

15 \* Sec. 3. AS 43.82.430(a) is amended to read:

16 (a) Within 30 days after the close of the public comment period under  
17 AS 43.82.410(4), the commissioner of revenue shall

18 (1) prepare a summary of the public comments received in response to  
19 the proposed contract and the preliminary findings and determination;

20 (2) after consultation with the commissioner of natural resources, if  
21 appropriate, and with the pertinent municipal advisory group established under  
22 AS 43.82.510, prepare a list of proposed amendments, if any, to the proposed contract  
23 that the commissioner of revenue determines are necessary to respond to public

1           comments;

2                                   (3) make final findings and a determination ~~that~~ [AS TO WHETHER]  
3           the proposed contract and any proposed amendments prepared under (2) of this  
4           subsection meet the long-term fiscal interests of the state and the requirements and  
5           purposes of this chapter."

6  
7    Renumber the following bill sections accordingly.

*If the leg. did not have an immediate eff. date,*

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 316( ), Draft Version "Y"

- 1 Page 3, line 6, following "challengir.g":
- 2       Insert "the final findings and determination of the commissioner of revenue made
- 3 under AS 43.82.430(a)."

24-LS1842Y  
Chenoweth  
4/24/06

**CS FOR SENATE BILL NO. 316( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SENATE JUDICIARY COMMITTEE**

**A BILL**  
**FOR AN ACT ENTITLED**

1 "An Act amending provisions of the Alaska Stranded Gas Development Act relating to  
2 establishing when records and files relevant to development of a contract for payments  
3 in lieu of taxes and for the other purposes described in that Act become public records,  
4 to legislative review of, and authorization to execute, a proposed contract negotiated  
5 under that Act, and to judicial review of the findings and recommendation that support  
6 a proposed contract, its authorization, and its enforceability; and providing for an  
7 effective date."

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

9 \* Section 1. AS 43.82.310(f) is amended to read:

10 (f) If the commissioner of revenue chooses to develop a contract under  
11 AS 43.82.020, the portions of the records and files of the Department of Revenue, the  
12 Department of Natural Resources, the Department of Law, and a municipal advisory  
13 group established under AS 43.82.510 that reflect, incorporate, or analyze information

1 that is relevant to the development of the position or strategy of the commissioner of  
 2 revenue, the commissioner of natural resources, or the attorney general with respect to  
 3 a particular provision that may be incorporated into the contract are [NOT] public  
 4 records after [UNTIL] the commissioner of revenue gives public notice under  
 5 AS 43.82.410 of the commissioner's preliminary findings and determination under  
 6 AS 43.82.400. Nothing in this subsection

7 (1) makes a record or file of the Department of Revenue, the  
 8 Department of Natural Resources, or the Department of Law a public record that  
 9 otherwise would not be a public record under AS 40.25.100 - 40.25.220;

10 (2) affects the confidentiality provisions of (a) - (e) of this section; or

11 (3) abridges a privilege recognized under the laws of this state,  
 12 whether at common law or by statute or by court rule.

13 \* Sec. 2. AS 43.82.435 is repealed and reenacted to read:

14 **Sec. 43.82.435. Legislative authorization.** (a) The governor may transmit a  
 15 contract developed under this chapter to the legislature together with a request for  
 16 authorization to execute the contract.

17 (b) Concurrent with transmittal of the contract and request for authorization  
 18 under (a) of this section, the governor shall

19 (1) submit to the legislature the commissioner's final findings and  
 20 determination and the financial, technical, and market data, including the work papers,  
 21 analyses, and recommendations of any independent contractors used under  
 22 AS 43.82.240, that were considered by the commissioner to make the findings and  
 23 determination; and

24 (2) make available to the public copies of the proposed contract and  
 25 the material described in (1) of this subsection.

26 (c) After considering the material described in (b)(1) of this section and other  
 27 information that the legislature considers relevant that it has requested from the  
 28 governor and state agencies and received, the legislature may, by law, authorize the  
 29 state to execute the contract transmitted by the governor.

30 (d) A contract developed under this chapter is not binding on or enforceable  
 31 against the state or other parties to the contract unless the governor is authorized to

*Supporting info*

1 execute the contract by law.

2 (e) The state and the other parties to the contract may execute the contract  
3 within 60 days after the effective date of the law authorizing the contract.

4 \* Sec. 3. AS 43.82.440 is amended to read:

5 Sec. 43.82.440. Judicial review. Notwithstanding any other provision of  
6 law, a [A] person may not bring an action challenging the findings and  
7 determinations relied on by the legislature to authorize the execution of a  
8 contract developed under this chapter, the constitutionality of a law authorizing a  
9 contract enacted under AS 43.82.435, or the enforceability of a contract executed  
10 under a law authorizing a contract enacted under AS 43.82.435 until that contract  
11 has been executed and unless the action is commenced within 120 days after the date  
12 that the contract was executed by the state and the other parties to the contract.

13 \* Sec. 4. AS 43.82.430(c) is repealed.

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

~~contracts~~

*we have affirm. final  
preserved that challenge  
but limited the time...*

severability

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 24, 2006

**SUBJECT:** Draft CSSB 316(JUD)  
(Work Order No. 24-LS1842\Y)

**TO:** Senator Ralph Seekins  
Chair of the Senate Judiciary Committee

**FROM:** Jack Chenoweth  
Assistant Revisor

With inclusion of material in AS 43.55.435(b)(1), you invite a conflict between AS 43.82.310(f), making "public records" out of

the portions of the records and files of the Department of Revenue, the Department of Natural Resources, the Department of Law, and a municipal advisory group established under AS 43.82.510 that reflect, incorporate, or analyze information that is relevant to the development of the position or strategy of [specific public officers] with respect to a particular provision that may be incorporated into the contract

once the commissioner of the Department of Revenue "gives public notice under AS 43.82.410 of the commissioner's preliminary findings and determination under AS 43.82.400," and proposed AS 43.82.435(b)(1) that, under (b)(2), requires the commissioner to make available to the public

the financial, technical, and market data, including the work papers, analyses, and recommendations of independent contractors . . . that the commissioner considered.

To the extent that these provisions identify different subsets of records and information, it is not clear to me that public release, and the identity of the documents to be released, will occur (1) when notice is given or (2) when actual submission is made to the legislature. My point is this: you may be able to do with one or the other, but having both may open the door to argument that a record or information need not be disclosed -- at least "not now" -- because a condition hasn't been met.

If you decide to retain both references, identification of what should be released should be precise. There are differences between the material described in AS 43.82.310(f) and the material described in AS 43.82.435(b)(1). You should consider eliminating those

Senator Ralph Seekins

April 24, 2006

Page 2

differences. If what you want to be released to the public is that which is described in proposed AS 43.82.435(b)(1), then those same records and sources of information should either be set out again in AS 43.82.310(f) or should be cross-referenced.

Do you want to require release "sooner" rather than "later"? If so, then, it seems to me, you'll want to require release under AS 43.82.310(f), which seems to me to be a point in time that will always be earlier than release under proposed AS 43.82.435(b)(1).

JBC:med

06-333.med

Enclosure

Sec. 40.25.110. Public records open to inspection and copying; fees.

(a) Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of the fee established under this section or AS 40.25.115 a certified copy of the public record.

(b) Except as otherwise provided in this section, the fee for copying public records may not exceed the standard unit cost of duplication established by the public agency.

(c) If the production of records for one requester in a calendar month exceeds five person-hours, the public agency shall require the requester to pay the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform the search and copying tasks. The requester shall pay the fee before the records are disclosed, and the public agency may require payment in advance of the search.

(d) A public agency may reduce or waive a fee when the public agency determines that the reduction or waiver is in the public interest. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated. A public agency may waive a fee of \$5 or less if the fee is less than the cost to the public agency to arrange for payment.

(e) Notwithstanding other provisions of this section to the contrary, the Bureau of Vital Statistics and the library archives in the Department of Education and Early Development may continue to charge the same fees that they were charging on September 25, 1990, for performing record searches, and may increase the fees as necessary to recover agency expenses on the same basis that was used by the agency immediately before September 25, 1990.

Notwithstanding other provisions of this section to the contrary, the Department of Commerce, Community, and Economic Development may continue to charge the same fees that the former Department of Commerce and Economic Development was charging on July 1, 1999, for performing record searches for matters related to banking, securities, and corporations, and may increase the fees as necessary to recover agency expenses on the same basis that was used by the former Department of Commerce and Economic Development immediately before July 1, 1999.

(f) Notwithstanding other provisions of this section to the contrary, the Board of Regents of the University of Alaska may establish reasonable fees for the inspection and copying of public records, including record searches.

(g) Notwithstanding other provisions of this section to the contrary, the board of directors of the Alaska Railroad Corporation may establish reasonable fees for the inspection and copying of public records, including record searches.

(h) Notwithstanding other provisions of this section to the contrary, the judicial branch may establish by court rule reasonable fees for the inspection and copying of public records, including record searches.

(i) Electronic information that is provided in printed form shall be made available without codes or symbols, unless accompanied by an explanation of the codes or symbols.

Sec. 40.25.115. Electronic services and products.

(a) Notwithstanding AS 40.25.110 (b) - (d) to the contrary, upon request and payment of a fee established under (b) of this section, a public agency may provide electronic services and products involving public records to members of the public. A public agency is encouraged to make information available in usable electronic formats to the greatest extent feasible. The activities authorized

under this section may not take priority over the primary responsibilities of a public agency.

(b) The fee for electronic services and products must be based on recovery of the actual incremental costs of providing the electronic services and products, and a reasonable portion of the costs associated with building and maintaining the information system of the public agency. The fee may be reduced or waived by the public agency if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.

(c) Notwithstanding (b) of this section, the fee for duplicating a public record in the electronic form kept by a public agency may not exceed the actual incremental costs of the public agency.

(d) Public agencies shall include in a contract for electronic services and products provisions that

(1) protect the security and integrity of the information system of the public agency and of information systems that are shared by public agencies; and

(2) limit the liability of the public agency providing the services and products.

(e) Each public agency shall notify the state library distribution and data access center established under \S 14.56.090 of the electronic services and products offered by the public agency to the public under this section. The notification must include a summary of the available format options and the fees charged.

(f) When offering on-line access to an electronic file or data base, a public agency also shall provide without charge on-line access to the electronic file or data base through one or more public terminals.

(g) Each public agency shall establish the fees for the electronic services and products provided under this section. The governor may cancel the fees established by a public agency in the executive branch, except the fees of the University of Alaska and the Alaska Railroad Corporation, if the governor determines that the fees are unreasonably high.

(h) A public agency may not make electronic services and products available to one member of the public and withhold them from other members of the public.

(i) A public agency other than a municipality or the Alaska Railroad Corporation shall separately account for the fees received by the agency under this section and deposited in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the agency to carry out the activities of the agency.

Sec. 40.25.120. Public records; exceptions; certified copies.

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

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

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

(3) medical and related public health records;

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

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

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

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

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

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

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

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

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

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

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

(8) public records containing information that would disclose or might lead to the disclosure of a component in the process used to execute or adopt an

electronic signature if the disclosure would or might cause the electronic signature to cease being under the sole control of the person using it;

(9) [See delayed repeal note]. reports submitted under AS 05.25.030 concerning certain collisions, accidents, or other casualties involving boats;

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

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

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

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

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

(b) Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the fees under AS 40.25.110 - 40.25.115 a certified copy of the record, and the copy shall in all cases be evidence of the original.

(c) Recorders shall permit memoranda, transcripts, and copies of the public records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the records and to prevent interference with the regular discharge of the duties of the recorders and their employees.

Sec. 40.25.121. Copies of public records for veterans.

When a copy of a public record is required by the Department of Military and Veterans' Affairs, the Department of Commerce, Community, and Economic Development, or by the United States Department of Veterans Affairs to be used in determining the eligibility of a person to participate in benefits, the official custodian of the public record shall, without charge, provide the applicant for the benefits, a person acting on behalf of the applicant, or an authorized representative of the department or the United States Department of Veterans Affairs with a certified copy of the record.

Sec. 40.25.122. Litigation disclosure.

A public record that is subject to disclosure and copying under AS 40.25.110 - 40.25.120 remains a public record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement proceedings, involving a public agency, except that with respect to a person involved in litigation, the records sought shall be disclosed in accordance with the rules of procedure applicable in a court or an administrative adjudication. In this section, "involved in litigation" means a party to litigation or representing a party to litigation, including obtaining public records for the party.

Sec. 40.25.123. Supervision and regulation.

(a) The Department of Administration shall supervise and adopt regulations for the operation and implementation of AS 40.25.110 - 40.25.140 by public agencies in the executive branch, except the Alaska Railroad Corporation.

(b) The legislative council shall supervise and adopt procedures for the operation and implementation of AS 40.25.110 - 40.25.140 by public agencies in the legislative branch.

(c) The administrative director of courts shall supervise and adopt procedures for the operation and implementation of AS 40.25.110 - 40.25.140 by public agencies in the judicial branch.

(d) The Board of Regents of the University of Alaska shall supervise and adopt procedures for the operation and implementation of AS 40.25.110 - 40.25.140 by the University of Alaska.

(e) The regulations and procedures adopted under this section must include the establishment of procedures for making an administrative appeal of public agency action that is taken under AS 40.25.110 - 40.25.140.

(f) In this section,

(1) "action" includes the calculation of a fee, the denial of a fee reduction or waiver, and the denial of a request to inspect or copy a public record;

(2) "public agency" does not include a municipality.

Sec. 40.25.124. Appeals.

A person may appeal to the superior court the final administrative order made by a public agency under AS 40.25.110 - 40.25.140.

Sec. 40.25.125. Enforcement: Injunctive relief.

A person having custody or control of a public record who denies, obstructs, or attempts to obstruct, or a person not having custody or control who aids or abets another person in denying, obstructing, or attempting to obstruct, the inspection of a public record subject to inspection under AS 40.25.110 or 40.25.120 may be enjoined by the superior court from denying, obstructing, or attempting to obstruct, the inspection of public records subject to inspection under AS 40.25.110 or 40.25.120. A person may seek injunctive relief under this section without exhausting the person's remedies under AS 40.25.123 - 40.25.124.

Sec. 40.25.140. Confidentiality of library records.

(a) Except as provided in (b) of this section, the names, addresses, or other personal identifying information of people who have used materials made available to the public by a library shall be kept confidential, except upon court order, and are not subject to inspection under AS 40.25.110 or 40.25.120. This section applies to libraries operated by the state, a municipality, or a public school, including the University of Alaska.

(b) Records of a public elementary or secondary school library identifying a minor child shall be made available on request to a parent or guardian of that child.

Sec. 40.25.151. Confidentiality of retirement records.

(a) Except as provided in (b) - (d) of this section, public records, including electronic services and products involving public records, containing information about a person and maintained under AS 14.25, AS 22.25, AS 26.05.222 - 26.05.229, AS 39.35, or former AS 39.37 shall be kept confidential and are not subject to inspection or copying under AS 40.25.110 - 40.25.120.

(b) Records described in (a) of this section concerning a person who is a member or former member of a state retirement system who is still living may only be released to

- (1) the person or the person's guardian;
- (2) the person's employer or former employer;
- (3) a state agency authorized to obtain confidential information;
- (4) another person if the person has

(A) written authorization for release from the affected member or former member or the member's or former member's guardian; or

(B) a court order or subpoena to obtain the information.

(c) Records described in (a) of this section concerning a member or former member of a state retirement system who is deceased or a deceased member's named beneficiary may only be released to

- (1) the member's named beneficiary or the beneficiary's guardian;
- (2) the member's or former member's former employer;
- (3) a state agency authorized to obtain confidential information;
- (4) the personal representative of the member's or former member's estate;
- (5) another person if the person has

(A) written authorization for release from the member or former member, the member's named beneficiary, or the personal representative of the member's or former member's estate; or

(B) a court order or subpoena to secure the information.

(d) The name and address of a living person who is a member or former member of a state retirement system may be released to a retirement organization representing persons receiving benefits under a state retirement system if the retirement organization is affiliated with an organization representing employees of the employer under AS 23.40.070 - 23.40.260 (Public Employment Relations Act).

(e) In this section, "state retirement system" means the teachers' retirement system under AS 14.25, the judicial retirement system under AS 22.25, the retirement system for members of the national guard under AS 26.05.222 - 26.05.229, the public employees' retirement system under AS 39.35, or the elected public officers retirement system under former AS 39.37.

Sec. 40.25.220. Definitions for AS 40.25.100 - 40.25.220.

In AS 40.25.100 - 40.25.220, unless the context otherwise requires,

(1) "electronic services and products" means computer-related services and products provided by a public agency, including

(A) electronic manipulation of the data contained in public records in order to tailor the data to the person's request or to develop a product that meets the person's request;

(B) duplicating public records in alternative formats not used by a public agency, providing periodic updates of an electronic file or data base, or duplicating an electronic file or data base from a geographic information system;

(C) providing on-line access to an electronic file or data base;

(D) providing information that cannot be retrieved or generated by the existing computer programs of the public agency;

(E) providing functional electronic access to the information system of the public agency; in this subparagraph, "functional access" includes the capability for alphanumeric query and printing, graphic query and plotting, nongraphic data input and analysis, and graphic data input and analysis;

(F) providing software developed by a public agency or developed by a private contractor for a public agency;

(G) generating maps or other standard or customized products from an electronic geographic information system;

(2) "public agency" means a political subdivision, department, institution, board, commission, division, authority, public corporation, council, committee, or other instrumentality of the state or a municipality; "public agency" includes the University of Alaska and the Alaska Railroad Corporation;

(3) "public records" means books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public agency; "public records" does not include proprietary software programs;

(4) *[Repealed, E.O. No. 113 Sec. 18 (2005)].*

AMENDMENT

OFFERED IN THE SENATE  
TO: SB 316

BY SENATOR FRENCH

1 Page 1, line 1:

2 Delete "eliminate"

3 Insert "limit"

4

5 Page 1, line 7, through page 2, line 28:

6 Delete all material and insert:

7 **"\* Section 1. AS 43.82.430(c) is amended to read:**

8 (c) The commissioner's final findings and determination under (a) of this  
9 section

10 (1) are final agency decisions under this chapter; and

11 (2) may be made the subject of judicial review under AS 44.62, as  
12 authorized by AS 44.62.560(a) and applicable rules of court governing appeals in  
13 civil matters, only if a proposed contract negotiated with a qualified sponsor or  
14 qualified sponsor group under this chapter is executed as authorized by law.

15 **\* Sec. 2. This Act takes effect immediately under AS 01.10.070(c)."**

**SENATE BILL NO. 316**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Introduced: 4/13/06**

**Referred: Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act amending the Alaska Stranded Gas Development Act to eliminate the  
2 opportunity for judicial review of the findings and determination of the commissioner of  
3 revenue on which are based legislative review for a proposed contract for payments in  
4 lieu of taxes and for the other purposes described in that Act; and providing for an  
5 effective date."

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

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

9 **LEGISLATIVE FINDINGS AND PURPOSE.** (a) The legislature finds that  
10 (1) when introduced in 1998 at the request of the governor, the bill to enact the  
11 Alaska Stranded Gas Development Act provided that the commissioner of revenue, after  
12 making preliminary findings and a determination, providing opportunity for public review of  
13 and comment on those preliminary decisions, and making final findings and a determination,

1 had the discretionary authority to execute the contract for payments in lieu of taxes and for the  
 2 other purposes described in the proposed Alaska Stranded Gas Development Act if the  
 3 commissioner determined that a contract authorized by that Act would serve the long-term  
 4 fiscal interests of the state; the proposed Act declared that the commissioner's final findings  
 5 and determinations and decisions as to whether or not to execute the contract constituted final  
 6 agency decisions; the declaration was consistent with the notion that the commissioner's  
 7 conclusion would constitute a final administrative decision that might be subject to judicial  
 8 review; and

9 (2) legislative action on the bill to enact the Alaska Stranded Gas  
 10 Development Act incorporated a provision allowing for legislative review of the  
 11 commissioner's determination and withholding of the authority to execute a contract for  
 12 payments in lieu of taxes and for the other purposes described in the Act until the legislature,  
 13 by law, authorizes the governor to execute it; consequently, the commissioner's final  
 14 determination was substantially changed so that it is no longer to be regarded as a final  
 15 administrative decision, but rather a recommendation subject to legislative review.

16 (b) It is the purpose of this Act to

17 (1) affirm that, consistent with AS 43.82.435, it is the legislature that must  
 18 exercise final authority over direction to execute any contract for payment in lieu of taxes and  
 19 for the other purposes described in the Alaska Stranded Gas Development Act; and

20 (2) assert that the reaffirmation of that legislative authority is made without  
 21 amendment or compromise of AS 43.82.440 regarding judicial review of a law enacted under  
 22 AS 43.82.435 or the enforceability of a contract executed under that law.

23 \* Sec. 2. AS 43.82.430(c) is repealed and reenacted to read:

24 (c) Notwithstanding another provision of law, and except for a claim based on  
 25 the United States Constitution or the Constitution of the State of Alaska, the  
 26 commissioner's final findings and determination under (a) of this section are not  
 27 subject to review, stay, or injunction by any court. *unless a contract is authorized*

28 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c). *by the Legislature*

*no challenge*  $\frac{0}{1}$

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 16-DNR-O&G-04-17-06  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
 Title Court Review of Stranded Gas Decision RDU Resource Development  
 Component Oil and Gas Development  
 Sponsor Senate Judiciary  
 Requester Senate Judiciary Component No. 439

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

There is no anticipated fiscal impact for DNR associated with implementation of this bill.

Prepared by: William Van Dyke, Acting Director  
 Division Oil and Gas  
 Approved by: Michael Menge, Commissioner  
 Agency Natural Resources

Phone 269-8800  
 Date/Time 4/17/2006  
 Date 4/17/2006

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB316-LAW-OGM-4-17-06  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title \*An Act amending the Alaska Stranded Gas RDU CIVIL  
Development Act to eliminate the opportunity for judicial review..\* Component Oil, Gas & Mining  
 Sponsor Senate Judiciary  
 Requester Senate Judiciary Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill repeals and reenacts AS 43.82.430 ( c ) of the Alaska Stranded Gas Development Act in order to clarify the legislature's role as the entity that authorizes execution of a contract proposed by the Commissioner of Revenue under the Alaska Stranded Gas Development Act. The change would make clear that, except for claims based on the U.S. or Alaska constitutions, the commissioner's findings and determination with respect to a proposed contract are not judicially reviewable.

Passage of this legislation will not have a fiscal impact on the Department of Law

Prepared by: Kathryn Daughhettee, Director Phone 465-3673  
 Division Administrative Services Division Date/Time 4/17/06 4:27 PM  
 Approved by: Kathryn Daughhettee for David Márquez, Attorney General Date 4/17/2006  
 Agency Department of Law

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 316  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (None if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title COURT REVIEW OF STRANDED GAS DECISION RDU  
 Component Commissioners Office  
 Sponsor Senate Judiciary  
 Requester Senate Judiciary Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
Bond Proceeds						
Bond Bank Investment Earnings						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

SB 316 properly recognizes that any final contract under the Alaska Stranded Gas Development Act is not a final contract until approved by the Legislature. The Commissioner's determination is a recommendation to the Governor and Legislature, not a "final administrative decision" and thus should not be subject to judicial review.

Prepared by: Jerry Burnett Phone 465-2312  
 Division Administrative Services Date/Time 4/14/06 12:00 AM  
Steve Porter Date \_\_\_\_\_  
 Agency Department of Revenue

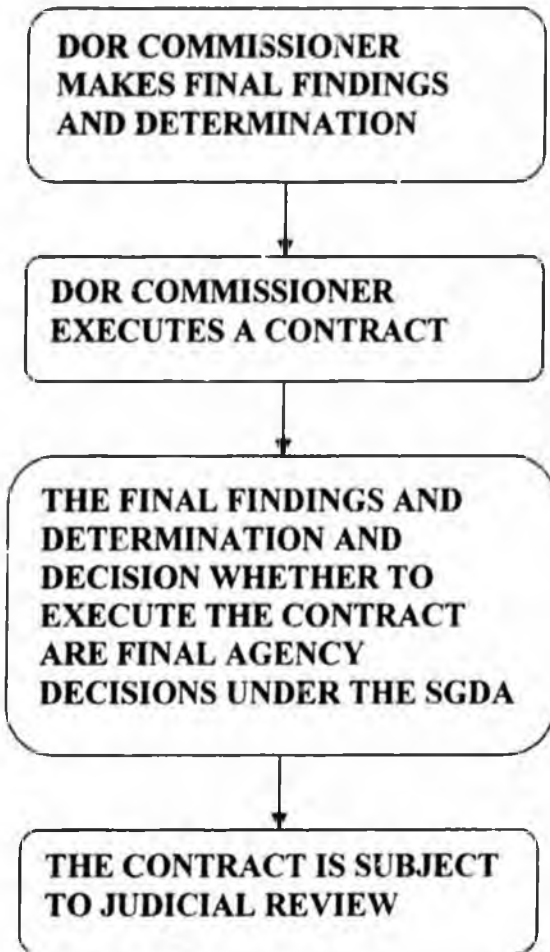
**S.B. 316  
AMENDING STRANDED GAS DEVELOPMENT ACT  
SECTION AS 43.82.430(c)**

**FEBRUARY 11, 1998 (ORIGINAL) VERSION OF AS 43.82.430**

**COMPARED WITH**

**MARCH 26, 1998 (ENACTED) VERSION OF AS 43.82.430 AND AS 43.82.435**

**ORIGINAL VERSION**



**ENACTED VERSION**



**ORIGINAL VERSION (02/11/1998) OF THE  
SGDA - SECTION 430(c) AUTHORIZES  
THE DOR COMMISSIONER TO  
EXECUTE A CONTRACT WITHOUT  
LEGISLATIVE AUTHORIZATION**

0-GH2006.A

**HOUSE BILL NO. 393**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**Introduced: 2/11/98**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to contracts with the state establishing payments in lieu of  
2 other taxes by a qualified sponsor or qualified sponsor group for projects to  
3 develop stranded gas resources in the state; providing for the inclusion in such  
4 contracts of terms making certain adjustments regarding royalty value and the  
5 timing and notice of the state's right to take royalty in kind or in value from  
6 such projects; relating to the effect of such contracts on municipal taxation; and  
7 providing for an effective date."

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

9 \* Section 1. FINDINGS. The legislature finds that  
10 (1) a vast quantity of gas in Alaska is stranded from commercial development  
11 because of the cost associated with providing access to markets for that gas; on the North  
12 Slope alone, between the Colville and Canning Rivers, approximately 35 trillion cubic feet of  
13 discovered gas resources are stranded in this way;

1           (2) because of the high cost of providing access to markets for North Slope  
2 gas, exploration efforts there have historically focused on oil; if the infrastructure needed to  
3 provide market access for North Slope gas were economically available, it is possible that new  
4 gas exploration efforts would be initiated, which could lead to the discovery and development  
5 of significantly greater gas resources than have been discovered so far;

6           (3) maintaining production operations, whether for oil, gas, or both, enhances  
7 the opportunities for oil and gas exploration and development on the North Slope;

8           (4) on the North Slope, in the absence of an economic development  
9 opportunity, gas produced along with oil has been used for pressure maintenance and enhanced  
10 oil recovery, resulting in greater ultimate hydrocarbon recovery and higher rates of oil  
11 production, to the benefit of the people of Alaska;

12           (5) in the Cook Inlet area, which is Alaska's other currently producing oil and  
13 gas area, oil and gas exploration and development activities historically also have focused  
14 more on oil than gas, although there has been a relatively greater degree of exploration for and  
15 commercial development of gas in the Cook Inlet area than there has been on the North Slope;

16           (6) large areas of Alaska, encompassing a number of geologic provinces and  
17 basins, do not have oil and gas production and still remain largely unexplored for oil and gas;  
18 exploration for gas in some of these areas might be facilitated if infrastructure was  
19 economically available to provide access for such gas to markets;

20           (7) it is unlikely that markets will develop within Alaska that would need more  
21 than a relatively small proportion of the volume of stranded gas already discovered on the  
22 North Slope; therefore, the primary need for gas infrastructure for at least the next decade will  
23 be to provide access to markets outside the state;

24           (8) although developing technology may offer other alternatives, such as gas-  
25 to-liquids (GTL), currently the principal mode anticipated for stranded North Slope gas to  
26 access markets outside the state is a gas pipeline to an ice-free Alaska port where the gas  
27 would be turned into liquefied natural gas (LNG) and exported using specially designed  
28 marine tankers;

29           (9) the gas pipeline required by a North Slope LNG project would be 800  
30 miles long and expensive, with some estimates placing the construction cost for the project  
31 as a whole as high as \$15 billion; at that cost, given the prevailing price levels in the East

1 Asian LNG market and the fact that most of the pipeline system costs must be incurred before  
2 any gas is delivered to that market, the project is not economic;

3 (10) in addition, the size of the capital expenditure needed to get North Slope  
4 gas to market via an LNG project requires long-term contracts for an enormous volume of gas,  
5 on the order of 14 million metric tons per year of LNG; that volume of gas represents  
6 approximately one-quarter of the entire East Asian LNG market today and probably cannot  
7 be placed into that market all at once; to be successful, a North Slope LNG project needs to  
8 reach this full annual volume in not more than six years from the commencement of  
9 commercial operations (the "ramp up" period), which means that the project must secure most,  
10 if not all, of the projected growth in demand for LNG in the East Asian market over the ramp  
11 up period;

12 (11) for a North Slope LNG project to become economically viable and  
13 competitive, the estimated costs of constructing such a project must be reduced significantly;  
14 reducing the financial risk associated with the project would also improve its chances of  
15 becoming economically viable and competitive;

16 (12) although the state can do little now to reduce expected construction costs,  
17 the state can reduce some of the financial risk associated with a North Slope LNG project, or  
18 other stranded gas development projects, by specifying with as much certainty as possible the  
19 state taxes and royalties that would apply to such a project throughout its life;

20 (13) the state may also improve a stranded gas development project's  
21 economics and competitiveness by adjusting the timing of the state's receipt of its share of  
22 such a project's economic rent; for example, Alaska's present fiscal regime is "front-end  
23 loaded," which means that the state and local governments take a significant part of their share  
24 of a project's economic rent early in the project's life, even before such a project starts to  
25 generate an income stream; the state and local governments may improve the economics of  
26 a stranded gas development project by taking more of their share of a project's economic rent  
27 later in the project's life;

28 (14) the state's present fiscal regime, as it would apply to a stranded gas  
29 development project, also is regressive to the extent that it is insensitive to changes in a  
30 project's profitability, so that in times of low profitability the state and local governments may  
31 take an excessive amount of a project's economic rent, and in times of high profitability they

1 may take an inadequate amount of a project's economic rent; the state and local governments  
2 may improve the economics of a stranded gas development project by making the overall  
3 fiscal system less regressive and more responsive to the relative profitability of a project;

4 (15) establishing a fiscal regime applicable to a specific stranded gas  
5 development project under a long-term contract with the state, where payments would be made  
6 in lieu of other taxes, would enable the state to create a less "front-end loaded" and less  
7 regressive fiscal regime for a project without rewriting the tax laws for gas already being  
8 developed and produced; it would also enable the state to customize the timing and burden  
9 of its fiscal regime to fit the economic circumstances of a particular stranded gas development  
10 project; finally, it would reduce the financial risk of such a project by reducing uncertainty  
11 about the fiscal terms applicable to the project;

12 (16) authorizing the state, through the executive branch, to enter into a contract  
13 establishing the fiscal regime that would apply to a qualified project if it was built is an  
14 exercise of the legislature's taxing power that is consistent with art. IX, sec. 1, of the  
15 Constitution of the State of Alaska;

16 (17) authorizing the state, through the executive branch, to enter into a contract  
17 establishing a fiscal regime that reduces the risks and improves the economics of a stranded  
18 gas development project is an exercise of the legislature's power under art. IX, sec. 4, of the  
19 Constitution of the State of Alaska to create tax exemptions by general law and is consistent  
20 with the legislature's responsibility under art. VIII, sec. 2, of the Constitution of the State of  
21 Alaska to provide for the utilization, development, and conservation of all natural resources  
22 belonging to the state for the maximum benefit of its people;

23 (18) stranded gas development projects are a matter of statewide interest  
24 because they are an important potential source of revenue to the state, job opportunities for  
25 the people of the state, and gas for use by communities throughout the state;

26 (19) to the extent permissible under the United States Constitution and the  
27 Constitution of the State of Alaska, the legislature intends that state residents and businesses  
28 share in, and not be excluded from, the opportunities stemming from the development of the  
29 state's gas resources; and

30 (20) good faith efforts by qualified sponsors and qualified sponsor groups that  
31 have entered into a contract with the state under this Act, and their contractors, to undertake

1 voluntary actions to achieve employment of Alaska residents and Alaska businesses are in the  
2 long-term interests of the state.

3 \* **Sec. 2. INTENT.** (a) The legislature intends that contracts entered into under this Act  
4 provide stable fiscal terms that encourage the development of stranded gas projects that  
5 otherwise might not be developed under the prevailing tax and royalty regime. The legislature  
6 further intends, however, that any fiscal terms agreed to in a contract under this Act in lieu  
7 of other taxes will fully and fairly compensate the people of the State of Alaska for the  
8 severance, production, and sale of natural resources belonging to the people of the state, the  
9 negative effects and risks that a project may impose upon the state, and the value of the  
10 infrastructure that may be provided by the state to a project, including all the advantages of  
11 civilized society that may be provided by the state to the sponsors of a project.

12 (b) The legislature intends that a qualified sponsor or qualified sponsor group that  
13 enters into a contract relating to a stranded gas project under this Act, and its contractors, will,  
14 with respect to the project, voluntarily

15 (1) undertake reasonable measures to hire Alaska residents to perform work  
16 that they are qualified to perform on a competitive basis;

17 (2) assist Alaska residents who are capable of being qualified and who make  
18 a good faith effort to obtain the requisite training required for employment; and

19 (3) use reasonable efforts to contract with qualified Alaska businesses  
20 whenever their performance is competitive with regard to price, quality, and availability.

21 \* **Sec. 3.** AS 43 is amended by adding a new chapter to read:

22 **Chapter 82. Development of Alaska Stranded Gas.**

23 **Article 1. Contracts for Payments in Lieu of Other Taxes.**

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

25 (1) encourage new investment to develop the state's stranded gas  
26 resources by authorizing establishment of fiscal terms related to that new investment  
27 without significantly altering tax and royalty methodologies and rates upon existing oil  
28 and gas infrastructure and production;

29 (2) allow the fiscal terms applicable to a qualified sponsor or the  
30 members of a qualified sponsor group, with respect to a qualified project, to be tailored  
31 to the project's particular economic conditions and to establish those fiscal terms in

1 advance and with as much certainty as the Constitution of the State of Alaska allows;  
2 and

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

5 **Sec. 43.82.020. Contracts for payments in lieu of other taxes and for**  
6 **royalty adjustments.** The commissioner may, under this chapter, enter into a contract  
7 with a qualified sponsor or qualified sponsor group providing for (1) periodic payment  
8 in lieu of one or more taxes that otherwise would be imposed by the state or a  
9 municipality upon the qualified sponsor or members of the qualified sponsor group as  
10 a consequence of the sponsor's or group's participation in an approved qualified  
11 project under this chapter; and (2) certain adjustments regarding royalty under  
12 AS 43.82.220.

13 **Article 2. Qualification and Application Procedures.**

14 **Sec. 43.82.100. Qualified project.** Based on information available to the  
15 commissioner, the commissioner may determine that a proposal for new investment is  
16 a qualified project under this chapter only if the project

17 (1) would produce at least 500 billion cubic feet of stranded gas within  
18 20 years from the commencement of commercial operations; and

19 (2) is capable, subject to applicable commercial regulation and technical  
20 and economic considerations, of making gas available to meet reasonably foreseeable  
21 demand in this state for gas within proximity of the project.

22 **Sec. 43.82.110. Qualified sponsor or qualified sponsor group.** The  
23 commissioner may determine that a person or group is a qualified sponsor or qualified  
24 sponsor group if the person or a member of the group

25 (1) intends to own an equity interest in a qualified project or commit  
26 gas that it owns to a qualified project; and

27 (2) meets one or more of the following criteria:

28 (A) owns a working interest in at least 10 percent of the  
29 stranded gas proposed to be developed by a qualified project;

30 (B) has the right to purchase at least 10 percent of the stranded  
31 gas proposed to be developed by a qualified project;

1 (C) has the right to acquire, control, or market at least 10  
2 percent of the stranded gas proposed to be developed by a qualified project;

3 (D) holds the permits that the department determines are  
4 essential to construct and operate a qualified project;

5 (E) has a net worth equal to at least 33 percent of the estimated  
6 cost of constructing a qualified project;

7 (F) has an unused line of credit equal to at least 25 percent of  
8 the estimated cost of constructing a qualified project.

9 **Sec. 43.82.120. Applications.** (a) A qualified sponsor or qualified sponsor  
10 group may submit to the department an application for a contract under AS 43.82.020  
11 evidencing that the requirements of AS 43.82.100 - 43.82.110 are met. The application  
12 must be submitted in the manner and form, and contain the information, required by  
13 the department.

14 (b) Along with an application submitted under (a) of this section, an applicant  
15 shall submit a proposed project plan for a qualified project that contains the following  
16 information based upon the information known to the applicant at the time of  
17 application:

18 (1) a description of the work accomplished as of the date of the  
19 application to further the project;

20 (2) a schedule of proposed development activity leading to the  
21 projected commencement of commercial operations of the project;

22 (3) a description of the development activity proposed to be  
23 accomplished under the proposed project plan;

24 (4) a description of each lease or property that the applicant believes  
25 to contain the stranded gas that would be developed if the project was built;

26 (5) a description of the methods and terms under which the applicant  
27 is prepared to make gas available to meet reasonably foreseeable demand in this state  
28 for gas within proximity of the project during the term of the proposed contract,  
29 including proposed pipeline transportation and expansion rules if pipeline transportation  
30 is a part of the proposed project;

31 (6) other information that the commissioner of revenue, in consultation

1 with the commissioner of natural resources, considers necessary to make a  
2 determination that

3 (A) the work accomplished as of the date of application, the  
4 schedule of proposed development activity, and the development activity  
5 proposed to be accomplished under the proposed project plan reflect a proposal  
6 for diligent development on the part of the applicant;

7 (B) the proposed project plan does not materially conflict with  
8 the obligations of a lessee to the state under a lease or under a pool, unit, or  
9 other agreement with the state; and

10 (C) the proposed project plan describes satisfactory methods and  
11 terms for accommodating reasonably foreseeable demand for gas in this state  
12 within proximity of the project during the term of the proposed contract.

13 (c) The requirements of (b) of this section do not diminish the obligations of  
14 a qualified sponsor or member of a qualified sponsor group to the state, or restrict the  
15 authority of the commissioner of revenue or the commissioner of natural resources,  
16 under any other law or agreement relating to a plan of development for a lease, pool,  
17 or unit.

18 **Sec. 43.82.130. Qualified project plan.** A proposed project plan submitted  
19 under AS 43.82.120 may be approved as a qualified project plan under AS 43.82.140  
20 if the proposed project plan

21 (1) reflects a proposal for diligent development of the project on the  
22 part of the applicant;

23 (2) does not materially conflict with the obligations of a lessee to the  
24 state under a lease or under a pool, unit, or other agreement with the state; and

25 (3) describes satisfactory methods and terms for making gas available  
26 to meet reasonably foreseeable demand in this state for gas within the proximity of the  
27 project during the term of the proposed contract.

28 **Sec. 43.82.140. Review of applications and determination of qualifications.**

29 (a) The commissioner of revenue shall review an application submitted under  
30 AS 43.82.120 to determine whether the provisions of AS 43.82.100 concerning a  
31 qualified project and AS 43.82.110 concerning a qualified sponsor or qualified sponsor

1 group have been met. The commissioner of revenue may approve an application only  
2 if those provisions have been met.

3 (b) If the commissioner of revenue approves an application under (a) of this  
4 section, the commissioner of revenue and the commissioner of natural resources shall  
5 review the proposed project plan submitted with the application to determine whether  
6 the provisions of AS 43.82.130 have been met. The commissioner of revenue may  
7 approve the proposed project plan as a qualified project plan only if the commissioner  
8 of natural resources concurs in the approval.

9 (c) The commissioner of revenue shall send to the applicant written notice of  
10 and the reasons for the determinations made under (a) and (b) of this section.

11 **Sec. 43.82.150. Actions challenging determinations on applications.** (a)  
12 Only an applicant under AS 43.82.120 who is aggrieved by a determination of the  
13 commissioner of revenue or the commissioner of natural resources under AS 43.82.140  
14 has standing to seek judicial review of the determination.

15 (b) The only grounds for judicial review of a determination made under  
16 AS 43.82.140 are

17 (1) failure to follow the qualification and application procedures set out  
18 in AS 43.82.100 - 43.82.180; or

19 (2) abuse of discretion that is so capricious, arbitrary, or confiscatory  
20 as to constitute a denial of due process.

21 **Sec. 43.82.160. Multiple applications for similar or competing qualified**  
22 **projects.** Nothing in this chapter prohibits different qualified sponsors or different  
23 qualified sponsor groups from submitting applications under AS 43.82.120 relating to  
24 similar or competing qualified projects, or prohibits the commissioner of revenue or  
25 the commissioner of natural resources from reviewing and approving applications and  
26 proposed project plans under AS 43.82.140 relating to similar or competing qualified  
27 projects.

28 **Sec. 43.82.170. Application deadline.** The commissioner of revenue or the  
29 commissioner of natural resources may not act on an application for a contract  
30 submitted under AS 43.82.120 unless the application is received by the Department of  
31 Revenue no later than June 30, 2004.

1           **Sec. 43.82.180. Withdrawal of applications.** Subject to the terms of a  
 2 reimbursement agreement under AS 43.82.240 or other agreement with the Department  
 3 of Revenue, the Department of Natural Resources, the commissioner of revenue, or the  
 4 commissioner of natural resources affecting the withdrawal of an application, a  
 5 qualified sponsor or qualified sponsor group may withdraw an application submitted  
 6 under AS 43.82.120 at any time before the date that the commissioner of revenue  
 7 enters into a contract under AS 43.82.430 without further obligation under this chapter.

8                           **Article 3. Contract Development.**

9           **Sec. 43.82.200. Contract development.** If the commissioner of revenue  
 10 approves an application and proposed project plan under AS 43.82.140, the  
 11 commissioner may develop a contract under AS 43.82.020 that may include

12                           (1) terms concerning periodic payment in lieu of one or more taxes as  
 13 provided in AS 43.82.210;

14                           (2) terms developed under AS 43.82.220 relating to

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

17   (B) royalty value;

18                           (3) terms regarding Alaska hire and Alaska contracting under  
 19 AS 43.82.230;

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

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

24                           (6) terms and conditions for administrative termination of a contract  
 25 under AS 43.82.440; and

26                           (7) other terms or conditions that are

27   (A) necessary to further the purposes of this chapter; or

28   (B) in the best interests of the state.

29           **Sec. 43.82.210. Contract terms relating to payment in lieu of one or more**  
 30 **taxes.** (a) If the commissioner of revenue approves an application and proposed  
 31 project plan under AS 43.82.140, the commissioner may develop proposed terms, for

1 inclusion in a contract under AS 43.82.020, for periodic payment in lieu of one or  
2 more of the following taxes that otherwise would be imposed by the state or a  
3 municipality upon the qualified sponsor or a member of the qualified sponsor group  
4 as a consequence of participating in an approved qualified project:

- 5 (1) oil and gas production taxes and oil surcharges under AS 43.55;
- 6 (2) oil and gas exploration, production, and pipeline transportation  
7 property taxes under AS 43.56;
- 8 (3) oil and gas conservation tax under AS 43.57;
- 9 (4) Alaska net income tax under AS 43.20;
- 10 (5) municipal sales and use tax under AS 29.45.650 - 29.45.680 or  
11 29.45.700 - 29.45.710;
- 12 (6) municipal property tax under AS 29.45.010 - 29.45.250 or  
13 29.45.550 - 29.45.600;
- 14 (7) municipal special assessments under AS 29.46;
- 15 (8) a comparable tax or levy imposed by the state or a municipality  
16 after the effective date of this bill section;
- 17 (9) other state or municipal taxes or categories of taxes identified by  
18 the commissioner.

19 (b) If the commissioner chooses to develop proposed terms under (a) of this  
20 section, the commissioner shall, if practicable and consistent with the long-term fiscal  
21 interests of the state, develop the terms in a manner that attempts to balance the  
22 following principles:

- 23 (1) the terms should, in conjunction with other factors such as cost  
24 reduction of the project, cost overrun risk reduction of the project, and increased fiscal  
25 certainty and successful marketing, improve the competitiveness of the approved  
26 qualified project in relation to other development efforts aimed at supplying the same  
27 market;
- 28 (2) the terms should accommodate the interests of the state, the affected  
29 municipalities, and the project sponsors under a wide range of economic conditions,  
30 potential project structures, and marketing arrangements;
- 31 (3) the state's and affected municipalities' combined share of the

1 approved qualified project's economic rent under the contract should be relatively  
2 progressive; that is, the state's and affected municipalities' combined annual share of  
3 the approved qualified project's economic rent generally should not increase when  
4 there are decreases in project profitability, or decrease when there are increases in  
5 project profitability;

6 (4) the state's and affected municipalities' combined share of the  
7 approved qualified project's economic rent under the contract should be relatively  
8 lower in the earlier years than in the later years of the approved qualified project;

9 (5) the terms should allow the project sponsors to retain a share of the  
10 approved qualified project's economic rent that is sufficient to compensate the sponsors  
11 for risks under a range of economic circumstances;

12 (6) the terms should provide the state and affected municipalities with  
13 a significant share of the approved qualified project's economic rent, when discounted  
14 to present value, under favorable price and cost conditions;

15 (7) the method for calculating the periodic payment in lieu of certain  
16 taxes under the contract should be clear and unambiguous; and

17 (8) while cost calculations for the approved qualified project under the  
18 contract should be based on amounts that closely approximate actual costs, agreed-  
19 upon formulas reflecting reasonable economic assumptions should be used if possible  
20 to promote administrative certainty and efficiency.

21 (c) Except as provided in (b) of this section, the commissioner's discretion  
22 under this section in developing proposed terms for a contract under AS 43.82.020 is  
23 not limited to consideration of the approved qualified project's economic rent.

24 **Sec. 43.82.220. Contract terms relating to royalty.** (a) Notwithstanding any  
25 contrary provisions of AS 38, the commissioner of natural resources, with the  
26 concurrence of the commissioner of revenue and the affected parties holding a state  
27 lease or unit agreement, may develop proposed terms, for inclusion in a contract under  
28 AS 43.82.020, that modify the timing and notice provisions of the applicable oil and  
29 gas leases and unit agreements pertaining to the state's rights to receive its royalty in  
30 kind or in value, if

31 (1) the viability of the approved qualified project depends upon long-

1 term gas purchase and sale agreements;

2 (2) certainty over time regarding the quantity of royalty gas that the  
3 state may be taking in kind is needed to secure the long-term purchase and sale  
4 agreements;

5 (3) the specified period of the state's commitment to take its royalty  
6 share in value or in kind does not exceed the term of the purchase and sale  
7 agreements; and

8 (4) the modification does not impair the ability of the approved  
9 qualified project to meet the reasonably foreseeable demand in this state for gas within  
10 proximity of the project during the term of the contract entered into under  
11 AS 43.82.020.

12 (b) Notwithstanding any contrary provisions of AS 38, the commissioner of  
13 natural resources, with the concurrence of the commissioner of revenue and the  
14 affected parties holding a state lease or unit agreement, may develop proposed terms,  
15 for inclusion in a contract under AS 43.82.020, that establish a valuation method for  
16 the state's royalty share of the gas production from an approved qualified project.

17 (c) The commissioner of revenue shall include any proposed terms relating to  
18 royalty developed in accordance with this section in the proposed contract under  
19 AS 43.82.400.

20 **Sec. 43.82.230. Contract terms relating to Alaska hire and Alaska**  
21 **contracting.** (a) The commissioner shall include in every contract under  
22 AS 43.82.020 a term requiring the qualified sponsor or qualified sponsor group, and  
23 its contractors, to comply with all valid federal, state, and municipal laws in hiring  
24 Alaska residents and contracting with Alaska businesses to work in the state on the  
25 approved qualified project, and to not discriminate against Alaska residents or Alaska  
26 businesses. Within the constraints of law, the commissioner shall also include in a  
27 contract under AS 43.82.020 a term that requires the qualified sponsor or qualified  
28 sponsor group, and its contractors, to employ Alaska residents and Alaska businesses  
29 to work in the state on the approved qualified project to the extent they are available,  
30 competitively priced, and qualified.

31 (b) The commissioner shall include a term in every contract under

1 AS 43.82.020 requiring the qualified sponsor or qualified sponsor group, and its  
2 contractors, to

3 (1) advertise for available positions in newspapers in the location where  
4 the work is to be performed and in other publications distributed throughout the state,  
5 including in rural areas; and

6 (2) use Alaska job service organizations located throughout the state  
7 and not just in the location where the work is to be performed, in order to notify  
8 Alaskans of work opportunities on the approved qualified project.

9 (c) This section does not create or abridge individual rights and does not create  
10 a private right of action for any person.

11 (d) For purposes of this section,

12 (1) "Alaska business" means a firm or contractor that

13 (A) has held an Alaska business license for the preceding 12  
14 months;

15 (B) maintains, and has maintained for the preceding 12 months,  
16 a place of business within the state that competently and professionally deals  
17 in the supplies, services, or construction of the nature required for the approved  
18 qualified project; and

19 (C) is

20 (i) a sole proprietorship and the proprietor is an Alaska  
21 resident;

22 (ii) a partnership and more than 50 percent of the  
23 partnership interest is held by Alaska residents;

24 (iii) a limited liability company and more than 50  
25 percent of the membership interest is held by Alaska residents;

26 (iv) a corporation that has been incorporated in the state  
27 or is authorized to do business in the state; or

28 (v) a joint venture and a majority of the joint venturers  
29 qualify as Alaska businesses under this paragraph;

30 (2) "Alaska job service organizations" means those offices maintained  
31 by the state and recommended by the Department of Labor whose functions are to aid

1 the unemployed or underemployed in finding employment;

2 (3) "Alaska resident" means a natural person who

3 (A) receives a permanent fund dividend under AS 43.25, or

4 (B) has any two of the following:

5 (i) current Alaska voter registration card;

6 (ii) current Alaska resident fishing, hunting, or trapping  
7 license under AS 16;

8 (iii) current Alaska driver's license; or

9 (iv) current Alaska motor vehicle registration;

10 (4) "available," as applied to an Alaska resident or Alaska business,  
11 means that the resident or business is available for employment at the time required  
12 and is located anywhere in the state, not just in the area of the state where the work  
13 is to be performed;

14 (5) "qualified," as applied to an Alaska resident or Alaska business,  
15 means that the resident or business possesses the requisite education, training, skills,  
16 certification, or experience to perform the work necessary for a particular position or  
17 to perform a particular service.

18 **Sec. 43.82.240. Use of an independent contractor.** (a) The commissioner  
19 may use an independent contractor to assist in the evaluation of an application or in  
20 the development of contract terms under AS 43.82.200. The commissioner may  
21 condition the development of a contract under AS 43.82.020 upon an agreement by the  
22 applicant to reimburse the state for the expenses of an independent contractor under  
23 this section.

24 (b) An independent contractor selected under this section must sign an  
25 agreement regarding confidentiality and disclosures, consistent with the determinations  
26 made under AS 43.82.310, before the contractor may review information that is  
27 determined confidential under that section.

28 (c) Selection of an independent contractor under this section is not subject to  
29 AS 36.30.

30 **Sec. 43.82.250. Term of contract; effective date.** (a) A contract under  
31 AS 43.82.020 may be entered into for a term no longer than is necessary to develop

1 the stranded gas that is subject to the contract; however, the term of the contract may  
2 not exceed 35 years from the commencement of commercial operations of the  
3 approved qualified project.

4 (b) The effective date of a contract under AS 43.82.020 is the date the  
5 commissioner executes the contract unless another date is set out in the contract. The  
6 commissioner may condition the effective date of a contract under AS 43.82.020 upon  
7 the enactment of a federal law that improves the economic feasibility or  
8 competitiveness of stranded gas projects in this state.

9 **Sec. 43.82.260. Change of parties to an application or a contract;**  
10 **assignment of interests.** (a) A qualified sponsor or member of a qualified sponsor  
11 group may assign an interest in an application under AS 43.82.120 or a contract under  
12 AS 43.82.020, or add or withdraw a party to such an application or contract only if the  
13 commissioner has

14 (1) made a finding that the assignment, addition, or withdrawal is  
15 consistent with the requirements of AS 43.82.110; and

16 (2) given prior written approval for the assignment, addition, or  
17 withdrawal.

18 (b) Upon being added to an application or contract under this section, a party  
19 becomes a qualified sponsor or a member of a qualified sponsor group, as appropriate,  
20 for the relevant project.

21 (c) The commissioner may not unreasonably withhold approval under (a) of  
22 this section, but may condition the approval in any way reasonably necessary to protect  
23 the fiscal interests of the state and further the purposes of this chapter.

24 (d) For purposes of this section, an assignment includes a transfer of stock or  
25 a partnership interest in a manner that changes control of a qualified sponsor or  
26 member of a qualified sponsor group.

27 **Sec. 43.82.270. Project plans and work commitments.** A contract under  
28 AS 43.82.020 must include the qualified project plan approved under AS 43.82.140  
29 and provisions for updating the plan at reasonable intervals until the commencement  
30 of commercial operations of the approved qualified project. The commissioner of  
31 revenue, in consultation with the commissioner of natural resources, may, as a

1 condition of a contract under AS 43.82.020, include work commitments or other  
2 obligations in the contract to be accomplished before the commencement of  
3 commercial operations of the approved qualified project.

4 **Article 4. Requests for Information; Confidentiality; Disclosure of Information.**

5 **Sec. 43.82.300. Requests for information.** The commissioner of revenue or  
6 the commissioner of natural resources may request from an applicant information that  
7 the respective commissioner determines is necessary to perform the respective  
8 commissioner's responsibilities under AS 43.82.140. If the application is approved  
9 under AS 43.82.140, the respective commissioner shall require the successful applicant  
10 to provide financial, technical, and market information regarding the qualified project  
11 that the respective commissioner determines is necessary for the purpose of developing  
12 contract terms for the qualified project under AS 43.82.200. If requested information  
13 is not provided, the commissioner of revenue may not continue to review the  
14 application under AS 43.82.140 or develop the contract under AS 43.82.200 -  
15 43.82.270, as applicable.

16 **Sec. 43.82.310. Disclosure of information; confidentiality.** (a) An applicant  
17 may request confidential treatment of information that the applicant provides under  
18 AS 43.82.300 by clearly identifying the information and the reasons supporting the  
19 request for confidential treatment. The commissioner receiving the request shall keep  
20 the information confidential until the commissioner determines whether the  
21 requirements of (b) of this section are met. If the commissioner has not made a  
22 determination under (b) of this section within 14 days after receiving a request, the  
23 request is considered denied. If the commissioner determines that the information does  
24 not meet the requirements of (b) of this section, or fails to make a determination  
25 within 14 days, the commissioner shall return the information and any copies of it at  
26 the request of the applicant that provided the information. If a commissioner returns  
27 information under this subsection, the commissioner shall cease review of the  
28 application or cease contract development under AS 43.82.200 - 43.82.270, as  
29 applicable, unless the commissioner determines that the returned information is  
30 unnecessary to make a determination on the application or to develop contract terms  
31 under AS 43.82.200 - 43.82.270.

1 (b) If requested by the applicant, information provided to the commissioner of  
2 revenue or the commissioner of natural resources under AS 43.82.300 shall be kept  
3 confidential if the commissioner receiving the information determines, upon an  
4 adequate showing by the applicant, that the information

5 (1) is a trade secret or other proprietary research, development, or  
6 commercial information that the applicant treats as confidential;

7 (2) affects the applicant's competitive position; and

8 (3) has commercial value that may be significantly diminished by  
9 public disclosure.

10 (c) Information determined to be confidential under (b) of this section is  
11 confidential under that subsection only so long as is necessary to protect the  
12 competitive position of the applicant and to prevent the significant diminution of the  
13 commercial value of the information. A commissioner may not release information  
14 that the commissioner has previously determined to be confidential under (b) of this  
15 section without providing the applicant notice and an opportunity to be heard.

16 (d) Notwithstanding the release of information limitation of (c) of this section,  
17 the Department of Revenue and the Department of Natural Resources may provide to  
18 one another, to the Department of Law, and to the Office of the Governor any  
19 information provided under AS 43.82.300 relevant to the implementation of this  
20 chapter or to the enforcement of state or federal laws. Information that is exchanged  
21 under this subsection that was determined to be confidential under (b) of this section  
22 remains confidential except as provided in (c) of this section. The portions of the  
23 records and files of the Department of Revenue, Department of Natural Resources,  
24 Department of Law, and the Office of the Governor that reflect, incorporate, or analyze  
25 information that was determined to be confidential under (b) of this section are not  
26 public records except as provided in (c) of this section.

27 (e) Notwithstanding the release of information limitation of (c) of this section,  
28 information that was determined to be confidential under (b) of this section may be  
29 disclosed by the commissioner of revenue, the commissioner of natural resources, or  
30 the attorney general to a legislator; to the legislative auditor in the division of  
31 legislative audit; and, as directed by the chair or vice-chair of the Legislative Budget

1 and Audit Committee, to the director of the division of legislative finance, to the  
2 permanent employees of those divisions who are responsible for evaluating a contract  
3 made under AS 43.82.020, and to agents or contractors of the legislative auditor or the  
4 director of legislative finance who are engaged to evaluate such a contract.  
5 Information that was determined to be confidential under (b) of this section also may  
6 be disclosed by the commissioner of revenue or the commissioner of natural resources  
7 to an independent contractor under AS 43.82.240. Before confidential information is  
8 disclosed under this subsection, the person receiving the information must sign an  
9 appropriate confidentiality agreement.

10 (f) If the commissioner of revenue chooses to develop a contract under  
11 AS 43.82.020, the portions of the records and files of the Department of Revenue, the  
12 Department of Natural Resources, and the Department of Law that reflect, incorporate,  
13 or analyze information that is relevant to the development of a commissioner's position  
14 or strategy with respect to any particular provision that may be incorporated into the  
15 contract are not public records until the commissioner of revenue gives public notice  
16 under AS 43.82.410 of the commissioner's preliminary findings and determination  
17 under AS 43.82.400. Nothing in this subsection (1) makes a record or file of the  
18 Department of Revenue, the Department of Natural Resources, or the Department of  
19 Law a public record that otherwise would not be a public record under AS 09.25.100 -  
20 09.25.220; (2) affects the confidentiality provisions of (a) - (e) of this section; or (3)  
21 abridges a privilege recognized under the laws of this state, whether at common law  
22 or by statute.

23 **Article 5. Contract Review, Approval, and Termination.**

24 **Sec. 43.82.400. Preliminary findings and determination regarding the**  
25 **contract.** (a) If the commissioner develops a proposed contract under AS 43.82.200 -  
26 43.82.270, the commissioner

27 (1) must make preliminary findings and a determination that the  
28 proposed contract terms are in the long-term fiscal interests of the state and further the  
29 purposes of this chapter; and

30 (2) shall prepare a proposed contract that includes those terms and shall  
31 announce that, under AS 43.82.020, the commissioner intends to enter into the

1 proposed contract.

2 (b) To make the preliminary findings and determination required by (a)(1) of  
3 this section, the commissioner shall compare the projected public revenue anticipated  
4 from the approved qualified project with the estimated operating and capital costs of  
5 the additional state and municipal services anticipated to arise from the construction  
6 and operation of the approved qualified project. The commissioner shall address the  
7 reasonably foreseeable effects of the proposed contract on the public revenue.

8 (c) In conjunction with the making of preliminary findings and determination  
9 required by (a)(1) of this section, the commissioner shall describe the principal factors,  
10 including the projected price of gas, projected production rate or volume of gas, and  
11 projected recovery, development, construction, and operating costs, upon which the  
12 determination made under (a)(1) of this section is based. If the commissioner has  
13 previously entered into a contract under AS 43.82.020 relating to another approved  
14 qualified project that is similar to or would compete with the approved qualified  
15 project that is the subject of the commissioner's preliminary findings and  
16 determination, the commissioner shall describe any material differences between the  
17 terms of the existing contract and the proposed contract.

18 **Sec. 43.82.410. Notice and comment regarding the contract.** The  
19 commissioner shall

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

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

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

29 (B) the chairs of the legislature's standing committees on  
30 finance and resources; and

31 (C) the chairs of the legislature's special committees on oil and

1 gas, if any;

2 (3) establish a period of at least 30 days for the public to comment on  
3 the proposed contract and the preliminary findings and determination made under  
4 AS 43.82.400; and

5 (4) offer to appear before the Legislative Budget and Audit Committee  
6 to provide the committee a review of the commissioner's preliminary findings and  
7 determination, the proposed contract, and the supporting financial, technical, and  
8 market data; if the Legislative Budget and Audit Committee accepts the commissioner's  
9 offer, the committee shall give notice of the committee's meeting to the public and all  
10 members of the legislature; if the financial, technical, and market data that is to be  
11 provided must be kept confidential under AS 43.82.310, the commissioner may not  
12 release the confidential information during a public portion of a committee meeting.

13 **Sec. 43.82.420. Coordination of public and legislative review.** To the extent  
14 practicable, the commissioner shall coordinate the public comment opportunity  
15 provided under AS 43.82.410(3) with any proposed review by the Legislative Budget  
16 and Audit Committee of the contract and the preliminary findings and determination  
17 under AS 43.82.410(4).

18 **Sec. 43.82.430. Final findings, determination, and proposed amendments;  
19 execution of the contract.** (a) Within 30 days after the close of the public comment  
20 period under AS 43.82.410(3), the commissioner shall

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

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

26 (3) make final findings and a determination as to whether the proposed  
27 contract and any proposed amendments prepared under (2) of this subsection meet the  
28 requirements and purposes of this chapter.

29 (b) After considering the material described in (a) of this section and securing  
30 the agreement of the other parties to the proposed contract regarding any proposed  
31 amendments prepared under (a) of this section, the commissioner may execute the

1 contract if the commissioner determines that the contract is in the long-term fiscal  
2 interests of the state.

3 (c) The commissioner's final findings and determination under (a) of this  
4 section, and decision regarding whether to execute the contract under (b) of this  
5 section, are final agency decisions under this chapter.

6 **Sec. 43.82.440. Administrative termination of a contract.** (a) The  
7 commissioner may terminate a party's rights under a contract under AS 43.82.020 if  
8 the procedures and conditions set out in this section are met and the party has

9 (1) ceased to meet the requirements of AS 43.82.110 as a qualified  
10 sponsor or as a qualified sponsor group;

11 (2) intentionally or fraudulently misrepresented, in whole or in part,  
12 material facts or circumstances upon which the contract was made;

13 (3) failed to comply with a condition or material term of the contract  
14 or a provision of this chapter; or

15 (4) failed to comply with the approved qualified project plan or any  
16 updated project plan.

17 (b) Before administrative termination of a contract under this section, the  
18 commissioner shall give notice to the parties of the commissioner's intent to terminate  
19 and an opportunity to be heard. Additionally, the commissioner may provide the  
20 parties an opportunity to cure any deficiency that is the basis for the termination if the  
21 commissioner determines that curing the deficiency is appropriate under the  
22 circumstances.

23 (c) Notwithstanding (a) and (b) of this section, the commissioner may not  
24 administratively terminate a contract after the party has committed full project funding  
25 except as provided in (e) of this section.

26 (d) A party to the contract who is affected by the commissioner's action to  
27 terminate under (a) of this section may file an appeal with the superior court under the  
28 Alaska Rules of Appellate Procedure.

29 (e) The commissioner may provide terms and conditions in a contract entered  
30 into under AS 43.82.020 upon which a party's rights under the contract may be  
31 administratively terminated after the party commits full project funding.

1                   **Article 6. Payment to Municipalities; Equity or**  
2                   **Other Participation by Municipalities.**

3                   **Sec. 43.82.500. Payment to municipalities; equity or other participation by**  
4 **municipalities.** (a) If the commissioner executes a contract under AS 43.82.020 that  
5 includes terms that exempt a party to the contract, and the property, gas, products, and  
6 activities associated with the approved qualified project that is subject to the contract,  
7 from a municipal tax in accordance with AS 29.45.810, AS 29.46.010(b),  
8 AS 43.82.200, and 43.82.210, the commissioner shall require, as a condition of the  
9 contract, that the party instead make periodic payment to the affected municipality in  
10 a fair and reasonable amount as determined by the commissioner under (b) of this  
11 section.

12                   (b) After consultation with the affected municipality, the commissioner shall  
13 determine the amount of payment due under (a) of this section. In making the  
14 determination required by this subsection, the commissioner shall

15                   (1) estimate the total operating and capital costs of additional services  
16 and construction that would be provided and paid for by that municipality during the  
17 term of the contract under AS 43.82.020 as a result of the construction and operation  
18 in the municipality of the approved qualified project that is subject to the contract; and

19                   (2) amortize the total costs estimated under (1) of this section over the  
20 term of the contract or a portion of the term of the contract.

21                   (c) In lieu of payments under (a) of this section, the commissioner, with the  
22 concurrence of the municipality, may include a term in a contract under AS 43.82.020  
23 that provides the municipality with an equity or other interest in the approved qualified  
24 project that is subject to the contract.

25                   **Article 7. Miscellaneous Provisions.**

26                   **Sec. 43.82.600. Governing law.** If a provision of this chapter conflicts with  
27 another provision of state or municipal law, the provision of this chapter governs.

28                   **Sec. 43.82.610. Regulations.** The commissioner of revenue, the commissioner  
29 of natural resources, and the commissioner of labor may adopt regulations to carry out  
30 their respective duties under this chapter.

31                   **Sec. 43.82.620. Procedures for collection of amounts due; security.** (a)

1 The commissioner may adopt procedures for the collection of amounts due the state  
2 under a contract entered into under AS 43.82.020, including the collection of interest  
3 and penalties.

4 (b) The commissioner may require a party to a contract under AS 43.82.020  
5 to provide security sufficient to guarantee amounts due under the contract.

6 **Sec. 43.82.630. Reports and audits.** The commissioner may require periodic  
7 reports from, and may at reasonable intervals conduct audits and inspect the books of,  
8 a party that has entered into a contract under AS 43.82.020 to ensure compliance with  
9 the provisions of this chapter and the regulations adopted under it and of the terms of  
10 the contract.

11 **Sec. 43.82.640. Annual report of the commissioner of labor.** On an annual  
12 basis, the commissioner of labor shall prepare and present to the legislature a  
13 comprehensive report on each party to a contract with the state under AS 43.82.020,  
14 and its contractors, regarding the state residency of the employees working in this state  
15 on the approved qualified project that is subject to the contract. The commissioner of  
16 labor shall use state databases, including data from the quarterly reports by a party to  
17 the contract under AS 43.82.020 and its contractors for unemployment insurance  
18 purposes, to determine state residency of employees regarding compliance with  
19 AS 43.82.230.

20 **Article 8. General Provisions.**

21 **Sec. 43.82.900. Definitions.** In this chapter, unless the context requires  
22 otherwise,

23 (1) "commencement of commercial operations" means the start of  
24 regular deliveries of marketable products from an approved qualified project;

25 (2) "cubic foot of gas" means the quantity of gas contained in a volume  
26 of one cubic foot at a standard temperature of 60° Fahrenheit and a standard absolute  
27 pressure of 14.65 pounds per square inch;

28 (3) "economic rent" means the estimated total gross revenue less  
29 estimated total costs for a qualified project over the term of a contract under  
30 AS 43.82.020, measured in undiscounted nominal dollars; for purposes of this  
31 paragraph, "total costs" do not include a rate of return on capital, financing costs, or

1 any payments to governments;

2 (4) "full project funding" means the date that a party to a contract  
3 under AS 43.82.020 gives full approval for the expenditure of the capital necessary for  
4 construction and operation of the approved qualified project that is subject to the  
5 contract;

6 (5) "gas" has the meaning given that term in AS 43.55.900;

7 (6) "group" means two or more persons;

8 (7) "lease or property" has the meaning given that term in  
9 AS 43.55.900;

10 (8) "municipality" has the meaning given that term in AS 29.71.800;

11 (9) "periodic payment" means payment made in lieu of one or more  
12 other taxes under a contract under AS 43.82.020;

13 (10) "stranded gas" means gas that is uneconomic or uncompetitive to  
14 develop as determined by the commissioner for a particular project.

15 **Sec. 43.82.990. Short title.** This chapter may be cited as the Alaska Stranded  
16 Gas Development Act.

17 \* **Sec. 4.** AS 29.10.200 is amended by adding new paragraphs to read:

18 (54) AS 29.45.810 (exemption from municipal taxation);

19 (55) AS 29.46.010(b) (exemption from municipal assessment).

20 \* **Sec. 5.** AS 29.45 is amended by adding a new section to read:

21 **Sec. 29.45.810. Exemption from municipal taxation.** (a) A party to a  
22 contract with the Department of Revenue under AS 43.82.020, and the property, gas,  
23 products, and activities associated with the approved qualified project that is subject  
24 to the contract, are exempt, as specified in the contract, from all taxes identified in the  
25 contract that would be levied and collected by a municipality under state law as a  
26 consequence of the participation by the party in the approved qualified project.

27 (b) This section applies to home rule and general law municipalities.

28 \* **Sec. 6.** AS 29.46.010 is amended by adding a new subsection to read:

29 (b) Notwithstanding (a) of this section, a party to a contract with the  
30 Department of Revenue under AS 43.82.020 is exempt, as specified in the contract,  
31 from assessment under this chapter against real property associated with the approved

1 qualified project that is subject to the contract.

2 \* Sec. 7. AS 36.30.850(b) is amended by adding a new paragraph to read:

3 (38) contracts between the commissioner of revenue and an independent  
4 contractor under AS 43.82.240.

5 \* Sec. 8. AS 43.20.072 is amended by adding a new subsection to read:

6 (h) A taxpayer that has signed a contract under AS 43.82.020 with the  
7 commissioner providing for payments in lieu of the tax under this chapter, and that has  
8 nexus with the state solely as the result of its participation in the approved qualified  
9 project that is subject to the contract or, but for such participation, would not be  
10 engaged in the production of oil or gas from a lease or property in this state or  
11 engaged in the transportation of oil or gas by pipeline in this state, is not required to  
12 file a return under this section unless required to do so by the contract.

13 \* Sec. 9. AS 43.20.073 is amended by adding a new subsection to read:

14 (h) A corporation that has signed a contract with the commissioner under  
15 AS 43.82.020 providing for payments in lieu of the tax under this chapter, and that has  
16 nexus with the state solely as the result of its participation in the approved qualified  
17 project that is subject to the contract is not required to file a return under this section  
18 unless required to do so by the contract.

19 \* Sec. 10. SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the  
20 application of a provision of this Act to any person or circumstance, is held invalid, the  
21 remainder of this Act and the application to other persons or circumstances is not affected.

22 \* Sec. 11. This Act takes effect immediately under AS 01.10.070(c).

**FIRST AMENDED VERSION (03/26/1998)  
OF THE SGDA - A NEW SECTION  
(43.82.435) MANDATES LEGISLATIVE  
AUTHORIZATION BEFORE THE  
GOVERNOR MAY SIGN A CONTRACT**

0-GH2006L

**CS FOR HOUSE BILL NO. 393(O&G)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS**

**Offered: 3/26/98**

**Referred: Resources, Finance**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to contracts with the state establishing payments in lieu of  
2 other taxes by a qualified sponsor or qualified sponsor group for projects to  
3 develop stranded gas resources in the state; providing for the inclusion in the  
4 contracts of terms making certain adjustments regarding royalty value and the  
5 timing and notice of the state's right to take royalty in kind or in value from  
6 projects to develop stranded gas resources in the state; relating to the effect of  
7 the contracts on municipal taxation; and providing for an effective date."

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

9 \* **Section 1. FINDINGS.** The legislature finds that

10 (1) a vast quantity of gas in Alaska is stranded from commercial development  
11 because of the cost associated with providing access to markets for that gas; on the North  
12 Slope alone, between the Colville and Canning Rivers, approximately 35 trillion cubic feet of  
13 discovered gas resources are stranded in this way;

1           (2) because of the high cost of providing access to markets for North Slope  
2 gas, exploration efforts there have historically focused on oil; if the infrastructure needed to  
3 provide market access for North Slope gas were economically available, it is possible that new  
4 gas exploration efforts would be initiated that could lead to the discovery and development  
5 of significantly greater gas resources than have been discovered so far;

6           (3) maintaining production operations, whether for oil, gas, or both, enhances  
7 the opportunities for oil and gas exploration and development on the North Slope;

8           (4) large areas of the state, encompassing a number of geologic provinces and  
9 basins, do not have oil and gas production and still remain largely unexplored for oil and gas;  
10 exploration for gas in some of these areas might be facilitated if infrastructure were  
11 economically available to provide access for the gas to markets;

12           (5) it is unlikely that markets will develop within the state that would need  
13 more than a relatively small proportion of the volume of stranded gas already discovered on  
14 the North Slope; therefore, the primary need for gas infrastructure for at least the next decade  
15 will be to provide access to markets outside the state;

16           (6) currently the principal mode anticipated for stranded North Slope gas to  
17 access markets outside the state is a gas pipeline to an ice-free Alaska port where the gas  
18 would be turned into liquefied natural gas and exported using specially designed marine  
19 tankers;

20           (7) the size of the capital expenditure needed to get North Slope gas to market  
21 by way of a liquefied natural gas project requires long-term contracts for gas on the order of  
22 14,000,000 metric tons a year of liquefied natural gas; to be successful, a North Slope  
23 liquefied natural gas project needs to reach this full annual volume in not more than six years  
24 from the commencement of commercial operations;

25           (8) for a North Slope liquefied natural gas project to become economically  
26 viable and competitive, the estimated costs of constructing such a project must be reduced  
27 significantly; reducing the financial risk associated with the project would also improve the  
28 project's chances of becoming economically viable and competitive;

29           (9) the state has contracted an extensive financial analysis of the  
30 commercialization of North Slope gas; this analysis, performed by a recognized expert in  
31 petroleum economics, Dr. Pedro Van Meurs, indicates that changes in the local, state, and

1 federal tax structure may be necessary to make commercialization of North Slope gas  
2 resources economically viable;

3 (10) although the state can do little now to reduce expected construction costs,  
4 the state can reduce some of the financial risk associated with a North Slope liquefied natural  
5 gas project or other stranded gas development projects by specifying with as much certainty  
6 as possible the state taxes and royalties that would apply to such a project throughout its life;

7 (11) the state could improve the economics and competitiveness of a stranded  
8 gas development project by adjusting the timing of the state's receipt of its share of the  
9 economic rent of the project; the present fiscal regime is front-end loaded, which means that  
10 the state and local governments take a significant part of their shares of the economic rent of  
11 a project early in the life of the project, even before the project starts to generate an income  
12 stream; the state and local governments could improve the economics of a stranded gas  
13 development project by taking more of their shares of the economic rent of a project later in  
14 the life of the project;

15 (12) the state's present fiscal regime, as it would apply to a stranded gas  
16 development project, is also regressive to the extent that it is insensitive to changes in the  
17 profitability of the project, so that, in times of low profitability, the state and local  
18 governments would take an excessive amount of the economic rent of the project, and, in  
19 times of high profitability, they would take an inadequate amount of the economic rent of a  
20 project; the state and local governments could improve the economics of a stranded gas  
21 development project by making the overall fiscal system less regressive and more responsive  
22 to the relative profitability of a project;

23 (13) establishing a fiscal regime applicable to a specific stranded gas  
24 development project under a long-term contract with the state, where payments would be made  
25 in lieu of other taxes, would

26 (A) enable the state to create a fiscal regime that is less front-end  
27 loaded and less regressive for a project without rewriting the tax laws for gas already  
28 being developed and produced;

29 (B) enable the state to customize the timing and burden of its fiscal  
30 regime to fit the economic circumstances of a particular stranded gas development  
31 project;

1 (C) reduce the financial risk of the project by reducing uncertainty  
2 about the fiscal terms applicable to the project;

3 (14) authorizing the state, through the executive branch, to develop a contract  
4 establishing the fiscal regime that would apply to a qualified stranded gas development project  
5 if it were built will result in contracts that are an exercise of the legislature's taxing power  
6 that is consistent with art. IX, sec. 1, Constitution of the State of Alaska;

7 (15) authorizing the state, through the executive branch, to develop a contract  
8 establishing a fiscal regime that reduces the risks and improves the economics of a stranded  
9 gas development project will result in contracts that are an exercise of the legislature's power  
10 under art. IX, sec. 4, Constitution of the State of Alaska, to create tax exemptions by general  
11 law and is consistent with the legislature's responsibility under art. VIII, sec. 2, of the  
12 Constitution of the State of Alaska, to provide for the utilization, development, and  
13 conservation of all natural resources belonging to the state for the maximum benefit of its  
14 people;

15 (16) stranded gas development projects are a matter of statewide interest  
16 because they are an important potential source of revenue to the state, job opportunities for  
17 the people of the state, and gas for use by communities throughout the state;

18 (17) to the extent permissible under the Constitution of the United States and  
19 the Constitution of the State of Alaska, the legislature intends that state residents and  
20 businesses share in and not be excluded from the opportunities stemming from the  
21 development of the state's gas resources; and

22 (18) good faith efforts by qualified sponsors, qualified sponsor groups, and  
23 contractors of qualified sponsors and qualified sponsor groups that enter into a contract with  
24 the state developed under this Act to undertake voluntary actions to provide employment  
25 opportunities for Alaska residents and opportunities for Alaska businesses are in the long-term  
26 interests of the state.

27 \* Sec. 2. INTENT. (a) The legislature intends that contracts developed under this Act  
28 provide stable fiscal terms that encourage the development of stranded gas projects that  
29 otherwise might not be developed under the prevailing tax and royalty regime. The legislature  
30 further intends that any fiscal term agreed to in a contract developed under this Act in lieu of  
31 other taxes will fully and fairly compensate the people of the state for the severance,

1 production, and sale of natural resources belonging to the people of the state, for the negative  
 2 effects and the risks that a project may impose on the state, and for the value of the  
 3 infrastructure that may be provided by the state to a project, including all the advantages of  
 4 civilized society that may be provided by the state to the sponsors of a project.

5 (b) The legislature intends that, in order to provide the stable fiscal terms that will  
 6 encourage development of stranded gas projects, any contract developed under this Act will  
 7 express whether the state intends to be bound to the full extent allowed by the Constitution  
 8 of the State of Alaska; however, the legislature further intends that the terms of a contract  
 9 developed under this Act will not be binding on or enforceable against the state or the other  
 10 parties to the contract unless the governor is authorized to execute the contract by the  
 11 legislature.

12 (c) The legislature intends that a qualified sponsor or qualified sponsor group or a  
 13 contractor of a qualified sponsor or qualified sponsor group that enters into a contract  
 14 developed under this Act relating to a stranded gas project will, with respect to the project,  
 15 voluntarily

16 (1) undertake reasonable measures to hire Alaska residents to perform work  
 17 that they are qualified to perform on a competitive basis;

18 (2) assist Alaska residents who are capable of being qualified and who make  
 19 a good faith effort to obtain the requisite training required for employment; and

20 (3) use reasonable efforts to contract with qualified Alaska businesses when  
 21 their performance is competitive with regard to price, quality, and availability.

22 \* Sec. 3. AS 43 is amended by adding a new chapter to read:

23 **Chapter 82. Development of Alaska Stranded Gas.**

24 **Article 1. Contracts for Payments in Lieu of Other Taxes.**

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

26 (1) encourage new investment to develop the state's stranded gas  
 27 resources by authorizing establishment of fiscal terms related to that new investment  
 28 without significantly altering tax and royalty methodologies and rates on existing oil  
 29 and gas infrastructure and production;

30 (2) allow the fiscal terms applicable to a qualified sponsor or the  
 31 members of a qualified sponsor group, with respect to a qualified project, to be tailored

1 to the particular economic conditions of the project and to establish those fiscal terms  
 2 in advance with as much certainty as the Constitution of the State of Alaska allows;  
 3 and

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

6 **Sec. 43.82.020. Contracts for payments in lieu of other taxes and for**  
 7 **royalty adjustments.** The commissioner may, under this chapter, negotiate terms for  
 8 inclusion in a proposed contract with a qualified sponsor or qualified sponsor group  
 9 providing for

10 (1) periodic payment in lieu of one or more taxes that otherwise would  
 11 be imposed by the state or a municipality on the qualified sponsor or members of the  
 12 qualified sponsor group as a consequence of the sponsor's or group's participation in  
 13 an approved qualified project under this chapter; and

14 (2) certain adjustments regarding royalty under AS 43.82.220.

15 **Article 2. Qualification and Application Procedures.**

16 **Sec. 43.82.100. Qualified project.** Based on information available to the  
 17 commissioner, the commissioner may determine that a proposal for new investment is  
 18 a qualified project under this chapter only if the project

19 (1) would produce at least 500,000,000,000 cubic feet of stranded gas  
 20 within 20 years from the commencement of commercial operations; and

21 (2) is capable, subject to applicable commercial regulation and technical  
 22 and economic considerations, of making gas available to meet the reasonably  
 23 foreseeable demand in this state for gas within the economic proximity of the project.

24 **Sec. 43.82.110. Qualified sponsor or qualified sponsor group.** The  
 25 commissioner may determine that a person or group is a qualified sponsor or qualified  
 26 sponsor group if the person or a member of the group

27 (1) intends to own an equity interest in a qualified project or to commit  
 28 gas that it owns to a qualified project; and

29 (2) meets one or more of the following criteria:

30 (A) owns a working interest in at least 10 percent of the  
 31 stranded gas proposed to be developed by a qualified project;

1 (B) has the right to purchase at least 10 percent of the stranded  
2 gas proposed to be developed by a qualified project;

3 (C) has the right to acquire, control, or market at least 10  
4 percent of the stranded gas proposed to be developed by a qualified project;

5 (D) holds the permits that the department determines are  
6 essential to construct and operate a qualified project;

7 (E) has a net worth equal to at least 33 percent of the estimated  
8 cost of constructing a qualified project;

9 (F) has an unused line of credit equal to at least 25 percent of  
10 the estimated cost of constructing a qualified project.

11 **Sec. 43.82.120. Applications.** (a) A qualified sponsor or qualified sponsor  
12 group may submit to the department an application for development of a contract  
13 under AS 43.82.020 evidencing that the requirements of AS 43.82.100 and 43 52.110  
14 are met. The application must be submitted in the manner and form and contain the  
15 information required by the department.

16 (b) Along with an application submitted under (a) of this section, an applicant  
17 shall submit a proposed project plan for a qualified project that contains the following  
18 information based on the information known to the applicant at the time of  
19 application:

20 (1) a description of the work accomplished as of the date of the  
21 application to further the project;

22 (2) a schedule of proposed development activity leading to the  
23 projected commencement of commercial operations of the project;

24 (3) a description of the development activity proposed to be  
25 accomplished under the proposed project plan;

26 (4) a description of each lease or property that the applicant believes  
27 to contain the stranded gas that would be developed if the project was built;

28 (5) a description of the methods and terms under which the applicant  
29 is prepared to make gas available to meet the reasonably foreseeable demand in this  
30 state for gas within the economic proximity of the project during the term of the  
31 proposed contract, including proposed pipeline transportation and expansion rules if

1 pipeline transportation is a part of the proposed project;

2 (6) a detailed description of options to mitigate the increased demand  
3 for public services and other negative effects caused by the project;

4 (7) a detailed description of options for the safe management and  
5 operation of the project once it is constructed;

6 (8) other information that the commissioner of revenue, in consultation  
7 with the commissioner of natural resources, considers necessary to make a  
8 determination that

9 (A) the work accomplished as of the date of application, the  
10 schedule of proposed development activity, and the development activity  
11 proposed to be accomplished under the proposed project plan reflect a proposal  
12 for diligent development on the part of the applicant;

13 (B) the proposed project plan does not materially conflict with  
14 the obligations of a lessee to the state under a lease or under a pool, unit, or  
15 other agreement with the state; and

16 (C) the proposed project plan describes satisfactory methods and  
17 terms for accommodating reasonably foreseeable demand for gas in this state  
18 within the economic proximity of the project during the term of the proposed  
19 contract.

20 (c) The requirements of (b) of this section do not diminish the obligations of  
21 a qualified sponsor or member of a qualified sponsor group to the state or restrict the  
22 authority of the commissioner of revenue or the commissioner of natural resources  
23 under any other law or agreement relating to a plan of development for a lease pool,  
24 or unit.

25 **Sec. 43.82.130. Qualified project plan.** A proposed project plan submitted  
26 under AS 43.82.120 may be approved as a qualified project plan under AS 43.82.140  
27 if the proposed project plan

28 (1) reflects a proposal for diligent development of the project on the  
29 part of the applicant;

30 (2) does not materially conflict with the obligations of a lessee to the  
31 state under a lease or under a pool, unit, or other agreement with the state; and

1 (3) describes satisfactory methods and terms for making gas available  
 2 to meet the reasonably foreseeable demand in this state for gas within the economic  
 3 proximity of the project during the term of the proposed contract.

4 **Sec. 43.82.140. Review of applications and determination of qualifications.**

5 (a) The commissioner shall review an application submitted under AS 43.82.120 to  
 6 determine whether the provisions of AS 43.82.100 concerning a qualified project and  
 7 AS 43.82.110 concerning a qualified sponsor or qualified sponsor group have been  
 8 met. The commissioner may approve an application only if those provisions have been  
 9 met.

10 (b) If the commissioner approves an application under (a) of this section, the  
 11 commissioner and the commissioner of natural resources shall review the proposed  
 12 project plan submitted with the application to determine whether the provisions of  
 13 AS 43.82.130 have been met. The commissioner may approve the proposed project  
 14 plan as a qualified project plan only if the commissioner of natural resources concurs  
 15 in the approval.

16 (c) The commissioner shall send to the applicant written notice of and the  
 17 reasons for the determinations made under (a) and (b) of this section.

18 **Sec. 43.82.150. Actions challenging determinations on applications.** (a)  
 19 Only an applicant under AS 43.82.120 who is aggrieved by a determination of the  
 20 commissioner of revenue or the commissioner of natural resources under AS 43.82.140  
 21 may seek judicial review of the determination.

22 (b) The only grounds for judicial review of a determination made under  
 23 AS 43.82.140 are

24 (1) failure to follow the qualification and application procedures set out  
 25 in AS 43.82.100 - 43.82.180; or

26 (2) abuse of discretion that is so capricious, arbitrary, or confiscatory  
 27 as to constitute a denial of due process.

28 **Sec. 43.82.160. Multiple applications for similar or competing qualified**  
 29 **projects.** Nothing in this chapter prohibits different qualified sponsors or different  
 30 qualified sponsor groups from submitting applications under AS 43.82.120 relating to  
 31 similar or competing qualified projects or prohibits the commissioner of revenue or the

1 commissioner of natural resources from reviewing and approving applications and  
 2 proposed project plans under AS 43.82.140 relating to similar or competing qualified  
 3 projects.

4 **Sec. 43.82.170. Application deadline.** The commissioner of revenue or the  
 5 commissioner of natural resources may not act on an application for a contract  
 6 submitted under AS 43.82.120 unless the application is received by the Department of  
 7 Revenue no later than June 30, 2001.

8 **Sec. 43.82.180. Withdrawal of applications.** Subject to the terms of a  
 9 reimbursement agreement under AS 43.82.240 or other agreement with the Department  
 10 of Revenue, the Department of Natural Resources, the commissioner of revenue, or the  
 11 commissioner of natural resources affecting the withdrawal of an application, a  
 12 qualified sponsor or qualified sponsor group may withdraw an application submitted  
 13 under AS 43.82.120 at any time before the date that the commissioner of revenue  
 14 submits a contract to the governor under AS 43.82.430 without further obligation under  
 15 this chapter.

### 16 **Article 3. Contract Development.**

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

20 (1) terms concerning periodic payment in lieu of one or more taxes as  
 21 provided in AS 43.82.210;

22 (2) terms developed under AS 43.82.220 relating to

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

25 (B) royalty value;

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

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

30 (5) terms regarding arbitration or alternative dispute resolution  
 31 procedures;

1 (6) terms and conditions for administrative termination of a contract  
2 under AS 43.82.445; and

3 (7) other terms or conditions that are

4 (A) necessary to further the purposes of this chapter; or

5 (B) in the best interests of the state.

6 **Sec. 43.82.210. Contract terms relating to payment in lieu of one or more**  
7 **taxes.** (a) If the commissioner approves an application and proposed project plan  
8 under AS 43.82.140, the commissioner may develop proposed terms for inclusion in  
9 a contract under AS 43.82.020 for periodic payment in lieu of one or more of the  
10 following taxes that otherwise would be imposed by the state or a municipality on the  
11 qualified sponsor or member of a qualified sponsor group as a consequence of  
12 participating in an approved qualified project:

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

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

16 (3) oil and gas conservation tax under AS 43.57;

17 (4) Alaska net income tax under AS 43.20;

18 (5) municipal sales and use tax under AS 29.45.650 - 29.45.710;

19 (6) municipal property tax under AS 29.45.010 - 29.45.250 or  
20 29.45.550 - 29.45.600;

21 (7) municipal special assessments under AS 29.46;

22 (8) a comparable tax or levy imposed by the state or a municipality  
23 after the effective date of this section;

24 (9) other state or municipal taxes or categories of taxes identified by  
25 the commissioner.

26 (b) If the commissioner chooses to develop proposed terms under (a) of this  
27 section, the commissioner shall, if practicable and consistent with the long-term fiscal  
28 interests of the state, develop the terms in a manner that attempts to balance the  
29 following principles:

30 (1) the terms should, in conjunction with other factors such as cost  
31 reduction of the project, cost overrun risk reduction of the project, increased fiscal

1 certainty, and successful marketing, improve the competitiveness of the approved  
2 qualified project in relation to other development efforts aimed at supplying the same  
3 market;

4 (2) the terms should accommodate the interests of the state, affected  
5 municipalities, and the project sponsors under a wide range of economic conditions,  
6 potential project structures, and marketing arrangements;

7 (3) the state's and affected municipalities' combined share of the  
8 economic rent of the approved qualified project under the contract should be relatively  
9 progressive; that is, the state's and affected municipalities' combined annual share of  
10 the economic rent of the approved qualified project generally should not increase when  
11 there are decreases in project profitability, or decrease when there are increases in  
12 project profitability;

13 (4) the state's and affected municipalities' combined share of the  
14 economic rent of the approved qualified project under the contract should be relatively  
15 lower in the earlier years than in the later years of the approved qualified project;

16 (5) the terms should allow the project sponsors to retain a share of the  
17 economic rent of the approved qualified project that is sufficient to compensate the  
18 sponsors for risks under a range of economic circumstances;

19 (6) the terms should provide the state and affected municipalities with  
20 a significant share of the economic rent of the approved qualified project, when  
21 discounted to present value, under favorable price and cost conditions;

22 (7) the method for calculating the periodic payment in lieu of certain  
23 taxes under the contract should be clear and unambiguous; and

24 (8) while cost calculations for the approved qualified project under the  
25 contract should be based on amounts that closely approximate actual costs, agreed-  
26 upon formulas reflecting reasonable economic assumptions should be used if possible  
27 to promote administrative certainty and efficiency.

28 (c) Except as provided in (b) of this section, the commissioner's discretion  
29 under this section in developing proposed terms for a contract under AS 43.82.020 is  
30 not limited to consideration of the economic rent of the approved qualified project.

31 **Sec. 43.82.220. Contract terms relating to royalty.** (a) Notwithstanding any

1 contrary provisions of AS 38, the commissioner of natural resources, with the  
 2 concurrence of the commissioner of revenue and the affected parties holding a state  
 3 lease or unit agreement, may develop proposed terms for inclusion in a contract under  
 4 AS 43.82.020 that modify the timing and notice provisions of the applicable oil and  
 5 gas leases and unit agreements pertaining to the state's rights to receive its royalty on  
 6 gas in kind or in value if

7 (1) the viability of the approved qualified project depends on long-term  
 8 gas purchase and sale agreements;

9 (2) certainty over time regarding the quantity of royalty gas that the  
 10 state may be taking in kind is needed to secure the long-term purchase and sale  
 11 agreements;

12 (3) the specified period of the state's commitment to take its royalty  
 13 share in value or in kind does not exceed the term of the purchase and sale  
 14 agreements; and

15 (4) the modification does not impair the ability of the approved  
 16 qualified project or the state to meet the reasonably foreseeable demand in this state  
 17 for gas within economic proximity of the project during the term of the contract  
 18 developed under AS 43.82.020.

19 (b) Notwithstanding any contrary provisions of AS 38, the commissioner of  
 20 natural resources, with the concurrence of the commissioner of revenue and the  
 21 affected parties holding a state lease or unit agreement, may develop proposed terms  
 22 for inclusion in a contract under AS 43.82.020 that establish a valuation method for  
 23 the state's royalty share of the gas production from an approved qualified project.

24 (c) The commissioner of revenue shall include any proposed terms relating to  
 25 royalty developed in accordance with this section in the proposed contract under  
 26 AS 43.82.400.

27 (d) Nothing in this chapter permits modification of the state's rights that relate  
 28 to timing, notice, and rights to receive oil royalty in kind or in value under oil and gas  
 29 leases or unit agreements.

30 **Sec. 43.82.230. Contract terms relating to hiring of Alaska residents and**  
 31 **contracting with Alaska businesses.** (a) The commissioner shall include in a

1 contract under AS 43.82.020 a term requiring the qualified sponsor or qualified  
2 sponsor group and contractors of the qualified sponsor or qualified sponsor group to  
3 comply with all valid federal, state, and municipal laws relating to hiring Alaska  
4 residents and contracting with Alaska businesses to work in the state on the approved  
5 qualified project and not to discriminate against Alaska residents or Alaska businesses.  
6 Within the constraints of law, the commissioner shall also include in a contract under  
7 AS 43.82.020 a term that requires the qualified sponsor or qualified sponsor group and  
8 contractors of the qualified sponsor or qualified sponsor group to employ Alaska  
9 residents and to contract with Alaska businesses to work in the state on the approved  
10 qualified project to the extent the residents and businesses are available, competitively  
11 priced, and qualified.

12 (b) The commissioner shall include in a contract under AS 43.82.020 a term  
13 requiring the qualified sponsor or qualified sponsor group and contractors of the  
14 qualified sponsor or qualified sponsor group to

15 (1) advertise for available positions in newspapers in the location where  
16 the work is to be performed and in other publications distributed throughout the state,  
17 including in rural areas; and

18 (2) use Alaska job service organizations located throughout the state  
19 and not just in the location where the work is to be performed in order to notify  
20 Alaskans of work opportunities on the approved qualified project.

21 (c) Subject to the voluntary agreement of the qualified sponsor, the  
22 commissioner may include a term in the contract providing for incentives to encourage  
23 training and hiring of Alaska residents.

24 (d) This section does not create or abridge individual rights and does not create  
25 a private right of action for any person.

26 (e) For purposes of this section,

27 (1) "Alaska business" means a firm or contractor that

28 (A) has held an Alaska business license for the preceding 12  
29 months;

30 (B) maintains, and has maintained for the preceding 12 months,  
31 a place of business in the state that competently and professionally deals in

1 supplies, services, or construction of the nature required for the approved  
2 qualified project; and

3 (C) is

4 (i) a sole proprietorship and the proprietor is an Alaska  
5 resident;

6 (ii) a partnership and more than 50 percent of the  
7 partnership interest is held by Alaska residents;

8 (iii) a limited liability company and more than 50  
9 percent of the membership interest is held by Alaska residents;

10 (iv) a corporation that has been incorporated in the state  
11 or is authorized to do business in the state; or

12 (v) a joint venture and a majority of the venturers  
13 qualify as Alaska businesses under this paragraph;

14 (2) "Alaska job service organizations" means those offices maintained  
15 by the state and recommended by the Department of Labor whose functions are to aid  
16 the unemployed or underemployed in finding employment;

17 (3) "Alaska resident" means a natural person who

18 (A) receives a permanent fund dividend under AS 43.23; or

19 (B) has a current Alaska

20 (i) voter registration card; and

21 (ii) resident fishing, hunting, or trapping license under  
22 AS 16;

23 (4) "available," as applied to an Alaska resident or Alaska business,  
24 means that the resident or business is available for employment at the time required  
25 and is located anywhere in the state, not just in the area of the state where the work  
26 is to be performed;

27 (5) "qualified," as applied to an Alaska resident or Alaska business,  
28 means that the resident or business possesses the requisite education, training, skills,  
29 certification, or experience to perform the work necessary for a particular position or  
30 to perform a particular service.

31 **Sec. 43.82.2.0. Use of an independent contractor. (a) The commissioner**

1 may use an independent contractor to assist in the evaluation of an application or in  
2 the development of contract terms under AS 43.82.200. The commissioner may  
3 condition the development of a contract under AS 43.82.020 on an agreement by the  
4 applicant to reimburse the state for the expenses of an independent contractor under  
5 this section.

6 (b) An independent contractor selected under this section must sign an  
7 agreement regarding confidentiality and disclosures consistent with the determinations  
8 made under AS 43.82.310 before the contractor may review information that is  
9 determined confidential under AS 43.82.310.

10 (c) Selection of an independent contractor under this section is not subject to  
11 AS 36.30 (State Procurement Code).

12 **Sec. 43.82.250. Term of contract; effective date.** The term of a contract  
13 developed under AS 43.82.020 may be for no longer than is necessary to develop the  
14 stranded gas that is subject to the contract; however, the term of the contract may not  
15 exceed 35 years from the commencement of commercial operations of the approved  
16 qualified project.

17 **Sec. 43.82.260. Change of parties to an application or a contract;**  
18 **assignment of interests.** (a) A qualified sponsor or member of a qualified sponsor  
19 group may assign an interest in or add or withdraw a party to an application under  
20 AS 43.82.120 only if the commissioner has

21 (1) made a finding that the assignment, addition, or withdrawal is  
22 consistent with the requirements of AS 43.82.110; and

23 (2) given prior written approval for the assignment, addition, or  
24 withdrawal.

25 (b) A contract developed under this chapter may provide for the assignment  
26 to or withdrawal of a qualified sponsor or member of a qualified sponsor group.

27 (c) Upon being added to an application under this section, a party becomes a  
28 qualified sponsor or a member of a qualified sponsor group, as appropriate, for the  
29 relevant project.

30 (d) The commissioner may not unreasonably withhold approval under (a) of  
31 this section, but may condition the approval in any way reasonably necessary to protect

1 the fiscal interests of the state and to further the purposes of this chapter.

2 (e) For purposes of this section, an assignment includes a transfer of stock or  
3 a partnership interest in a manner that changes control of a qualified sponsor or  
4 member of a qualified sponsor group.

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

13 **Article 4. Requests for Information; Confidentiality;**  
14 **Disclosure of Information.**

15 **Sec. 43.82.300. Requests for information.** The commissioner of revenue or  
16 the commissioner of natural resources may request from an applicant information that  
17 the respective commissioner determines is necessary to perform the respective  
18 commissioner's responsibilities under AS 43.82.140. If the application is approved  
19 under AS 43.82.140, the respective commissioner shall require the successful applicant  
20 to provide financial, technical, and market information regarding the qualified project  
21 that the respective commissioner determines is necessary for the purpose of developing  
22 contract terms for the qualified project under AS 43.82.200. If requested information  
23 is not provided, the commissioner of revenue may not continue to review the  
24 application under AS 43.82.140 or develop the contract under AS 43.82.200 -  
25 43.82.270, as applicable.

26 **Sec. 43.82.310. Disclosure of information; confidentiality.** (a) An applicant  
27 may request confidential treatment of information that the applicant provides under  
28 AS 43.82.300 by clearly identifying the information and the reasons supporting the  
29 request for confidential treatment. The commissioner of revenue or the commissioner  
30 of natural resources, as appropriate, shall keep the information confidential until the  
31 commissioner determines whether the requirements of (b) of this section are met. If

1 the commissioner of revenue or the commissioner of natural resources has not made  
2 a determination under (b) of this section within 14 days after receiving a request for  
3 confidential treatment, the request is considered denied. If the appropriate  
4 commissioner determines that the information does not meet the requirements of (b)  
5 of this section or if the commissioner fails to make a determination within 14 days, the  
6 commissioner shall return the information and any copies of it at the request of the  
7 applicant. If the commissioner of revenue or the commissioner of natural resources,  
8 as appropriate, returns information under this subsection, the commissioner shall cease  
9 review of the application or cease contract development under AS 43.82.200 -  
10 43.82.270, as appropriate, unless the commissioner determines that the returned  
11 information is unnecessary to make a determination on the application or to develop  
12 contract terms under AS 43.82.200 - 43.82.270.

13 (b) If requested by the applicant, information provided to the commissioner of  
14 revenue or the commissioner of natural resources under AS 43.82.300 shall be kept  
15 confidential if the commissioner receiving the information determines, upon an  
16 adequate showing by the applicant, that the information

17 (1) is a trade secret or other proprietary research, development, or  
18 commercial information that the applicant treats as confidential;

19 (2) affects the applicant's competitive position; and

20 (3) has commercial value that may be significantly diminished by  
21 public disclosure or that public disclosure is not in the long-term fiscal interests of the  
22 state.

23 (c) Information determined to be confidential under (b) of this section is  
24 confidential under that subsection only so long as is necessary to protect the  
25 competitive position of the applicant, to prevent the significant diminution of the  
26 commercial value of the information, or to protect the long-term fiscal interests of the  
27 state. The commissioner of revenue or the commissioner of natural resources, as  
28 appropriate, may not release information that the commissioner has previously  
29 determined to be confidential under (b) of this section without providing the applicant  
30 notice and an opportunity to be heard.

31 (d) Notwithstanding the limitation in (c) of this section, the Department of

1 Revenue and the Department of Natural Resources may provide to one another, to the  
2 Department of Law, to the legislature, and to the Office of the Governor any  
3 information provided under AS 43.82.300 relevant to the implementation of this  
4 chapter or to the enforcement of state or federal laws. Information that is exchanged  
5 under this subsection that was determined to be confidential under (b) of this section  
6 remains confidential except as provided in (c) of this section. The portions of the  
7 records and files of the Department of Revenue, the Department of Natural Resources,  
8 the Department of Law, the legislature, and the Office of the Governor that reflect,  
9 incorporate, or analyze information that is determined to be confidential under (b) of  
10 this section are not public records except as provided in (c) of this section.

11 (e) Notwithstanding the limitation in (c) of this section, information that is  
12 determined to be confidential under (b) of this section shall be disclosed on request by  
13 the commissioner of revenue, the commissioner of natural resources, or the attorney  
14 general to a legislator; to the legislative auditor; and, as directed by the chair or vice-  
15 chair of the Legislative Budget and Audit Committee, to the director of legislative  
16 finance, to the permanent employees of those divisions who are responsible for  
17 evaluating a contract under AS 43.82.020, and to agents or contractors of the  
18 legislative auditor or the director of legislative finance who are engaged to evaluate  
19 a contract under AS 43.82.020. Information that is determined to be confidential under  
20 (b) of this section may also be disclosed by the commissioner of revenue or the  
21 commissioner of natural resources to an independent contractor under AS 43.82.240  
22 or to a municipal advisory group established under AS 43.82.510. Before confidential  
23 information is disclosed under this subsection, the person receiving the information  
24 must sign an appropriate confidentiality agreement.

25 (f) If the commissioner of revenue chooses to develop a contract under  
26 AS 43.82.020, the portions of the records and files of the Department of Revenue, the  
27 Department of Natural Resources, the Department of Law, and a municipal advisory  
28 group established under AS 43.82.510 that reflect, incorporate, or analyze information  
29 that is relevant to the development of the position or strategy of the commissioner of  
30 revenue, the commissioner of natural resources, or the attorney general with respect  
31 to a particular provision that may be incorporated into the contract are not public

1 records until the commissioner of revenue gives public notice under AS 43.82.410 of  
 2 the commissioner's preliminary findings and determination under AS 43.82.400.

3 Nothing in this subsection

4 (1) makes a record or file of the Department of Revenue, the  
 5 Department of Natural Resources, or the Department of Law a public record that  
 6 otherwise would not be a public record under AS 09.25.100 - 09.25.220;

7 (2) affects the confidentiality provisions of (a) - (e) of this section; or

8 (3) abridges a privilege recognized under the laws of this state, whether  
 9 at common law or by statute or by court rule.

10 **Article 5. Contract Review, Approval, and Termination.**

11 **Sec. 43.82.400. Preliminary findings and determination regarding the**  
 12 **contract.** (a) If the commissioner develops a proposed contract under AS 43.82.200 -  
 13 43.82.270, the commissioner shall

14 (1) make preliminary findings and a determination that the proposed  
 15 contract terms are in the long-term fiscal interests of the state and further the purposes  
 16 of this chapter; and

17 (2) prepare a proposed contract that includes those terms and shall  
 18 submit the contract to the governor.

19 (b) To make the preliminary findings and determination required by (a)(1) of  
 20 this section, the commissioner shall compare the projected public revenue anticipated  
 21 from the approved qualified project with the estimated operating and capital costs of  
 22 the additional state and municipal services anticipated to arise from the construction  
 23 and operation of the approved qualified project. The commissioner shall address the  
 24 reasonably foreseeable effects of the proposed contract on the public revenue.

25 (c) In conjunction with the making of preliminary findings and determination  
 26 required by (a)(1) of this section, the commissioner shall describe the principal factors,  
 27 including the projected price of gas, projected production rate or volume of gas, and  
 28 projected recovery, development, construction, and operating costs, upon which the  
 29 determination made under (a)(1) of this section is based. If the commissioner has  
 30 previously submitted a proposed contract to the governor, the commissioner shall  
 31 describe any material differences between the terms of the currently proposed contract

1 and the previously proposed contract.

2 **Sec. 43.82.410. Notice and comment regarding the contract.** The  
3 commissioner shall

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

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

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

13 (B) the chairs of the finance and resources committees of the  
14 legislature; and

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

17 (3) offer to appear before the Legislative Budget and Audit Committee  
18 to provide the committee a review of the commissioner's preliminary findings and  
19 determination, the proposed contract, and the supporting financial, technical, and  
20 market data; if the Legislative Budget and Audit Committee accepts the commissioner's  
21 offer, the committee shall give notice of the committee's meeting to the public and all  
22 members of the legislature; if the financial, technical, and market data that is to be  
23 provided must be kept confidential under AS 43.82.310, the commissioner may not  
24 release the confidential information during a public portion of a committee meeting;  
25 and

26 (4) establish a period of at least 30 days for the public and members  
27 of the legislature to comment on the proposed contract and the preliminary findings  
28 and determination made under AS 43.82.400.

29 **Sec. 43.82.420. Coordination of public and legislative review.** To the extent  
30 practicable, the commissioner shall coordinate the public comment opportunity  
31 provided under AS 43.82.410(4) with a review by the Legislative Budget and Audit

44.62.960

1 Committee under AS 43.82.410(3).

2 **Sec. 43.82.430. Final findings, determination, and proposed amendments;**  
3 **execution of the contract.** (a) Within 30 days after the close of the public comment  
4 period under AS 43.82.410(4), the commissioner of revenue shall

5 (1) prepare a summary of the public comments received in response to  
6 the proposed contract and the preliminary findings and determination;

7 (2) after consultation with the commissioner of natural resources, if  
8 appropriate, and with the pertinent municipal advisory group established under  
9 AS 43.82.510, prepare a list of proposed amendments, if any, to the proposed contract  
10 that the commissioner of revenue determines are necessary to respond to public  
11 comments;

12 (3) make final findings and a determination as to whether the proposed  
13 contract and any proposed amendments prepared under (2) of this subsection meet the  
14 requirements and purposes of this chapter. *and findings ...*

15 (b) After considering the material described in (a) of this section and securing  
16 the agreement of the other parties to the proposed contract regarding any proposed  
17 amendments prepared under (a) of this section, *After* if the commissioner determines that the  
18 contract is in the long-term fiscal interests of the state, the commissioner shall submit  
19 the contract to the governor.....

20 (c) The commissioner's final findings and determination under (a) of this  
21 section are final agency decisions under this chapter. . .

22 **Sec. 43.82.435. Legislative authorization.** The governor may transmit a  
23 contract developed under this chapter to the legislature together with a request for  
24 authorization to execute the contract. A contract developed under this chapter is not  
25 binding upon or enforceable against the state or other parties to the contract unless the  
26 governor is authorized to execute the contract by law. The state and the other parties  
27 to the contract may execute the contract within 60 days after the effective date of the  
28 law authorizing the contract.

29 **Sec. 43.82.440. Judicial review.** A person may not bring an action  
30 challenging the constitutionality of a law authorizing a contract enacted under  
31 AS 43.82.435 or the enforceability of a contract executed under a law authorizing a

\$

Terribly wrong

43.82.101

SGDA...

- Oil certainty... we won't give oil certainty
- oil + gas linked for a purpose.....

\* World Bank re-opening

15-25 years OK! 40 yrs = no!

\* Pay off return + then a re-opening...

\* stability on borough taxes = risk transfer.

☐ higher risk = higher reward...

☐ risk is transferred to state...

\*

risk follows after the fact...

Way out...

- build leverage - in place reserve tax
- Pt. Thompson - 40% expansion... they had to drill - then just well this year.
- 800-300 mmbbl oil there...

\*

we need to see their books...

McKenzie gas bid

2017 for Alaska.

1 contract enacted under AS 43.82.435 unless the action is commenced within 120 days  
2 after the date that the contract was executed by the state and the other parties to the  
3 contract.

4 **Sec. 43.82.445. Administrative termination of a contract.** (a) The  
5 commissioner shall include terms in a contract developed under AS 43.82.020 that  
6 provide for administrative termination of a party's rights under the procedures and  
7 conditions set out in this section if the party has

8 (1) ceased to meet the requirements of AS 43.82.110 as a qualified  
9 sponsor or qualified sponsor group;

10 (2) intentionally or fraudulently misrepresented, in whole or in part,  
11 material facts or circumstances upon which the contract was made;

12 (3) failed to comply with a condition or material term of the contract  
13 or a provision of this chapter; or

14 (4) failed to comply with the approved qualified project plan or any  
15 updated project plan.

16 (b) Before administrative termination of a contract under this section, the  
17 commissioner shall give notice to the parties of the commissioner's intent to terminate  
18 the contract and an opportunity to be heard. The commissioner may also provide the  
19 parties an opportunity to cure any deficiency that is the basis for the termination if the  
20 commissioner determines that curing the deficiency is appropriate under the  
21 circumstances.

22 (c) Notwithstanding (a) and (b) of this section, the commissioner may not  
23 administratively terminate a contract after the party has committed full project funding  
24 except as provided in (e) of this section.

25 (d) A party to a contract who is affected by the commissioner's action to  
26 terminate under (a) of this section may file an appeal with the superior court under the  
27 Alaska Rules of Appellate Procedure.

28 (e) The commissioner may provide terms and conditions in a contract  
29 developed under AS 43.82.020 upon which a party's rights under the contract may be  
30 administratively terminated after the party commits full project funding.

31 **Article 6. Municipal Participation.**

- \* Time value of money...
- \* Clause in lease - "duty to develop"  
we need to quit warehousing

Super way out...

- I can't go any further...
- do an upstream general public incentive
- give incentives to builder of pipeline
- royalty in value / royalty in kind switching

(when producer sells  
 we get higher of the  
 3 sellers.

problem ⊗

- open season - take or pay stream down the  
 [Pipeline ...] ⊗ ⊗ ⊗

State has no storage for gas...

What is the language in the LLC ?

4 companies in J.V.

5-6 billion each in risk

Is it expandible?

1           **Sec. 43.82.500. Obligation to share payments with municipalities.** If the  
2 commissioner develops a contract under AS 43.82.020 that includes terms that exempt  
3 a party to the contract, and the property, gas, products, and activities associated with  
4 the approved qualified project that is subject to the contract, from a municipal tax or  
5 assessment in accordance with AS 29.45.810 or AS 29.46.010(b), or AS 43.82.200 and  
6 43.82.210, the commissioner shall include a term in the contract that the party pay a  
7 portion of the periodic payments due under the contract to the revenue-affected  
8 municipality.

9           **Sec. 43.82.505. Payments to economically affected municipalities.** If the  
10 commissioner executes a contract under AS 43.82.020 that will produce one or more  
11 economically affected municipalities, the commissioner shall include a term in the  
12 contract that provides for a portion of the periodic payments to the economically  
13 affected municipalities under the principles in AS 43.82.520.

14           **Sec. 43.82.510. Municipal advisory group.** (a) If the commissioner approves  
15 an application and proposed project plan under AS 43.82.140 and decides to develop  
16 a contract under AS 43.82.020 and 43.82.200, the commissioner shall notify each  
17 revenue-affected municipality and economically affected municipality.

18           (b) The mayor of a municipality notified by the commissioner under (a) of this  
19 section may appoint one representative to a municipal advisory group in relation to the  
20 application.

21           (c) Each municipal advisory group serves until a final action is taken on the  
22 application for which the group was appointed.

23           (d) Each municipal advisory group shall elect a chair.

24           **Sec. 43.82.520. Duties of the commissioner of revenue in relation to**  
25 **municipal participation.** (a) The commissioner shall meet with each municipal  
26 advisory group periodically to report on the development of the contract provisions that  
27 affect the municipalities.

28           (b) In developing a contract under AS 43.82.200 - 43.82.270, the commissioner  
29 shall ensure that each revenue-affected municipality and economically affected  
30 municipality receives a fair and reasonable share of the payments provided under  
31 AS 43.82.210 in accordance with the following principles:

will they walk away? NO

known quantities TCF 250-260

we can be the energy forces of the  
future - but we must control the timing.

1 (1) the share of the payments to revenue-affected municipalities should  
2 be given priority over payments to economically affected municipalities with due  
3 regard to the anticipated size of the tax base that the contract would exempt from  
4 municipal taxation by revenue-affected municipalities;

5 (2) the share of the payments to municipalities should be determined  
6 with due regard to the anticipated economic and social burdens that would be imposed  
7 on the municipality by construction and operation of the project;

8 (3) the respective shares of the total payments to the state and to  
9 municipalities should be fixed in a manner to ensure that their respective interests are  
10 aligned;

11 (4) to the extent practicable, the periodic amounts paid to each of the  
12 municipalities should be stable and predictable; and

13 (5) to the extent practicable, the provisions for sharing payments with  
14 municipalities should be consistent with the principles established in AS 43.82.210(b).

15 (c) In establishing the municipal shares under (b) of this section, the  
16 commissioner shall consult with the pertinent municipal advisory group.

#### 17 **Article 7. Miscellaneous Provisions.**

18 **Sec. 43.82.600. Governing law.** If a provision of this chapter conflicts with  
19 another provision of state or municipal law, the provision of this chapter governs.

20 **Sec. 43.82.610. Regulations.** The commissioner of revenue, the commissioner  
21 of natural resources, and the commissioner of labor may adopt regulations to carry out  
22 their respective duties under this chapter.

23 **Sec. 43.82.620. Procedures for collection of amounts due; security.** (a)  
24 The commissioner may adopt procedures for the collection of amounts due the state  
25 under a contract developed under AS 43.82.020, including the collection of interest and  
26 penalties.

27 (b) The commissioner may require a party to a contract developed under  
28 AS 43.82.020 to provide security sufficient to guarantee amounts due under the  
29 contract.

30 **Sec. 43.82.630. Reports and audits.** The commissioner may require periodic  
31 reports from and may at reasonable intervals conduct audits and inspect the books of

1 a party that has entered into a contract developed under AS 43.82.020 to ensure  
 2 compliance with the provisions of this chapter and the regulations adopted under this  
 3 chapter and of the terms of the contract.

4 **Sec. 43.82.640. Annual report of the commissioner of labor.** On an annual  
 5 basis, the commissioner of labor shall prepare and present to the legislature a  
 6 comprehensive report on each party to a contract with the state developed under  
 7 AS 43.82.020, and its contractors, regarding the state residency of the employees  
 8 working in this state on the approved qualified project that is subject to the contract.  
 9 The commissioner of labor shall use state databases, including data from the quarterly  
 10 reports by a party to the contract developed under AS 43.82.020 and its contractors for  
 11 unemployment insurance purposes, to determine state residency of employees regarding  
 12 compliance with AS 43.82.230.

13 **Article 8. General Provisions.**

14 **Sec. 43.82.900. Definitions.** In this chapter, unless the context requires  
 15 otherwise,

16 (1) "affected municipality" means an economically affected  
 17 municipality or a revenue-affected municipality;

18 (2) "commencement of commercial operations" means the start of  
 19 regular deliveries of marketable products from an approved qualified project;

20 (3) "cubic foot of gas" means the quantity of gas contained in a volume  
 21 of one cubic foot at a standard temperature of 60 degrees Fahrenheit and a standard  
 22 absolute pressure of 14.65 pounds per square inch;

23 (4) "economically affected municipality" means a municipality the  
 24 commissioner of revenue determines will be reasonably required to provide additional  
 25 public services under the terms proposed in an application approved under  
 26 AS 43.82.140(a); the commissioner may consider historical data from construction of  
 27 the Trans Alaska Pipeline System, and information submitted by a municipality in  
 28 making the determination;

29 (5) "economic proximity" means the distance within which a person  
 30 may be willing to design, construct, and operate a gas line to provide service to a local  
 31 consumer;

1 (6) "economic rent" means the estimated total gross revenue less  
 2 estimated total costs for a qualified project over the term of a contract under  
 3 AS 43.82.020, measured in undiscounted nominal dollars; for purposes of this  
 4 paragraph, total costs do not include a rate of return on capital, financing costs, or any  
 5 payments to governments;

6 (7) "full project funding" means full approval by a party to a contract  
 7 under AS 43.82.020 for the expenditure of the capital necessary for construction and  
 8 operation of the approved qualified project that is subject to the contract;

9 (8) "gas" has the meaning given in AS 43.55.900;

10 (9) "group" means two or more persons;

11 (10) "lease or property" has the meaning given in AS 43.55.900;

12 (11) "periodic payment" means payment made in lieu of one or more  
 13 other taxes under a contract under AS 43.82.020;

14 (12) "revenue-affected municipality" means a municipality that the  
 15 commissioner of revenue reliably expects will be restricted from imposing a tax, or a  
 16 portion of a tax, as a result of implementation of a contract developed under this  
 17 chapter;

18 (13) "stranded gas" means gas that is not being marketed due to  
 19 prevailing costs or price conditions as determined by an economic analysis by the  
 20 commissioner for a particular project.

21 **Sec. 43.82.990. Short title.** This chapter may be cited as the Alaska Stranded  
 22 Gas Development Act.

23 \* **Sec. 4.** AS 29.10.200 is amended by adding new paragraphs to read:

24 (54) AS 29.45.810 (exemption from municipal taxation);

25 (55) AS 29.46.010(b) (exemption from municipal assessment).

26 \* **Sec. 5.** AS 29.45 is amended by adding a new section to read:

27 **Sec. 29.45.810. Exemption from municipal taxation.** (a) A party to a  
 28 contract approved by the legislature as a result of submission of a proposed contract  
 29 developed under AS 43.82, and the property, gas, products, and activities associated  
 30 with the approved qualified project that is subject to the contract, are exempt, as  
 31 specified in the contract, from all taxes identified in the contract that would be levied

1 and collected by a municipality under state law as a consequence of the participation  
2 by the party in the approved qualified project.

3 (b) This section applies to home rule and general law municipalities.

4 \* Sec. 6. AS 29.46.010 is amended by adding a new subsection to read:

5 (b) Notwithstanding (a) of this section, a party to a contract approved by the  
6 legislature as a result of submission of a proposed contract developed under AS 43.82  
7 is exempt, as specified in the contract, from assessment under this chapter against real  
8 property associated with the approved qualified project that is subject to the contract.

9 \* Sec. 7. AS 36.30.850(b) is amended by adding a new paragraph to read:

10 (38) contracts between the commissioner of revenue and an independent  
11 contractor under AS 43.82.240.

12 \* Sec. 8. AS 43.20.072 is amended by adding a new subsection to read:

13 (h) A taxpayer that has signed a contract approved by the legislature as a result  
14 of submission of a proposed contract developed under AS 43.82 providing for  
15 payments in lieu of the tax under this chapter and that has nexus with the state solely  
16 as the result of the taxpayer's participation in the approved qualified project that is  
17 subject to the contract or would not, but for such participation, be engaged in the  
18 production of oil or gas from a lease or property in this state or engaged in the  
19 transportation of oil or gas by pipeline in this state, is not required to file a return  
20 under this section unless required to do so by the contract.

21 \* Sec. 9. AS 43.20.073 is amended by adding a new subsection to read:

22 (h) A corporation that has signed a contract approved by the legislature as a  
23 result of submission of a proposed contract developed under AS 43.82 providing for  
24 payments in lieu of the tax under this chapter and that has nexus with the state solely  
25 as the result of the corporation's participation in the approved qualified project that is  
26 subject to the contract is not required to file a return under this section unless required  
27 to do so by the contract.

28 \* Sec. 10. SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the  
29 application of a provision of this Act to any person or circumstance, is held invalid, the  
30 remainder of this Act and the application to other persons or circumstances is not affected.

31 \* Sec. 11. This Act takes effect immediately under AS 01.10.070(c).

## Bill Resolution Versions Display for HB 393 in the 20th Legislature

**HB 393**

Version	Amended Name	PDF	Intro/Offered		Passed	
			Date	House	Senate	
HB0393A	<a href="#">HB 393</a>		02/11/1998			
HB0393B	<a href="#">CSHB 393(O&amp;G)</a>		03/26/1998			
HB0393C	<a href="#">CSHB 393(RES)</a>		04/03/1998	04/17/1998		
HB0393D	<a href="#">SCS CSHB 393(FIN)</a>		05/10/1998	05/12/1998	05/12/1998	

Bill Root: [To Report Problems with Basis Inquiry](#)[Live KTOO Streams](#) [Return to Basis Main Menu \(20th Legislature\)](#)[Return to Legislature Home Page](#)

## Bill History/Action Display

**BILL:** HB 393**SHORT TITLE:** DEVELOP STRANDED GAS RESOURCES**BILL VERSION:** SCS CSHB 393(TIN)**CURRENT STATUS:** CHAPTER 104 SLA 98**STATUS DATE:** 06/17/98**SPONSOR(s):** RLS BY REQUEST OF THE GOVERNOR

**TITLE:** "An Act relating to contracts with the state establishing payments in lieu of other taxes by a qualified sponsor or qualified sponsor group for projects to develop stranded gas resources in the state; providing for the inclusion in the contracts of terms making certain adjustments regarding royalty value and the timing and notice of the state's right to take royalty in kind or in value from projects to develop stranded gas resources in the state; relating to the effect of the contracts on municipal taxation; and providing for an effective date."

**Bill Root:**

Jrn-Date	Jrn-Page	Action
02/11/98	<u>2280</u>	(H) READ THE FIRST TIME - REFERRAL(S)
02/11/98	<u>2281</u>	(H) OIL & GAS, FINANCE
02/11/98	<u>2281</u>	(H) 2 FISCAL NOTES (DNR, REV)
02/11/98	<u>2281</u>	(H) GOVERNOR'S TRANSMITTAL LETTER
03/09/98	<u>2578</u>	(H) RES REFERRAL ADDED
03/26/98	<u>2749</u>	(H) O&G RPT CS(O&G) NT & ATTACHED AM 1DP 5NR
03/26/98	<u>2750</u>	(H) DP: HODGINS; NR: BUNDE, OGAN, ROKEBERG,
03/26/98	<u>2750</u>	(I) BRICE, KEMPLER
03/26/98	<u>2750</u>	(H) 2 FISCAL NOTES (DNR, REV) 2/11/98
04/03/98	<u>2867</u>	(H) RES RPT CS(RES) NT 3DP 6NR
04/03/98	<u>2867</u>	(H) DP: OGAN, BARNES, DYSON; NR: HUDSON,
04/03/98	<u>2867</u>	(H) NICHOLIA, JOULE, MASEK, WILLIAMS, GREEN
04/03/98	<u>2868</u>	(H) 2 FISCAL NOTES (DNR, REV) 2/11/98
04/07/98	<u>2900</u>	(H) FIN RPT CS(RES) NT 4DP 5NR
04/07/98	<u>2901</u>	(H) DP: DAVIES, MULDER, KOHRING, FOSTER;
04/07/98	<u>2901</u>	(H) NR: THERRIAULT, MARTIN, KELLY,
04/07/98	<u>2901</u>	(H) GRUSSENDORF, HANLEY
04/07/98	<u>2901</u>	(H) 2 FISCAL NOTES (DNR, REV) 2/11/98
04/17/98	<u>3045</u>	(H) RULES TO CALENDAR 4/17/98
04/17/98	<u>3045</u>	(H) READ THE SECOND TIME
04/17/98	<u>3045</u>	(H) RES CS ADOPTED UNAN CONSENT
04/17/98	<u>3046</u>	(H) ADVANCED TO THIRD READING UNAN CONSENT
04/17/98	<u>3046</u>	(H) READ THE THIRD TIME CSHB 393(RES)
04/17/98	<u>3046</u>	(H) PASSED Y36 N4

04/17/98 3047 (H) EFFECTIVE DATE(S) SAME AS PASSAGE  
 04/17/98 3061 (H) TRANSMITTED TO (S)  
 04/18/98 3358 (S) READ THE FIRST TIME - REFERRAL(S)  
 04/18/98 3358 (S) L&C, RES, FIN  
 05/01/98 3650 (S) L&C RPT 2DP 1AM 1NR  
 05/01/98 3650 (S) DP: LEMAN, MACKIE; AM: KELLY  
 05/01/98 3650 (S) NR: HOFFMAN  
 05/01/98 3650 (S) (H) FNS (DNR, REV)  
 05/07/98 3866 (S) RES REFERRAL WAIVED  
 05/10/98 3971 (S) FIN RPT SCS 4DP 3NR SAME TITLE  
 05/10/98 3972 (S) DP: PHILLIPS, ADAMS, TORGERSON, DONLEY  
 05/10/98 3972 (S) NR: PEARCE, SHARP, PARNELL  
 05/10/98 3972 (S) (H) FNS (DNR, REV)  
 05/11/98 4040 (S) RULES TO 1ST SUPP CAL 5/11/98  
 05/11/98 4071 (S) READ THE SECOND TIME  
 05/11/98 4071 (S) FIN SCS ADOPTED UNAN CONSENT  
 05/11/98 4071 (S) AM NO 1 FAILED Y6 N12 A2  
 05/11/98 4072 (S) ADVANCED TO THIRD READING UNAN CONSENT  
 05/11/98 4072 (S) READ THE THIRD TIME SCS CSHB 393(FIN)  
 05/11/98 4073 (S) PASSED Y19 N- A1  
 05/11/98 4073 (S) EFFECTIVE DATE(S) SAME AS PASSAGE  
 05/11/98 4073 (S) TAYLOR NOTICE OF RECONSIDERATION  
 05/12/98 4155 (S) RECON TAKEN UP - IN THIRD READING  
 05/12/98 4155 (S) (S) ADOPTED LETTER OF INTENT  
 05/12/98 4156 (S) PASSED ON RECONSIDERATION Y20 N-  
 05/12/98 4157 (S) EFFECTIVE DATE(S) SAME AS PASSAGE  
 05/12/98 4184 (S) TRANSMITTED TO (H) AS AMENDED  
 05/12/98 3916 (H) HELD UNDER UNFINISHED BUSINESS  
 05/12/98 3920 (H) CONCUR AM OF (S) Y35 N? A3  
 05/12/98 3922 (H) EFFECTIVE DATE(S) SAME AS PASSAGE  
 05/12/98 3922 (H) LTR OF INTENT ADOPTED UNAN CONSENT  
 05/28/98 3990 (H) 11:05 AM 5/27/98 TRANSMITTED TO GOVERNOR  
 07/15/98 4085 (H) SIGNED INTO LAW 6/17 CHAPTER 104 SLA 98  
 07/15/98 4085 (H) EFFECTIVE DATE OF LAW 6/18/98

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## Journal Text for HB393 in the 20th Legislature

Full Journal

02-11-1998

House Journal

2281

HB 393

"An Act relating to contracts with the state establishing payments in lieu of other taxes by a qualified sponsor or qualified sponsor group for projects to develop stranded gas resources in the state; providing for the inclusion in such contracts of terms making certain adjustments regarding royalty value and the timing and notice of the state's right to take royalty in kind or in value from such projects; relating to the effect of such contracts on municipal taxation; and providing for an effective date."

was read the first time and referred to the House Special Committee on Oil & Gas and the Finance Committee.

The following fiscal notes apply:

Fiscal note, Dept. of Natural Resources, 2/11/98

Fiscal note, Dept. of Revenue, 2/11/98

The Governor's transmittal letter dated February 9, 1998, appears below:

"Dear Speaker Phillips:

Today I am transmitting the Alaska Stranded Gas Development Act to advance the development of Alaska's vast supply of North Slope natural gas. This legislation follows the recommendations of the North Slope Gas Commercialization Team which was established by legislation last year to build a framework to improve the economic feasibility and competitiveness of a North Slope gas project.

The bill authorizes the state to negotiate contracts with project sponsors to improve the economic feasibility of developing stranded gas on the North Slope. Contract payments would replace some or all of the state and municipal taxes applicable to the gas project including: 1) state and municipal ad valorem property taxes; 2) production or severance taxes; and 3) state corporate taxes. The state's royalty share of produced gas would not be subject to such a contract. Contract payments would be designed to improve project economics by "back-end loading" tax liabilities to allow project investors to begin to recoup some of their investment before facing a heavy tax burden.

02-11-1998

House Journal

2282

HB 393

The contract payments would also be designed to provide the state with an increased share of the project's revenue if energy prices increase or if the sponsors are able to substantially decrease anticipated project construction costs.

Such contract payments were envisioned in both the House Concurrent Resolution relating to North Slope gas and the gas commercialization team bill passed last year. While the bill is unique in many respects, there are precedents for this type of incentive. For example, the LNG

project on the Kenai Peninsula, which provides significant jobs and production and property tax revenue, benefited directly from the Alaska Industrial Incentive Act which provided tax advantages critical for development.

There are several major benefits to the approach authorized in the bill. Fiscal arrangements can be tailored to the specific economics of a gas project. Contractual payments are more likely to provide predictability for potential investors in a project. This method also addresses the critical element of local taxes by providing a mechanism for ensuring a steady payment stream to municipalities over the life of the contract.

Local hire and the use of local businesses in any project are also stressed in the legislation. Employers participating in the project are required to advertise locally for available positions, use Alaska job service organizations, and employ qualified Alaska residents and Alaska-owned businesses to the full extent permitted by law.

Any contract negotiated by the Administration would be subject to legislative review and public hearing. Additionally, I would encourage the legislature to require legislative approval of a contract because of the appropriate role of the legislature in such a unique and significant decision. Furthermore, if such a contract in lieu of taxes was considered a tax, the legislature may well be required to approve such action by law.

The bill recognizes that in the process of negotiating a contract it may be necessary to review confidential company data if the state's best interests are to be advanced. The bill strikes a balance between the public's right to review the basis for the contract and the company's right to protect proprietary information from their competitors.

02-11-1998

House Journal

2283

HB 393

Confidentiality of proprietary information is limited to items that, if revealed, would both affect a company's competitive position and significantly diminish the commercial value of the information.

The Stranded Gas Development Act is a critically important step in our efforts to realize the benefits of the enormous gas resources on the North Slope. While it is true a number of other factors must be addressed before a North Slope gas project becomes a reality, such as project cost reductions, market conditions, and the need for more favorable federal tax laws, this bill lays the necessary groundwork for our success. I urge your prompt and favorable action on this measure.

Sincerely,  
/s/  
Tony Knowles  
Governor"

Bill Root:

**House SPECIAL COMMITTEE ON OIL & GAS Minute**

Feb 19, 1998

HB 393 - DEVELOP STRANDED GAS RESOURCES

CHAIRMAN HODGINS stated that the committee would now hear HB 393, "An Act relating to contracts with the state establishing payments in lieu of other taxes by a qualified sponsor or qualified sponsor group for projects to develop stranded gas resources in the state; providing for the inclusion in such contracts of terms making certain adjustments regarding royalty value and the timing and notice of the state's right to take royalty in kind or in value from such projects; relating to the effect of such contracts on municipal taxation; and providing for an effective date." He asked Commissioner Condon to give his presentation.

Number 0167

WILSON CONDON, Commissioner, Department of Revenue, stated that he was the chairman of the gas commercialization team, created by HB 250. He stated that HB 393 was introduced by the Governor and if enacted, would be called the Alaska Stranded Gas Development Act. He stated that he wanted to talk about the objective of the bill, the development of stranded gas in Alaska. He stated that Commissioner Shively and himself would testify about some provisions in the bill and then he would address the following seven policy issues: Alaska hire, gas supplies for local communities, municipal sharing in project revenue, confidentiality of information, Legislative approval, the question of whether one legislature can bind future legislatures with respect to the project's fiscal system and the delegation of tax and power.

Number 0295

COMMISSIONER CONDON stated that a lot of gas has been discovered on the North Slope. He stated that in the Prudhoe Bay Reservoir, one-quarter of the recoverable energy that is available is in the form of gas. There has also been a big gas discovery on the North Slope, he asserted that the question that needs to be asked is why can't these resources be developed like oil and why do they appear to be stranded today. He explained that the reason is because it takes a lot more plumbing and more expense to haul an equivalent unit of energy in the form of gas to market then it does for a unit of energy in the form of oil.

Number 0366

COMMISSIONER CONDON referred to the proposed project to take North Slope gas as liquefied natural gas (LNG) to Asia. The facilities for that project would include a conditioning plant, a pipeline, a liquefaction plant and ships. This project will cost about the same in nominal dollars as the oil pipeline in hauling the North Slope oil to market. Yet the proposed North Slope Gas Project will carry an energy equivalent of about 400,000 barrels of oil a day to

market. He pointed out that it is one-third or less in energy equivalents of the oil stream that is going to market. Therefore, the situation is that there is the same dollar cost spread over one-third the amount of energy.

Number 0436

COMMISSIONER CONDON stated that currently there are two possibilities for commercializing the North Slope Gas Resource: the above-mentioned LNG project, pipelining gas to tide water, liquefying it there and then transporting the LNG to Asian markets, or a gas-to-liquids (GTL) project. This project would convert North Slope Gas to liquids that could be transported through taps. It is the state's belief that the proposed LNG project has the best chance of commercial success. He pointed out that it would be helpful to review the alphabet soup of LNG, natural gas liquids (NGL) and GTL's. He stated that the liquids in each of them are quite different. He held up a model of a methane molecule which has one carbon molecule and four hydrogen molecules at the center. In order to make LNG, it is a physical process and this is what makes up the gas, it makes up 90 percent of the "good stuff". This "stuff" would be pipelined from the North Slope to Valdez or Prince William Sound to a liquefaction plant and then it would be cooled to minus 260 degrees Fahrenheit, and in doing so it becomes a liquid. The liquid is then hauled to Asia where it would be re-gasified and distributed through a pipeline system to a power plant and a town gas delivery system.

Number 0639

COMMISSIONER CONDON stated that he wanted to talk about NGL'S, a substance which is present in natural gas but can be liquefied and sold as propane, butane and others. Currently, these gases are recovered out of the gas stream on the North Slope. Propane is made up of three carbon molecules and eight hydrogen molecules. He explained that it is one of the substances that comes out of the gas stream of Prudhoe Bay and used as miscible injectant to increase the recovery of oil in the reservoir. He stated that butane consists of four carbon and four hydrogen molecules. It is also recovered in the central gas facility of Prudhoe Bay and is blended with the crude oil and sent to market. He stated that substances which were generally thought of as gas are marketed from the North Slope as part of the crude oil springs.

Number 0802

COMMISSIONER CONDON stated that he would talk about the chemical conversion of the substance methane into another chemical substance. This molecule is taken apart to achieve the conversion, the molecules are then put into another chemical process and constructed into another substance. He stated that the desired result is the molecule decane, which consists of 10 carbon molecules and 22 hydrogen molecules. He explained that what often happens is a molecule that had 20 carbon molecules and 42 hydrogens molecules which is wax. This cannot be prevented, therefore, there needs to be a facility in the project that will take that apart again to result in the two decane molecules.

Number 0965

COMMISSIONER CONDON explained that a year and a half ago the department retained a Dr. Pedro van Meurs, a consultant that talks to governments around the world that are trying to structure their fiscal systems to develop resources. Dr. van Meurs was retained to see if there was something that the state could do to improve the economic viability of a North Slope Gas Project. His recommendations were that in order to be able to compete against other political entities, restructuring of the state and local fiscal regime should be considered to make it competitive with the fiscal terms that are being offered in respect to other grass roots projects around the Pacific Basin. Specifically, modify the front-end loaded fiscal system to one which is a back-end loaded and modify it in a way that it would be more progressive. This could be risking some of revenue that may be received in the event of low energy prices in exchange for receiving a higher share, if energy prices turn out to be high. He recommended increasing the fiscal certainty of the arrangements that are put in place, by embodying them in a contract. He also recommended that federal decision makers be engaged and that there is a succinct modification of federal fiscal terms so that they would also facilitate the project

Number 1118

COMMISSIONER CONDON stated that both state and local fiscal systems are just part of what is needed to come together before a North Slope gas project is going to be viable. There needs to be significant reductions in the cost and there needs to be favorable market conditions in order to have a successful resource to market. House Bill 393 would provide for payment, in lieu of taxes, for sponsors of a stranded gas project. He explained that existing taxes including production, property and corporate income taxes could be replaced by a single periodic payment that is more closely related to the projects profitability. And gives state and local governments more of a share of the projects economic grant later on in the life of the project. He stated that the provisions in the bill that lays out the above mentioned proposition is in AS 43.82.020 and AS 43.82.210(a)

Number 1205

COMMISSIONER CONDON explained that stranded gas is gas that the commissioner determines to be uneconomic or uncompetitive to develop under prevailing economic or competitive conditions. He stated that the definitions are listed in AS 43.82.900(10). He stated that if the fiscal regime is embodied by a contract that is negotiated by the state, it will enhance the viability of a project for two reasons: First, it increases certainty regarding the return investors can expect because it decreases the possibility that the government's portion will rise unexpectedly in the future. Secondly, it will increase certainty regarding the return investors can expect and therefore reduce the financial risks taken by the investors. He stated that it means that they will require a lower rate of return to compensate them for investing in a project. He stated that the department believes that is a sound justification for tailoring a fiscal system for a stranded gas project on a project by project basis to a fiscal contract.

Number 1325

COMMISSIONER CONDON stated that under the proposed bill the potential project sponsors come to the commissioner with a proposal for development. The proposed AS 43.82.110 would require that a qualified sponsor or a sponsor group must intend to own an equity interest in the project or commit gas to the project. In addition, they must either own 10 percent of the gas that the project proposes to market, hold the necessary permits to construct the project or have a sufficient network or borrowing capacity to get the project moving.

Number 1370

COMMISSIONER CONDON stated that a qualified project must be a proposal to develop 500 billion cubic feet or more of uncompetitive gas within 20 years from the project's commencement and it must be capable of satisfying local and state demand within the proximity of the project. These requirements are listed in AS 43.82.100. He explained that a qualified sponsor must also come in with a qualified plan and present that plan in the application, this is found in the bill under AS 43.82.120(b). A qualified client must have a proposal which reflects anticipated diligent development, it can not conflict with pertinent oil and gas lease terms and it has to be satisfactory for making gas available for instate demand within the proximity of the project. He stated that if there is a qualified project, qualified plan and qualified sponsor, the bill provides a review process to determine whether it is possible to go on and negotiate a contract. He stated that in respect to whether the applicant and the project are qualified, it is a determination made by the commissioner of revenue. Whether a project plan is satisfactory it would be made jointly by the commissioners of revenue and natural resources. This is stated in AS 43.82.120-150.

Number 1518

COMMISSIONER CONDON stated that if the prospective sponsor was qualified in all respects then the application would be initially approved and the negotiation process would begin. He stated that the contract negotiations process is covered by AS 43.82, Sections 200 to 270, pages 10-17. The important point being that the fiscal terms are to be tailored to the particular economic conditions faced by the project. They are to be developed by the commissioner of revenue after reviewing the pertinent technical and market data. The commissioner of revenue may employ an independent consultant with the cost to be reimbursed by the applicant. The commissioner of natural resources may negotiate terms to be included in the contract that deal with certain aspects of the royalty. He stated that once a proposed contract is in place there is a period for public comment and legislative review. He stated that the provisions that deal with that aspect of the bill are AS 43.82.400-420 pages 19-21.

Number 1611

COMMISSIONER CONDON stated that once a tentative contract has been negotiated, the commissioner of revenue is required to present the contract along with preliminary findings and a determination that the contract is in the long term fiscal interests of the state. He stated that the bill provides for legislative review but not legislative approval. After the opportunity for the general public and the legislature to review what the commissioner proposes to do,

the commissioner may then enter into the contract and can change the terms of the contract provided that the long term fiscal interest of the state remains protected.

Number 1654

COMMISSIONER CONDON stated that there are eight basis principles of contract development that are set forth in the proposed bill under AS 43.82.210(b), pages 10-11. He explained that in negotiating the contract the commissioner of revenue would be obligated to (1) improve the competitiveness of the proposed gas project, (2) develop a contract that was fair to both the state and to the projects sponsors under a wide range of economic circumstances, (3) provide fiscal terms that were progressive; state and local governments could take more if the economics turned out to be rich, (4) back-end loaded fiscal terms, (5) fiscal terms which recognize the sponsors need for a share of the up-side potential, (6) state and local governments should take a significant share of the proposed project economic grant, (7) clear and unambiguous terms and (8) the use of cost formulas for administrative certainty and efficiency were appropriate. He deferred to Commissioner Shively for some comments on the royalty provisions on the bill.

Number 1755

JOHN SHIVELY, Commissioner, Department of Natural Resources, stated that AS 43.82.220 contains the royalty provisions. He explained that the department has not suggested a change in royalty rate, it would stay the same. The issue that could be negotiated on, is the timing of how they take in-kind versus in-value gas. Currently, they are operating under the royalty oil contracts and can change the amount of royalty oil or gas that is taken on a monthly basis, as long as six months notice is given. This causes potential problems for any project sponsor that is involved in long-term contracts. He pointed out that is an area that may require some negotiation during the review of the project proposal. He stated that the second thing to look at is how the royalty is determined. He stated that in the past there has been a number of disagreements regarding the evaluation methodology with the industry.

Number 1839

COMMISSIONER CONDON stated that he would run throughout the sever policy issues. He explained that on the issue of Alaska hire, both the U.S. and Alaska Constitution limit the legislature's ability to impose local hire obligations in terms of exercising the legislature's police powers. He continued that the state does have more flexibility to achieve local hire objectives when it enters into contracts but it does run into problems, however, when the legislature mandates that it must be put into contracts. He stated that it is a difficult area and one which has to be approached with some delicacy. He stated that the local hire provisions are all found in the proposed AS 43.82.230, pages 13 to 15. He stated that the department would like to recommend a change to the definition of an Alaska resident. The definition in the bill is a person who has received a permanent fund dividend or any two of the following, a drivers license, a hunting fishing or trappers license, voter registration or motor vehicle registration. He stated that the drivers license and motor vehicle registration provision should be deleted so that it would be a permanent fund dividend or a hunting,

fishing and trapping license and voter registration. In order to make those changes on page 15, line 5, an "and" would need to be added at the end of the line and strike the language on lines 8 and 9.

Number 1967

COMMISSIONER CONDON addressed the issue of gas to communities. He stated that requiring project sponsors to subsidize local gas consumption would increase the project costs and have a dependency of pushing project economics in the wrong direction. He stated that they are trying to increase the likelihood that the project is going to come into being. He stated that they are going to be requiring a reasonable provision of gas to communities and they need to figure out ways to reduce the uncertainty regarding the quantity of gas that the project is going to be required to deliver to local users. This is so that requiring Alaska deliveries is not a disincentive to the project.

Number 2016

COMMISSIONER CONDON stated that the third area is municipal revenue sharing. Clearly, the single step that both state and local governments can take to improve economics of this project is to relieve the project of the tax burden of a local property tax before the project goes into operation. He stated that the state and local governments will feel the largest negative impact from the project in terms of providing social services and the social disruption that occurs with a large project. He pointed out that the question is whether or not it is worth it. He stated that there is the question of how municipalities should share in the revenues generated by a fiscal contract. Whether municipal governments should be at the table, is a question that the legislature needs to address. He pointed out that the bill does not provide for that now and if it were made to include them, negotiations would be more cumbersome.

Number 2107

COMMISSIONER CONDON addressed the area of confidentiality, trade secrets would be held in confidence by the state. That information would be shared among the pertinent executive branch agencies and the legislature, but would be kept confidential as long as they truly were trade secrets. The memorandum and documents generated during the negotiation process would remain confidential during the negotiation process but would be entirely open and available for review once the review of the contract began. He stated that it is stated in AS 43.82.310(f).

Number 2171

COMMISSIONER CONDON addressed the issue of legislative approval of the contract. Formal legislative approval of any fiscal contract involving the taxation of stranded gas is important for both policy and legal reasons. The Governor strongly supports formal legislative approval and has pledged to require it even if a legislature enacts legislation without legislatively inserting that requirement. He stated that the bill did not include this requirement because he was advised against it due to technical constitutional reasons.

Number 2276

COMMISSIONER CONDON stated that the final issue is, can one legislature bind future legislatures with respect to the tax liability of a project. He stated that the Department of Law has concluded that it is not possible to bind future legislatures. He stated that it could be done with a properly written fiscal contract which raises the issue of if the legislature wants to test that authority. The considerations are what the legislature believes its power ought to be and what effect litigation would have on this project. He stated that he thought it would be wiser to avoid litigation and the exploration of the issue of what the extent of legislative power is.

Number 2372

CHAIRMAN HODGINS stated that he would like to have a presentation by the producers and that the majority of the work be done in this committee.

Number 2417

REPRESENTATIVE JOE RYAN stated that the bill requires a deep leap of faith on the part of the legislature. He stated that it is time to get to the serious negotiations of what the resources are worth to state of Alaska and how far Alaska is willing to go to sell the project. He stated that there has not been any testimony as to the potential of the project.

TAPE 98-11, SIDE B  
Number 0033

REPRESENTATIVE RYAN stated that the commissioner of revenue through the bill is given a lot of power and he questioned if that was wise.

CHAIRMAN HODGINS stated that at a earlier meeting Dr. Pedro van Meurs' testified that he thought there was approximately \$150 billion worth of revenues. He stated that Dr. van Meurs would be back at a later date to answer those questions.

Number 0064

REPRESENTATIVE KEMPLER asked that on page 7, line 5 "proximity of the project" if the definition could be nailed down better than as stated. He questioned if it was just within 10 miles or does it extend to a pipeline that goes out to Southcentral Alaska.

Number 0099

CHAIRMAN HODGINS stated that it is his hope that committee members will pick the bill apart and make sure that there are no unanswered questions. He stated that HB 393 will be held over for further consideration.

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**House SPECIAL COMMITTEE ON OIL & GAS Minute**

**Feb 24, 1998**

HB 393 - DEVELOP STRANDED GAS RESOURCES

Number 0058

CHAIRMAN HODGINS announced the committee would hear HB 393, "An Act relating to contracts with the state establishing payments in lieu of other taxes by a qualified sponsor or qualified sponsor group for projects to develop stranded gas resources in the state; providing for the inclusion in such contracts of terms making certain adjustments regarding royalty value and the timing and notice of the state's right to take royalty in kind or in value from such projects; relating to the effect of such contracts on municipal taxation; and providing for an effective date." He stated that the committee would hear testimony from the producers.

Number 0151

GEORGE FINDLING, Business Development Advisor, Gas Commercialization Group, ARCO Alaska, Incorporated, read the following statement into the record: "Today, I would like to both express ARCO's overall support for HB 393 and discuss how this legislation fits into ARCO's plans for commercializing its very large gas resource on Alaska's North Slope.

"First, Mr. Chairman, our North Slope Gas Commercialization Manager, David Lawrence was unable to be here today. He hoped you would understand, though when you learned that he is in the Far East continuing efforts to facilitate the self assembly of a viable sponsor group for an Alaskan LNG project. Let me expand on this for just a moment.

Number 0219

"Several weeks ago, in January, ARCO sent out letters of inquiry to determine the level of interest of those who could potentially help advance a very large, complex, international LNG project in Alaska. Basically, the letters requested, under provisions of confidentiality, the opportunity for us to present a potential plan and discuss alternative ways forward. Since then, we have received many positive responses to the letters and have initiated presentations. This week, David is leading an ARCO Alaska team to the Far East for further presentations. I wish I could be more forth coming and provide further details, but the formation process is in the fragile early stages and we do not want to complicate it by making representations for others. As is always our policy, when there are developments which can be discussed, we will do so pro-actively.

"I would like now to turn to the bill being considered by the committee. Looking back, the legislature is to be congratulated for enacting HB 250 last year. As you know, that bill created a substantial and cooperative effort during 1997 by the state's gas

commercialization team and interested parties. This effort has lead to the proposed legislation now contained in HB 393. I would like to over view the bill and then briefly elaborate on how HB 393 supports ARCO's plans.

Number 0447

"First, I would like to make three main observations about HB 393.

"It provides the framework under which a competitive fiscal system can be developed. In our view, the framework legislation opens the door for cooperative action, in parallel with developments in other aspects of the project, to help to try to make an Alaskan project commercially viable. We see many important general provisions in the bill. It will not place inordinate demands on the state's staff because it allows the state to entertain applications from only serious parties. It is balanced in keeping sensitive and proprietary information confidential, yet provides for public scrutiny of essential aspects leading to the fiscal system. It promotes Alaska hire and in-state gas matters. It accommodates current uncertainties in technology, project approach, development timing and fiscal system development. Finally, it is also important to recognize that HB 393 does not in itself, create any unilateral and irrevocable commitments, which is appropriate at this early stage of project maturity.

"Secondly, under this legislation, the fiscal system is provided by long-term contract, and this can be very powerful in improving competitiveness. The execution of a fiscal contract near to the time of project sanction can give a level of fiscal stability which is both leveraging to the economics and competitive with other gas-rich provinces.

"Third, we would support the addition of language calling for legislative approval of any contract. Not only is it appropriate in such a unique and significant decision, but this process of legislative action can significantly improve the durability and stability of the fiscal system.

"Mr. Chairman, I would like now to turn to how the legislation relates to the ARCO's plans. In our November testimony to this committee, we described how ARCO is moving forward on a four point plan to try to achieve economic viability of an Alaskan LNG project. For reference, I can provide copies of the testimony. Today, I would like to discuss the interrelationships between our plans and the legislation.

"We see that the fiscal legislation both enables development to continue and integrates well into our activities. Let's look at those aspects in the context of a time-line.

Number 0627

"As we have said in the past, our current planning basis has the start up of an LNG project in late 2007, if everything goes right. And this makes 1998 important because a phased conceptual engineering effort should get underway later in the year to stay on track. This engineering is needed to establish confidence in and further reduce estimated project costs, which are essential to the project economics. It is also needed to develop the information

necessary to develop proposals to potential gas buyers and to proceed with other project development activities.

"In order for this next stage of engineering to commence, a sponsor group needs to be in place that can advance the project and share in the costs. In our preliminary discussions with potential sponsors, they have responded very positively to the prospects of framework fiscal legislation like that of HB 393. For ARCO specifically, we see passage as an critical signal of the long term willingness of the state to help make the project competitive.

"Looking forward, HB 393 integrates well into our LNG project development plans. As the technical work matures and the sponsor group gels, the bill allows an application to be submitted for a fiscal contract. In our view, and again using our planning basis, the development of a fiscal contract should commence no later than 2000. Since the bill is written generally, it does allow for flexibility in the timing of the application, the project structure and the nature of the new fiscal system, which are three important uncertainties right now. Under the bill, the fiscal contract can be developed in parallel with the other major agreements, such as sales and purchase agreements. Again, using our planning basis, it is our view that the fiscal contract should be in place no later than sometime in 2002. With that, the major agreements could be consummated and project sanction could occur, sometime in the 2003 time frame.

"Mr. Chairman, now I must pause for an important reality check. As I said above, a 2007 start-up is our planning basis. But keep in mind that meeting such a start up requires that everything fall in place, almost without a hitch. Most importantly, we ultimately have to have a commercially viable project before it can be sanctioned. Simply stated we are trying to turn what is today a non-competitive project into a competitive project. It should be recognized that this effort may not succeed: for example, in the long term, we might not be able to get costs down or cost uncertainty down; the federal government may chose not to provide the essential fiscal modifications that I described in my November testimony and the market may not be able to be developed at prices that can sustain an Alaskan project. In the shorter term, we may have difficulty attracting sufficient potential sponsors or we may find some other insurmountable hurdle. The bottom line message is that any time-line can change and that moving forward on each step requires success in the previous steps. Nonetheless, ARCO continues to be committed to trying to find a viable way forward by pursuing critical technical, fiscal and commercial avenues.

"As we mentioned in our November testimony before this committee, gas-to-liquids is our dark horse case for commercializing North Slope stranded gas. Without negatively impacting our Alaskan LNG development efforts, our Plano research group is trying to advance the technology in parallel. Critical to this effort is our licensing agreement with Syntroleum and our planned pilot test at our Cherry Point refinery this year. We are pleased to see that HB 393 does not preclude this option for commercializing stranded gas.

"My final comments relate to commercial regulation, a topic that is not directly the substance of HB 393. As you may recall, this topic was addressed in 1997 by the gas commercialization team under the auspices of HB 250. It was also addressed in our November

testimony before this committee. While ARCO anticipates that state legislation is probably needed, we think more work needs to be done to develop an appropriate proposal. We would anticipate that the particulars of how instate gas will be handled will be part of that commercial regulatory approach. While this topic is not ripe for HB 393, we know that gas for local communities is a vital concern that can not be forgotten. Therefore, we support the current wording in HB 393 addressing this topic in the application process.

"In closing, ARCO is committed to trying to commercialize it's ANS [Arctic North Slope] gas as evidenced by our proactive plans. We think that the prospects of success in this effort can be substantially improved by a cooperative effort with the state. By that measure, HB 393, is an essential step in development and we make this statement of support for the bill.

"Mr. Chairman, thank you for the opportunity to testify. I would be happy to address your questions."

Number 0832

WAYNE LEWIS, Vice President, Yukon Pacific Corporation, stated that Yukon Pacific Corporation is a business unit of CSX Corporation a \$17 billion transportation company, whose headquarters are in Richmond, Virginia. CSX also owns Sea Land, a major container shipping company serving Alaska. He stated that they agree with virtually all of Mr. Findling's testimony. The area of disagreement falls in their time-line. He believed it to be passive given the work that is already done. He commended ARCO'S efforts to assemble a project sponsor group. The absence of a sponsor group is the single biggest handicap, that the project suffers from. That change will be vital and they welcome the efforts of ARCO.

Number 0922

MR. LEWIS stated that Jeff Ownerfeld is in Washington D.C. to help lay the ground work for the federal counterpart of the bill. He stated that the state's consultant, Dr. Pedro van Meurs advised the committee that the effort on the federal level should be directed primarily towards the change in the federal tax law to allow an accelerated depreciation schedule for a North Slope source LNG export project. He explained that this change together with the progressive and aggressive post-government attitude embodied in HB 393 will enhance return on equity and reduce risk to all investors. The combined efforts by the Governor, the legislature and local governments, send a clear and forceful message to the markets and to the competitors that Alaska is committed and unified in this undertaking.

Number 1050

MR. LEWIS asserted that Yukon Pacific strongly endorses HB 393. He stated that the bill provides a rigorous qualification process for proposed project sponsors and proposed qualified projects. At the same time, this legislation recognizes the critical role of the state and local governments to directly influence the outcome or success of a new Alaska LNG project, proposing to serve Asian markets around the year 2005 and for many decades thereafter. He stated that the legislation recognizes close cooperation and

coordination by the host governments, through their combined resource ownership and taxing interest. He stated that it is essential just as it has been essential to the success of all major LNG projects stretching from Qatar to Indonesia. He stated that direct government participation at a variety of levels and in many ways is the norm and not the exception in world scale LNG projects.

Number 1142

MR. LEWIS stated that 30 years ago, Alaska, with the Phillips Marathon LNG project and the Unocal fertilizer plants did the same thing as today. He stated that these are the biggest gas developments anywhere in Alaska, although the state did not take a direct equity interest in the projects at the time. He pointed out that that project sponsors were granted a 10- year tax holiday which was fundamental to the development of these now highly successful enterprises. He stated that John Horne, Vice Chairman of Marketing Yukon Pacific Corporation, was the key player in the Phillips Marathon LNG project. He stated that Mr. Horne told him that the financial commitment involved in that project was the largest commitment that company had ever made to a single project at that point. The fundamental decision in the state's decision was the state's tax holiday for that project.

Number 1319

REPRESENTATIVE JOE RYAN drew Mr. Lewis's attention to page 5, line 29, and asked if he thought it was rather broad language. He asked where the interest for the state's share and the state's fiduciary responsibility as exercised by this body come in to play, under such broad terms.

Number 1368

MR. LEWIS responded that Yukon Pacific Corporation, heartily endorses an amendment to this legislation which would provide for legislative approval of any contract negotiated under the provisions of this bill. Regardless if it is a North Slope gas project or a Cook Inlet gas project. He stated that Representative Ryan is right that, they do not know now what a contract will look like between a project sponsor group and the state of Alaska. This is because they need to better define the cost of a North Slope project. He pointed out that there may not be a lot that is required of the state if the cost can be lower significantly. He stated that he thought this process which empowers the commissioner of revenue to learn the details and negotiate a deal to be the best way to do this. He felt it would be best for the contract to come before the legislature after it is negotiated and not before.

Number 1448

REPRESENTATIVE RYAN stated that he heard testimony that this was going to financially be a difficult project to put together as investors were looking at a 17 percent return over the life of the project and for various other conditions and uncertainties with markets and developments. He stated that now things have changed as people are stating that it looks like a good deal. He asked what he thought of the proposition of the state becoming a partner under the following conditions: The state will have a royalty share, issue a gas index bond and sell it as a hedge to the gas

buyers, and the return on their equity portion, to lower the risk for other investors, would be what the stock market has been for the last 60 years, 8.5 percent. He explained that this is considerably lower than the 17.5 percent of the market, considering they are going to pay taxes and royalties on the project.

Number 1526

MR. LEWIS responded that if the state did invest, it should only be because it is a good deal, as any investor would approach a project. He stated that he did not have a very good answer to his question.

Number 1557

REPRESENTATIVE RYAN stated that at no time would he advocate the permanent fund investing in this project, the bonds would be sold using the royalty gas as collateralizing the bonds. He stated that 1.5 would be a reasonable return.

REPRESENTATIVE ALAN KEMPLER stated that the legislation gives the framework for which the sponsor group can present their proposal to the state. He asked if it would be appropriate to have, in the framework, a section asking any proposed applicants to address the issue of state participation and how they would propose the state could participate in the project.

Number 1633

MR. LEWIS stated that he could not speak for the other producers or proposed investors but he thought it was an excellent idea.

Number 1650

REPRESENTATIVE NORMAN ROKEBERG stated that he has some major concern with the terms of the bill that would have an affected municipality sitting at the table and bargaining with them. He asked how Mr. Lewis felt about that from a business perspective.

Number 1681

MR. LEWIS responded that it is similar to the question of how government entities whether it is the state or municipalities, take an equity position in the project. He stated that the mechanism for that has only vaguely been discussed in terms of property tax relief in exchange for an equity position in the project. He stated that they do not have the answers. He stated that the cooperative spirit that everybody needs to go forward is in place and how to build on that is the question they are asking.

Number 1739

REPRESENTATIVE ROKEBERG stated that one of his concerns is the more players there are, the tougher it will be to make a deal. He stated that as he understands the bill allows equity as one of the alternatives but really speaks to the issue of "in payment of lieu of". He asked Mr. Lewis how he perceived this.

Number 1809

MR. LEWIS responded that his model is the Pedro van Meurs' model which really speaks to the position on the question of front-end loaded systems and how to levelize those payments so that the project is not penalized in its early years.

Number 1812

REPRESENTATIVE ROKEBERG stated that Mr. Lewis has lived in the municipality of Anchorage for thirty to forty years and asked if he would define an affected municipality to be including the municipality of Anchorage, particularly in light of the history of the past pipeline construction and the impacts on Anchorage.

Number 1831

MR. LEWIS responded that he would define municipality as a potentially affected municipality.

Number 1831

DAVID BROOKS, Manager, Alaska Gas, British Petroleum (BP) Exploration (Alaska) Inc., read the following statement into the record: "In this position I am responsible for managing BP's initiatives to commercialize North Slope gas. Those initiatives include the possible liquefied natural gas export project and the development of economic technology for the conversion of gas-to-liquid hydrocarbons, the so called gas-to-liquids technology.

"I have been with BP for 23 years and involved in the gas business for 16 years. Prior to moving to Alaska last November, I was commercial manager of BP's business unit in Abu Dhabi, which is in the Middle East where BP is a partner in two oil concessions and a 5 million ton per year LNG project, the Abu Dhabi Gas Liquefaction Company.

"Prior to my assignment in Abu Dhabi, I led the commercial side of BP's participation in the Australian North West Shelf LNG project. Today, I would like to briefly give BP's views of the proposed Alaska Stranded Gas Development Legislation.

Number 1899

"This legislation is clearly the logical next step following the Gas Commercialization Report which was published earlier this year. In passing we would like to comment that we were encouraged by the Report and pleased to have been able to contribute to its development. For the record we would like to compliment the authors of the report on a very professional piece of work which addressed the key issues in what is a complex area.

"We also welcomed the opportunity to work with the state's team in developing this legislation and I am able to confirm that BP is supportive of it.

Number 1925

"We believe the legislation would offer sponsors of stranded gas projects an opportunity to negotiate fiscal contracts with the state thereby increasing the certainty in respect of the level, methodology and rules for calculating the state's taxes and

royalties over the life of the project.

Number 1942

"We believe that the establishment of a fiscal contract between the project sponsors and the state based upon the profitability of the project and the principles set out in the legislation would enhance the international competitiveness of the project and reduce the fiscal risks, one of the key objectives identified by the state's consultant as necessary to improve the economic attractiveness of a North Slope gas development.

"We recognize that as the legislation is discussed there may be issues and questions which may arise. We look forward to working with the members of the legislature as they consider the merits of this legislation.

"Thank you for this opportunity to comment and explain BP's views."

Number 1986

REPRESENTATIVE ROKEBERG asked what his perception is of having the municipalities involved and what type of an impact and arrangements would be needed to create a viable sponsor group.

Number 2020

MR. BROOKS replied that the work that was done on the gas commercialization report identified that the fiscal regime is very front-end loaded and regressive, it suggested a more progressive regime, perhaps profits related. One of the consequences of this, which is recognized in the report is that it gives rise to the issue of property tax. He stated that he has met with two of the mayors in Anchorage to discuss this issue, they were concerned that they were excluded from the previous negotiations on the TAPS and felt that they were making a point to be included in the negotiations for a gas pipeline. He explained that they felt an innovative way of approaching this problem was necessary. He stated that he would welcome any suggestions that would help in any way to combine all the parties together so that everyone is satisfied with the outcome of the project.

MR. BROOKS stated that in respect to the negotiation the legislation envisions a fiscal contract under which the parties in the LNG project, would pay a sum in lieu of taxes. How the tax is allocated amongst the various government bodies should be discussed between those government bodies. He agreed that the more people there are at the table the slower the negotiations would be, however that should be seen as a mechanistic issue rather than a principle issue.

Number 2122

REPRESENTATIVE ROKEBERG asked if the impacts of the development in the Northwest shelf of Australia, could be applied to this project.

Number 2142

MR. BROOKS replied that there were significant impacts, as it was the largest investment in Australia and has been used to develop a

gas market in the Northwest shelf area. One of the differences is the gas field is 120 miles off the Northwest shelf of Australia, the infrastructure had to be mostly funded by the project.

Number 2182

REPRESENTATIVE RYAN stated that there are a lot of uncertainties to the cost of the project, he asked if there are any more certainties at this time.

Number 2243

MR. BROOKS replied that the development of the LNG market and the uncertainty of the financial situation in the Far East is still a factor. At the moment there are low oil prices and a reduction in LNG demand. He stated that Korea has dropped in 1998, 1.5 million tons of LNG and are not prepared to make forecasts of their LNG demand until April of this year. He stated that in Japan the supplies of LNG are fixed from April through March and their discussions are ongoing. Japan will meet their contractual obligations but will not do any more than that. He explained that they would hope to see some growth with Taiwan. The demand for LNG is there in the future, it is probably just pushed back a few years. He stated that he will be in Taiwan and may be able to give more information upon his return.

Number 2369

REPRESENTATIVE RYAN asked what his assessment is of the market in China.

MR. BROOKS replied that if the energy demand from China is huge, they rely a lot on coal brought down from the North of China. It is BP's view that China is a developing LNG market but are not sure if they are ready for a large LNG project. He projected that in the next 10 to 15 years China would start to import 1 to 2 million tons of LNG a year and build up to 15 tons. He asserted that Alaska should aim towards their market.

Number 2427

REPRESENTATIVE KEMPLER asked what his assessment is of ARCO's timeline.

Number 2442

MR. BROOKS replied that BP needs to work hard on the project to reduce the costs, once this is achieved then BP can place the project before the buyers. He stated that they are considering ARCO'S ideas.

TAPE 98-12, SIDE B  
Number 0015

REPRESENTATIVE KEMPLER stated that in regards to the contracts when Alaska is looking at developing their contract for natural gas with the notion of certainty, any contract should have the type of flexibility so that there is an allowance for scheduled periodic review of the demand for natural gas in order to accommodate changes in the market place. He stated that within the time frame

of the project, China will certainly be a buyer of LNG and any contract would have to have the flexibility to accommodate that increased demand. He asked if that was correct.

Number 0076

MR. BROOKS stated that he was talking about the Abu Dhabi Gas Liquefaction Company Project and it is underwritten by a 5 million ton per year contract through Tokyo Electric Power Company. He explained that they have committed to buy 5 million tons of LNG a year for 25 years. He stated that there is no flexibility other than a minor 10 percent downward flexibility. He stated that the company found that they could produce more than 5 million tons, so they sold it on a three-year basis to Korea on an exemption that a technical electric power company will come along and take the whole of the gas project. He stated that LNG projects are underwritten by one or two major sales contracts which define for the life of the contract the obligation of the project to supply a quantity of LNG and a balancing obligation of a buyer to purchase that quantity of LNG. He stated that other than the downward flexibility there is no flexibility in those contracts. He stated that the gas is effectively pre-sold. Contracts can not be changed it is a fixed-term contract.

Number 0175

REPRESENTATIVE KEMPLER asked if it was correct that in order to make the project economically viable the more the cost should be reduced, as it would then reduce the amount of LNG that a firm commitment is needed in order to make this project go. He stated that anything beyond that becomes profit and there is more flexibility to take advantage of opportunities in the marketplace.

Number 0208

MR. BROOKS stated that he would agree with his line of reasoning but in respect to this project it would cost over \$15 billion and in order to produce adequate profit to remunerate that cost, 14 million tons of LNG would need to be sold. He stated that the results of the work done as part of the gas commercialization report showed that is not currently economic as 14 million tons does not remunerate \$15 billion. He stated that the first step is to reduce that \$15 billion until there is a level where the risks and the rewards balance. He agreed that at that point the extra LNG is then a profit.

Number 0257

REPRESENTATIVE KEMPLER asked when did he see the costs being nailed down.

Number 0275

MR. BROOKS stated that they are just finishing a technical program with the gas owners and are looking at where and how they will go forward. He stated that March is when they hope to have a decision.

REPRESENTATIVE KEMPLER asked that the nailing down of the cost comes with the conceptual engineering.

MR. BROOKS responded that yes is part of ARCO's proposals. He stated that an aggressive cost reduction program needs to be done.

Number 0318

REPRESENTATIVE TOM BRICE stated that given the need to justify the base project, he asked how much confidence does the bill give Mr. Brooks, in terms of providing a stabilized fiscal system on the state's behalf.

Number 0347

MR. BROOKS stated that he sees the bill as enabling legislation. It would enable the project sponsor to negotiate with the state a fiscal contract. The fiscal contract would provide the fiscal term certainty. He stated that there are questions as to whether or not that certainty can be achieved and there are differing views. He stated that BP believes that it is possible and would like to see a fiscal contract negotiated and test whether the certainty is available perhaps by taking the issue to the supreme court.

Number 0391

REPRESENTATIVE BRICE asked if BP would see this legislation not as the end all of the project but as part of the catalyst to ensure that this long process continues and accelerates.

MR. BROOKS stated that is an element in removing the risks in the project.

Number 0407

REPRESENTATIVE RYAN referred to an article about LNG demand and shipping and the 100 percent increase of demand that is predicted. He stated that these projections would indicate that the market is there and there should not be difficulty in arranging the contracts. He asked if the predictions seem reasonable to him.

Number 0479

MR. BROOKS replied that he could not comment on the article but would be interested to know the dates that the reviews were done because the demand is constantly changing. In general terms he would agree that there is a market for LNG. He explained that the object is to get an economic project, as it does not matter the size, if an economic project can not be presented. He stated that the buyers are the ones who will choose which project to go ahead with, at the moment BP's project is not on the table because it is not economic. He stated that there is twice as much LNG supply chasing the amount of demand. He reiterated that the project first has to be economical and then the talks with the buyers can begin.

Number 0560

REPRESENTATIVE ROKEBERG asked if BP has taken a position on ARCO's statement to get primary engineering underway this year.

Number 0586

MR. BROOKS replied that they have been meeting with ARCO and they are considering their proposal and will give their answer in March as requested.

Number 0642

REPRESENTATIVE CON BUNDE stated that the Constitutional Budget Reserve (CBR) is a vital reserve account. This year they are looking at using a quarter to one-third of the CBR and asked how the potential drain of the CBR would affect his negotiations on a contract for the buyer.

Number 0700

MR. BROOKS responded that the buyer, when looking for projects, look for an economic project. Once contracted the buyer needs the certainty that the product will be there. He stated that with LNG projects there is a tied buyer and tied supplier. This is why the buyer would be interested in understanding the fiscal system in Alaska. He stated that in the Abu Dhabi project they developed a pricing contract which supported the price of LNG at very low oil prices and provided it at a discount at higher oil prices, this is called an S curve. He stated that an S curve protects the project revenues and the taxes that the project pays.

Number 0850

REPRESENTATIVE BUNDE asked if there are mechanisms built into reduce the risk of the buyer.

Number 0862

MR. BROOKS responded that the price is fixed as going between certain oil prices, outside of those figures it would be a renegotiation. He stated that there is a linear portion of the pricing curve where the LNG is priced proportionately to crude oil. He stated that it supports the revenues to the LNG project.

Number 0919

REPRESENTATIVE RYAN commented if there is a discount on the high end would the taxes be correspondently discounted.

Number 1002

BEVERLY MENTZER, Business Development Manager, Exxon Company USA, stated that she is responsible for the commercialization of Exxon's significant Alaska gas reserves. She read the following statement into the record: "Exxon has a keen interest in commercializing the North Slope gas reserves and is very pleased to see the effort and progress that has been made by the state in progressing the development of a long-term stable and appropriate fiscal regime. We believe it will take a combination of fiscal and regulatory modifications and certainty, favorable market terms and significant cost reductions for a North Slope gas project to be competitive and commercially viable.

"Enabling legislation is a good start, since it provides the basis for the negotiation of a binding fiscal contract that enhances the competitiveness and commercial viability of an Alaska gas project

while meeting with the long-term fiscal interests of the state. The state's current fiscal system is not favorable for development of a gas project because the system is regressive, front-end loaded and can be unilaterally changed by the state at any time. These facts have been supported in different ways by feed-back from the market, the state, the state consultant and producers.

"A competitive project needs to have a long-term stable and appropriate fiscal regime. The fiscal terms should be a function of the profitability of a project, balance state share with investor risk and reward, provide incentives for profit improvement under a range of economic conditions, and be clear and unambiguous in their implementation. Fiscal certainty should be provided through a contract that specifies the terms for the life of the project.

"With regards to HB 393, Exxon believes it provides reasonable guidelines and boundaries for the development of a fiscal contract. Additionally, we would support language that provides the legislature with the means to review and approve any proposed contract terms developed by the Administration.

"The passage of fiscal legislation is an appropriate and important step for the state of Alaska to take. We commend the state for all the effort that has brought us to this point; HCR 1, HB 250 and the work by the Department of Revenue, Department of Law, Department of Natural Resources and Department of Labor, throughout the interim and we hope you continue to make progress in this effect.

"I would be glad to respond to any questions now."

Number 1146

REPRESENTATIVE ROKEBERG asked if Exxon had taken a position on ARCO's plan to get the preliminary construction underway this year.

Number 1159

MS. MENTZER replied that they are talking with the producers and have yet to draw a conclusion on their future work plans.

Number 1169

REPRESENTATIVE ROKEBERG asked if Exxon planned to respond by March.

MS. MENTZER stated that they did intend to respond.

Number 1188

REPRESENTATIVE KEMPLER stated that BP brought in David Brooks, a person with extensive experience in developing natural gas projects, which indicates to him a sincere commitment by the corporation to look at the practical issues involved in the project. He asked if Exxon has plans to bring a similar person to Alaska.

Number 1241

MS. MENTZER replied that Exxon does not have plans to bring a similar person up to Alaska, they do not have a large work force in

Alaska since they are not an operator in Alaska. She stated that there are 40 people who are working on this effort, it is most effective to come up to Alaska as needed and assured the committee that the project is getting quite a bit of attention.

REPRESENTATIVE RYAN asked how if Exxon, is not an operator in Alaska, able to own gas in the Prudhoe Bay fields.

MS. MENTZER stated that it was through the leasing process.

Number 1349

CHAIRMAN HODGINS asked Commissioner Condon to answer some questions.

Number 1367

REPRESENTATIVE ROKEBERG referred to the issue of legislative approval and asked if he participated in any of the discussions on HB 207.

WILSON CONDON, Commissioner Department of Revenue, replied that he did not.

REPRESENTATIVE ROKEBERG stated that the issue of legislative approval was debated and was satisfactorily resolved in regards to HB 207. He advised that the commissioner look at this.

Number 1464

COMMISSIONER CONDON replied that the language in HB 393 tracks the the language of HB 207. He stated that formal legislative approval, either required or as result of the executive branch, is very important for this arrangement.

Number 1522

REPRESENTATIVE ROKEBERG asked what the mechanism was for approval.

Number 1540

COMMISSIONER CONDON stated that he did not know, but the legislature is given an opportunity to review the pertinent material. He stated that unlike HB 207 the Governor does not sign off on the deal.

Number 1629

REPRESENTATIVE ROKEBERG asked if a formal legislative approval would get in the way of project completion or the time-line.

Number 1686

COMMISSIONER CONDON replied that he did not think it would get in the way of a time-line because the time span is so great.

Number 1769

REPRESENTATIVE ROKEBERG asked if this particular contract would be negotiated, approved and executed prior to other major steps being

made or parallel to the other major steps.

Number 1788

COMMISSIONER CONDON replied that they believe that a fiscal contract and its development will be an effort that goes in parallel with respect to moving the project forward.

Number 1827

REPRESENTATIVE ROKEBERG stated that it seems that the communities are invited to the table but it is not defined as to who they are, nor is the scope of their ability to effect the negotiations defined, other than to state that they would be "receiving payment in lieu of".

Number 1910

COMMISSIONER CONDON replied that the bill does not put the communities at the negotiating table it imposes the obligation on the commissioner of revenue in putting together a set of fiscal terms and then sharing the payments that come out of those terms. He stated that it is something that the committee may chose to change.

Number 2009

REPRESENTATIVE KEMPLER referred to the need to reduce risks and provide more certainty for the participants of this project. He asked if any thought was given to reducing the risk for the public sector. There is the notion of back-end loading a lot of the benefits and if something were to happen to the major principals in the sponsor group, and the new player asked for a re-negotiation of the contract, would there be a way to minimize the risk that would occur.

Number 2126

COMMISSIONER CONDON replied that the legislation requires that the commissioner deals with changing of parties and that adequate security provisions be provided in the fiscal contract. The contract would be constructed in a way that the state is exposed to the risk of the project but not to the risks that the sponsors otherwise engage in, for example business trouble outside the project. However, there is talk to take some of the risks, that they would not be taking under the present fiscal system.

Number 2264

REPRESENTATIVE KEMPLER asked that one way to reduce that risk would be for the state to become an equity investor in the project.

Number 2277

COMMISSIONER CONDON replied that currently, he did not see how the state becoming an equity investor in the project changes the risks in the project. He stated that it may be that investing in the project is a wise thing to do and provides a return to the state but the state's investing in the project would not change the economics of the project.

Number 2366

REPRESENTATIVE RYAN referred to Article 2, and the specific state cuts and asked why is the front-end so broad but the shares and the concessions that will be given is so definite.

TAPE 98-13, SIDE A  
Number 0031

REPRESENTATIVE RYAN asked why the criteria is so broad and nothing is spelled out as to what is required of the sponsors.

Number 0108

COMMISSIONER CONDON responded that he could not disagree more. He stated that the bill spells out clearly that a sponsor would have to be very serious about the project before one proceeds. He stated that if Representative Ryan had ideas that would make it more specific he would be willing to consider them. He stated that the bill makes it difficult for a someone to sue us for failing to negotiate. Applications will not be reviewed from just anybody.

Number 0304

REPRESENTATIVE RYAN stated that one of the guidelines is "capable of subject to applicable commercial regulation and technical and economic consideration". He pointed out that an attorney could have a field day determining what the technical and economic considerations are. He stated that he wondered why the legislature would want to give the commissioner this broad authority.

Number 0374

COMMISSIONER CONDON stated that the provision relates to the delivery of gas to communities that are in proximity to the project. He stated that they would welcome a more precise definition if one can be developed that deals with what kinds of arrangements are going to be made for negotiating with potential project sponsors to impose an obligation on them to provide gas to communities along the pipeline. He stated that due to economics they need to be sensitive to requirements which have unknown obligations that go with them to provide gas to communities many years from now in unknown amounts. He stated that in attempting to make provisions for delivery of gas to communities, we impose uncertainty on the project, we are then working against ourselves.

Number 0530

REPRESENTATIVE ROKEBERG referred to Article 6, page 23, and asked if this lays out the authority of the affected communities because there are references to affected communities elsewhere in the bill. He asked if there are other portions of the bill relating to authority in dealing with the affected communities.

Number 0601

COMMISSIONER CONDON responded that it is the only provision in the bill that provides for dealing with local communities. There are other provisions that authorize the substitution of some payment in

lieu of locally imposed taxes.

Number 0643

REPRESENTATIVE ROKEBERG asked when would the payment in lieu of taxes start.

Number 0666

COMMISSIONER CONDON replied that would be a term in the deal.

REPRESENTATIVE ROKEBERG referred to subsection 3, line 23, that the commissioner in bargaining on the behalf of a municipality should provide for a term for equity participation "or other interests." He stated that there is no authority to bargain for an up-front lump-sum payment if there was a true impact. He asked if their hands are tied by this.

Number 0763

COMMISSIONER CONDON replied that he did not believe their hands are tied. The major social cost of this project would be imposed on the state and its communities during the construction and it is also the time when the project is not going to be generating any revenue. He stated that they might decide that because of the costs that the project would impose, and the reality that the project might not be able to afford to make substantial payments, that the project is not worth it. He stated that he did not think that would be the decision when the opportunities and long-term revenues are looked at. He stated that it might very well be that the public would have to absorb the costs in the first place in order to make the project a reality.

Number 0876

REPRESENTATIVE ROKEBERG referred to Article 6 and asked if he could draw attention to the language that gives him the flexibility that may be necessary.

Number 0880

COMMISSIONER CONDON replied that whatever the payments are that the state is going to require from the project sponsors in lieu of taxes is open-ended and there is nothing in Article 6 that determines what the structure of those payments is going to be. He stated that the authority to make periodic payments to affected municipality in a fair and reasonable amount gives the commissioner the authority to direct up-front payments if there are any in payment in lieu of taxes to the municipality.

Number 0951

REPRESENTATIVE ROKEBERG referred Article 6, line 10(b) and stated that his hands are tied as there is no choice due to the way the bill is drafted. He asked if this was correct.

Number 0981

COMMISSIONER CONDON stated that he did think he had a choice but he would look at it again.

Number 1039

CHAIRMAN HODGINS stated that the bill is going to be held over and recommended that the committee bring any changes that they would like to see in the bill to him.

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**House SPECIAL COMMITTEE ON OIL & GAS Minute**

Mar 12, 1998

HB 393 - DEVELOP STRANDED GAS RESOURCES

Number 2150

CHAIRMAN HODGINS announced the committee would hear HB 393, "An Act relating to contracts with the state establishing payments in lieu of other taxes by a qualified sponsor or qualified sponsor group for projects to develop stranded gas resources in the state; providing for the inclusion in such contracts of terms making certain adjustments regarding royalty value and the timing and notice of the state's right to take royalty in kind or in value from such projects; relating to the effect of such contracts on municipal taxation; and providing for an effective date." He stated that there is a marked version of HB 393, which is the committee substitute that the committee is proposing.

Number 2164

PAT CARTER asked that the committee look at the version with the words "O&G mark-up 3/12/98" written on the front which is the original bill with the changes written in and CSHB 393(O&G)0-GH2006\B, 3/11/98. He said "These should be substantially similar since its what legal worked off of. The drafting manual states that the new text underlined and the deleted text bracketed only applied to changes in existing statute and therefor it is very difficult to disseminate between the original bill and the mark-up." He asked the committee to turn to page 2 on the marked-up version finding (4) was deleted and renumbered accordingly. He stated that in (7) "although developing technology may offer other alternatives, such as gas-to-liquids (GTL), was deleted and Insert A, was added which reads:

Page 2, line 28: (7) following "marine tankers;" INSERT: although experimental research is being conducted on other alternative technologies such as gas-to-liquids (GTL), this technology is not yet commercially viable. If this research results in commercially viable technology, and after economic analysis by the state of Alaska of the application of this technology it is shown that local or state tax or regulatory changes are necessary to commercialize an Alaska project utilizing this technology, then this technology may be considered in regards to this legislation.

Number 2237

MR. CARTER stated that (9) was deleted. In (10) of the original bill, "for an enormous volume of gas," "that volume of gas represents approximately one-quarter of the entire East Asian LNG market today and probably cannot be placed into that market all at once", and "which means that the project must secure most, if not all, of the projected growth in demand for LNG in the East Asian market over the ramp up period;" was deleted. Inset B was added

which reads:

Page 3, Line 16: INSERT a new finding: (11) the state has contracted an extensive financial analysis of the commercialization of North Slope gas; this analysis, performed by a recognized expert in petroleum economics, Dr. Pedro Van Meurs, indicates that changes in the local, state, and federal tax structure may be necessary to make commercialization of North Slope gas resources economically viable;

Number 2304

MR. CARTER stated Insert C was added, which reads:

Page 5, line 12: INSERT: (b) The legislature intends that, in order to provide the stable fiscal terms that will encourage development of stranded gas projects, any contract negotiated pursuant to this Act will express whether the state intends to be bound to the full extent allowed by the Constitution of the State of Alaska; however, the legislature further intends that the terms of a contract negotiated under this chapter will not be binding on or enforceable against the state or the other parties to the contract unless the commissioner is authorized to execute the contract by the legislature as provided in this chapter.

Mr. CARTER stated that on page 6 , line 21 the word "economic" was added before "proximity" and as well as throughout the bill. Insert CC was added which reads:

Page 7, line 31: INSERT new : (6) a plan to mitigate the increased demand for public services and other negative effects caused by the project; (7) a plan for the safe management and operation of the project once it is constructed;

Number 2349

MR. CARTER stated that on page 9, line 31, the date is changed from 2004 to 2001. Insert D was added was reads:

Page 14, line 9: INSERT: (c) Subject to the voluntary agreement of the qualified sponsors, the commissioner may include a term in the contract providing for incentives to encourage training and hiring of Alaska residents.

Number 2377

Mr. CARTER stated that on page 15, line 4 the words "any two" were deleted and the word "both" was added. He stated that (iii) and (iv) were deleted. He stated that on page 14, line 7 following AS 43.82.240 "or to a municipal advisory" was added. On page 14, line 12 after the word "Law" "and municipal advisory group established held under AS 43.82.510" was added. He asked Commissioner Condon to speak to this.

Number 2423

WILSON CONDON, Commissioner, Department of Revenue, stated that it would be a group that is established and authorized to share

confidential information with the municipal advisory group.

Number 2452

MR. CARTER stated that on page 19, line 31, "enter into the proposed contract" was deleted and "submit the contract to the legislature, together with a request from the Governor, for authority to enter into the proposed contract pursuant to AS 43.82.435" was added. Similar language was also added on page 20, line 13, with Insert E.

TAPE 98-23, SIDE B  
Number 0003

CHAIRMAN HODGINS asked if that would be the ratification language.

MR. CARTER replied that is correct.

Number 0038

Mr. CARTER stated that on page 21, line 2 after the word "public" "and members of the legislature" is added and (3) is renumbered to (4) and vice versa. He stated that on page 21, line 24 after "appropriate", "and with the pertinent municipal advisory group" is added. He stated that on page 21, line 31, "the commissioner may execute the contract is deleted. Insert F is added which reads:

Page 22. Line 2: Following "state" INSERT: the commissioner shall under 43.82.435 submit the contract to the legislature, together with a request from the Governor for authorization to execute the contract.

Number 0096

MR. CARTER stated that Insert G is added which reads:

Page 22, between lines 5 and 6, INSERT: Sec. 43.82.435. Legislative Authorization. The commissioner may not execute a contract developed pursuant to this chapter and a contract developed pursuant to this contract is not binding upon or enforceable against the state or other parties to the contract unless the commissioner is authorized to execute the contract by means of general law. The state and the other parties to the contract shall execute the contract within 60 days of the effective date of the authorizing legislation.

Sec. 43.82.440. Judicial Review. A person may only bring an action challenging the constitutionality of an enactment under AS 43.82.435 or the enforceability of a contract executed pursuant to an enactment under AS 43.82.435 if the action is commenced within 120 days after the date that the contract was executed by the state and the other parties to the contract.

MR. CARTER stated that page 23, Article 6 was deleted and Insert H was added. He asked Commissioner Condon to explain it.

Number 0108

COMMISSIONER CONDON stated that in the original bill the contract provided for either a formula or an equity participation in the

project. Rather than having a specific formula in the legislation the new municipal provision provides that the proposed contract would provide for payment made directly to municipalities and those payments would be negotiated in line with the principles of AS 43.82.520 (b). He stated that the legislation would require the creation of an municipal advisory group and one member appointed from each municipality whose taxing power would be affected by the proposed project. He stated that the commissioner, in developing the contract would be obligated to keep the municipal advisory group informed and to seek their advice and counsel in arriving at the municipal sharing formula.

Number 0191

MR. CARTER stated that on page 24, line 23 was added, which reads:

(1) "affected municipality" means a municipality for which it is reliably expected by the commissioner of revenue that after the commencement of activities under AS 43.82.200 that a contract entered into pursuant to AS 43.82.020 will affect taxes that otherwise would be imposed by that municipality pursuant to AS 43.82.210.

MR. CARTER stated that Insert J was added which is the definition of economic proximity and is renumbered accordingly. He stated that on page 25, line 15, Insert K was added, which is the definition of uneconomic or uncompetitive.

Number 0278

REPRESENTATIVE TOM BRICE asked when legislative approval of the contracts is mentioned is it the approval in the form of resolution or statute.

Number 0292

COMMISSIONER CONDON replied that the committee substitute would provide a template for bringing modifications to the state's fiscal system before the legislature. It calls for the development of a proposal which the commissioner would not have the authority to sign. A bill would come before the legislature that, if passed, would give the authority to the commissioner to enter into a contract.

Number 0325

REPRESENTATIVE BRICE stated that a bill is either a resolution or a statute and he asked if he was taking statutory to mean a House bill.

Number 0330

COMMISSIONER CONDON replied absolutely. He stated that it might not show up as a section in the codified statutes but it is a bill as opposed to a resolution.

Number 0339

REPRESENTATIVE BRICE stated that his concern is that it would leave some leeway for legislative manipulation of that contract. He

stated that by resolution that language would be less easily manipulated.

Number 0361

COMMISSIONER CONDON replied that it would provide an opportunity for legislative review before the contract was submitted to the legislature along with the request for authority to enter into the contract. He stated that there is both the opportunity to change the contract in response to legislative views and then an up or down vote once authorization to enter into the contract is requested.

Number 0414

REPRESENTATIVE BRICE referred to Insert E and stated that the legislature can approve the contract by action of both bodies through resolution. A resolution would stand for the legislatures endorsement of a contract which is much different than having a piece of legislation that will be able to be amended in the committee process.

Number 0469

COMMISSIONER CONDON replied that it is the legislature's decision as to how this gets structured. He stated that this bill does not give the commissioner the authority to enter into the contract what it does is, requires the commissioner, under a detailed set of criteria, to come back to the legislature with a specific proposal in contract form and a requirement for it to become legally effective, a specific legislative authorization to enter into the contract. The legislature would not have the authority to amend the contract; they would have the authority either to give authority to the commissioner to enter into it or to deny it.

Number 0526

REPRESENTATIVE BRICE stated that he has a strong concern that the authority needs to be defined to be approved by the legislature through passage of a resolution, so there is a certain amount of specificity as to how the legislature will react to the contract.

Number 0548

REPRESENTATIVE ROKEBERG stated that if a general law was passed, it would be possible to amend or change the terms of the contract so the issue is, if it should be a law or resolution. He stated that the question is, does the legislature want to be able to change the terms of the contract.

Number 0574

COMMISSIONER CONDON stated that as the bill is structured, without the passage of a subsequent bill it can not be done by a resolution it has to be done by a bill.

REPRESENTATIVE RYAN stated that there is a separation of power and the job of the administration is to bring the deal back to the legislature. He stated that at that point the legislature could approve or disapprove it, it is not in the legislature's power to

cut the deal, only to approve it. He stated that legislative approval is necessary, but we should not be negotiating the deal.

Number 0657

REPRESENTATIVE ROKEBERG stated that he did not agree, he would think that the legislature would have the right to make changes in general law as well as granting authority.

Number 0685

COMMISSIONER CONDON stated that it could happen in a lot of different ways. For example, if there was a proposed contract that project participants and the commissioners have agreed to it. If the legislature grants the authority to enter into the deal then there would be a contract and the legal effects that go along with it. At that point, the legislature could say that they do not like the deal but like the ideas. Therefore, the legislature could take the provisions out of the contract and put them into the general law and pass it as a bill which would then be the fiscal system. He stated that would be the choice the legislature has.

Number 0764

REPRESENTATIVE ROKEBERG stated that is the point that Representative Brice was making. He stated that it is in the realm of politics, authority and responsibility; by crafting legislation we can shift the authority and the ultimate decision making from one branch of government to another.

Number 0797

COMMISSIONER CONDON stated that this proposed legislation does not limit the legislature's authority at all. It does require a process by which the administration can bring something back to the legislature. He stated that there are some policy advantages by having the proposal come back in the form of a contract. He stated that fiscal certainty is important in trying to reduce perceived risk to attract investors. He stated that putting the fiscal system in place in the form of a contract has the advantage of increasing the fiscal certainty that would be investors would have but the legislature has full discretion to say whether they like the idea.

Number 0918

MR. CARTER referred to a memo by Tam Cook from legal services that this may violate the separation of powers doctrine. He said "As I understand it the administration is not required to seek legislative approval and they have continued to take that position under oil contracts. The latest one is the governor's transmittal letter on SB 164 dated April 22, 1995." He read from the memo "That while the executive branch has consistently and in my view correctly asserted that legislative approval provisions are unconstitutional it is often conformed to them to accommodate the legislative desire for oversight."

Number 0982

COMMISSIONER CONDON referred to the separation of power doctrine

and stated that the legislature has taken the position that they will prevent the executive branch from acting unless there is specific legislative authorization. Any time the administration wants to build something with revenue bonds there needs to be specific legislative authority to do so. However, there is general authority to build roads etc. He stated that this bill would not give the administration the authority to do so, it gives the command to the administration to develop a proposal for legislative authorization. He stated that without legislative authorization there can not be a separation of power problem.

Number 1090

REPRESENTATIVE BRICE stated that he believed the legislature has been clear in its support of the gas line. He stated that HB 393 gives the administration the authority to break down the terms and negotiate the contract. He stated that he is hearing that Commissioner Condon wants more authority to negotiate fiscal terms and then come back to the legislature and ask for specific statute changes to meet those fiscal terms. He had hoped in the event that there was a contract, the legislature would either sign off through resolution or not. He stated that his confusion is that instead, the administration is going to come back with further changes to the state's fiscal system.

Number 1216

COMMISSIONER CONDON stated that what the bill would do is ask the legislature for the authority to enter into the contract. In order to do so a bill would have to be passed.

Number 1253

REPRESENTATIVE BRICE replied "The difference between HB 393 and HJR 12 in general terms, are two specific different animals." He stated that the administration asks for legislative approval submitted in House bill form, but to say that the legislature can not go into that contract and make changes is absolutely foreign. He stated that to say that the legislature will approve by resolution, the difference is in the discretion.

Number 1324

COMMISSIONER CONDON stated that if there is a contract they will have no discretion unless it is agreed to.

REPRESENTATIVE BRICE asked if he wanted a resolution.

COMMISSIONER CONDON replied that it in fact has to be done in the form of a bill.

Number 1357

REPRESENTATIVE ALAN KEMPLEN stated that there would be further discussions of this. The notion of fiscal certainty has been reinforced enough to move forward with the project. He stated that the process is building a case for a long term commitment to the terms of the contract. He stated that he believed this to be a good approach.

Number 1509

REPRESENTATIVE OGAN referred to Ms. Cook's memo and asked if we are binding further legislatures from changing the terms of the contract.

Number 1559

COMMISSIONER CONDON replied that the answer to that question is unknown. At some point in time the legislature will have the option of saying that they want to bind a future legislature, once contested the answer will be known. There are differing views on how far the legislature can go in binding future legislatures.

Number 1650

REPRESENTATIVE OGAN asked that in order to avoid legislation, it would be prudent to make sure the law is not ambiguous.

Number 1669

COMMISSIONER CONDON replied that he agreed with that but in respect to this issue, litigation would be wanted to find out the extent of the legislature's authority.

Number 1689

REPRESENTATIVE OGAN referred to Article 9, Section 1, and asked if he could explain what is provided in the article.

Number 1735

COMMISSIONER CONDON replied that the question of binding future legislatures would not arise now but when dealing with a proposed contract.

CHAIRMAN HODGINS asked Representative Ryan to present his committee substitute.

Number 1783

REPRESENTATIVE RYAN stated that there were a number of changes that he requested that are not reflected in the draft. He stated that he would not ask the committee to introduce his committee substitute until it includes what he intended it to. He stated that he was going to talk with the legislative legal department.

Number 2366

REPRESENTATIVE ROKEBERG made a motion to adopt CSHB 393(O&G). 0-GH2006, version B, 3/11/98.

TAPE 98-24, SIDE A

Number 0006

CHAIRMAN HODGINS asked if there was an objection. Hearing none, CSHB 393(O&G) 0-GH2006, version B, 3/11/98 was adopted.

Number 0076

REPRESENTATIVE ROKEBERG stated that he had two conceptual amendments. He stated that he would like to change that an affected community is not only those that have their revenue base affected but those that have a socio-economic impact for the services of those communities, specifically the Mat-su valley and the Anchorage area. Therefore, in the definition of the affected municipalities on page 26, line 17 add the word "revenue" before the term "affected municipality". He stated that he would like to create a new definition of economically affected communities which would state that "the municipalities incorporated under state law which have a history of or can demonstrate that they may have their services impacted by this type of project would be the economically affected communities."

Number 0291

REPRESENTATIVE OGAN stated that definitions are usually put in statute for terms that are in the bill.

REPRESENTATIVE ROKEBERG stated that he did have another amendment that would do so.

Number 0348

REPRESENTATIVE ROKEBERG made a motion to adopt the conceptual amendments.

CHAIRMAN HODGINS asked if there was an objection.

Number 0355

REPRESENTATIVE OGAN objected for discussion purposes. He stated that he is moving amendments to definitions and the committee does not know where he is going with the definitions. He stated that it would be helpful to have the amendments written.

Number 0408

CHAIRMAN HODGINS stated that the committee could adjourn with the motion pending.

Number 0438

REPRESENTATIVE ROKEBERG stated that he would explain the other portion to his amendment. On page 24, line 18, the economically affected communities would be added. He stated that he would bring the formal amendments to the committee. He withdrew his conceptual amendments.

Number 0542

REPRESENTATIVE OGAN stated that he concurred with Representative Rokeberg's direction with the amendments.

Number 0565

REPRESENTATIVE KEMPLIN referred to page 7, line 31 and stated that would address Representative Rokeberg's concerns. He referred Representative Rokeberg's above-mentioned proposed change on page 24, and stated that it was his understanding that the municipal

participation was for those communities that were giving up property taxes.

Number 0638

REPRESENTATIVE KEMPLIN stated that he would like to present a conceptual amendment on page 14, line 25 add "with a credit cap of \$100 million."

CHAIRMAN HODGINS asked that he present that amendment in written form at the next meeting. He announced that the bill would be held over.

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"DNR needs the information, not me," Martin retorted. "You need to be sure the Governor doesn't veto this. That's the bottom line, to make this thing acceptable to the Governor. [DNR needs the information] so they are satisfied and will tell the governor it's a good bill."

Kohring was scornful of Shively's claim that the Legislature is on "dangerous ground" by giving the oil industry a break.

"We should be less preoccupied with what the state is going to be giving up and what royalties we could potentially have, and look more at giving the oil industry more opportunities and less potential taxes," Kohring said. "The result will be a strong economy and more people employed. If the industry is willing to take on the risk of investing in the infrastructure and the time and money into this thing, they ought to reap the benefits."

Kohring said the role of the Legislature should be to minimize the tax on industry and individuals so there is a stronger economy.

Rep. Therriault moved his amendment lowering the cap oil eligible oil production to 25 million barrels per field. Rep. Kohring objected. The amendment passed on a vote of 5 to 2, with Reps. Eldon Mulder and Kohring voting no.

Mulder then offered a motion to move CSHB 380 (FIN) from Finance with individual recommendations.

Grussendorf objected, arguing that not enough information is available to know if this incentive is really needed. He pointed out that DNR will be getting the seismic information on Redoubt Shoals on March 31. But Therriault wasn't concerned because the information would be available to other committees. Hodgins assured the committee that he will draft amendments to the bill if the seismic shows "we are giving away the farm."

Mulder's motion to move the was approved, 6 to 1, with Grussendorf the only opposing vote. Reps. Gary Davis, Pete Kelly, Kohring, Martin, Mulder and Therriault voted in favor.

The bill garnered "do pass" recommendations from Davis, Kohring and Mulder. Grussendorf signed "amend," and Therriault, Kelly and Martin signed "no recommendation."

## **NORTH SLOPE GAS**

### **Gas-to-liquids incentives stay in bill after Ryan taken to woodshed**

After what seemed like endless hearings, the House Oil and Gas Committee sent its version of the administration's stranded gas legislation, HB 393, to House Resources, where it was heard on March 26 and 31. Another Resources hearing is scheduled for April 2, "so Ramona [Barnes] can have her say," according to a source. The bill is then expected to move quickly to House Finance.

At the March 24 Oil and Gas hearing, Rep. Joe Ryan had harsh words for the bill and a folder full of amendments.

This bill, he said is a "wish list" for the industry, that they hope the Legislature "is dumb enough to accept."

"Even with my few amendments, this bill proposes to give up 95 percent of Alaska's tremendous wealth, as much as the Spaniards took out of South America."

One of Ryan's proposed changes would have required project sponsors to pay 10.5 percent simple interest on any taxes or other payments a project sponsor is allowed to defer. The rate is the standard established in state law for prejudgment interest in lawsuits, and the rate at which the state both collects and pays interest on taxes under or over-paid.

If the state won't be getting any revenue from this project for 10 to 15 years, Ryan said the sponsors should at least pay the state for the value of its money.

"Where in the world can you use someone's money and not pay rent for it?" Ryan asked. "Why cheat the people of Alaska out of what is due them?"

Commissioner of Natural Resources John Shively, sitting in for an absent Wilson Condon, the administration's usual point-man on the stranded gas bill, opposed the amendment. He said Ryan's proposal would put another burden on the project, and noted that there is nothing in the bill precluding the administration from charging interest.

Rep. Norm Rokeberg said he believes tying it to a statutory interest rate is not wise, given that both market conditions and interest rates vary. Rep. Con Bunde agreed saying he would be embarrassed if the Legislature limited the interest rate to 10.5 percent, and the prime at the time the contract was entered into was 20 percent.

The amendment failed on a 1-3 vote, with Ryan alone in favor.

The Anchorage Republican representative did slightly better, losing a 2-4 vote on an amendment that would have restricted the commissioners' ability to change royalty valuation methods and related terms. He claimed that the bill gives the commissioner of natural resources the right to develop any terms for royalty he chooses. He said the amendment would make the commissioner abide by the royalty provisions in Title 38, that apply to everyone else.

Ryan said Kuwait gets an 88 percent royalty and Alaska only gets 12.5 percent. "We are getting the short end of the stick now and we don't need to get the short end of the stick again."

Shively assured the committee that he is not proposing a change in the 12.5 percent royalty.

But Ogan was not assured. "This bill gives a lot of latitude to cook the books," he observed. Might the state's 12.5 percent be worth zero, particularly if transportation costs are high?

Shively said if the commissioner negotiated the royalty to zero and the Legislature didn't catch it, he believes it would be a problem of public trust. "If there is no basic value, we should leave the gas in the ground," Shively added, reminding members that the contract will come before the Legislature for approval.

"We are giving an awful lot of authority to two people," Ryan retorted, referring to the commissioners of revenue and natural resources. Once a contract comes out with a rash of publicity, it will be difficult to stop. "You put your finger in the dike and the momentum of the project will wash you down the river," he said.

The amendment failed on a vote of 2 to 4, Ryan and Ogan voting "yes," and Brice, Kemplen, Rokeberg and Bunde "no."

A Ryan amendment to require a project labor agreement also failed, despite his argument, backed by a legal opinion from the chief legislative attorney, that the provisions in the bill regarding resident hire are unconstitutional.

"The only way we can insure some Alaska hire is with a project labor agreement," Ryan said. "This is the only way to insure we get a piece of the action."

Bunde pointed out that he is concerned about Alaska hire, but noted that hiring out of the labor halls doesn't necessarily fix the problem.

The amendment failed, 3 to 3. In favor of the amendment were Brice, Kemplen and Ryan. Opposed were Ogan, Rokeberg and Bunde.

Several of Ryan's less controversial amendments were adopted, including one to allow royalty modifications only if they do not "impair the ability of the state to meet the demand in this state for gas ...," and a proposal to require all information kept confidential under the bill to be made available to legislators.

The most interesting of Ryan's amendments, however, was one that was not adopted—or, to be precise, was adopted and then unadopted. It would have arguably prevented the bill—and the potential advantages it offers to investors—from applying to a gas-to-liquids (GTL) project, a project in which gas would be converted to a liquid fuel on the North Slope and then transported through the TAPS oil line.

A bill aimed at building a gas pipeline should not include language about GTL technology, Ryan argued.

Bunde, who was chairing the meeting in the absence of Oil and Gas Chair Mark Hodgins, countered that a GTL project needs to remain eligible because it might extend the economic life of the trans-Alaska pipeline (TAPS) oil line. Department of Natural Resources Commissioner John Shively also weighed in against the amendment, but to no avail. The amendment to dump GTLs from the bill was adopted on a 4 to 1 vote, Kemplen, Ogan, Rokeberg and Ryan in favor, and Bunde opposed.

Rep. Ryan had more amendments prepared, but time ran out, forcing the committee to schedule another meeting for the morning of March 26, so the bill could be moved out of committee in time to be read across the chief clerk's desk and be referred to Resources, which had scheduled HB 393, "pending referral," for an early afternoon hearing that same day. That kind of tight scheduling usually signifies a bill about which the legislative leadership is urgently concerned. That proved to be the case, as Ryan was about to discover.

According to Hodgins, on the morning of March 26, he and Ryan met with House Speaker Gail Phillips in her private office. Sources say Phillips angrily chastised Ryan for his actions on the bill. "He got taken to the woodshed," a source said.

When the Oil and Gas Committee convened later that morning, Bunde immediately moved that the committee rescind its action in adopting Ryan's amendment to scrub the bill of any intent to subsidize a gas-to-liquids project. Ryan, obviously vexed, offered an amendment to the amendment, to delete all the amendments the committee had adopted on Tuesday, but there was no second.

Rep. Kemplen objected to the motion, asking why committee members thought it necessary to rescind, to which Bunde observed that legislators are not required to explain their votes. Kemplen, apparently satisfied, removed his objection and the motion was approved without objection.

Ryan left the room at this point and never returned.

With Ryan's amendment back before the committee, Ogan again objected to leaving the GTL language in the bill, saying the whole idea of this bill is to provide an incentive and defer taxes to make a gas line project economically feasible. He expressed support for whatever technology is needed to get the gas developed, but said if it's GTL technology, those sponsors should come back to the Legislature if they need financial assistance.

Rokeberg said he absolutely agrees with Ogan, but said it is premature to remove this language until it has been debated by House and Senate committees. To do so would "send a negative message to industry" that the Legislature is not supportive. Ultimately, whatever contract is developed will undergo extraordinary public scrutiny, he added.

Kemplen was not satisfied. "This language says you can negotiate everything ... [W]e've put everything on the table." He questioned whether a GTL project will need the same fiscal adjustments

as a gas line project. He noted that many lawmakers have concerns with the Mapco royalty oil contract, but the administration has taken the position that lawmakers only have the opportunity to approve or reject the contract. He believes it is prudent for the Legislature to have a say in these contracts, and if legislators' recommendations have merit, the contracts should be changed.

Rokeberg's motion to remove the GTL deletion from Ryan's amendment passed on a vote of 4 to 2, with Brice, Bunde, Rokeberg and Hodgins voting in favor of leaving GTLs in the bill. Ogan and Kempfen, on the losing side, voted to take GTLs out of the bill.

*Judith Erickson, owner of CAPITAL INFORMATION GROUP, reported and did the final editing on this and the following story. ALASKA BUDGET REPORT Editor Gregg Erickson has an economic consulting engagement related to the gas project with a municipality along the route of the proposed pipeline.*

### **Condon: "This doesn't have a damn thing to do with oil"**

When House Resources Committee convened on the afternoon of March 26 to hear HB 393, the stranded gas bill, Rep. Mark Hodgins asked Resources Co-chair Scott Ogan what his intentions are in regards to the bill. Hodgins, who had the bill in his Oil and Gas Committee for almost two months, emphasized the importance of getting this bill to House Finance before they begin their budget work.

Ogan said he would probably move the bill out on Thursday, April 2. He said he is also in a hurry; otherwise he wouldn't have heard the bill on the day it came to his committee. He said Rep. Barnes will not be back until April 2, and he wants to give her the opportunity to address this bill before it moves.

After a presentation on the bill by Department of Revenue Commissioner Wilson Condon, Rep. Joe Green asked about the environmental consequences of another pipeline. If the state is walking in lock step with the proponents on this project and discovers an environmental problem, what would it do?

Condon said this is a responsible framework for a business deal; it is not sensible to address the state's environmental work in this process. Condon said a contract will move along irrespective of any environmental difficulties that might arise.

Rep. Williams asked if the 30 day legislative review would take place during session. Condon said it would have to.

Rep. Beverly Masek asked Condon how much the state will be giving away in taxes and royalties for this project.

This bill doesn't give away anything, Condon said. It is a framework that will allow the executive branch to come back to the Legislature with a proposal that might give something away, but it might not.

In response to a question from Rep. Bill Hudson, Hodgins said gas will be provided to communities within economic proximity of the project, meaning the distance within which private industry is willing to build a spur line to supply a community with natural gas.

Hudson asked if there will be any revenue sharing to help offset these costs. Hodgins explained that the Oil and Gas Committee had several meetings with the pipeline mayors and they are comfortable in seeing this project move forward. He said the mayors assured the committee that they have cash flow to address some of the socioeconomic impacts of the project, as long as they recoup their deferred tax dollars later on. Hodgins said the communities are very supportive of the project.

Hudson said the gas belongs to all Alaskans, but some communities are going to benefit greatly from the construction project. If there is revenue sharing in the contract, Hudson said he would like to see Kodiak and Southeast Alaska share in the benefits.

A March 24 successful amendment by Rokeberg, who represents Anchorage, could just conceivably make that possible. It establishes a special aid program for communities, including Anchorage, where municipal tax revenues won't be reduced, but which are nevertheless "economically affected" by the gas project. Both "revenue-affected" and "economically affected" communities would be eligible for periodic payments under a stranded gas project contract. In figuring out who is eligible for the payments the commissioner of revenue could consider historical data from construction of TAPS in the 1970s.

But during discussion of Rokeberg's proposal Bunde had wondered out loud if there was some way to prevent communities in western Alaska from claiming that they are "revenue-affected" on the theory that its residents were working on the gas line rather than fishing.

Rokeberg had said that he will look at "tightening up the sideboards" on the language as the bill moves through committee. He noted that Commissioner Condon had reviewed the language and thought it was workable.

Not surprisingly, no one at the March 26 Resources meeting brought this earlier exchange to Hudson's attention. Later in the meeting Hodgins said there will be impacts in every Alaska community, but if too much revenue dedication is loaded on the front end of the project, it will never be built.

Reading the list of taxes that the commissioner could consider for payments in lieu of taxes, Ogan said made him swallow hard.

"This is a heck of a lot of authority we are delegating to you or your successor," Ogan said. "Can you give us some comfort on why we should give you this authority?"

Ogan also asked if this would allow the renegotiation of oil taxes as well as taxes on gas.

Condon said this bill does not authorize the modification of any oil taxes. The bill is drafted to include the proper names for the tax chapters, many of which refer to oil and gas. He added that if this bill passes, the Legislature retains all the authority to decide whether or not to make these changes in the contract.

Ogan, apparently not satisfied, asked again if anything anywhere in the bill gives the commissioner of revenue the authority to consider changing taxes on oil.

"This doesn't have a damn thing to do with oil except that it has that three letter word there," Condon replied. Nothing in the bill instructs the commissioner to bring a proposal to the Legislature that changes taxes on oil. This a gas project, so the contract would only deal only with the taxes imposed by the state on gas, he added.

Hodgins said lawmakers must decide now if they want to see this project continue on further.

Rep. Masek said she knows this is an important issue to address, but given the price of oil she doesn't believe lawmakers need to rush it. She pointed out that things could change a lot in the next ten years. Masek said she isn't comfortable with the bill as its written and believes it needs many amendments.

"I don't know if this is the time for it," she said. "We should try not to rush into doing something we may regret later."

## Barnes suggests tax on gas reserves

"There has been an awful lot of pressure put on this committee to move the bill," Rep. Ramona Barnes observed to her House Resources Committee colleagues on March 31, after Rep. Bill Hudson moved to report the stranded gas legislation, HB 393, with individual recommendations. "In all my years in the Legislature I've never had a bill of this magnitude move so quickly. I don't believe this committee has had the opportunity to do the work on it that needs to be done," explaining her objection to Hudson's motion.

A flustered Scott Ogan, who was chairing the meeting called for an *ad hoc* meeting, after which Hudson withdrew his motion to move the bill. Before adjourning the meeting, Co-chair Ogan announced that he was "glad to accede to the wishes of my colleagues," noting that he had tried unsuccessfully in Oil and Gas to remove the provision allowing the bill to apply to a gas-to-liquids project. He announced that the committee would hold another meeting on the bill on April 2.

It was a remarkable conclusion to a remarkable meeting, on legislation that virtually everyone profess to support, but which has nonetheless created a remarkable amount of controversy.

The meeting had started earlier in the day with Chair Ogan offering a draft committee substitute authorizing the Legislature itself to conduct negotiations for a stranded gas contract, a change the administration has said would make the bill unworkable, if not unconstitutional.

Of course, the bill is already unconstitutional, according to a March 30 legal memorandum that accompanied the draft substitute when it arrived from the Legislative Affairs Agency.

According to Legislative Counsel Richard Glover, "the bill as introduced does not seem to comply with Art. IX, sec 1 of the state constitution," the section that prohibits the state from contracting away its taxing power.

Barnes was surprised and upset at the appearance of the memorandum, which she disagrees with. She called Glover, an employee of the Legislative Council, which Barnes chairs, to the witness stand to explain. He did, but Barnes remained unsatisfied.

The legal opinion was nothing new. On March 11 Glover's boss, Tanara Brandt Cook, had written precisely the same words in a somewhat more detailed memorandum accompanying an earlier committee substitute for HB 393 requested by Oil and Gas Committee Chair Mark Hodgins. As Barnes should know, such memos are a standard procedure when legislative attorneys spot legal problems in bills they draft for legislators.

Moreover, Assistant Attorney General Jack Griffin said much the same thing when he addressed the issue in November before the House Oil and Gas Committee [see **Administration describes stranded gas legislation**, *ALASKA BUDGET REPORT*, November 19, 1997].

"Why not have a constitutional amendment and be done with this," asked Rep. Norm Rokeberg asked at the November meeting. "This would ... give the public a chance to decide."

Griffin responded that the idea of a constitutional amendment was not considered by the administration team studying gas commercialization. He was unable to say why.

In a March 25 letter to Rep. Terry Martin, Griffin referred to Cook's March 11 opinion. "She concluded that one Legislature can not bind another, and I concur."

In his letter to Martin, however, Griffin drew a distinction between a contract with a project sponsor, which could unconstitutionally try to bind a future Legislature, and the stranded gas bill itself, which merely authorizes an unconstitutional contract. "[B]ecause it does not purport to bind future legislatures," the bill itself is not unconstitutional.

Legislators besides Barnes seemed unconcerned with the possible unconstitutionality of the bill, but were interested in separation of powers questions raised by the proposal to let the Legislature negotiate a contract with a project sponsor [see **Governor leaves out provision for legislative approval**, *ALASKA BUDGET REPORT*, February 18, 1998]. That issue was later mooted when the operative section in Ogan's draft substitute was removed.

The committee heard from representatives of the North Slope producers, who all supported the bill, but most of the attention was focused on Barnes' aggressive cross examination of David Brooks, manager Alaska gas for BP Exploration Alaska Incorporated.

After quizzing Brooks about BP's contacts with and representations to possible Far East gas purchasers, she accused the company of foot-dragging on Alaska gas development. The Legislature may need to establish some sort of "sunset date" on the effort, to "force you through taxation of gas in the ground, or other means" to get the project going.

It was not the first time Barnes had rebuked the major producers, for moving too slowly on Alaska gas, nor was there any indication from the Anchorage representative or in the responses of the producers that it would be the last [see **Barnes scolds gas pipeline "foot-draggers"**, *ALASKA BUDGET REPORT*, November 18, 1996].

## REORGANIZATION

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### DCED-DCRA "merger" bill moves to House Finance

Rep. Vic Kohring's bill to merge the Departments of Community and Regional Affairs with Commerce and Economic Development was reported from its first committee on March 30, and now moves to House Finance, where a hearing is scheduled for April 2.

Kohring told the March 30 meeting in House Labor and Commerce that DCED and DCRA should be merged into a new Department of Commerce and Rural Development because of overlapping missions and economic development programs. Both departments involve:

- Rural economic business development;
- Rural tourism;
- Rural sanitation and infrastructure;
- Energy development and funding;
- Utility assistance;
- Assistance to economically distressed regions;
- Fisheries.

HB 400 shifts Head Start, the child care program, and the day care assistance program to the Division of Health and Social Services. The purpose, according to material from Kohring's office, is to "eliminate cumbersome interagency coordination."

The Department of Labor would get the state training and employment program, the Jobs Training Partnership Act program, and the statewide service delivery component. The international trade subcomponent of the trade and development budget component would go to the Office of the Governor.

Although billed as a merger, the plans clearly indicate that DCED would be the surviving agency. The international trade subcomponent would be the only element of DCED that would not still be a part of the surviving department after the merger.

## **NORTH SLOPE GAS**

### **House complains, but passes gas bill 36-4**

Legislation to encourage construction of a pipeline to move North Slope natural gas to market passed the House on April 17. The vote was an overwhelming 36 to 4.

Although much amended, the House version of the bill, HB 393, retained key elements of the proposal Gov. Tony Knowles introduced in February [see **Gas legislation introduced, ALASKA BUDGET REPORT**, February 11, 1998], giving the commissioner of revenue authority to cede all or any part of state and local rights to levy taxes. In return, the project sponsor would agree to make payments under alternative contractual arrangements designed to make the project more profitable. This could be achieved by shifting payment obligations into the future, or aligning payments with project profitability.

As originally introduced, a sponsor of a gas-to-liquids (GTL) project using the existing oil line could have applied for a contract, but the GTL language was dropped during House committee action. The House added a key provision giving the Legislature the right to accept or reject the contract negotiated by the administration [see **Governor leaves out provision for legislative approval, ALASKA BUDGET REPORT**, February 18, 1998].

Debate in the House suggested that some members had misgivings on the substance of the bill but felt political pressure to vote for it.

"I'm going to, about as reluctantly as I'm ever going to, have to vote for this bill," confessed Rep. Joe Ryan. "Governor Knowles says the state is open for business. After reading this bill, I think I could paraphrase it that the State of Alaska is for sale."

"I advise you take a close look at it because you are going to be responsible for whatever happens."

Ryan said there is no way under the bill to guarantee that anyone from Alaska will work on this project. Nevertheless, Ryan said he had to vote for the measure because there is nothing else on the table to speed development of Alaska gas.

Rep. Ramona Barnes, a strong supporter of the bill, agreed with Ryan on his last point. "If we don't do this now, we'll never see our gas marketed."

Rep. Gene Kubina expressed concern that the pipeline communities are uncomfortable with the bill as it is now written.

Kubina said despite the state and Legislature's efforts, the major producers, are still not doing anything concrete to move the project forward.

"I think we ought to have something that says in 2005 we are going to tax this gas in the ground if a pipeline isn't started or take it back," Kubina said. "At some point this body is going to have to call their bluff."

"I wish we had the guts to tell them 'you are going to do this or else.' I don't think we do right now. How long do we get told 'trust me, it's coming, we're working on it,' before we stand up and say you either do it or give it back to us and we'll find someone else who will. Because that's what the other countries are saying." Kubina said before voting to approve the bill.

Rep. John Davies said he too will vote for the bill, but like Kubina is concerned that it doesn't have the teeth and demands from the Legislature needed to move the project forward. He said he believes the effort by industry to have GTL language added back to the bill is a delay tactic.

"Any discussion of gas-to-liquids right now is diverting needed focus and attention away from the gas pipeline and towards some other chimera that isn't going to be there in the time frame we need this effort accomplished," Davies said.

Rep. Tom Brice said for the gas line project to become economically feasible, Alaska has to change its fiscal system. Passing the bill shows Alaska's good faith and willingness to do that.

"We are not saying the gas line will be built if this gets passed, but it sure as shucks won't get built if this isn't passed."

Rep. Jeannette James said she will cast a "half-hearted vote." As an accountant, James said she believes the market drives the system. She is hesitant to force something to move forward that can't make it on its own.

"I still have this little queasy part of my stomach that says 'I don't know if this is a good idea or not,'" James said.

Rep. Eric Croft said he is concerned with this bill and the concessions being discussed on this issue. He compared this proposal to a poker game. The state is playing for huge stakes on something that has huge costs and very low margins, and the rules are strange.

"This is something that we must dive into because it is an important piece of economic development for the state. But the way the game is structured now worries me a lot. If there is some way to change the rules of this game so we have more leverage, I'd be interested in seeing it," Croft said. "I will send this piece of legislation off with two statements to the administration—negotiate the best deal you can for Alaska and work with the people who already have the contracts and the permits in place to do this. I will hold them to these obligations."

Rep. Beverly Masek, who voted against the bill, expressed concern about accepting a contract when the Alaska economy is depressed. Masek said she doesn't know if it is wise to offer incentives to develop this project or rely more on market conditions to determine when a project should be developed.

Masek said she is not opposed to building a gas line, but said the state has a lot of time to look at this issue.

Rep. Bill Hudson said HB 393 makes a positive statement that provides flexibility and tries to encourage partnership with the private sector. Even though it is not a perfect bill and there are many unknowns, Hudson said he believes this is the right thing to do.

Rep. Con Bunde said he opposes the bill but for a different reason. If it was a truly stranded gas bill, it would encourage the marketing of Alaska's gas in every way possible, including gas-to-liquids. He said he would vote for this bill if the title was changed to reflect that it is a pipeline subsidy bill.

The four "no" votes were cast by Bunde, Masek, Terry Martin and maverick Republican Al Vezey.

### **Senators gain leverage from "give away the farm" gas bill**

The governor's stranded gas bill, HB 393, is widely considered a "must-pass" measure, but its fate in the Senate is not certain. Senate President Mike Miller referred the measure first to the Labor and Commerce Committee—a surprise to most observers—and then to Resources and Finance. Lobbyists said the Labor and Commerce referral was to give Sen. Loren Leman, the committee chair, leverage to dissuade Knowles from vetoing SB 299, a bill by Leman that exempts oil drilling equipment from air quality permitting requirements. That bill, which the departments of Environmental Conservation and Natural Resources opposed in committee testimony, is now on the governor's desk awaiting action.

"HB 299 will become law with or without the governor's signature," Leman told a reporter this week. "The governor has no reason not to [sign the bill] outside of his campaign of disinformation."

Does he find it convenient to have HB 393 in his committee while the governor considers HB 299?

"I normally don't operate that way, with linkage," Leman said. "I do not appreciate it when people say things that are not true," he added.

Leman said that with only a short time left until the end of session, the real issue might be whether there's enough time to deal with the bill.

"[The bill] might need to be expedited," he said.

Leman said he has general concerns about whether the gas measure adequately protects the state's interests.

"The process should be open enough to be credible," Leman said. With the authority it would grant the commissioner of revenue to give up state and local rights to levy taxes, "[T]here's all kinds of room for hanky-panky."

Leman said he will schedule HB 393 for a hearing in Labor and Commerce on April 28 or 30, Tuesday or Thursday of next week.

Resources Chair Rick Halford has also expressed doubts about the gas bill, and Senate Finance Co-chair Drue Pearce pointedly referred to the measure in less-than-complimentary terms.

Pearce's remark came during an April 16 Senate Finance hearing on a bill reducing state royalties on oil and gas from six long-discovered but never-developed fields in Cook Inlet [see **Hodgins moves bill to cut royalties on Cook Inlet fields**, *ALASKA BUDGET REPORT*, April 1, 1998]. Pearce, who supports the Cook Inlet bill and is the prime sponsor of the Senate version of the measure, told Department of Natural Resources oil and gas chief Ken Boyd that she doesn't understand the tone or pitch of the state's objection to the bill.

"Especially when I hear the administration wanting to give huge concessions for the gas line, that give away the farm."

The Cook Inlet bill, HB 380, passed the Senate on April 20, and the House quickly concurred in the Senate changes, sending that bill to the governor's desk, where it joins SB 299 and eight other measures awaiting the governor's action. The governor has 15 days, excepting Sundays, to consider measures; any vetoes of these bills will be available for possible override votes before the Legislature adjourns.

# STATE OF ALASKA

## DEPARTMENT OF LAW

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May 29, 1998

The Honorable Tony Knowles  
Governor  
State of Alaska  
P.O. Box 110001  
Juneau, Alaska 99801-0001

Re: SCS CSHB 393(FIN) -- Alaska Stranded Gas  
Development Act  
A.G. file no: 883-98-0083

Dear Governor Knowles:

At the request of your legislative director, Pat Pourchot, we have reviewed SCS CSHB 393(FIN), the Alaska Stranded Gas Development Act, which would authorize the commissioner of revenue to develop new fiscal terms for projects that develop stranded natural gas resources in the state.

The bill is identical in most important respects to the bill introduced at the request of the governor. The bill is largely the product of the North Slope Gas Commercialization Team, which was established last year by House Bill 250. The team, which consisted of the attorney general, the commissioner of revenue, and the commissioner of natural resources, was charged with recommending terms for a contract that would improve the economic feasibility and competitiveness of a North Slope gas project. The team also was asked to recommend legislative provisions necessary or appropriate to implement such a contract. The purpose of the team's efforts and of the bill is to enable the state to create a fiscal regime appropriately tailored to the development of some or all of the approximately 35 trillion cubic feet of gas on the North Slope. Today that gas is stranded there because of the prohibitive cost of getting it to market.

Sections 1 through 9 of the bill would authorize the commissioner of revenue to develop the terms of a fiscal contract with sponsors of projects to develop known gas reserves that currently cannot be marketed economically. Unlike the governor's proposal, the bill is limited to liquefied natural gas ("LNG") projects. In a letter of intent adopted by the Senate, Senator Kelly explains that while the state has studied the economics of a North Slope LNG project, no comparable study has been made of the next most likely alternative, a gas-to-liquids (GTL) project. The letter of intent suggests that the state should continue to explore any method of commercializing its stranded gas resources, and that an economic analysis of GTL may support amending the Stranded

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Gas Development Act to include it. The North Slope Gas Commercialization Team's Report to the Governor of December 15, 1997, in fact identifies an LNG project as the "most promising" alternative for commercializing North Slope gas and focuses its economic analysis exclusively upon it, although the fiscal principles in the Report which are incorporated in the bill, could be applied more broadly.

The payments required by the contract would replace some or all of the state and local taxes that would otherwise apply to qualified sponsors as a consequence of their participation in a qualified project. Those taxes might include: (1) the state and local ad valorem property taxes that would be imposed on the project facilities; (2) the production or severance tax that would be imposed on the gas produced and marketed by the project; and (3) the state corporate income tax obligation arising as a consequence of the construction and operation of the project. In addition, the commissioner of natural resources may develop terms, which the commissioner of revenue may include in a contract, addressing timing and notice of the state's right to take its royalty gas in kind, as well as a method for valuing the state's royalty share of gas. In effect, the bill would permit the commissioner of revenue to develop terms that would replace the state's current fiscal regime -- which, if applied to a North Slope gas project today, would be relatively regressive and front-end loaded -- with a regime that is more progressive and back-end loaded, in an effort to lower the risk of the project and boost the rate of return that investors could expect.

The principal difference between this bill and the version introduced at the governor's request is that the former, though empowering the commissioner of revenue to negotiate fiscal terms, does not authorize the commissioner to actually execute the contract. Instead, sec. 3 of the bill adds AS 43.82.435, which provides that the "governor may transmit a contract developed under this chapter to the legislature together with a request for authorization to execute the contract." The section further provides that the contract is not binding unless the governor is authorized to execute the contract by a subsequent enactment. In the view of legislative counsel, this aspect of the bill may reflect an encroachment by the legislature upon the powers properly reserved to the executive branch under the Alaska Constitution. However, legislative counsel also recognized that the executive is free as a matter of comity to acquiesce in what amounts to the legislature's request for more active oversight. In fact, the governor, in the transmittal letter accompanying his proposed legislation, encouraged the legislature to review the contract and approve it before it became effective. The governor made this request because of the importance of North Slope gas development to the state.

We agree with legislative counsel that the governor may acquiesce in the approach adopted by the legislature. We also note that it is far from clear that the legislature's approach would, in fact, violate the separation of powers doctrine. The legislature arguably has not usurped an executive function, but rather has divided its delegation of authority into two steps, rather than the traditional one. It should be noted, moreover, that both the negotiation of the contract and its submission to the legislature are discretionary. Finally, it is relevant that the contract that is to be provided to the legislature involves the state's fiscal regime, a subject substantially within the purview of the legislative branch under art. IX of the Alaska Constitution. Since the contractual payments in lieu of taxes authorized by this bill could be characterized as, in essence, a new tax, the

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legislature may well be required to levy the new tax by law. Viewed in this light, the legislature's approach might not only be permissible, but necessary, under the constitution.

There are a number of other important issues raised by this legislation. First, art. IX, sec. 1 of the Alaska Constitution provides that "[t]he power of taxation shall never be surrendered." The bill raises the "surrender of the taxing power" question because it contemplates development of a long-term contract that reflects the fiscal terms applicable to the sponsors of a stranded gas project. The legislation itself, however, is not unconstitutional under art. IX, because it does not purport to bind future legislatures. Instead, it merely authorizes the commissioners of revenue and natural resources to develop appropriate contract terms. Authorization to execute the contract will not be delegated to the executive branch until the legislature has had an opportunity to review the contract and ascertain whether its terms are in the public interest. Even if that authorization is given, the legislature may expressly provide that the contract's fiscal terms are binding only so long as no future legislature decides to exercise the taxing power in a different way. In other words, the "surrender of the taxing power" issue may never arise. A concrete analysis of this issue must be left to the day the legislature decides whether, and if so under what terms, it will allow execution of a contract at all.

The second issue is the bill's provision in sec. 3, adding AS 43.82.500 - 43.82.520, for municipal participation and revenue sharing. Like the former Industrial Incentive Act (AS 43.25, repealed in 1986), the bill recognizes that changes in the state's tax regime will be ineffective to encourage development unless municipal tax changes are also included. Unlike the former Act, the bill includes provisions to ensure that affected municipalities receive a "fair and reasonable" share of the payments from a project that affects them. The bill also creates a municipal advisory group to assist the commissioner in developing the contract terms that may affect municipalities.

Third, the bill recognizes that the commissioners of revenue and natural resources may have to review confidential company data in order to develop fiscal terms that best advance the state's interests. The people of the state, however, have a right to know the basis for administrative decisions affecting their welfare. The bill strikes a balance between, on the one hand, the state's interest in encouraging competition and the right of companies to keep proprietary information from their competitors and, on the other hand, the public's right to review their elected and appointed officials' decisions. The bill does this by limiting confidential treatment to proprietary information that, if revealed, would both affect a company's competitive position and significantly diminish the value of the information. In addition, information loses its confidential status as soon as confidentiality is no longer necessary to protect the company's competitive position or the information's value.

Finally, an important goal of this legislation is to facilitate the hiring of Alaskans in all phases of the construction and operation of a stranded gas project. The bill adds AS 43.82.230, which requires employers participating in a project to advertise locally for available positions and use Alaska job service organizations located throughout the state. Most significantly, the commissioner is directed, "[w]ithin the constraints of law," to include a provision in a contract requiring sponsors to employ qualified Alaska residents and Alaskan-owned businesses. The

The Honorable Tony Knowles, Governor  
A.G. file no: 883-98-0083

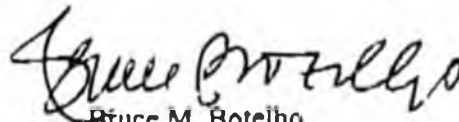
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commissioner of labor will prepare and present to the legislature an annual report compiled from state data bases, particularly quarterly unemployment insurance reports, regarding the residency of employees working in the state on the project. We see no constitutional problem with these aspects of the bill, because the bill expressly provides that the Alaska hire provisions in the contract must be consistent with "the constraints of law."

Finally, we note that although the bill is unique in many respects, the legislature has passed comparable measures to encourage industrial development in the past. For example, the liquefied gas plant, gas pipeline, and related facilities on the Kenai Peninsula benefited directly from the Alaska Industrial Incentive Act, former AS 43.25. Without the tax advantages provided by the Act at that time, the Kenai LNG facility might never have been built. Today, that facility is a significant source of jobs and property tax revenues in the Cook Inlet area.

We see no legal problems presented by this bill.

Sincerely,



Bruce M. Botelho  
Attorney General

BMT:JPG:jfs

# STATE OF ALASKA

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April 4, 2003

The Honorable Frank H. Murkowski  
Governor  
State of Alaska  
P.O. Box 110001  
Juneau, Alaska 99811-0001

Re: CSHB 16(FIN) am - amendments to the  
Alaska Stranded Gas Development Act  
Our file: 883-03-0008

Dear Governor Murkowski:

At the request of your legislative director, Mike Tibbles, we have reviewed CSHB 16(FIN) am, which passed the legislature today, on an expedited basis. The bill amends the Alaska Stranded Gas Development Act (the "Stranded Gas Act").

The Stranded Gas Act (AS 43.82) currently provides for the development of a contract between the state and the sponsor of a qualified project for the export of liquefied natural gas. Under the contract, the state may negotiate certain terms, including periodic payments in lieu of one or more taxes, royalty matters, and provisions relating to hiring of Alaska residents and contracting with Alaska businesses. The purpose of the Stranded Gas Act is to encourage new investment to develop the state's stranded gas resources by authorizing establishment of fiscal terms related to that investment, and to maximize the benefit to the people of the state of the development of the state's stranded gas resources. AS 43.82.010.

Section 1 of the bill provides two statements of legislative intent. The first statement is that the legislature intends that a qualified project sponsor that enters into a contract with the state under the Stranded Gas Act may develop and enter into a project labor agreement with appropriate collective bargaining organizations for the project. The second statement is legislative intent that a contract for payment in lieu of taxes and for royalty adjustments entered into under the Stranded Gas Act contain a provision by which the contract may be reopened by any party.

Honorable Frank H. Murkowski  
Our file: 883-03-0008

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Section 2 of the bill amends AS 43.82.100, which defines a qualified project, to include a natural gas pipeline and also any other technology that commercializes the shipment of natural gas within the state or for export. Thus, sec. 2 expands the type of natural gas projects that may be eligible as a qualified project, in that previously only a liquefied natural gas project could qualify.

Section 3 of the bill amends AS 43.82.110, which provides two requirements for eligibility as a qualified sponsor or qualified sponsor group. The first requirement, which is unchanged by the bill, is that a qualified sponsor or qualified sponsor group must intend to own an equity interest in a qualified project, intend to commit gas that it owns to a qualified project, or hold permits that the state determines are essential to construct and operate a qualified project. The bill amends the second requirement, which consists of five different criteria only one of which must be met. The bill changes two of the criteria, in amending AS 43.82.110(2)(D) and (E), by lowering the net worth requirement for a qualified sponsor or qualified sponsor group from 33 percent to 10 percent of the estimated cost of constructing a qualified project, and by lowering the amount of the qualified sponsor's or qualified sponsor group's unused line of credit from 25 percent to 15 percent of the estimated cost of constructing a qualified project. Thus, the amendments allow a potential sponsor to become a qualified sponsor with a lower net worth or a lower unused line of credit than under the Stranded Gas Act before the bill's amendments.

Section 4 of the bill provides that the commissioners of the Department of Revenue and the Department of Natural Resources may not act on an application for a contract submitted by a qualified project sponsor unless the application is received by March 31, 2005. Under the Stranded Gas Act before the bill's amendments, the application deadline was June 30, 2001, and had therefore expired.

Section 5 of the bill amends AS 43.82.240(a), which provides that the commissioner of the Department of Revenue may use an independent contractor to assist the state in evaluating an application or in developing contract terms, and also that the commissioner may condition development of a contract on the qualified project sponsor applicant's agreement to reimburse the state for the expenses of an independent contractor. The bill amends that provision by allowing the commissioner to use more than one independent contractor, and also adds provisions that the independent contractors' expenses are reimbursable only if they are reasonable and only to the extent that they do not exceed \$1,500,000 per each application.

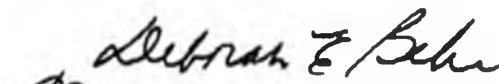
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Section 6 of the bill provides that it takes effect immediately under AS 01.10.070(c).

We see no legal or constitutional difficulties with the amendments to the Stranded Gas Act contained in the bill. We are available to answer any questions you may have concerning the Stranded Gas Act, or to assist in its implementation.

Sincerely,

  
Gregg D. Renkes  
Attorney General

GDR:MS:jn