

SB 104

(FILE 1)

BILL

MATERIAL

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
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Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

Changes Made in Senate Judiciary to CSSB104(RES) Natural Gas Pipeline Project

The bill order was changed to comport with the bill order of the House companion bill, at the request of legislative drafters.

Article 1.

Inducement to Construction of a Natural Gas Pipeline

Section 43.90.010 Purposes: No changes were made to this section.

Article 2.

Alaska Gasline Inducement Act License

Section 43.90.100 Gas Project: No changes were made to this section.

Section 43.90.110 Construction Inducement:

- Language was added to clarify that the \$500,000,000 inducement is subject to appropriation by the legislature.

Section 43.90.120 Request for Applications:

- Language requiring the administration to request applications within 90 days was changed to "as soon as practicable" and a conforming amendment was made in uncodified law stating the legislature's intent that it take place within 90 days.
- A provision for an appeals process for solicitation and appeals relating to applications was deleted as the committee added language to the application requirements that applicants waive their rights to appeal.

Section 43.90.130 Application Requirements:

- Language was added to (D) to require that applicants will describe their plans to implement practices for controlling carbon emissions from natural gas systems as established by the US EPA.
- The requirements that an applicant propose and support rolled-in rates were rewritten to require that the 15 percent will apply to negotiated rates rather than just the maximum recourse rate, and that rolled in rates will include fuel costs
- Language was added better defining the provisions for a project labor agreement, and requiring that an applicant utilize the Department of Labor's job centers and internet hiring program to the extent practicable.
- Two new requirements for applicants were added: (16) requires applicants to waive appeal rights, both to the determination that no applicant merits the issuance of a license, and to the determination to license a particular applicant. New requirement (19) requires the applicant provide a more detailed delineation of the parties to an application.

Section 43.90.140 Initial Application Review: No changes were made to this section.

Section 43.90.150 Proprietary Information and Trade Secrets:

- Language was added to clarify that only information submitted by the licensee and retained by the state is subject to disclosure

Section 43.90.160 Notice, Review and Comment:

- Language was deleted that stated that applications received are "not public documents" as this was a misstatement of fact.
- Language was added clarifying that the summary provided by the applicant is a summary of confidential information.
- A new subsection was added to require that the information determined by the commissioners to be confidential would nevertheless be available to legislators, legislative auditors and legislative finance staff and their contractors on request after the person making the request signs a confidentiality agreement.

Section 43.90.170 Application Evaluation and Ranking: No changes were made to this section.

Section 43.90.180 Notice to Legislature:

- One change was made to clarify that the project rather than the application is judged on its proposed benefits.

Section 43.90.190 Legislative Approval:

- This section was redrafted to require that the legislature approve the selection of a licensee through a bill to be introduced in both bodies. The legislature must act within 60 days (this provision is a change to the Uniform Rules and will require a 2/3rds vote). If the legislature fails to approve the issuance of a license, the commissioners may not issue the license the legislature failed to approve but may request new applications.

Section 43.90.200 Certification by Regulatory Authority: No changes were made to this section.

Section 43.90.210 Amendment or Modification of Project Plan:

- Language was added that allows a project to be modified if the modification improves the net present value of the project
- Language was added that allows a project to be modified if necessary of an order issued by the Alaska Oil and Gas Conservation Commission.

Section 43.90.220 Records, Report, Conditions, and Audit Requirements: no changes to this section.

Section 43.90.230 License Violations; Damages: No changes were made to this section

Section 43.90.240 Abandonment of Project:

- The term "uneconomic" was defined in the section, and references to arbitrating abandonment were deleted.
- Language was added to require that arbitration be conducted under the substantive and procedural laws of Alaska, that judgments must be entered in a superior court in this state, that the burden of proof for any appeal of an arbitration rested with the person making the appeal, and that all arbitrators must be selected from the National Roster of the American Arbitration Association.
- The bill was changed to state that if an arbitration panel makes a final determination that the project is uneconomic, the licensee shall assign studies, data etc. to the state regardless of which party requested the arbitration.

Section 43.90.250 Gasline Inducement Act Coordinator:

- Language was added to clarify that the position was in the office of the governor, would be supported by the office of the Governor, and that the coordinator was appointed by the Governor and can be removed at the discretion of the governor.
- Language requiring confirmation of the coordinator was deleted.

Section 43.260 Expedited Review and action by state agencies: No changes in this section.

Article 3.

Resource Inducement

Section 43.90.300 Qualification for Resource Inducement:

- Reference to the tax freeze was deleted from the provisions that can be made contractual.

Section 43.90.310 Royalty Inducement:

- Language regarding protest actions by shippers if FERC roll-in rate policies change were deleted.

Section 43.90.320 Gas Production Tax Exemption:

- Tax freeze provisions were changed so that tax rates are set at the start of the first binding open season rather than at the end of it.
- Conforming language was added to remove contractual provisions for the tax freeze vouchers received by gas producers.
- Language regarding protest actions by shippers if FERC roll-in rate policies change were deleted.

Section 43.90.330 Inducement Vouchers:

- A new section was added to provide for vouchers for persons committing to firm transportation for a certain amount of gas as agreed to in a binding sales contract with a gas producer; the vouchers may then be transferred to the gas producer for that volume for the period of the contract or the period of the inducement, whichever expires first.

Article 4.

Miscellaneous Provisions

Section 43.90.400 Gasline Inducement Matching Contribution Fund: No changes were made to this section.

Section 43.90.410 Regulations: No changes were made to this section.

Section 43.90.420 Statute of Limitations:

- This section was amended to clarify the provision applies to this chapter.

Section 43.90.430 Interest: No changes were made to this section.

Section 43.90.440 Licensed Project Assurances:

- The language was amended to clarify that funds must be appropriated by the legislature; that only qualified expenditures will be reimbursed, and that existing programs to settle royalty disputes, modify royalty rates, or provide the benefits of a large project permit coordinator under existing state law does not constitute preferential treatment.

Section 43.90.450 Assignments:

- A provision was added to require that public notice, legislative notice and a 30 day public comment period precede a license transfer.
- A conforming amendment was made to address the transfer of inducement vouchers.

Article 5.

General Provisions

- A section was added as a conforming amendment to state it was the legislature's intent that a request for applications be issued within 90 days after the effective date of this act.
- A section was added to uncodified law to state the legislature's intent that the Court expedite cases relating to a pipeline under this act by giving the case priority over all other civil cases to the extent permitted under the Alaska Rules of Court.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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Juneau, Alaska 99801-1182
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MEMORANDUM

April 20, 2007

SUBJECT: Disagreement on whether a project is uneconomic
(CSHB 104(JUD)); Work Order No. 25-GS1060(V)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith


FROM: Donald M. Bullock Jr.
Legislative Counsel

Enclosed is the final version of CSSB 104(JUD). The bill contains all of the amendments made in your committee.

Please look at page 17, lines 22 - 23. Based on the amendment to these lines made in the committee, the first sentence in sec. 43.90.240(b) reads, in part, as follows:

If the commissioners and the licensee do not agree that the project is uneconomic, the disagreement shall be settled

If the commissioners and the licensee both agree that the project is not uneconomic, there is no disagreement to be settled, but they fit within the above language. The intent of the provision is that one party thinks the project is uneconomic and the other believes it to be not uneconomic. This is the dispute that goes to the arbitration panel.

To make the sentence unambiguous, I suggest that you advise the Senate Finance Committee to change the first part of the sentence so that it reads, "If the commissioners or the licensee determine that the project is uneconomic and the other party disagrees, the disagreement shall . . ." By doing this, a disagreement over whether the project is not uneconomic is ripe for presentation to the arbitration panel.

If I may be of further assistance, please advise.

DMB:ljw
07-219.ljw

Enclosure

Alaska State Legislature

Senator Hollis French, Chair
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Juneau, Alaska 99801
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Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

MEMORANDUM

DATE: April 19, 2007

TO: Don Bullock

FROM: Cindy Smith

RE: CSSB⁴107 Natural Gas Pipeline Project

Please make the following changes to CSSB104(JUD) version 1060\O to reflect amendments made by the committee. Please prepare an as-passed final version.

Amendment #1: to page 3, line 6

Remove the comma after the word "assets"

Amendment#2: to page 10 at line 18: after the word "licensee" delete the phrase

"and retained under this chapter" and insert the same phrase after the word "licensee" on line 22.

Amendment #3: to page 11, line 11: after the word "summary" add the phrase "of the confidential information"

Amendment #5: to page 17, line 21 delete the word "or" and replace with "and"

Delete the word "does" and replace with "do"

Amendment #6: to page 18, line 8: after the word "commitments insert "government assistance"

Then, after the word "or" insert "or other sources of"

Amendments 7,9,10, 11, 12, 15, 16, 17, 18, and 19 as attached.

AMENDMENT #7

OFFERED IN THE SENATE

BY SENATOR WIELECHOWSKI

TO: CSSB 104(JUD), Draft Version "O"

- 1 Page 15, line 15, following "project":
2 Insert "to the state, are necessary because of an order issued by the Alaska Oil and Gas
3 Conservation Commission,"
4
5 Page 15, line 19:
6 Following "and":
7 Insert ", except for a modification or amendment required because of an order
8 issued by the Alaska Oil and Gas Conservation Commission,"
9 Delete "to the state"
10 Following "project":
11 Insert "to the state"

adopted

AMENDMENT #9

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 104(JUD), Draft Version "O"

1 Page 14, lines 9 - 10:

2 Delete all material and insert:

3 "(d) If the legislature fails to approve the issuance of the license, the
4 commissioners

5 (1) may not issue the license that the legislature failed to approve; and

6 (2) may request new applications for a license under AS 43.90.120."

adopted

AMENDMENT #10

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 104(JUD), Draft Version "O"

1 Page 17, line 19:

2 Delete "(e)"

3 Insert "(f)"

4

5 Page 18, line 1:

6 Delete "(e)"

7 Insert "(f)"

8

9 Page 18, following line 14:

10 Insert a new subsection to read:

11 "(d) In an appeal of a final determination rendered by the arbitrators under (b)

12 of this section, the person making the appeal has the burden of ^{proof.} proving that there was

13 ~~a prejudicial abuse of discretion by the arbitrators.~~

14

15 Reletter the following subsections accordingly.

on page 17, line 23

#1 the "substantive & procedural" laws of the state

"under 49.23"

Adopted

AMENDMENT ((

OFFERED IN THE SENATE

BY SENATOR WIELECHOWSKI

TO: CSSB 104(JUD), Draft Version "O"

- 1 Page 17, lines 25 - 26:
- 2 Delete "a list provided by the American Arbitration Association"
- 3 Insert "the American Arbitration Association's National Roster"

adopted

15

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR THERRIAULT

TO: CSSB 104(JUD), Draft Version "O"

- 1 Page 19, lines 4 - 5:
- 2 Delete "The appointment is subject to confirmation by the legislature."

GT - ~~yes~~ yes
Bw - ~~no~~ no

AMENDMENT #17

OFFERED IN THE SENATE

BY SENATOR WIELECHOWSKI

TO: CSSB 104(JUD), Draft Version "O"

1 Page 22, line 30, through page 31, line 8:

2 Delete all material and insert:

3 "Sec. 43.90.330. Inducement vouchers. (a) A person that acquires firm
4 transportation capacity in the first binding open season of the project, that does not
5 hold an oil and gas lease on the North Slope, and that is not an affiliate of a person that
6 holds an oil and gas lease on the North Slope, may apply to the commissioners for a
7 voucher under this section. A voucher issued by the commissioners must describe the
8 firm transportation capacity in the project to which the voucher is applicable.

9 (b) A voucher issued by the commissioners under this section entitles the
10 holder of the voucher to the resource inducements in AS 43.90.310 and 43.90.320 for
11 gas shipped in the firm transportation capacity acquired by the person applying for the
12 voucher during the first binding open season of the project and described in the
13 voucher. The voucher may be transferred to a gas producer that has a binding
14 obligation to sell gas to the person transferring the voucher under a gas purchase
15 agreement.

16 (c) A gas producer holding a voucher may claim the resource inducements for
17 gas shipped through the firm transportation capacity described in the voucher and only
18 on gas that is produced and delivered to the purchaser on the North Slope. A gas
19 producer may claim the resource inducements under this subsection until the earlier of
20 the termination of the binding gas purchase agreement or the expiration of the
21 inducements by operation of law."

22

23 Page 25, line 31:

- 1 Delete "A"
- 2 Insert "Except for the transfer of a voucher to a producer under AS 43.90.330(b), a"

#18

Ag. 25 line 8-9

Delete (B) + Replace with

(B) the state's exercise of its right to modify royalties as authorized by law in effect on the effective date of this section; or

Please include in CS *Thank's* C.H.
16

Senate Judiciary- CS For Senate Bill No. 104, Version O

Proposed Amendment to address TransCanada situation where they currently hold FERC certificate, and would be working to amend that certificate as opposed to obtaining new FERC certificate.

Section 43.90.130 Application requirements

Page 5, line 13, and line 16

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

(C) qualified expenditures are costs that occurred after the license is issued under this chapter by the licensee or the licensee's designated affiliate, and are directly and reasonably related to obtaining a certificate or an amended certificate of public convenience and necessity from the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska, as appropriate, for development of the project; in this subparagraph, "qualified expenditures" does not include overhead costs, litigation costs, assets, or work product predating the issuance of the license, or civil or criminal penalties or fines: and.....

~~And on~~ pg 3, line 2
→ or amended certificate
adopted

AMENDMENT 12

OFFERED IN THE SENATE

BY SENATOR WIELECHOWSKI

TO: CSSB 104(JUD), Draft Version "O"

- 1 Page 13, lines 30 - 31:
- 2 Delete all material.

adopted

AMENDMENT #13

OFFERED IN THE SENATE

BY SENATOR THERRIAULT

TO: CSSB 104(JUD), Draft Version "O"

- 1 Page 13, line 27:
- 2 Delete "60"
- 3 Insert "45"
- 4
- 5 Page 14, line 5:
- 6 Delete "60-day"
- 7 Insert "45-day"

fails

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR THERRIAULT

TO: CSSB 104(JUD), Draft Version "O"

- 1 Page 13, line 27:
- 2 Delete "60"
- 3 Insert "30"
- 4
- 5 Page 14, line 5:
- 6 Delete "60-day"
- 7 Insert "30-day"

Withdrawn

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR WIELECHOWSKI

TO: CSSB 104(JUD), Draft Version "O"

- 1 Page 18, line 7:
- 2 Delete "does not have"
- 3 Insert "cannot reasonably secure"

Withdrawn

25-GS10600
Bullock
4/18/07

CS FOR SENATE BILL NO. 104(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **Sec. 43.90.110. Natural gas pipeline project construction inducement.**
13 Subject to the limitations of this chapter, a license issued under this chapter entitles the
14 licensee or its designated affiliate to receive

15 (1) subject to appropriation, state matching contributions in an amount
16 not to exceed \$500,000,000, paid in total to the licensee over a five-year period; the
17 payment period may be extended by the commissioners under an amendment or
18 modification of the project plan under AS 43.90.210; the payment period commences
19 on the date of the issuance of the license; payments under this paragraph shall be made
20 according to the following:

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

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

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

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

8 (2) the benefit of an Alaska Gasline Inducement Act coordinator who
9 has the authority prescribed in AS 43.90.250.

10 **Sec. 43.90.120. Request for applications for the license.** (a) The
11 commissioners shall commence a public process to request applications for a license
12 under this chapter as soon as practicable after the effective date of this chapter.

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

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

21 **Sec. 43.90.130. Application requirements.** An application for a license must
22 be consistent with the terms of the request for applications under AS 43.90.120 and
23 must

24 (1) be filed by the deadline established by the commissioners in the
25 request for applications;

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

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

30 (B) receipt and delivery points and the size and design capacity
31 of the proposed natural gas pipeline at the proposed receipt and delivery points,

1 except that this information is not required for in-state delivery points unless
2 the application proposes specific in-state delivery points;

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

5 (D) an economically and technically viable work plan, timeline,
6 and associated budget for developing the proposed project, including how the
7 applicant will perform field work, environmental studies, design, and
8 engineering, how the applicant will implement practices for controlling carbon
9 emissions from natural gas systems as established by the United States
10 Environmental Protection Agency, and how the applicant will comply with all
11 applicable state, federal, and international regulatory requirements that affect
12 the proposed project; the work plan must address the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (7) commit that the applicant

14 (A) will propose and support the recovery of mainline capacity
15 expansion costs, including fuel costs, from all mainline system users through
16 rolled-in rates as provided in (B) and (C) of this paragraph or through a
17 combination of incremental and rolled-in rates as provided in (D) of this
18 paragraph;

19 (B) will propose and support the recovery of mainline capacity
20 expansion costs, including fuel costs, from all mainline system users through
21 rolled-in rates; an applicant is obligated under this subparagraph only if the
22 rolled-in rates would increase the rates

23 (i) not described in (ii) of this subparagraph by not more
24 than 15 percent above the initial maximum recourse rates for capacity
25 acquired before commercial operations commence; in this sub-
26 subparagraph, "initial maximum recourse rates" means the highest cost-
27 based rates for any specific transportation service set by the Federal
28 Energy Regulatory Commission, the Regulatory Commission of
29 Alaska, or the National Energy Board of Canada, as appropriate, when
30 the pipeline commences commercial operations;

31 (ii) by not more than 15 percent above the negotiated

1 rate for pipeline capacity on the date of commencement of commercial
2 operations where the holder of the capacity is not an affiliate of the
3 owner of the pipeline project; for the purposes of this sub-
4 subparagraph, "negotiated rate" means the rate in a transportation
5 service agreement that provides for a rate that varies from the otherwise
6 applicable cost-based rate, or recourse rate, set out in a gas pipeline's
7 tariff approved by the Federal Energy Regulatory Commission, the
8 Regulatory Commission of Alaska, or the National Energy Board of
9 Canada, as appropriate; or

10 (iii) for capacity acquired in an expansion after
11 commercial operations commence, to a level that is not more than 115
12 percent of the volume-weighted average of all rates collected by the
13 project owner for pipeline capacity on the date commercial operations
14 commence;

15 (C) will, if recovery of mainline capacity expansion costs,
16 including fuel costs, through rolled-in rate treatment would increase the rates
17 for capacity described in (B) of this paragraph, propose and support the partial
18 roll-in of mainline expansion costs, including fuel costs, to the extent that rates
19 acquired before commercial operations commence do not exceed the levels
20 described in (B) of this paragraph;

21 (D) may, for the recovery of mainline capacity expansion costs,
22 including fuel costs, that, under rolled-in rate treatment, would result in rates
23 that exceed the level in (B) of this paragraph, propose and support the recovery
24 of those costs through any combination of incremental and rolled-in rates;

25 (E) agrees not to enter into a negotiated rate agreement that
26 would preclude the applicant from collecting from any shipper, including a
27 shipper with a negotiated rate agreement, the rolled-in rates that are required to
28 be proposed and supported by the applicant under (B) of this paragraph or the
29 partial rolled-in rates that are required to be proposed and supported by the
30 applicant under (C) of this paragraph;

31 (8) state how the applicant proposes to deal with a North Slope gas

1 treatment plant, regardless of whether that plant is part of the applicant's proposal, and,
 2 to the extent that that plant will be owned entirely or in part by the applicant, commit
 3 to seek certificate authority from the Federal Energy Regulatory Commission if the
 4 proposed project is engaged in interstate commerce, or from the Regulatory
 5 Commission of Alaska if the project is not engaged in interstate commerce, for a
 6 North Slope gas treatment plant that will be owned entirely or in part by the applicant
 7 and, for rate-making purposes, commit to value previously used assets that are part of
 8 the gas treatment plant at net book value; describe the gas treatment plant, including
 9 its design, engineering, construction, ownership, and plan of operation; the identity of
 10 any third party that will participate in the ownership or operation of the gas treatment
 11 plant; and the means by which the applicant will work to minimize the effect of the
 12 costs of the facility on the tariff;

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

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

20 (11) describe the means by which the applicant plans to manage
 21 overruns in costs of the proposed project, if any, and the measures that the applicant
 22 proposes to mitigate the effects of any overruns;

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

25 (13) commit to offer firm transportation service to delivery points in
 26 this state as part of the tariff regardless of whether any shippers bid successfully in a
 27 binding open season for firm transportation service to delivery points in this state, and
 28 commit to offer distance-sensitive rates to delivery points in this state consistent with
 29 18 C.F.R. 157.34(c)(8);

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

- 1 (15) to the extent permitted by law, commit to
- 2 (A) hire qualified residents from throughout the state for
- 3 management, engineering, construction, operations, maintenance, and other
- 4 positions on the proposed project;
- 5 (B) contract with businesses located in the state;
- 6 (C) establish hiring facilities or use existing hiring facilities in
- 7 the state; and
- 8 (D) use, as far as is practicable, the job centers and associated
- 9 services operated by the Department of Labor and Workforce Development
- 10 and an Internet-based labor exchange system operated by the state;
- 11 (16) waive the right to appeal the issuance of a license to another
- 12 applicant or to appeal the determination under AS 43.90.180(b) that no application
- 13 merits the issuance of a license;
- 14 (17) commit to negotiate, before construction, a project labor
- 15 agreement; in this paragraph, "project labor agreement" means a comprehensive
- 16 collective bargaining agreement between the licensee or its agent and the appropriate
- 17 labor representatives to ensure expedited construction with labor stability for the
- 18 project by qualified residents of the state;
- 19 (18) commit that the state matching contribution received by a licensee
- 20 may not be included in the applicant's rate base, and shall be used as a credit against
- 21 licensee's cost of service;
- 22 (19) provide a detailed description of the applicant, the affiliates of the
- 23 applicant, all partners, members of a joint venture, and other entities participating with
- 24 the applicant in the application and the project proposed by the applicant, and persons
- 25 the applicant intends to involve in the construction and operation of the proposed
- 26 project; the description must include the nature of the affiliation for each person, the
- 27 commitments by the person to the applicant, and other information relevant to the
- 28 commissioners' evaluation of the readiness and ability of the applicant to complete the
- 29 project presented in the application;
- 30 (20) otherwise demonstrate that the applicant is ready and able to
- 31 perform the activities specified in the application, including the detailed work plan,

1 timeline, and associated budget.

2 **Sec. 43.90.140. Initial application review; additional information requests;**
3 **complete applications.** (a) The commissioners shall review each application
4 submitted under AS 43.90.120 to determine whether it is consistent with the terms of
5 the request for applications and meets the requirements of AS 43.90.130. The
6 commissioners shall reject any application that does not meet those terms and
7 requirements.

8 (b) To evaluate an application not rejected under (a) of this section, the
9 commissioners may request from an applicant additional information relating to the
10 application.

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

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

17 **Sec. 43.90.150. Proprietary information and trade secrets.** (a) At the
18 request of the applicant, information submitted by the licensee and retained under this
19 chapter that the applicant identifies and demonstrates is proprietary or is a trade secret
20 is confidential and not subject to public disclosure under AS 40.25, unless the
21 applicant is granted a license under this chapter. After a license is awarded, all
22 information submitted by the licensee shall be made public.

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

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

30 (d) In this section, "proprietary" means that the information is treated by the
31 applicant as confidential and the public disclosure of that information would adversely

1 affect the competitive position of the applicant or materially diminish the commercial
2 value of the information to the applicant.

3 **Sec. 43.90.160. Notice, review, and comment.** (a) The commissioners shall
4 publish notice and provide a 60-day period for public review and comment on all
5 applications determined complete under AS 43.90.140.

6 (b) Applications received under this chapter are not subject to public
7 disclosure under AS 40.25 until the commissioners publish notice under this section.
8 However, information that the commissioners have determined is confidential under
9 AS 43.90.150 may not be made public even after the notice is published under (a) of
10 this section, except as otherwise provided by AS 43.90.150. If information is held
11 confidential under AS 43.90.150, the applicant shall provide a summary that is
12 satisfactory to the commissioners, and the commissioners shall make the summary of
13 the information available to the public.

14 (c) Information provided by an applicant to the commissioners under this
15 chapter, including information determined by the commissioners to be confidential
16 under AS 43.90.150, shall be disclosed to the legislative auditor, the fiscal analyst who
17 serves as head of the legislative finance division, agents and contractors of the
18 legislative auditor and the fiscal analyst, and members of the legislature, on request
19 and after the individual making the request signs a confidentiality agreement prepared
20 by the commissioners.

21 **Sec. 43.90.170. Application evaluation and ranking.** (a) The commissioners
22 shall evaluate all applications determined to be complete under AS 43.90.140,
23 consider public comments received under AS 43.90.160(a), and rank each application
24 according to the net present value of the anticipated cash flow to the state from the
25 applicant's project proposal using the factors in (b) of this section and weighted by the
26 project's likelihood of success based on the commissioners' assessment of the factors
27 listed in (c) of this section.

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

31 (1) how quickly the applicant proposes to begin construction of the

1 proposed project and how quickly the project will commence commercial operation;

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

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

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

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

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

12 (1) the reasonableness, specificity, and feasibility of the applicant's
13 work plan, timeline, and budget required to be submitted under AS 43.90.130,
14 including the applicant's plan to manage cost overruns, insulate shippers from the
15 effect of cost overruns, and encourage shippers to participate in the first binding open
16 season;

17 (2) the financial resources of the applicant;

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

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

23 (5) the applicant's record of

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

25 (B) integrity and good business ethics; and

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

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

30 **Sec. 43.90.180. Notice to the legislature of intent to issue license; denial of**
31 **license.** (a) If, after consideration of public comments received under AS 43.90.160

1 and evaluation of complete applications under AS 43.90.170, the commissioners
2 determine that an application proposes a project that would sufficiently maximize the
3 benefits to the people of this state and merits issuance of a license under this chapter,
4 the commissioners shall

5 (1) issue a determination, with written findings addressing the basis for
6 the determination; the determination becomes a final agency action in accordance with
7 AS 43.90.190;

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

10 (3) forward the notice under (2) of this subsection, along with the
11 findings, supporting documentation, and determination under (1) of this subsection, to
12 the presiding officer of each house of the legislature for action as provided in
13 AS 43.90.190.

14 (b) If, after evaluation of complete applications under AS 43.90.170, the
15 commissioners determine that no application sufficiently maximizes the benefits to the
16 people of this state and merits issuance of a license under this chapter, the
17 commissioners shall issue a written finding that addresses the basis for that
18 determination.

19 (c) The commissioners' determination under (b) of this section is a final
20 agency action.

21 **Sec. 43.90.190. Legislative approval; issuance of license.** (a) After the
22 presiding officer of each house of the legislature receives a determination from the
23 commissioners under AS 43.90.180, the rules committee of each house of the
24 legislature shall introduce a bill in the committee's respective chamber that provides
25 for the approval of the license proposed to be issued by the commissioners.

26 (b) If a bill approving the issuance of the license passes the legislature within
27 60 days after the last date a presiding officer receives a determination by the
28 commissioners under AS 43.90.180, the commissioners shall issue the license as soon
29 as practicable after the effective date of the Act approving the issuance of the license.
30 The issuance of the license approved by the legislature is a final administrative action
31 on the date the license is issued for purposes of appeal to the superior court.

1 (c) Notwithstanding a legislative rule that prohibits the carryover of a bill after
2 the end of a special session or after the end of a regular session of a legislature, a bill
3 introduced under (a) of this section that is not passed or not withdrawn, defeated,
4 vetoed, or indefinitely postponed shall be carried over to any subsequent regular or
5 special legislative session convened during the 60-day period described in (b) of this
6 section in the same reading or status it was in at the time of adjournment. However, a
7 bill introduced under (a) of this section may not be carried over to the first regular
8 session of a legislature.

9 (d) If the legislature fails to approve the issuance of the license, the
10 commissioners may request new applications for a license under AS 43.90.120.

11 **Sec. 43.90.200. Certification by regulatory authority and project sanction.**

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

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

23 (c) If the licensee does not have credit support sufficient to finance
24 construction of the project through ownership of rights to produce and market gas
25 resources, firm transportation commitments, or government financing, the licensee
26 shall sanction the project within five years after the effective date of the certificate of
27 public convenience and necessity issued by the Federal Energy Regulatory
28 Commission or the Regulatory Commission of Alaska, as applicable.

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

31 (1) seek approval from the Federal Energy Regulatory Commission or

1 Regulatory Commission of Alaska, as appropriate, to abandon and transfer the
2 certificate to the state or the state's designee; and

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

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

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

13 **Sec. 43.90.210. Amendment of or modification to the project plan.** Subject
14 to the approval of the commissioners, a licensee may amend or modify its project plan
15 if the amendments or modifications improve the net present value of the project or are
16 necessary as a result of changed circumstances outside the licensee's control and not
17 reasonably foreseeable before the license was issued. An amendment or modification
18 approved under this section must be consistent with the requirements of AS 43.90.130
19 and may not diminish the net present value to the state of the project or the project's
20 likelihood of success.

21 **Sec. 43.90.220. Records, reports, conditions, and audit requirements.** (a) A
22 licensee shall maintain complete and accurate records of all expenditures and
23 commitments of state money received under this chapter, including receipts and
24 records showing the payment or cost of purchased items and services, the names and
25 addresses of the sellers and service providers, and the dates of service or delivery.

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

29 (c) The commissioners may do the following with respect to information
30 relating to the project: conduct hearings or other investigative inquiries; compel the
31 attendance of witnesses and production of documents; and require the licensee to

1 furnish information in paper copy or electronic format.

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

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

13 **Sec. 43.90.230. License violations; damages.** (a) A licensee is in violation of
14 the license if the commissioners determine that the licensee has

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

17 (2) substantially departed from the specifications set out in the
18 application without state approval of a project plan amendment or modification under
19 AS 43.90.210;

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

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

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

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

30 (d) If the commissioners and the licensee are unable to resolve the violation
31 within the time specified in (b) of this section, the commissioners shall, after providing

1 the licensee with notice and opportunity to be heard, make a written determination
2 regarding the violation. The written determination made under this subsection is the
3 final agency action for purposes of appeal to the court under the Alaska Rules of
4 Appellate Procedure.

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

7 (1) discontinuation of state matching contributions under this chapter;

8 (2) recoupment of state money that the licensee has received under this
9 chapter to date, with interest, regardless of whether the licensee has expended or
10 committed that money;

11 (3) license revocation;

12 (4) assignment to the state or the state's designee of all engineering
13 designs, contracts, permits, and other data related to the project that are acquired by
14 the licensee during the term of the license; and

15 (5) any other remedies provided by law or in equity.

16 **Sec. 43.90.240. Abandonment of project.** (a) If the commissioners and the
17 licensee agree that the project is uneconomic and should be abandoned, inducement
18 provided for in AS 43.90.110 terminates, and, except for requirements imposed on the
19 licensee under (e) of this section and AS 43.90.220, the state and the licensee no
20 longer have any obligations under this chapter with respect to the license.

21 (b) If the commissioners or the licensee does not agree that the project is
22 uneconomic, the disagreement shall be settled by arbitration administered by the
23 American Arbitration Association under the laws of this state, and judgment on the
24 award rendered by the arbitrators may be entered in superior court in the state. In the
25 event of arbitration, each party shall select an arbitrator from a list provided by the
26 American Arbitration Association, and the two arbitrators shall appoint a third
27 arbitrator from the American Arbitration Association's National Roster who shall
28 serve as the chair of the three-member arbitration panel. If the arbitration panel
29 determines that the project is

30 (1) uneconomic, the state and the licensee no longer have any
31 obligations under this chapter with respect to the license, except for requirements

1 imposed on the licensee under (e) of this section and AS 43.90.220;

2 (2) not uneconomic, the obligations of the licensee and the state
3 continue as provided under this chapter and the license.

4 (c) The arbitration panel in (b) of this section shall make a determination that
5 the project is uneconomic only if the panel finds that the party claiming the project is
6 uneconomic has proven by a preponderance of the evidence that the

7 (1) project does not have credit support sufficient to finance
8 construction of the project through firm transportation commitments or financing; and

9 (2) predicted costs of transportation at a 100 percent load factor, when
10 deducted from predicted gas sales revenue using publicly available predictions of
11 future gas prices, would result in a producer rate of return that is below the rate
12 typically accepted by a prudent oil and gas exploration and production company for
13 incremental upstream investment that is required to produce and deliver gas to the
14 project.

15 (d) If the state makes a payment to the licensee under AS 43.90.440, the
16 license is considered abandoned, and the state and the licensee no longer have any
17 obligations under this chapter with respect to the license, except that the licensee must
18 comply with the

19 (1) requirements imposed on the licensee under AS 43.90.220
20 regarding state money received by the licensee before the license was considered
21 abandoned; and

22 (2) requirements of AS 43.90.440.

23 (e) If the licensee and the state agree or an arbitration panel makes a final
24 determination that the project is uneconomic, the licensee shall assign to the state or
25 the state's designee all engineering designs, contracts, permits, and other data related
26 to the project that are acquired by the licensee during the term of the license upon
27 reimbursement by the state of the net amount of expenditures incurred and paid by the
28 licensee that are qualified expenditures for the purposes of AS 43.90.110.

29 **Sec. 43.90.250. Alaska Gasline Inducement Act coordinator.** (a) There is
30 created in the Office of the Governor the position of Alaska Gasline Inducement Act
31 coordinator. Administrative support for the position shall be provided by the Office of

1 the Governor. The position shall continue until one year after commencement of
2 commercial operations of the project.

3 (b) The governor shall appoint a person to the position of Alaska Gasline
4 Inducement Act coordinator. The appointment is subject to confirmation by the
5 legislature. The individual serving as the Alaska Gasline Inducement Act coordinator
6 may be removed from the position at the discretion of the governor.

7 **Sec. 43.90.260. Expedited review and action by state agencies.** (a) All
8 reviews conducted and actions taken by a state agency relating to a project shall be
9 expedited in a manner consistent with the completion of the necessary approvals in
10 accordance with this chapter.

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

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

22 **Article 3. Resource Inducement.**

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

30 (b) A gas producer receiving a voucher under AS 43.90.330 is qualified to
31 receive the resource inducement in AS 43.90.310 and 43.90.320 for the gas shipped in

1 the firm transportation capacity described in the voucher for the period described in
2 AS 43.90.330.

3 **Sec. 43.90.310. Royalty inducement.** (a) Before the beginning of the first
4 binding open season to be conducted by the licensee, the commissioner of natural
5 resources shall adopt regulations to establish a method to determine the monthly value
6 of the state's royalty share of gas production and establish terms under which the state
7 will exercise its right to switch between taking its royalty in value or in kind for gas
8 committed for firm transportation in the first binding open season of the project or
9 shipped in the firm transportation capacity described in a voucher received by the gas
10 producer under AS 43.90.330. The regulations must

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

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

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

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

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

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

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

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

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

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

4 (1) to calculate its gas royalty obligation under the regulations adopted
5 under (a) of this section for natural gas transported on a firm contract negotiated
6 during the project's first binding open season or under the methodology set out in the
7 existing leases from which the gas is produced, and

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

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

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

22 (c) To claim the inducement under (b) of this section, a lessee or other
23 qualified person shall agree, on an application form provided by the Department of
24 Natural Resources, that the lessee or person, and the lessee's or person's affiliates,
25 successors, assigns, and agents, will not protest or appeal a filing by the licensee to
26 roll in expansion costs of the mainline up to a level that is required in
27 AS 43.90.130(7). The agreement not to protest may not preclude the lessee or other
28 qualified person, or the lessee's or other person's affiliates, successors, assigns, and
29 agents from protesting a filing to roll in mainline expansion costs that licensee is not
30 required to propose and support under AS 43.90.130(7).

31 (d) The commissioner of natural resources shall provide for review of the

1 regulations adopted under (a) of this section at least every two years after the
2 commencement of commercial operations of the project to determine whether the
3 regulations continue to meet the requirements of (a)(1) of this section under current
4 conditions, and shall amend the regulations when the requirements are not being met.

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

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

17 (b) The exemption under this section may be applied only within 10 years
18 immediately following commencement of commercial operations of the project and
19 only applied to production taxes that are levied on North Slope gas shipped through
20 firm transportation capacity the person acquired during the first binding open season
21 or shipped in the firm transportation capacity described in a voucher received by the
22 gas producer under AS 43.90.350.

23 (c) The person claiming the exemption under this section shall agree that the
24 person, and the person's affiliates, successors, assigns, and agents, will not protest or
25 appeal a filing by the licensee to roll in mainline expansion costs up to the level that
26 the licensee is required to propose and support under AS 43.90.130(7). The agreement
27 required under this subsection may not preclude the person, or the person's affiliates,
28 successors, assigns, and agents, from protesting a filing to roll in mainline expansion
29 costs that the licensee is not required to propose and support under AS 43.90.130(7).

30 **Sec. 43.90.330. Inducement vouchers.** A person may apply to the
31 commissioners for an inducement voucher for the total amount of capacity the person

1 acquired during the first binding open season of the project and may transfer the
2 voucher to a gas producer that has a binding obligation to the person under a gas
3 purchase agreement. A gas producer may redeem the voucher for the tax and royalty
4 inducement under AS 43.90.310 and 43.90.320 for the gas shipped in the firm
5 transportation capacity described in the voucher. The gas producer receiving the
6 voucher is entitled to the tax and royalty inducement provided by the voucher until the
7 earlier of the termination of the binding gas purchase agreement or the expiration of
8 the inducement by operation of law.

9 **Article 4. Miscellaneous Provisions.**

10 **Sec. 43.90.400. Alaska Gasline Inducement Act matching contribution**
11 **fund; disbursements; audits.** (a) There is established in the general fund an Alaska
12 Gasline Inducement Act matching contribution fund. The fund consists of money
13 appropriated to it by the legislature for disbursement to pay the state's matching
14 contributions under AS 43.90.110. Appropriations to the fund do not lapse under
15 AS 37.25.010, but remain in the fund for future disbursements.

16 (b) The Department of Revenue shall manage the fund, and may invest money
17 in the fund so as to yield competitive market rates as provided in AS 37.10.071.
18 Interest received on money in the fund shall be accounted for separately and may be
19 appropriated to the fund annual.

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

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

29 **Sec. 43.90.410. Regulations.** The commissioners may jointly adopt
30 regulations for the purpose of implementing the provisions of this chapter. The
31 commissioner of revenue may change regulations adopted under existing authority in

1 this title as necessary to implement the provisions of this chapter. The commissioner
2 of natural resources may change regulations adopted under existing authority in AS 38
3 as necessary to implement the provisions of this chapter.

4 **Sec. 43.90.420. Statute of limitations.** A person may not bring a judicial
5 action challenging the constitutionality of this chapter or a license issued under this
6 chapter unless the action is commenced in a court of the state of competent
7 jurisdiction within 90 days after the date that a license was issued.

8 **Sec. 43.90.430. Interest.** When a payment due to the state under this chapter
9 becomes delinquent, the payment bears interest in a calendar quarter at the annual rate
10 of five percentage points above the annual rate charged member banks for advances by
11 the 12th Federal Reserve District as of the first day of that calendar quarter, or at the
12 annual rate of 11 percent, whichever is greater, compounded quarterly as of the last
13 day of that quarter.

14 **Sec. 43.90.440. Licensed project assurances.** (a) Except as otherwise
15 provided in this chapter, the state grants a licensee assurances that the licensee has
16 exclusive enjoyment of the inducements provided under this chapter before the
17 commencement of commercial operation of the project. If, before the commencement
18 of commercial operation of the project, the state extends to another person preferential
19 royalty or tax treatment or grant of state money for the purpose of facilitating the
20 construction of a competing natural gas pipeline project in this state, and if the
21 licensee is in compliance with the requirements of the license and with the
22 requirements of state and federal statutes and regulations relevant to the project, the
23 licensee is entitled to payment from the state of an amount equal to three times the
24 total amount of the expenditures incurred and paid by the licensee that are qualified
25 expenditures for the purposes of AS 43.90.110 that the licensee incurred in developing
26 the licensee's project before the date that the state first extended preferential treatment
27 to another person. The payment to the licensee under this subsection is subject to
28 appropriation. Upon payment by the state of the amount owed under this section, the
29 licensee shall, at no cost to the state, assign to the state or the state's designee all
30 engineering designs, contracts, permits, and other data related to the project that are
31 acquired by the licensee during the term of the license.

1 (b) In this section,

2 (1) "competing natural gas pipeline project" means a project designed
3 to accommodate throughput of more than 500,000,000 cubic feet a day of North Slope
4 gas to market;

5 (2) "preferential royalty or tax treatment" does not include

6 (A) the state's exercise of its right to resolve disputes involving
7 royalties and taxes;

8 (B) a statutory change or a change in regulations relating to
9 royalties or taxes after the effective date of this section; or

10 (C) the benefits of a large project permit coordinator authorized
11 by a law in effect on the effective date of this section.

12 **Sec. 43.90.450. Assignments.** (a) A licensee may transfer all or part of the
13 license, including the rights and obligations arising under the license, if, after
14 publishing notice of the proposed transfer, providing notice to the presiding officer of
15 each house of the legislature, and providing a period of not less than 30 days for public
16 review and comment,

17 (1) the transfer is approved in writing in advance by the
18 commissioners; and

19 (2) the transfer does not increase or diminish the obligations created by
20 the license or diminish the likelihood of success of the project or the net present value
21 of the license to the state.

22 (b) Notwithstanding the commissioners' approval of a transfer of all or part of
23 a license under (a) of this section, the transferor of the license remains subject to the
24 requirements of AS 43.90.220 regarding all state money received by the licensee
25 before the effective date of the transfer.

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

31 (d) A person receiving a voucher under AS 43.90.330 based on the person's

1 acquisition of firm transportation capacity in the first binding open season of the
2 project may transfer the voucher only if the transfer is in connection with the
3 permanent assignment by the person of 100 percent of the firm transportation capacity
4 acquired in the first binding open season of the project.

5 **Sec. 43.90.460. Conflicting laws.** Nothing in this chapter shall be construed to
6 repeal or abrogate the administrative, regulatory, or statutory procedures and functions
7 of state and federal law governing the development and oversight of a project.

8 **Sec. 43.90.470. State pipeline employment development.** The commissioner
9 of labor and workforce development shall develop a job training program that will
10 provide training for workers in gas pipeline project management, construction,
11 operations, maintenance, and other gas pipeline-related positions.

12 **Article 5. General Provisions.**

13 **Sec. 43.90.900. Definitions.** In this chapter, unless the context otherwise
14 requires,

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

18 (2) "Alaska Gasline Inducement Act coordinator" means the person
19 appointed under AS 43.90.250;

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

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

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

28 (6) "equity holder" means the

29 (A) stockholders of a corporation;

30 (B) members of a limited liability company;

31 (C) partners of a partnership;

- 1 (D) joint venturers of a joint venture;
- 2 (E) members of a governmental authority and similar persons;
- 3 or
- 4 (F) holders of any other entity or person;
- 5 (7) "gas processing" means post-production treatment of gas to extract
- 6 natural gas liquids;
- 7 (8) "governing body" means a corporation's board of directors, a
- 8 limited liability company's managing members, a partnership's general partners, a joint
- 9 venturer's joint venturers, a governmental authority's board or council members, and
- 10 similar entities;
- 11 (9) "lease" means an oil and gas, or gas, lease issued by this state;
- 12 (10) "lessee" means a person that holds a working interest in an oil and
- 13 gas, or gas, lease issued by this state;
- 14 (11) "license" means a license issued under this chapter;
- 15 (12) "licensee" means the holder of a license issued under this chapter
- 16 and all affiliates, successors, assigns, and agents of the holder;
- 17 (13) "North Slope" means the area of Alaska north of 68 degrees North
- 18 latitude;
- 19 (14) "project" means a natural gas pipeline project authorized under a
- 20 license issued under this chapter;
- 21 (15) "recourse rates" means cost-based rates with a minimum and
- 22 maximum range that are approved by the Federal Energy Regulatory Commission, the
- 23 Regulatory Commission of Alaska, or the National Energy Board of Canada, as
- 24 appropriate, and set out in the pipeline's tariff; "recourse rates" includes only those
- 25 rates that the pipeline must make available to all shippers;
- 26 (16) "sanction" means financial commitments to go forward with the
- 27 project as evidenced by entering into financial commitments of at least
- 28 \$1,000,000,000 with third parties;
- 29 (17) "under common control with" has the meaning given "control" in
- 30 this section;
- 31 (18) "unit agreement" means an agreement executed by the working

1 interest owners and royalty owners creating the unit.

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

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

5 (45) contracts for an arbitration panel to determine whether a project is
6 uneconomic under AS 43.90.240, and contracts for the development of application
7 provisions for licensure and for the evaluation of those applications under AS 43.90.

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

9 (41) the Alaska Gasline Inducement Act coordinator appointed under
10 AS 43.90.250.

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

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

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

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

18 (3) medical and related public health records;

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

21 (5) to the extent the records are required to be kept confidential under
22 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure
23 or retain federal assistance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (11) the written notification regarding a proposed regulation provided

1 under AS 24.20.105 to the Department of Law and the affected state agency and
2 communications between the Legislative Affairs Agency, the Department of Law, and
3 the affected state agency under AS 24.20.105;

4 (12) records that are

5 (A) proprietary or a trade secret in accordance with

6 AS 43.90.150;

7 (B) applications that are received under AS 43.90 until

8 notice is published under AS 43.90.160.

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

11 FIRST REQUEST FOR APPLICATIONS FOR THE LICENSE. It is the intent of the
12 legislature that the first request for applications for the license by the commissioners under
13 AS 43.90.120 as enacted in sec. 1 of this Act be issued within 90 days after the effective date
14 of this Act.

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

17 EXPEDITED CONSIDERATION OF COURT CASES. It is the intent of the
18 legislature that the courts of the state, when considering a case related to the development and
19 construction of a natural gas pipeline under this Act or to the commitment of a shipper to
20 acquire firm transportation capacity during the first binding open season for a project
21 developed under this Act, expedite the resolution of the case by giving the case priority over
22 all other civil cases to the extent permitted under the Alaska Rules of Court.

23 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application
26 of it to any person or circumstance, is held invalid, the remainder of this Act and the
27 application to other persons or circumstances are not affected.

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

Cindy Smith

From: Nan Thompson [nan_thompson@dnr.state.ak.us]
Sent: Friday, April 13, 2007 10:09 PM
To: Cindy Smith
Cc: marcia_davis@revenue.state.ak.us; marty_rutherford@dnr.state.ak.us;
bonnie_harris@law.state.ak.us
Subject: Amendments to CS for SB 104

Cindy-

These are the amendments that we recommend. The first five are out of order, sorry for the confusion. The 5th is a new concept that may need some additional tweaking. We'll call you early next week if it looks to ugly the morning after. Call me at 269-8813, or send me an e-mail if you have any questions. I don't plan to be in the office the whole weekend, but you can try my cell 748-7489.

Nan

① I. Amend Section 43.90.140(15), page 9, line 15 by adding two new subsections as follows:

"(b) establish hiring facilities, or use existing hiring facilities, located within Alaska; and

(c) use, to the maximum extent practicable, the Alaska Job Center Network to facilitate referral of Alaskan applicants to hiring facilities located within the state;"

1A NEW DEFINITION: "Alaska Job Center Network" means the Alaska Department of Labor and Workforce Development-operated job centers and associated services, and the state operated web-based labor exchange system.

② II. Replace Section 43.90.140(7), page 7, with the following:

"(7) commit that the applicant

(A) will propose and support recovery of mainline capacity expansion costs from all mainline system users through rolled-in rates as provided in this paragraph. If the recovery of all expansion costs through rolled-in rates would increase initial shippers' rates by no more than 15 percent of the initial maximum recourse rates or, in the case of an initial shipper that is not an affiliate of the owner of the pipeline project, by no more than 15% of any negotiated rate being paid at the time that the pipeline commences commercial operations, the costs of the expansion will be rolled-in. The costs of expansions must also be rolled in if the roll-in does not increase the rate for expansion shippers to a level that is greater than 115% of the volume-weighted average of all rates collected by the pipeline company from initial shippers on the date the pipeline commences commercial operations. If rolled-in expansion costs would increase initial or expansion shippers' rates by an amount greater than provided in this paragraph the applicant will propose and support the partial roll-in of mainline expansion costs from all mainline system users to the extent that initial and expansion shippers' rates

would not be increased by more than these amounts. In this subparagraph, "initial maximum recourse rates" means the highest cost-based rates for any specific transportation service set by the Federal Energy Regulatory Commission, the Regulatory Commission of Alaska or the National Energy Board of Canada, as appropriate, at the time that the pipeline commences commercial operations; "initial shipper" means a shipper that holds capacity on the pipeline on the date the pipeline commences commercial operations, and an shipper who acquires capacity on the pipeline prior to the date of the first pipeline expansion; and "expansion shipper" means any shipper that acquired capacity through any expansion of the mainline subsequent to the pipeline going into commercial operation. For purposes of this section expansion costs include fuel costs. "

III. Amend 43.90.120 on page 4 beginning on line 13, by adding a new subsection as follows:

(e) The arbitration panel shall find the project uneconomic only if the panel finds

(1) the project does not have firm transportation commitments or financing, and

(2) the party claiming the project is uneconomic has proven by a preponderance of

the evidence that predicted costs of transportation, when deducted from predicted gas sales revenue, would result in a rate of return that is below the rate typically accepted by a prudent exploration and production oil and gas company for incremental upstream investment that is required to produce and deliver gas to the project."

IV. Amend 43.90.130 (D) by inserting after "studies" and before "design" "including the Best Management Practices for controlling carbon emissions from natural gas systems defined by the United States Environmental Protection Agency in the Natural Gas STAR Program " in line 9 on page 5.

V. Add a new Section 43.90.330 as follows:

"Sec. 43.90.330. Inducement Vouchers. A person that acquires firm transportation capacity in the first binding open season of the project may apply to the commissioners for a voucher for the total or a portion of the amount of capacity the person acquired. A person may transfer a voucher to a gas producer that has a binding gas purchase agreement with the person. A gas producer may redeem a voucher for the tax and royalty inducement under AS 43.90.310 or AS 43.90.320."

VI. Amend Section 43.90.120(b) by changing the end of the first sentence to "entered in any Alaska court of competent jurisdiction." *(and in forming)*

and subsection(b)(1) by changing the word "should" to "shall" in line 24 (page 3).

VII. Amend Section 120 as follows:

Subsection (b)-page 3, line 15, after licensee, insert "do not agree" and delete "independently determines."

Line 16 delete " and should be abandoned but the other party does not agree."

Line 19 insert "Alaska state" between "any" and "court" and delete "having jurisdiction thereof."

Line 24 delete " and should be abandoned"

Line 27-28 delete "and should be abandoned, the project may not be abandoned, and"

8 VIII. Amend Section .140 by adding two new subsections to page 9:

"(16) Waive the right to appeal the award to another applicant, ^{of} the determination under AS 43.90.180(b) that no application merits the issuance of a license;"

"(19) provide a detailed description of the applicant; the affiliates of the applicant; all partners, members of a joint venture, and other entities participating with the applicant in the application and the project proposed by the applicant; and persons the applicant intends to involve in the construction and operation of the proposed project; the description must include the nature of the affiliation for each person, the commissioners' evaluation of the readiness and ability of the applicant to complete the project presented in the application; and"

9 XIX. Amend 43.90.170 (page 11) by adding a new subsection (c):

"(c) Information provided by an applicant to the commissioners under this chapter, including information determined by the commissioners to be confidential under AS 43.90.150, shall be disclosed to the legislative auditor, the fiscal analyst who serves as head of the legislative finance division, agents and contractors of the legislative auditor and the fiscal analyst, and members of the legislature, upon request and after the individual making the request signs a confidentiality agreement prepared by the commissioners. "

10 X. Amend 43.90.190, page 12, line 18 by inserting "proposes a project that would" between " application" and "would"

11 XI. Amend 43.90.310 (c), page 18, lines 21-23 by changing the comma at the end of line 21 to a semi-colon and deleting the next two lines, including the period. The first letter of the next sentence should become lower case.

12 XII. Amend 43.90.320(a), page 19, line 12 by deleting "at the conclusion of" and inserting "when the person makes a firm transportation commitment to the project at"
Amend (c), page 19, lines 25-27 by deleting everything after the citation to 43.90.140(7) through the end of the sentence.

13 XIII. Amend 43.90.400 deleting it in its entirety and substituting what is in the CS for HB1 77 beginning on page 17, line 26 and continuing through page 18, line 17.

14 XIV. Amend 43.90.500 by inserting two sentences. Page 21, line 6, insert "Money appropriated to the fund may be spent for the purposes of the fund without further appropriation." After the period on that line. Line 7, insert " Nothing in this subsection creates a dedicated fund." after the period.

15 XV. Amend 43.980.520 by inserting at page 21, line 28 "issued under this chapter" after "license."

16 XVI. Amend 43.90.540 as follows:

Line 8, add an "s" to inducement

Line 10 insert "or" after "royalty" and delete the comma. Insert "treatment" after "tax."

Line 11 delete "monetary treatment" and insert "grant of state funds"

Line 17 insert a new sentence after the period as follows: " Preferential royalty and tax treatment shall not include the state's exercise of its legal right to resolve disputes involving royalty and taxes, and shall not include the modification of provisions contained in state law as of the date of this act.

or a large project permit coordinator as

17 XVII. Page 24, line 28, delete the "s" at the end of "includes"

16

XVIII. Amend 43.90.990, section 2 on page 25, line 9-10 by deleting "abandonment of a project" and inserting "whether a project is uneconomic."

From: Bonnie Harris

To: Nan Thompson

April 16, 2007

The following proposed amendments to CSSB 104 are for the purposes of (1) avoiding conflict with the legislative findings, purpose or provisions of the Alaska Stranded Gas Development Act, AS 43.82; and (2) providing that the AGIA's inducement provisions are exempt from the prohibition on financial aid to corporations by the state [even though the inducement provisions do not facially implicate the prohibition in AS 37.10.085, the exemption makes clear the legislature's intent].

Going by CS for Senate Bill 104 [25-GS106/K]

Additional Conforming Amendments:

Add a new section at page 27 to read:

* **Sec. 6. Sec. 43.82.580. Priority of Chapter.** If a provision or finding of this chapter is construed to conflict with a provision of or finding for AS 43.82, the provisions and findings of this chapter supersede to the extent necessary to fully effect the provisions and findings of this chapter.

Add a new section at page 27 to read:

* **Sec. 7. AS 37.10.085 is amended by adding a new paragraph to read:**

(d)(3) the inducement provisions of the Alaska Gas Inducement Act under AS 43.90.

Joe Balash

Admin #19

From: Paula Scavera [paula_scavera@labor.state.ak.us]
Sent: Thursday, April 12, 2007 5:14 PM
To: Balash, Joseph R (GOV)

Project labor agreement is a comprehensive collective bargaining agreement between the licensee or its agent and the appropriate labor representatives thus assuring expedited construction with labor stability for the project by qualified Alaskans.

LEGAL SERVICES

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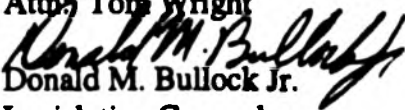
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 23, 2007

SUBJECT: Local and special legislation
(HB 177; Work Order No. 25-GH1060\B.5)

TO: Representative John Harris
Attn: Tom Wright

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Enclosed is the amendment you requested that would require an applicant for the project license to commit to enter into a project labor agreement with two labor councils in the state. Please review this amendment carefully to ensure that it is consistent with your intent, but be aware of a constitutional issue it raises. Also, since the phrase "project labor agreement" is not defined in the Alaska Statutes or in the Alaska Administrative Code, it would be helpful to add a definition.

The amendment would require an applicant for the license to commit to entering into a project labor agreement with two named labor councils. The naming of two specific councils raises an issue under art. II, sec. 19 of the state constitution. That section reads as follows:

Local or Special Acts. The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected.

To avoid this constitutional issue, can the amendment be changed to one of general application rather than to require the commitment to only negotiate with those two labor councils?

Also, as a practical matter, is AS 43.90.140(15) in conflict with the amendment? Is there a way to mesh the two requirements? Paragraph 15 requires a commitment to hire qualified residents and to contract with state business to the extent permitted by law. Does the project labor agreement narrow the scope of employees or businesses that may be employed in the project? What is the effect of the project labor agreement on

Representative John Harris

March 23, 2007

Page 2

"businesses located in [the] state"? Do you want each business that subcontracts with the licensee to have a similar agreement with its workforce?

In upholding a project labor agreement that was required by the Fairbanks North Star Borough, the Alaska Supreme Court described a project labor agreement as follows:¹

A project labor agreement is a prebid contract between a construction project owner and a labor union (or unions) establishing the union as the collective bargaining representative for all persons who will perform work on the project. The PLA provides that only contractors and subcontractors who sign a prenegotiated agreement with the union can perform project work. A PLA thus generally requires all bidders on the project to hire workers through the union hiring halls; follow specified dispute resolution procedures; comply with union wage, benefit, seniority, apprenticeship and other rules; and contribute to the union benefit funds. In return for a project owner's promise to insist in its specifications that all successful bidders agree to be covered by a PLA, the union promises labor peace through the life of the contract.

Would you want the first sentence in the above quote to be included in the amendment as the definition for "project labor agreement"? Do you have a different definition that you would prefer?

Finally, please verify the official names of the labor councils so that they may be identified correctly. We found different variations in the names in our research.

If I may be of further assistance, please advise.

DMB:med
07-198.med

Enclosure

could be used, project cost 35

¹ *Laborers' Local # 942 v. Lampkin*, 956 P.2d 422, 428, n. 1 (Alaska 1998).

(16) Commit prior to commencing construction of The Alaska Natural Gas Line Project to negotiate a Project Labor Agreement with the appropriate Alaska Building Trades Council(s) thus assuring expedited construction with labor stability for the Project by qualified Alaskans; and

Alaska Department of Labor and Workforce Development
Proposed amendments to HB177/SB104
3/28/07 10:00 am

Amend Sec. 43.90.140. Application requirements, Page 8, Line 13, by adding a new subsection (16) to read:

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

(16) ^{to} commit prior to construction, negotiate a project labor agreement thus assuring expedited construction with labor stability for the project by qualified Alaskans; and

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

Explanation

The current bill lacks a requirement for the applicant to demonstrate a commitment to assuring a steady stream of Alaska labor, free of strike or lockout provisions. Project labor agreements assure such commitments.

It's in existing used up
language - Governor a union

Line Development Authority

(Successful License Replaces Authority)

with it def of labor authority

Sec. ~~41.41.500~~. Contract terms relating to use of Alaska resources.

- (a) The authority shall enter into one or more prehire project term agreements with labor organizations that
 - (1) contain no-strike clauses; and
 - (2) secure timely completion of the project and maximum employment opportunities for state residents.
- (b) To maximize the economic benefits of the project to Alaskan businesses, the authority shall use Alaska contractors and suppliers to the maximum extent possible to take advantage of the Alaska experience in Arctic engineering and construction.

Article 06. GENERAL PROVISIONS

Sec. 41.41.900. Tax exemption.

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

Sec. 41.41.990. Definitions.

In this chapter,

- (1) "authority" means the Alaska Natural Gas Development Authority;
- (2) "board" means the board of directors of the Alaska Natural Gas Development Authority;
- (3) "project" means the gas transmission pipeline, together with all related property and facilities, to extend from the Prudhoe Bay area on the North Slope of Alaska either to tidewater at a point on Prince William Sound and the spur line from Glennallen to the Southcentral gas distribution grid or to tidewater at a point on Cook Inlet, and includes planning, design, and construction of the pipeline and facilities as described in AS 41.41.010 (a)(1) - (5).

Chapter 41.45. ALASKA SURFACE COAL MINING CONTROL AND RECLAMATION ACT

[Renumbered as AS 27.21].

Chapter 41.98. MISCELLANEOUS PROVISIONS; NUCLEAR COMPACT

Sec. 41.98.010. - 41.98.100 Mineral Resource Fund. [Repealed, Sec. 12 ch 42 SLA 1997].

Repealed or Renumbered

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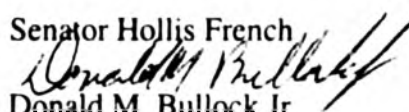
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 9, 2007

SUBJECT: Tax exemption inducement (CSSB 104(RES);
Work Order No. 25-GS1060\K)

TO: Senator Hollis French

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked for my opinion on the form of a tax inducement related to the production tax on gas that could be inserted into CSSB 104(RES).

To pass constitutional muster, a tax inducement must be consistent with art. IX, sec. 1, and art. IX, sec. 4 of the state constitution. Based on the elements in those two sections, a permissible inducement would be in the form of an exemption created by statute.

The following is offered in the form of a concept, should not be taken as a policy suggestion, and is subject to revision based on our drafting requirements:

Sec. 43.90.XXX. Limited tax exemption. (a) The production of ten percent of taxable gas produced by a person described in (b) of this section and shipped through transportation capacity acquired by the person during the first binding open season of the project is exempt from the tax imposed under AS 43.55.011.

(b) A person claiming the exemption in (a) of this section must qualify for the resource inducement in AS 43.90.300 and shall agree to the commitments required in (c) of this section.

(c) [Agreement regarding rate-setting or other requirements similar to AS 43.90.320(c)]

The exemption is in the form of a general law -- a statute -- and is not contractual.

Explanation

Article IX, sec. 1, Constitution of the State of Alaska prohibits the contracting away or suspension of the power to tax, with limited exception. Article IX, sec. 1, reads as follows:

Taxing Power. The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article.

Article IX, sec. 4, is generally agreed to be the only section in art. IX that could fit within the phrase, "except as provided in this article." That section reads as follows:

Exemptions. The real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained until otherwise provided by law.

The first two sentences in the above section create exemptions for certain property based on ownership or use. The third sentence is authority for the legislature to enact additional exemptions.

The third sentence specifically states that the exemption "may be granted by general law."¹ In other words, the exemption is "provided by law" not "authorized by law."

An example of a state tax exemption in current law is AS 43.65.010(a). That subsection reads:

(a) A person prosecuting or attempting to prosecute, or engaging in the business of mining in the state shall obtain a license from the department. *All new mining operations are exempt from the tax levied by this chapter for three and one-half years after production begins.* The tax exemption granted to new mining operations does not extend or apply to the mining of sand and gravel. [Emphasis added.]

¹ Note that art. IX, sec. 4, does not include the words, "or a contract authorized by general law." In *Stanek v. Kenai Peninsula Borough*, 81 P.3d 268, 274 (Alaska 2003), the court referred to "tax exemptions that are authorized by statute." Citing art. IX, sec. 4, the court wrote:

By requiring the equal assessment of property, AS 29.45.110 implies an equal taxation goal. Accepting that equal taxation is a goal of section .110, this goal is necessarily *subject to tax exemptions that are authorized by statute.* As we have seen, the exemption in this case is authorized by statute. [Emphasis added.]

Also, before the enactment of the petroleum production tax (PPT), new oil production after a certain date benefited from a lower tax rate during the first five years of production. AS 43.55.011(a) and (b) (repealed April 1, 2006) read as follows:

(a) There is levied upon the producer of oil a tax for all oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation. The tax is equal to either the percentage-of-value amount calculated under (b) of this section or the cents-per-barrel amount calculated under (c) of this section, whichever is greater, multiplied by the economic limit factor determined for the oil production of the lease or property under AS 43.55.013. If the amounts calculated under (b) and (c) of this section are equal, the amount calculated under (b) of this section shall be treated as if it were the greater for purposes of this section.

(b) The percentage-of-value amount equals 12.25 percent of the gross value at the point of production of taxable oil produced on or before June 30, 1981, from the lease or property and 15 percent of the gross value at the point of production of taxable oil produced from the lease or property after June 30, 1981; *except that for a lease or property coming into commercial oil production after June 30, 1981, the percentage-of-value amount equals 12.25 percent of the gross value at the point of production of taxable oil produced from the lease or property in the first five years after the start of commercial oil production and equals 15 percent of the gross value at the point of production of taxable oil produced thereafter from the lease or property.*

Two things should be noticed from the excerpt immediately above. First, the reduced tax was authorized by a statute that was subsequently repealed. Second, the application of a lower tax in earlier years of production is similar to AS 43.90.320(a) in SB 104 as introduced by request of the governor, which provided for a lower tax rate during the first 10 years of project operation if the legislature subsequently enacted a higher rate. That subsection in the governor's bill reads as follows:

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

Senator Hollis French

April 9, 2007

Page 4

The effect of this subsection is to shield the person receiving the inducement from tax increases. AS 43.90.320(b) in the same bill allows the inducement to apply during the first 10 years following the commencement of commercial operations.

If I may be of further assistance, please advise.

DMB:ljw
07-204 1/1

LEGAL SERVICES

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

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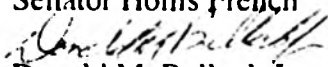
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St . Rm 329

MEMORANDUM

April 6, 2007

SUBJECT: Open season jurisdiction
(CSSB 104(RES), Work Order No. 25-GS1060\K.1)

TO: Senator Hollis French

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Enclosed is an amendment that prohibits a shipper from making a capacity commitment during the first binding open season subject to the condition that the Alaska Supreme Court does not find the tax inducement to be invalid.

The Federal Energy Regulatory Commission may have limitations on the consideration of a commitment made during open season that is subject to a condition precedent. If firm commitments are required to support a certificate of public convenience and necessity, a conditional commitment may not carry very much weight. I recommend that you discuss this issue with the administration.

If I may be of further assistance, please advise.

DMB:med
07-223.med

Enclosure

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 104(RES)

1 Page 19, line 23:

2 Delete "will"

3 Insert "(1) may"

4

5 Page 19, line 27:

6 Delete ". The"

7 Insert "; the"

8

9 Page 19, line 28:

10 Delete "subsection"

11 Insert "paragraph"

12

13 Page 19, line 30, following "AS 43.90.140(7)":

14 Insert "; and

15 (2) may not make the commitment to acquire firm transportation

16 capacity in the first binding open season of the project subject to a determination by

17 the Alaska Supreme Court that this section is not invalid."

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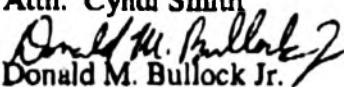
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 6, 2007

SUBJECT: Issues in CSSB 104(RES) (Work Order No. 25-GS1060K)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cyndi Smith

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Based on a request from Cyndi Smith, the following is a list of topics you may wish to consider during the review of SB 104 and CSSB 104(RES) by your committee.

Constitutional issues:

Separation of Powers¹

- Legislative approval of licensee recommended by the commissioners (AS 43.90.200).
- If the legislature has the power to approve or disapprove, whether a bill is required (AS 43.90.200). (See, *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 773 (Alaska 1980) (when the legislature wishes to act in an advisory capacity it may act by resolution; however, when it means to take action having a binding effect on those outside the legislature it may do so only by following the enactment procedures)).
- Approval of appointment of Alaska Gasline Act Coordinator by the legislature (AS 43.90.400).

Power of Taxation²

- Whether an assurance that certain gas will not be subject to an increase in tax rates amounts to a suspension or contracting away of the power to tax (AS 43.90.320).

¹ Art. II, sec. 1, and art. III, sec. 1, Constitution of the State of Alaska.

² Art. IX, secs. 1 and 4, Constitution of the State of Alaska.

Senator Hollis French

April 6, 2007

Page 2

- Whether a statute can establish a contractual relationship subject to art. I, sec. 15 (AS 43.90.300).
- Whether a general law that authorizes an exemption by contract is within the requirement that an exemption be granted by general law in art. IX, sec. 4 (AS 43.90.300).

Statute of Limitation

- Whether a statute of limitation may apply to the constitutionality of a provision in AS 43.90 (AS 43.90.520).
- Whether an actual controversy may exist within 90 days after the issuance of the license to allow the superior court to consider making a declaratory judgment (AS 43.90.520).³

Policy Issues⁴

- T How and when the state's contribution will be paid to the licensee (AS 43.90.110).⁵
- T What costs qualify for state contribution (AS 43.90.110(1)(C)).
- T If the commissioners and the licensee disagree on whether the project should be abandoned, how should the dispute be settled (AS 43.90.120).
- What procedures should be used for appeals that relate to the process for soliciting an application for and awarding the license (AS 43.90.130(c)).
- What commitments should an applicant be required to make in the application for the license, including requirements relating to a project labor agreement or a commitment not to appeal if an applicant does not receive the license (AS 43.90.140).

³ See AS 22.10.020(g). The court may be reluctant to consider the case until there is an actual controversy. If the tax protection offered in AS 43.90.320 is not actually exercised until there is an increase in the gas production tax, would the court consider that there is "an actual controversy"? Is the possibility that a tax may be limited at some future time enough to get a declaratory judgment?

⁴ These issues were addressed in revisions to the governor's bill or were discussed in committees in both houses that have considered the proposed legislation.

⁵ Neither CSSB 104(RES) nor the original bill address whether the state's contribution will be made in the form of reimbursement or paid as qualified expenditures accrue.

Senator Hollis French

April 1, 2007

Page 3

- Whether the costs of increasing capacity are subject to rolled-in or incremental rate treatment and the power of a person making a capacity commitment during the first binding open season to participate in a rate-making protest or appeal (AS 43.90.140(7); see also AS 43.90.310 and 43.90.320).

W⊙ How should the costs and operation of the gas treatment plant be described in the application (AS 43.90.140).

T⊙ The treatment of proprietary information and trade secrets; when and if information submitted to the commissioners is subject to public or restricted disclosure (AS 43.90.160 and 43.90.170).

W⊙ Criteria for evaluation and ranking, including evaluating the net present value of the cash flow from the project to the state and the likelihood that the applicant's project will succeed as planned (AS 43.90.180).

- Legislative approval, including who should receive the commissioners' recommendation for a licensee, whether the approval should be by resolution or a bill, whether the legislature should either affirmatively approve or disapprove, and who has the responsibility for introducing the bill or resolution (AS 43.90.190 and 43.90.200).

W⊙ The requirements for sanctioning a project by a licensee who either has or does not have the credit support to finance the project at the time the license is issued and what happens if the licensee fails to sanction the project (AS 43.90.210).

- The person subject to audit by the commissioners for the use of contributed state money received for the project (AS 43.90.240).

W⊙ The payment by the state, if any, to acquire engineering designs, contracts, permits, and other data related to the project that are acquired by the licensee if the project is abandoned, the licensee fails to sanction the project, or the licensee violates the terms and conditions of the license (AS 43.90.120, 43.90.210, and 43.90.240).

- Qualifications for and form of resource inducement, including inducements relating to royalties and taxes; for a tax inducement, whether the inducement may be fixed in contract or otherwise be in a form that prevents a future legislature from changing the tax applicable to gas production (AS 43.90.300, 43.90.310, and 43.90.320).

W⊙ Whether the inducements will actually bring a producer to the first binding open season (AS 43.90.300, 43.90.310, and 43.90.320).

Senator Hollis French

April 6, 2007

Page 4

- Issues relating to Alaska Gasline Inducement Act coordinator: whether the position may be subject to confirmation by the legislature; where the position should be placed in the executive branch; how the office should be staffed; salary and qualifications for the person nominated to the position (AS 43.90.400).
- W (C) The form and responsibility for development of the state pipeline employment training program (AS 43.90.420).
- Whether the state should be subject to treble damages if the state violates the project assurances (AS 43.90.540).
- The standards for evaluating a proposal by the licensee to assign rights and responsibilities under the license and for the recipient of a resource inducement (royalty or tax) to assign the inducements (AS 43.90.550).

Structural and Drafting Issues

- Whether the abandonment provision should be placed at the end of Article 2 and near the provision relating to license violations (AS 43.90.120 and 43.90.240).
- Whether the provisions relating to the coordinator and expedited agency review should be moved to the end of Article 2 because those provisions relate directly to the licensee (AS 43.90.400 and 43.90.410).
- Whether the state pipeline employment development provision could be moved to the article containing miscellaneous provisions (AS 43.90.420).
- Whether the Alaska Gasline Inducement Act should be located in Title 31 (Oil and Gas) or Title 42 (Public Utilities and Carriers) rather than Title 43 (Revenue and Taxation).⁶

Please do not consider the above list exclusive. If I may be of further assistance, please advise.

DMB:med
07-224.med

⁶ The subject of tax is mentioned only in AS 43.90.320 (tax inducement), 43.90.540 (assurances), and 43.90.550 (assignments); the overriding subject of the act is the form and implementation of the gas pipeline project. The administration may provide insight into the placement in Title 43 (Revenue and Taxation).

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

SB104 Natural Gas Pipeline Project

Wednesday, April 11, 2007:
1:30 to 3 p.m.

Constitutionality of tax freeze provisions

Is it constitutional?	Larry Ostrovsky/Don Bullock
Is it necessary? The economics	Antony Scott

5:30 - 7 p.m.

Expedited Judicial Review
Point at which legal challenge may be brought
Legislative role in approving/disapproving the license

Thursday, April 12, 2007:
3:30 to 5 p.m.

AGIA treatment of royalties
Triple damages
Confidentiality of materials/public records
License transfer provisions
Arbitration process and definitions

5:30 - 7 p.m. PUBLIC testimony

Friday, April 13, 2007:

1:30 - 3:00 Pt. Thomson, and litigation in general
Leases and the duty to produce/unit operating agreements
Canadian right of way issues/first nation agreements

5:30 - 7:00 Anti-trust issues/AGPA complaint
AOGCC off-take ruling
FERC policy on tariffs vs. AGIA
PLA language and definitions

Saturday, April 14, 2007:

10:00 am Industry testimony on issues addressed

SUNDAY OFF

Drafting Issues:

1. We need a definition of a project labor agreement.
2. amend language on capacity commitment re:tax freeze
3. amend for judicial review/delayed vesting of rights?
4. Realign to match house version.
5. The whole issue of a resolution: not binding, no committees etc.

Committee

PLA definition

Therriault: can legislature see as soon as opened? House crafted amendment ..we should do something similar.

Pipeline coordinator: add word "position" and add a line that the person serves at the pleasure of the governor.

Expedited court review by some method...

Look at house bill on appeal rights provision that states that applicants cannot appeal outcome

Or - until "X" takes place, no final administrative action

Change "administrative" to "agency" on line 13 (or vice versa, the words should be the same)

Issue of ability to serve until confirmed for pipeline coordinator

A bill or a resolution??

43.90.440

In the triple damages section:

1. (house language) clarify what costs are eligible for reimbursement "qualified expenditures"
2. exempt current practices of royalty tax disputes/settlements
3. exempt current dnr royalty modifications, per existing statutes.
4. define monetary treatment
5. clarify that hiring another coordinator does not constitute a violation
6. clarify that gas in the smaller line must be delivered to a market, not to a GTP or back into the ground.
7. Triple damages subject to appropriation.

Other:

43.90.320 Tax rate freeze should begin at the start of the open season (house language)

CS FOR SENATE BILL NO. 104(JUD)

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

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

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

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

8

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

10

11 **Sec. 43.90.010. Purpose.**

12

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

14

15 **Sec. 43.90.100. Gas project.**

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

17 **Sec. 43.90.120. Request for applications for the license.**

18 **Sec. 43.90.130. Application requirements.**

19 **Sec. 43.90.140. Initial application review; additional information requests; complete**
20 **applications.**

21 **Sec. 43.90.150. Proprietary information and trade secrets.**

22 **Sec. 43.90.160. Notice, review, and comment.**

23 **Sec. 43.90.170. Application evaluation and ranking.**

24 **Sec. 43.90.180. Notice to the legislature of intent to issue license; denial of license.**

25 **Sec. 43.90.190. Legislative approval; issuance of license.**

26 **Sec. 43.90.200. Certification by regulatory authority and project sanction.**

27 **Sec. 43.90.210. Amendment of or modification to the project plan.**

- 1 **Sec. 43.90.220. Records, reports, conditions, and audit requirements.**
- 2 **Sec. 43.90.230. License violations; damages.**
- 3 **Sec. 43.90.240. Abandonment of project.**
- 4 **Sec. 43.90.250. Alaska Gasline Inducement Act coordinator.**
- 5 **Sec. 43.90.260. Expedited review and action by state agencies.**

Article 3. Resource Inducement.

- 9 **Sec. 43.90.300. Qualification for resource inducement.**
- 10 **Sec. 43.90.310. Royalty inducement.**
- 11 **Sec. 43.90.320. Gas production tax exemption.**
- 12 **Sec. 43.90.330. Inducement vouchers.**

Article 4. Miscellaneous Provisions.

- 16 **Sec. 43.90.400. Alaska Gasline Inducement Act matching contribution fund;**
- 17 **disbursements; audits.**
- 18 **Sec. 43.90.410. Regulations.**
- 19 **Sec. 43.90.420. Statute of limitations.**
- 20 **Sec. 43.90.430. Interest.**
- 21 **Sec. 43.90.440. Licensed project assurances.**
- 22 **Sec. 43.90.450. Assignments.**
- 23 **Sec. 43.90.460. Conflicting laws.**
- 24 **Sec. 43.90.470. State pipeline employment development.**

Article 5. General Provisions.

- 28 **Sec. 43.90.900. Definitions.**
- 29 **Sec. 43.90.990. Short title.**

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

1 (45) contracts for an arbitration panel to determine whether a project is
 2 uneconomic under AS 43.90.240, and contracts for the development of application
 3 provisions for licensure and for the evaluation of those applications under AS 43.90.

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

5 (41) the Alaska Gasline Inducement Act coordinator appointed under
 6 AS 43.90.250.

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

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

10 ...

11 (12) records that are

12 (A) proprietary or a trade secret in accordance with
 13 AS 43.90.150:

14 (B) applications that are received under AS 43.90 until
 15 notice is published under AS 43.90.160.

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

18 **FIRST REQUEST FOR APPLICATIONS FOR THE LICENSE.** It is the intent of the
 19 legislature that the first request for applications for the license by the commissioners under
 20 AS 43.90.120 as enacted in sec. 1 of this Act be issued within 90 days after the effective date
 21 of this Act.

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

24 **EXPEDITED CONSIDERATION OF COURT CASES.** It is the intent of the
 25 legislature that the courts of the state, when considering a case related to the development and
 26 construction of a natural gas pipeline under this Act or to the commitment of a shipper to
 27 acquire firm transportation capacity during the first binding open season for a project
 28 developed under this Act, expedite the resolution of the case by giving the case priority over
 29 all other civil cases to the extent permitted under the Alaska Rules of Court.

30 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
 31 read:

Sectional Analysis of CS for Senate Bill 104 (25-GS1060\K)

43.90.010. Purpose- States the purpose of AGIA as facilitating commercialization, promoting exploration and development, maximizing development benefits to Alaskans and encouraging lessees to commit gas to the pipeline.

43.90.100. Gas project- Empowers the commissioners of natural resources and revenue to award an AGIA license and clarifies that other gas pipelines are not precluded.

43.90.110. Natural gas pipeline project construction inducement- Defines the inducements to construction of a gas pipeline as: (1) a state matching contribution of no more than \$500,000 of qualified expenditures paid over five years, and (2) the appointment of a pipeline coordinator (coordinator duties defined in 43.90.400). The matching contribution is up to 50% before the first open season ends, and up to 80% thereafter. Qualified expenditures are costs related to obtaining a FERC or RCA certificate.

43.90.120. Abandonment of project- If the commissioners and licensee agree that the project is uneconomic, inducements terminate and the licensee is relieved from further obligations except audit and recordkeeping requirements. If the commissioners and licensee do not agree the issue is resolved by a panel of 3 arbitrators appointed under the American Arbitration Association procedures. If the project is abandoned all engineering design, contracts, permits and other data are assigned to the state.

43.90.130. Request for applications for the license- The commissioners begin a public application process by issuing a request for applications within 3 months after AGIA's effective date. They may use independent contractors to develop the license terms and shall adopt regulations describing protest and appeal procedures.

43.09.140. Application requirements-All AGIA applications must:

1. Be filed by deadline set by Commissioners;
2. Describe the proposed pipeline project, including
 - a. Pipeline route
 - b. receipt and delivery points and size and design capacity at those points
 - c. an economic and technical analysis of project viability

- d. a timeline, work plan and budget that includes detailed discussion of how any required Canadian permits will be obtained, and/or a detailed description of any marine transportation component and LNG plant.
3. For interstate pipeline proposals, commit to hold a binding open season within 36 months of after license award and apply for a FERC certificate;
4. For intrastate pipeline proposals, commit to hold a binding open season with 36 month after license award and apply for an RCA certificate;
5. Commit to assess market demand for additional pipeline capacity at least every two years after the first binding open season;
6. Commit to expand the pipeline in reasonable engineering increments and on commercially reasonable terms that encourage exploration and development of Alaska's gas resources;
7. Commit to recover expansion costs through rolled-in rates that would not exceed initial rates by more than 15%. If the costs exceed the cap, the pipeline owner can propose a combination of incremental and rolled-in rates. Negotiated rate agreements that make either of the previous terms impossible are prohibited;
8. Explain how the applicant will deal with a North Slope gas treatment plant;
9. Propose a percentage and total dollar amount for the state's matching contribution;
10. Commit to propose and support pipeline rates that are based on a capital structure of at least 70 percent debt;
11. Describe how cost overruns will be managed;
12. Commit to five delivery points in Alaska
13. Commit to distance sensitive rates to Alaska delivery points;
14. Commit to establish a local headquarters
15. Commit to hire qualified Alaskans to work on the project and contract with Alaskan businesses;
16. Commit to negotiate a project labor agreement;
17. Commit that the state matching fund will be applied to reduce pipeline tariffs

18. Demonstrate ability to perform.

43.09.150. Initial application review: additional information requests: complete applications-The commissioners review the applications to determine if they are complete and may ask for additional information if necessary.

43.90.160. Proprietary information and trade secrets- Applicants may request confidentiality for proprietary information or trade secrets. If the commissioners agree, the information is held confidential unless either the license is awarded to that applicant or that applicant protests the award. If the commissioners do not agree that the information should be held confidential, it is returned to the applicant.

43.09.170. Notice, review and comment- The commissioners will publish notice of the applications and seek public comment for 60 days. If parts of the application are confidential, the applicants must provide a summary that can be publically released.

43.90.180. Application evaluation and ranking-The commissioners will evaluate the applications and rank the applications based on the net present value of the anticipated cash flow to the state weighted by the project's likelihood of success. The bill directs the commissioners to use undiscounted value and to consider the project's timing, gas value, project overrun provisions, design and other relevant evaluative criteria. The bill lists factors the commissioners must use in evaluating likelihood of success, including ability to control cost overruns, financial resources and record on other projects.

43.90.190. Notice to legislature of intent to issue license; denial of license- The commissioners publish a notice of intent to award, if there is project that meets the AGIA criteria and sufficiently maximizes the benefits to the people of the state of Alaska.

43.90.200. Legislative approval: issuance of license-The commissioners may issue the license if both houses of the legislature pass a resolution so authorizing within 60 days of the commissioners' notice of intent. If a resolution is not passed in 60 days, the commissioners may request new applications.

43.90.210. Certification by regulatory authority and project sanction-Licensees must accept the certificates issued by FERC or the RCA, as appropriate and shall sanction the project within one year after the certificate is issued if sufficient credit support is available. If the licensee does not have sufficient credit support, the project must be sanctioned within 5 years or the certificate is assigned to the state.

43.90.220. Amendment or modification of the project plan- The licensee may amend the project plan with the commissioners' approval if necessary because of changed circumstances.

43.90.230. Records, reports, conditions, and audit requirements-The licensee must maintain complete records of its expenditures which are subject to audit. Records must be maintained for seven years from the date licensee receives state money. After the license has been issued and before commercial operations begin, the commissioners may have a representative attend all meetings of the licensee's governing body and equity holders.

43.90.240. License violations; damages-License violations are defined as substantial departure from the approved project plan, unauthorized use of state funds, or violation of law. The licensee has 90 days after the commissioners issue notice of a violation to cure it. Disbursement of state funds can be suspended after a notice of violation is issued. A process for resolving disputes over license violations and the remedies are described.

43.90.300. Qualification for resource inducement. Parties that commit gas to the pipeline project during the first binding open season are eligible for resource inducements.

43.90.310. Royalty Inducement-Before the first open season the commissioner of natural resources must adopt regulations that describe how the state will exercise its right to switch between royalty in kind and in value. The regulations must minimize retroactive adjustments and include a methodology for valuing the state's gas based on market data that includes deductions for transportation and processing costs, location differentials and deductions permitted under the 1980 Royalty Settlement Agreement for Prudhoe Bay gas. The terms for switching the state's royalty share may not interfere with long term marketing plans or cause a disproportionate shift of transportation costs. The leases from which gas was committed to the pipeline during the first open season may be amended consistently with this royalty inducement at the lessee's request provided the lessee agrees not to protest the rolled-in treatment of expansion costs mandated in AGIA. These regulations must be reviewed every two years to determine their effectiveness.

43.90.320. Gas production tax exemption-Anyone who commits gas to the first open season is entitled to claim an exemption in an amount equal to the difference between the gas production tax rate on the date of the first open season, and any subsequent higher rate for the ten years after the pipeline begins commercial operations. This exemption is contractual and the licensee must agree not to protest

the treatment of expansion costs mandated by AGIA if FERC does not have a rebuttable presumption of rolled-in rate treatment of expansion costs.

43.90.400. Alaska Gasline Inducement Act coordinator- The governor shall appoint, subject to legislative confirmation, a gas pipeline coordinator to coordinate amongst the jurisdictional state agencies and the federal pipeline coordinator.

43.90.420. State pipeline economic development-The commissioner of labor and workforce development shall develop a training program to prepare Alaskans for gas pipeline jobs.

43.09.500. Alaska Gasline Inducement Act matching fund: disbursements, audits-The AGIA matching funds shall be held in the general fund and managed by Department of Revenue. The commissioners shall adopt regulations describing the process for disbursement of these funds and audits. The commissioners shall report to the legislature within ten days of the beginning of each regular session on disbursements from this fund.

43.90.510. Regulations- The commissioners may jointly adopt regulations.

43.90.520. Statute of limitations-Lawsuits to challenge the constitutionality of an AGIA license must be filed within 90 days of its issuance.

43.90.530. Interest-The rate of 11%, or five points over the federal reserve rate, whichever is greater, shall apply to payments under AGIA.

43.90.540. Licensed Project Assurances- The inducements available before commercial operations begin are exclusive to the licensee. If the state, after awarding a license, but before commercial operations begin extends preferential royalty or tax treatment to a competing pipeline project the state will owe the licensee a penalty equal to three times what the licensee has spent on the project.

43.90.550. Assignments-The licensee may transfer the license with the commissioner's approval. Rights to the royalty inducement or the gas production tax exemption can only be transferred if all of the company's assets are sold.

43.90.560. Conflicting laws-AGIA does not abrogate state or federal regulatory authority.

43.90.570. Severability- If a court finds any portion of AGIA invalid, the remainder continues in effect.

43.90.900. Definitions- Many AGIA terms are defined.