

HB

189

<TARGET><BILL>HB 189</BILL><SUBJECT>HB
189</SUBJECT><COMM>HRES27</COMM></TARGET>

Alaska State Legislature

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REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE HOUSE

SPONSOR STATEMENT HOUSE BILL 189

"An Act providing for the transfer of information of Alaska Gasline Development Corporation; and providing for an effective date."

In 2010, the 26th Alaska Legislature passed House Bill 369 requiring the development of an in-state natural gas pipeline plan to be delivered to the legislature by July 1, 2011, that provides for a natural gas pipeline that is operational by December 31, 2015. The Alaska Gasline Development Corporation has been established under AS 18.56.086 for this purpose and is working to meet its July 1, 2011 mandate. Progress reports are provided to the legislature from the Corporation on a monthly basis.

The Chair of the Joint In-State Gasline Development team has requested bill language that will allow the Corporation to enter into confidentiality agreements that would not be subject to public disclosure. This action is necessary to allow the Joint In-State Gasline Development team to carry out its functions as described under sec. 19, ch. 14, SLA 2009; "requiring expedited review and action by state agencies or entities relating to the in-state natural gas pipeline project."

Further, this bill will amend the original legislation to reflect certain changes to the Joint In-State Gasline Development team, which includes allowing for a chair's designee of the Alaska Railroad Corporation and removing the chief executive officer of the Alaska Natural Gas Development Authority.

CS FOR HOUSE BILL NO. 189(RES)

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE RESOURCES COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES CHENAULT, Johnson

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska Gasline Development Corporation and creating an**
2 **exception to the public records statute for information provided to the Alaska Gasline**
3 **Development Corporation; amending the composition of the Joint In-State Gasline**
4 **Development Team; and providing for an effective date."**

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

6 *** Section 1.** AS 38.34.030(a) is amended to read:

7 (a) The Joint In-State Gasline Development Team is established in the Alaska
8 Gasline Development Corporation, a subsidiary of the Alaska Housing Finance
9 Corporation, created under AS 18.56.086. The development team consists of four
10 [FIVE] members as follows:

11 (1) the commissioner of transportation and public facilities, or the
12 commissioner's designee;

13 (2) the chair of the board of directors of the Alaska Railroad
14 Corporation or the chair's designee;

1 (3) [THE CHIEF EXECUTIVE OFFICER OF THE ALASKA
2 NATURAL GAS DEVELOPMENT AUTHORITY;

3 (4)] the in-state gasline project coordinator; and

4 (4) [(5)] the executive director of the Alaska Housing Finance
5 Corporation.

6 * **Sec. 2.** AS 38.34.050 is amended by adding a new subsection to read:

7 (e) The Alaska Gasline Development Corporation may enter into a
8 confidentiality agreement necessary to acquire information to carry out its functions.
9 Information acquired under a confidentiality agreement is not subject to disclosure
10 under AS 40.25.110. The Alaska Gasline Development Corporation may enter into
11 confidentiality agreements with a public agency, as defined in AS 40.25.220, to allow
12 release of information protected by a confidentiality agreement to that public agency.
13 The portions of the records and files of a public agency bound by a confidentiality
14 agreement that reflect, incorporate, or analyze information subject to a confidentiality
15 agreement under this subsection are not public records. Confidentiality agreements
16 entered into under this subsection are valid and binding against all parties in
17 accordance with the terms of the confidentiality agreement.

18 * **Sec. 3.** AS 40.25.120(a) is amended to read:

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

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

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

25 (3) medical and related public health records;

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

28 (5) to the extent the records are required to be kept confidential under
29 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure
30 or retain federal assistance;

31 (6) records or information compiled for law enforcement purposes, but

1 only to the extent that the production of the law enforcement records or information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (12) records that are

12 (A) proprietary, privileged, or a trade secret in accordance with
 13 AS 43.90.150 or 43.90.220(e);

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

16 **(13) information that is covered by a confidentiality agreement**
 17 **between the Alaska Gasline Development Corporation created under**
 18 **AS 18.56.086 and the provider of the information.**

19 * Sec. 4. AS 38.34.050(e) and AS 40.25.120(a)(13) are repealed December 31, 2011.

20 * Sec. 5. Sections 1 - 3 of this Act take effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version HB189
 () Publish Date _____

Identifier (file name): HB189-DOR-AHFC-03-18-11 Dept. Affected Revenue
 Title Gasline Dev. Team/Corp. Members/Info Appropriation AK Housing Finance Corporation
 Allocation AK Gasline Development Corp
 Sponsor Representatives Chenault
 Requester House Resources Committee OMB Component Number 2986

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Commodities	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Capital Outlay	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other (please identify)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Why this fiscal note differs from previous version (if initial version, please note as such)

initial version

Prepared by Stacy Schubert, Director Government Relations & Public Affairs
 Division Alaska Housing Finance Corporation
 Approved by Ginger Blaisdell, Director Administrative Services Division
Department of Revenue

Phone 907-301-4556
 Date/Time 10:43am; 3/18/11
 Date 11:10am; 3/18/11

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 189

Analysis

This bill will allow the Alaska Gasline Development Corporation to enter into confidentiality agreements that would not be subject to public disclosure. This action is necessary to allow the Joint In-State Gasline Development team to carry out its functions as described under sec. 19, ch. 14, SLA 2009; "requiring expedited review and action by state agencies or entities relating to the in-state natural gas pipeline project."

Further, this bill will amend the original legislation to reflect changes to the Joint In-State Gasline Development team, including allowing for a chair's designee of the Alaska Railroad Corporation and removing the chief executive officer of the Alaska Natural Gas Development Authority.

No additional resources or staff are expected; therefore, there is no anticipated fiscal impact to the corporation.

LEGAL SERVICES

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

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

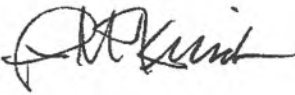
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 8, 2011

SUBJECT: Public records exception for the Alaska Gasline Development Corporation (Work Order No. 27-LS0621\A)

TO: Representative Mike Chenault
Speaker of the House
Attn: Tom Wright

FROM: Lisa Moritz Kirsch 
Legislative Counsel

I have drafted the enclosed bill creating a public records exception for the Alaska Gasline Development Corporation (AGDC). I am writing to explain why I chose a different approach than the one you suggested.

The broad purpose of the public records act, which appears at AS 40.25, is to provide public access to public records. AS 40.25.110 provides in part that:

Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours.

This provision has been interpreted by the Supreme Court which noted that:

There is a strong public interest in disclosure of the affairs of government and [sections AS 40.25.110 and 40.25.120] articulate a broad policy of open records. The right of citizen access to public records has been characterized as a fundamental right.¹

While this fundamental right has not been directly linked to a specific constitutional provision, it appears likely the Alaska courts would include it in the penumbral rights under the constitution given that the Alaska Supreme Court has opined that public access is a fundamental right and applied a balancing test consistent with those used for

¹ *Gwich'in Steering Committee v. State, Office of the Governor*, 10 P.3d 572, 578 (Alaska 2000) (citing *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316, 1323-24 (Alaska 1982) (quoting *MacEwan v. Holm*, 226 Or. 27, 359 P.2d 413, 421-22 (1961) (en banc))).

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constitutional rights when analyzing a decision to withhold public records. The Alaska Supreme Court cited this Oregon test with approval in *City of Kenai*:

In balancing the interests referred to above, the scales must reflect the fundamental right of a citizen to have access to the public records as contrasted with the incidental right of the agency to be free from unreasonable interference. The citizen's predominant interest may be expressed in terms of the burden of proof which is applicable in this class of cases; the burden is cast upon the agency to explain why the records sought should not be furnished. Ultimately, of course, it is for the courts to decide whether the explanation is reasonable and to weigh the benefits accruing to the agency from non-disclosure against the harm which may result to the public if such records are not made available for inspection. (Citation omitted).²

The legislative findings and intent added to the public records act in 1990 support this interpretation:

[P]ublic access to government information is a fundamental right that operates to check and balance the actions of elected and appointed officials and to maintain citizen control of government[.]³

The request I received protected all information in the possession of the public corporation from release under the public records act. I am concerned that the sweeping approach you requested may be inconsistent with the intent of the act and the fundamental right of access to public documents acknowledged by the courts. This sweeping exception may also cause difficulties for the corporation if a provider of information relied on the exception to keep all of their information confidential and later contested AGDC's decision to release.

At Tom Wright's request, I spoke to attorney Ken Vassar. He expressed that the intent of the legislation was to give the public corporation the ability to release information at its discretion, as a private corporation would. I would argue that the right of the public access to information is so strong that even if the AGDC were a private corporation it might be compelled to release its documents.⁴ However, AGDC is not a private corporation. Its documents are public records, and while AS 40.25.110 does allow for

² *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d at 1323.

³ Ch. 200, § 1, SLA 1990.

⁴ *Federal Communications Commission v. AT & T Inc.*, WL 691243, 2011 U.S. LEXIS 1899 (March 1, 2011) (holding AT&T does not have a personal privacy interest in records provided to a public entity).

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exceptions, it allows for them only where "specifically provided otherwise." When interpreting those specific exceptions to the public records act the courts have always narrowly construed them.⁵ It is true that the public records act is only a statute, and can be subsequently amended by legislation, but the amendments or new provisions must harmonize with the unchanged existing law.

My second concern is that an exception for all information in the possession of AGDC might mislead the entity providing information into believing that everything provided to the corporation would remain confidential. It is true that an exception under AS 40.25.120 does not actually create confidentiality by its provisions, instead it typically excepts specific material that is confidential under some other law or rule. While it is not unreasonable to interpret a blanket exception to the release statute as a means of preventing mandatory release and allowing the AGDC discretion to release only when it chooses to release, it is also reasonable that a provider of information might rely on that exception to prevent any release at all.

My solution was to create an exception for information covered by a confidentiality[™] agreement. This allows the parties involved to decide up-front what they consider confidential so there is less likelihood of confusion or contested releases. It also creates specificity as to what is excepted from the act, which I believe better matches the underlying intent of the public records act.

Please feel free to contact me if you have questions or concerns.

LMK:ljw:plm
11-153.ljw

Enclosure

⁵ *Anchorage School Dist. v. Anchorage Daily News*, 779 P.2d 1191, 1193 (Alaska 1989); quoting, *Doe v. Alaska Superior Court*, 721 P.2d 617, 624 (Alaska 1986).

Sec. 01.10.070. Time statutes become law and take effect.

(a) All bills passed by the legislature become law upon the governor's signature or upon the governor's veto being overridden or, when the governor allows a bill to become law without signature, on the day after expiration of the period allowed for gubernatorial action by art. II, Sec. 17 of the Alaska Constitution. Acts become effective 90 days after becoming law, unless the legislature, by concurrence of two-thirds of the membership of each house, provides for another effective date.

(b) The actual effective date of an Act having no effective-date provision is determined by starting with the day after it is signed by the governor or the day after the governor's veto is overridden or the day after expiration of the period allowed for gubernatorial action by art. II, Sec. 17 of the Alaska Constitution, and counting 90 calendar days, the Act becoming effective at 12:01 a.m., Alaska Standard Time on the 90th day.

(c) The actual effective date and time of an Act having an immediate-effective-date provision is 12:01 a.m., Alaska Standard Time, on the day after it is signed by the governor or on the day after the governor's veto is overridden or on the day after expiration of the period allowed for gubernatorial action by art. II, Sec. 17 of the Alaska Constitution.

(d) An Act that specifies a definite effective date becomes effective at 12:01 a.m., Alaska Standard Time, on the date specified. However, if the specified definite effective date is on or before the day the governor signs the Act, the day the governor's veto is overridden, or the last day of the period allowed for gubernatorial action by art. II, sec. 17, Constitution of the State of Alaska, as applicable, the Act becomes effective at 12:01 a.m., Alaska Standard Time, on the day after the governor signs the Act, the governor's veto is overridden, or the period allowed for gubernatorial action by art. II, sec. 17, Constitution of the State of Alaska, expires, as applicable.

(e) When the governor allows a bill to become law without signature, the governor shall give written notice of that fact to the legislature. The date of this notice does not affect the date the bill becomes law or the date the Act takes effect.

(f) In this section

(1) "Act" means a bill which has become law;

(2) "bill" means a legislative document proposing an Act;

(3) "becomes effective" means becomes applicable; "effective date" does not mean date of enactment (or date of becoming law), although the two will coincide when a bill which has an immediate-effective-date provision is allowed to become law without the governor's signature;

(4) "becomes law" means is enacted; "enactment" occurs when any one of the following takes place:

(A) a bill which is passed by the legislature is signed by the governor;

(B) the period specified in art. II, Sec. 17 of the Alaska Constitution expires without gubernatorial action;

(C) the legislature overrides the governor's veto of a bill;

(5) "passed by the legislature" means that the required majority of each house of the legislature has taken final action in approving the same version of a bill.

History -

(Sec. 5 ch 62 SLA 1962; am Sec. 8 ch 126 SLA 1966; am Sec. 1 ch 115 SLA 1974; am Sec. 1 - 3 ch 6 SLA 1984; am Sec. 1 ch 20 SLA 2002)

Cross References -

For federal law concerning standard time, see 15 U.S.C. 260-267.

Decisions -

Applied in *Atlantic Richfield Co. v. State*, 705 P.2d 418 (Alaska 1985).

Stated in *Rowe v. Burton*, 884 F. Supp. 1372 (D. Alaska 1994).

Cited in *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534 (Alaska 1978); *Fowler v. State*, 70 P.3d 1106 (Alaska Ct. App. 2003); *Allen v. Alaska Oil & Gas Conservation Comm'n*, 147 P.3d 664 (Alaska 2006).

Article Notes -

Collateral References.- 73 Am. Jur. 2d, Statutes, Sec. 164 et seq.

82 C.J.S., Statutes, Sec. 548 et seq.

Sec. 38.34.040. Duties of the development team.

(a) The Joint In-State Gasline Development Team shall produce a project plan for the development of an in-state natural gas pipeline. The development team shall ensure that the project plan is completed and delivered to the legislature by July 1, 2011. The project plan must specify and document how an in-state natural gas pipeline can be designed, financed, constructed, and made operational by December 31, 2015.

(b) The Joint In-State Gasline Development Team shall assume executive authority over and managerial responsibility for all activities enumerated under sec. 19, ch. 14, SLA 2009, including work previously completed, work in process, and work for which money has been encumbered but that is not completed on April 27, 2010.

(c) The project plan must include specific plans to coordinate and facilitate construction, ownership, operation, and management of a natural gas pipeline serving Fairbanks, the Southcentral region of the state, and other communities whenever practicable, connecting with or enhancing the existing gas pipeline system, and reaching to tidewater in the Southcentral region of the state.

(d) The development team's work product must include an analysis of alternative possible routes and the selection of a route that, consistent with the other requirements of this section,

(1) is economically feasible;

(2) makes natural gas available to residents at the lowest possible cost;

(3) allows for connecting lines to serve industrial, residential, and utility customers along the entire route, and in other regions of the state that can be served at commercially feasible rates;

(4) uses state land and existing state highway and railroad rights-of-way to the maximum extent feasible;

(5) uses existing highway and railroad bridges, gravel sources, equipment yards, maintenance facilities, and other existing facilities and resources to the maximum extent feasible.

(e) With the intent that any project-related assets acquired or developed be available for transfer or sale to the entity best able to complete the project, the development team shall

(1) prepare plans and designs necessary for construction of the in-state natural gas pipeline project;

(2) coordinate with entities qualified to build, own, and operate the natural gas pipeline;

(3) identify, apply for, and obtain rights-of-way and other permits for the project route;

(4) work with other entities to promote gas supply and purchase contracts required for the project to be commercially viable;

(5) prepare cost estimates for the project design, construction, and operation to determine the project's economic feasibility and the projected cost of natural gas to consumers;

(6) coordinate with and, to the fullest extent possible, use existing work by other state agencies and entities before contracting for new reports and research and analysis;

(7) determine regulatory authority over the pipeline project and perform any necessary compliance requirements;

(8) identify and apply for, or support extension of, existing permits for export of Alaska natural gas if that export improves project economics and will reduce the price of natural gas to in-state consumers.

(f) Notwithstanding any other provision of law, any rights to a natural gas pipeline corridor obtained by a state agency under eminent domain may be transferred to a private entity.

(g) Notwithstanding any other provision of law, a state agency acquiring an interest in land by eminent domain may grant a permit authorizing a private person to construct, manage, and operate a gas pipeline over, under, along, across, or upon the land.

(h) In preparing the project plan required in this section, the development team may consider all aspects of the in-state natural gas pipeline project, including public, private, or joint construction alternatives, marketing of natural gas, financing alternatives for pipeline construction, procurement of natural gas from producers, maximization of local hire, opportunities for promoting value-added industries, gas-to-liquids manufacturing opportunities, production and delivery of liquefied natural gas or propane to Yukon River, Interior, and coastal communities, alternatives for transporting natural gas to other locations in the state, the acquisition of natural gas commitments sufficient to ensure the long-term feasibility of the in-state natural gas pipeline project, the development of a global natural gas trading hub in the state, and facilitating the project developer's commitment, to the maximum extent permitted by law, to

(1) hire qualified residents from throughout the state for management, engineering, construction, operations, maintenance, and other positions on the proposed project;

(2) contract with businesses located in the state;

(3) establish hiring facilities or use existing hiring facilities in the state; and

(4) use, as far as is practicable, the job centers and associated services operated by the Department of Labor and Workforce Development and an Internet-based labor exchange system operated by the state.

(i) The Joint In-State Gasline Development Team shall take all action necessary to complete its responsibilities under this section.

History -

(Sec. 4 ch 7 SLA 2010)

Cross References -

For transitional provisions applicable to the obligations of the Joint In-State Gasline Development Team that are prescribed in this section, see Sec. 11(a), ch. 7, SLA 2010, in the 2010 Temporary and Special Acts.

Sec. 38.34.050. Cooperation and access to information.

(a) The Joint In-State Gasline Development Team may have access to information of all state agencies that is directly related to the planning, design, construction, or operation of the in-state natural gas pipeline.

(b) All state agencies or entities shall cooperate with and, except for requests from the Alaska Gasline Inducement Act coordinator (AS 43.90.250), give priority to requests for information from the Joint In-State Gasline Development Team. The development team shall avoid duplicating studies, plans, and designs that have already been produced or otherwise obtained by other state entities.

(c) Notwithstanding any contrary provision of law, the Department of Natural Resources shall grant the Alaska Housing Finance Corporation a right-of-way lease under AS 38.35 for the gas pipeline transportation corridor if

(1) the corporation submits a complete right-of-way lease application under AS 38.35.050;

(2) the lease application is made the subject of notice and other reasonable and appropriate publication requirements under AS 38.35.070; and

(3) the corporation agrees to be bound by the right-of-way lease covenants set out in AS 38.35.120.

(d) Notwithstanding any contrary provision of law, a right-of-way lease granted under (c) of this section is subject to AS 38.05, except that the best interest findings requirements of AS 38.05 and the permit requirements of AS 38.05.850 do not apply to a lease made under this section.

History -

(Sec. 4 ch 7 SLA 2010)

Cross References -

For transitional provisions applicable to the obligations of state agencies and entities to the transfer of responsibilities for obligations and initiatives related to the project described in this chapter to the Alaska Housing Finance Corporation as the principal entity to carry out that project, see Sec. 11(b), ch. 7, SLA 2010, in the 2010 Temporary and Special Acts.

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

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

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

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

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

(e) Notwithstanding other provisions of this section to the contrary, the Bureau of Vital Statistics and the library archives in the Department of Education and Early Development may continue to charge the same fees that they were charging on September 25, 1990, for performing record searches, and may increase the fees as necessary to recover agency expenses on the same basis that was used by the agency immediately before September 25, 1990. Notwithstanding other provisions of this section to the contrary, the Department of Commerce, Community, and Economic Development may continue to charge the same fees that the former Department of Commerce and Economic Development was charging on July 1, 1999, for performing record searches for matters related to banking, securities, and corporations, and may increase the fees as necessary to recover agency expenses on the same basis that was used by the former Department of Commerce and Economic Development immediately before July 1, 1999.

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

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

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

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

History -

(Sec. 3.22 ch 101 SLA 1962; am Sec. 2, 3 ch 200 SLA 1990; am Sec. 1 ch 58 SLA 1999; am Sec. 22 ch 14 SLA 2005)

Revisors Notes -

Formerly AS 09.25.110. Renumbered in 2000, at which time, in subsection (a), "AS 40.25.115" was substituted for "AS 09.25.115" to reflect the 2000 renumbering of AS 09.25.115. In 2004, in (e) of this section, a reference to "Department of Community and Economic Development" was changed to "Department of Commerce, Community, and Economic Development", in accordance with Sec. 3, ch. 47, SLA 2004.

Cross References -

For proof of public records, see Evid. R. 1005; for management and preservation of public records, see AS 40.21.

Amendment Notes -

The 2005 amendment, effective May 6, 2005, in the second sentence of subsection (e) deleted "division of banking, securities, and corporations in the" preceding "Department" and inserted "for matters related to banking, securities, and corporations."

AG Opinions -

As to confidentiality of oil and gas documents held by state agencies, see Nov. 24, 1980 Op. Att'y Gen.

When the taxpayer files the notice of appeal, a Department of Revenue hearing decision may be made public because the taxpayer is, in effect, waiving any right to confidentiality he may have had. June 16, 1983 Op. Att'y Gen., modifying March 12, 1980 Op. Att'y Gen. to the

extent that the time when the decision becomes a part of the public record is changed from the issuance of a court order to prepare the record to the filing of the notice of the appeal.

Certain provisions contained in a Subscriber Service Agreement with the Credit Bureau of Alaska, which provided that the subscriber (the Division of Accounting and Collections) agreed to make available to the credit bureau "all its consumer credit experience records pertaining to individuals located with the Bureau's geographic area of file building," did not violate the individual privacy of borrowers. May 11, 1984 Op. Att'y Gen.

Documents of the Alaska Real Estate Commission, including complaints (both licensing and surety fund), investigative files (to the extent that they do not contain constitutionally protected private information and insofar as the integrity of the investigation is not compromised), closed license files, hearing officer's proposed decisions, and subpoenas are public information and may not be kept confidential. Also, the hearing officer's proposed decisions are public record. 1984-2 Inf. Op. Atty. Gen. 269 (October 9; 166-154-85).

All materials received in response to the request for proposals (RFP) for the Anchorage Office Complex (AOC) were "public documents" subject to disclosure, but disclosure of certain records could have been delayed until a tentative contract award. During the evaluation process, the financial component of any proposal was not subject to disclosure. Further, the state or its agents could have properly declined to disclose records which would have compromised the anonymity of the aesthetic evaluation process. Jan. 30, 1985 Op. Att'y Gen.

The Office of Management and Budget (OMB) has the authority to provide the public with copies of the audits it receives under 2 AAC 45.010 (audits submitted by entities that have received state financial assistance from state agencies). Aug. 12, 1987 Op. Att'y Gen.

The Mental Health Board may have access to documents reflecting communications between the Department of Law and the Department of Health and Social Services to the extent that the commissioner of health and social services believes is appropriate. To the extent that the commissioner authorizes such access for documents which nonetheless are not subject to public disclosure (e.g., subject to the attorney/client privilege or the executive privilege), the board is required to preserve that confidentiality. Aug. 15, 1988 Op. Att'y Gen.

The names of purchasers of homes and condominiums, and the sales prices, are not confidential, and thus may be released to the public. Jan. 9, 1989 Op. Att'y Gen.

College transcripts of certified teachers or certificate applicants are not confidential, and they must be released at the request of a member of the public. Nov. 4, 1992 Op. Att'y Gen.

The policy favoring disclosure of public records supports the conclusion that records maintained by the charitable gaming division are open to public scrutiny. Any conclusion to the contrary would require compelling evidence of legislative intent to shroud these records in confidentiality. In the absence of such evidence, these records are open to public inspection. 1996 Op. Atty. Gen. No. 4.

Decisions -

For discussion of the history of this section, see *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Broad policy. - This section and AS 09.25.120 (now AS 40.25.120) articulate a broad policy of open records. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

The "agencies and departments" language used in this section must be read as referring to the agencies and departments of the governments to which the statute applies, but that language itself does not define what the applicable level of government is. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982) (decided prior to 1990 amendment).

The word "public" as used in this section and AS 09.25.120 (now AS 40.25.120) with "officer" refers both to state and local officials. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Deliberative process privilege. - Legislative proposals by state departments and agencies sent to the Governor to aid him in deciding what legislation to propose to the legislature were predecisional and deliberative and fell within the deliberative process privilege. *Capital Info. Group v. State, Office of Governor*, 923 P.2d 29 (Alaska 1996).

Budget impact memoranda prepared by state department heads at the request of the director of the Office of Management and Budget pursuant to AS 37.07.050, although meeting the threshold requirements of the deliberative process privilege, were required to be disclosed by the terms of AS 37.07.050(g). *Capital Info. Group v. State, Office of Governor*, 923 P.2d 29 (Alaska 1996).

Application to municipalities. - The provisions of this section are applicable to municipalities. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

In light of the common law rule, legislative history, and the court's reading of the sections, the state supreme court will construe this section and AS 09.25.120 (now AS 40.25.120) as that court would have construed them prior to 1957, which is as a strong legislative declaration that records in the possession of municipalities shall be available for

public inspection, subject to exceptions based on need. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Fees held proper. - Homer, Alaska regulations and municipal code charge a fee for the production of documents to the extent that such production exceeds five hours of working time, and such charges are not in violation of this section. *Fuller v. City of Homer*, Op. No. 5902, 113 P.3d 659 (Alaska 2005).

No fee allowed for time spent on privilege review. - "Production," under this section and under Homer, Alaska regulations, does not include a privilege review; where an individual was charged for the time spent on the production of records, remand was proper to determine if any time charged for was time spent on such a review. *Fuller v. City of Homer*, Op. No. 5902, 113 P.3d 659 (Alaska 2005).

Disclosure of applications for public posts. - Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular, requires public disclosure and inspection of applications for posts having substantial discretionary authority. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Lawsuit settlement agreement terms. - A public agency may not circumvent the statutory disclosure requirements by agreeing to keep the terms of a lawsuit settlement agreement confidential. *Anchorage Sch. Dist. v. Anchorage Daily News*, 779 P.2d 1191 (Alaska 1989).

University of Alaska. - The legislature intended to include the University of Alaska within the scope of state agencies subject to the public records statute. *Carter v. Alaska Pub. Employees Ass'n*, 663 P.2d 916 (Alaska 1983).

The president of the University of Alaska is a public officer for purposes of this section. *Carter v. Alaska Pub. Employees Ass'n*, 663 P.2d 916 (Alaska 1983).

Disclosure withheld from Office of Governor. - Because the seven disputed documents were all predecisional and deliberative, and because plaintiff's need for the documents did not outweigh the interest of the Office of the Governor in preventing interference with its decisionmaking process, the documents were properly withheld as privileged. *Gwich'in Steering Comm. v. State*, 10 P.3d 572 (Alaska 2000).

Letters sent by citizens to governor regarding appointments are public records within the scope of the public records statute, AS 09.25.110 - 09.25.120 (now AS 40.25.110 - 40.25.120). *Doe v. Alaska Superior Court*, 721 P.2d 617 (Alaska 1986).

Exceptions to disclosure requirements. - Exceptions to the disclosure requirements of this section are construed narrowly in furtherance of the legislature's expressed bias in favor of broad public access. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

The Open Meetings Act, which provides for closed executive sessions when subjects potentially prejudicial to reputation are discussed, does not establish an express exception to the pro-disclosure requirements of the Public Records Act or otherwise permit the suppression of documents produced at such sessions. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Sex offenders. - Alaska Sex Offender Registration Act (ASORA) requires release of information that is in part not otherwise public or readily available; taken in conjunction with AS 40.25.110(a), ASORA's treatment of this information, confirmed by the regulations, seems to require that the information be publicly available, and the harmful effects of ASORA stem not just from the conviction but from the registration, disclosure, and dissemination provisions. *Doe v. State*, 189 P.3d 999 (Alaska 2008).

Registry of users of marijuana for medical purposes. - Alaska's medical marijuana law does not require medical marijuana users to divulge any details about the debilitating conditions they suffer, and although it does require them to register and to identify their approving physicians, the law explicitly requires the department to keep the registry confidential; therefore, the law's confidential registration process does not violate the constitutional right to privacy. *Rollins v. Ulmer*, 15 P.3d 749 (Alaska 2001).

Child custody proceedings. - Although the public records law provides that public records are open to inspection, because AS 25.20.120 allows the court to close the records of child custody proceedings "if it is in the best interests of the child," an order sealing those records was proper. *In Re Alaback*, 997 P.2d 1181 (Alaska 1999).

Report of mayor's blue ribbon fiscal policy committee, appointed to investigate city's economic condition, was not exempt from ordinary disclosure requirements, where the report was the product of a public process and was intended for public dissemination. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Documents for city petition for annexation. - Alaska Public Records Act, AS 40.25.110(a), required disclosure of documents used to prepare a city petition for annexation; the deliberative process privilege did not apply because the public's interest in having access to these documents outweighed the city's interest in confidentiality. *Fuller v. City of Homer*, 75 P.3d 1059 (Alaska 2003).

Time sheets. - Time sheets which indicate merely the hours worked for a public employer are included in the definition of "public records" in AS 09.25.220(3) (now AS 40.25.220(3)), and they are not subject to the confidentiality provisions of AS 39.25.080. *Alaska Wildlife Alliance v. Rue*, 948 P.2d 976 (Alaska 1997).

Under the right of privacy provision, Alaska Const., art. I, Sec. 22, the Department of Fish & Game was entitled to redact the names of public employees and private contractors from time sheets requested under the Public Records Act, where those individuals had received threats against their lives. *Alaska Wildlife Alliance v. Rue*, 948 P.2d 976 (Alaska 1997).

Superior court order requiring city library advisory board to release to a newspaper a performance evaluation report pertaining to a head librarian was affirmed, where the evaluation did not in any way deal with the personal, intimate, or otherwise private life of the librarian. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Government bears burden of justifying denial of access. - When the government seeks to deny access to a particular public document, it is the government which bears the initial burden of presenting evidence justifying denial. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

A governmental agency is not entitled to delay access to a public document through the use of depositions where it has presented no prima facie defense to release. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Applied in *Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287 (Alaska 1984).

Cited in *O'Leary v. Superior Court*, 816 P.2d 163 (Alaska 1991).

Collateral Refs -

Admissibility of report of public officer or employee on cause of or responsibility for injury to person or damage to property. 69 ALR2d 1148.

Sec. 40.25.220. Definitions for AS 40.25.100 - 40.25.295.

In AS 40.25.100 - 40.25.295, unless the context otherwise requires,

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

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

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

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

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

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

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

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

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

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

History -

(Sec. 1 ch 115 SLA 1967; am Sec. 14 ch 59 SLA 1982; am Sec. 8 ch 200 SLA 1990; am Sec. 104 ch 4 FSSLA 1992; am E.O. No. 113 Sec. 18 (2005); am Sec. 21 ch 58 SLA 2010)

Revisors Notes -

Formerly AS 09.25.220. Renumbered in 2000, at which time "AS 40.25.100 - 40.25.220" was substituted for "AS 09.25.100 - 09.25.220" to reflect the 2000 renumbering of AS 09.25.100 - 09.25.220.

In 1994, former paragraphs (2)-(4) and (7) were renumbered as AS 09.25.390(1)-(4).

Amendment Notes -

The 2005 amendment, effective March 14, 2005, repealed former paragraph (4).

The 2010 amendment, effective June 10, 2010, in the section heading and in the introductory language, substituted "AS 40.25.100 - 40.25.295" for "AS 40.25.100 - 40.25.220".

AG Opinions -

Permanent fund dividend applications are most certainly included as records developed by a public agency preserved both for informational value and as evidence of the operation of the agency, i.e., they are public records. In 1990, the legislature passed laws directing the state to provide special notice when requiring a person to supply personal information so that the person may, among other things, challenge the accuracy or completeness of the information. As a part of this Act, the legislature adopted a definition of "personal information." This definition specifically excludes a person's name and address. Thus, a person's name and address are subject to disclosure, and the Department of Revenue must provide the names and addresses of PFD applicants to any member of the public who requests the information and pays the required fees. 1992 Inf. Op. Atty. Gen. 161 (April 1; 663-92-0163).

Decisions -

Public official. - The president of the University of Alaska is a public officer for purposes of AS 09.25.110 (now AS 40.25.110). *Carter v. Alaska Pub. Employees Ass'n*, 663 P.2d 916 (Alaska 1983).

Public records. - Time sheets which indicate merely the hours worked for a public employer are included in the definition of "public records" in this section, and they are not subject to the confidentiality provisions of AS 39.25.080. *Alaska Wildlife Alliance v. Rue*, 948 P.2d 976 (Alaska 1997).

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

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

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

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

(3) medical and related public health records;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) records that are

(A) proprietary, privileged, or a trade secret in accordance with AS 43.90.150 or 43.90.220(e);

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

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

(c) Recorders shall permit memoranda, transcripts, and copies of the public records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants, subject to reasonable rules and regulations as are necessary for the protection of the records and to

prevent interference with the regular discharge of the duties of the recorders and their employees.

History -

(Sec. 3.23 ch 101 SLA 1962; am Sec. 5 ch 200 SLA 1990; am Sec. 1 ch 113 SLA 1994; am Sec. 1 ch 102 SLA 1997; am Sec. 2 ch 65 SLA 1998; am Sec. 1 ch 3 SLA 2000; am Sec. 24 ch 28 SLA 2000; am Sec. 1 ch 36 SLA 2002; am Sec. 4 ch 164 SLA 2004; am Sec. 5 ch 22 SLA 2007; am Sec. 2 ch 76 SLA 2008)

Postponed Repeal Effective Date -.

Delayed repeal of paragraph (a)(9). - Under secs. 27 and 30, ch. 28, SLA 2000, as amended by sec. 3, ch. 34, SLA 2004, sec. 1, ch. 19, SLA 2009, and sec. 1, ch. 47, SLA 2010, paragraph (a)(9) of this section is repealed effective on the earlier of July 1, 2013, or the occurrence of the contingency described in sec. 30(2), ch. 28, SLA 2000, which is "90 days after the date the chair of the Alaska Legislative Council notifies the revisor of statutes that in the previous state fiscal year the state did not receive and does not anticipate receiving federal funding for a statewide boating and safety education program; the director of the division of legislative finance shall notify the chair of the Alaska Legislative Council when the state, in the previous fiscal year, did not receive federal funding for a statewide boating and safety program; the chair of the Alaska Legislative Council may not give the notice described in this paragraph unless the notice is approved by a vote of a majority of the members of the Alaska Legislative Council."

Revisors Notes -

Formerly AS 09.25.120. Renumbered in 2000, at which time, in subsection (b), "AS 40.25.110 - 40.25.115" was substituted for "AS 09.25.110 - 09.25.115" to reflect the 2000 renumbering of AS 09.25.110 and 09.25.115.

Reorganized into subsections in 1994.

Amendment Notes -

The 2007 amendment, effective June 8, 2007, added paragraph (a)(12).

The 2008 amendment, effective July 1, 2008, deleted "and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public records for those purposes" following "abstract plants" in subsection (c), and deleted "in conformity to the direction of the court" following "rules and regulations" in that subsection.

AG Opinions -

Disclosing library use records, while deleting any references which would allow the library patron to be identified, should, in most cases, satisfy the policies underlying the Freedom of Information Act without interfering with privacy interests. There may, however, be some instances in which the release of names is necessary to accomplish an important public interest. Such requests should be reviewed on a case-by-case basis with advice from the Department of Law. July 13, 1984 Op. Att'y Gen.

The Alaska Judicial Council is a public agency, and its records are public records subject to the provisions of this section. Oct. 3, 1984 Op. Att'y Gen.

The Judicial Council is authorized to adopt rules and regulations regarding the confidentiality of its own records, provided they are consistent with state statutes, including this section. For those cases where considerations favoring disclosure are nearly equal to those favoring confidentiality, rules or regulations may, and indeed should, be adopted to set guidelines for use in deciding whether disclosure should be made. Oct. 3, 1984 Op. Att'y Gen.

Any letters concerning judicial applicants which are transferred by the Judicial Council to the governor remain confidential in the hands of the governor and should not be disclosed to the public. Oct. 3, 1984 Op. Att'y Gen.

Portions of trip memoranda prepared by the governor which related to personal matters were not public records subject to release. Further, the "public record" portion of the trip memoranda were communications which the governor's office, in its discretion, could have declined to release under the doctrine of executive privilege. Finally, even if the governor waived any claim to executive privilege, he should have declined to release material which compromised an individual's privacy rights, unless a waiver was obtained. Sept. 24, 1985 Op. Att'y Gen.

The radio frequencies of the Department of Fish and Games telemetry transmitters that are used to track wildlife in the state should not normally be disclosed to the public because this disclosure would be against the public interest. While there is no state statute specifically requiring these radio frequencies to be kept confidential, there are two other sources of "state law" under which records may be required to be kept confidential: (1) the right of privacy specified in article I, section 22 of the Alaska Constitution; and (2) the common-law "public interest" exception. Oct. 21, 1985 Op. Att'y Gen.

In response to a public records request received by the Division of Retirement and Benefits concerning former state troopers, firemen, and fish and wildlife protection officers who were receiving occupational disability benefits under the Public Employees' Retirement System (PERS), which request included asking for the recipients' names, former positions with the state, dates of injury, types of injury or disability, retirement dates, and amounts of

monthly benefits, the public interest was served by providing the requested information, but, in order to protect the privacy interests of the benefit recipients, all personal references and information that would have easily allowed identification of individuals had to be deleted. Aug. 6, 1986 Op. Att'y Gen.

The names and addresses of individual trappers, contained on Alaska Department of Fish and Game wolf sealing forms, are not expressly exempted from the public disclosure requirements of AS 09.25.110 (now AS 40.25.110), and there is no constitutional or common-law requirement for confidentiality. Sept. 3, 1986 Op. Att'y Gen.

Certain private business records in the possession of the Department of Commerce and Economic Development, which were submitted voluntarily, in order for the department to carry out its statutory duty to conduct economic development studies relating to domestic fish harvesting, which records included those used by seafood processors to formulate business plans for future years - data on volume/species mixes, target areas of the state, and market share information - were probably not a matter of public record, but this result may have varied depending on the content of particular documents. Without a regulation based on statutory or constitutional authority, the department had to, in each case, balance the interest of the business with the public's right to know. Dec. 8, 1986 Op. Att'y Gen.

Certain oil and gas leasing receipts from University of Alaska trust lands between 1981 and 1985 were improperly allocated among the Alaska permanent fund, the general fund, and the public school fund, and should have been allocated to the fund established under AS 14.40.100. This requirement stems directly from federal law, which supersedes the provisions of state law in this instance. 1987-1 Inf. Op. Atty. Gen. 233 (April 8; 663-87-0465).

Active investigation files of the Alaska Public Offices Commission (APOC) cannot be viewed and copied. There are at least three demonstrable public and private interests which, at least in the aggregate, outweigh the public's right to have access to these files: (1) the agency and the public have an interest in preserving the integrity and effectiveness of law enforcement investigations, and that interest may be jeopardized by the release of active investigative files; (2) release of unevaluated information to the public may unfairly impair the reputation of the subjects of the investigation, and may come perilously close to violating their due process rights guaranteed by the state and federal constitutions; and (3) Alaska's constitutional right to privacy requires APOC to use extreme caution in disclosing unverified or unevaluated charges of materials obtained by the agency in the course of an investigation. Apr. 30, 1987 Op. Att'y Gen.

The Child Support Enforcement Division could release a list of child support obligors who are in arrears, pursuant to a request by a newspaper under the state's public records statutes. In releasing this information, however, the division could not identify those cases

which were related to Aid to Family with Dependent Children. The division also had to explain to the newspaper that the existence of arrears was disputable by the individual obligors. May 30, 1989 Op. Att'y Gen.

Information in grant status reports by the former Alaska Science and Technology Foundation was public, and the reports had to be presented in open session in accordance with the Open Meetings Act. However, confidential information under former AS 37.17.090 could be presented in executive session, and omitted from a grant status report provided for public inspection. 1991 Op. Atty. Gen. No. 173.

The Workers' Compensation Division may not, in response to a public information request, release its electronic data base in its entirety, but may release the information contained in the data base if social security numbers are deleted. Public agencies are prohibited under the federal Privacy Act of 1974 from disclosing claimants' social security numbers if the claimants were not informed whether the disclosure was voluntary or mandatory or told of the potential uses of the numbers when the number was provided. Furthermore the release of an electronic data base that contains names matched with individual social security numbers in response to a public information request appears to violate the protections intended under the Privacy Act. Nov. 13, 1992 Op. Att'y Gen.

Teacher transcripts sent to the Alaska Department of Education for the purpose of obtaining teacher certification are not subject to the provisions of the Family Education Rights and Privacy Act of 1974 (FERPA), and are public records subject to disclosure upon request. 1992 Op. Atty. Gen. No. 235.

The first step when a request for records is received is to determine whether the requestor is involved in litigation, or is representing someone involved in litigation, with the state or one of its agencies. If so, the request must be denied. The person should be advised that the records can only be produced in response to a subpoena or discovery order. In other instances, a specific determination as to the existence of an exemption should be made, especially in cases related to criminal investigations. 1994 Op. Atty. Gen. No. 1.

Decisions -

For discussion of the history of this section, see *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Broad policy. - AS 09.25.110 (now AS 40.25.110) and this section articulate a broad policy of open records. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Effect of "in the state" language. - When the legislature chose to say "in the state," and not "of the state" in the first sentence of this section, they were conscious of the fact that they were defining scope and had it been intended to limit the application of this section to state agencies and departments, it could easily and clearly have done so. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

The word "public" as used in AS 09.25.110 (now AS 40.25.110) and this section with "officer" refers both to state and local officials. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Deliberative process privilege. - Legislative proposals by state departments and agencies sent to the Governor to aid him in deciding what legislation to propose to the legislature were predecisional and deliberative and fell within the deliberative process privilege. *Capital Info. Group v. State, Office of Governor*, 923 P.2d 29 (Alaska 1996).

Budget impact memoranda prepared by state department heads at the request of the director of the Office of Management and Budget pursuant to AS 37.07.050, although meeting the threshold requirements of the deliberative process privilege, were required to be disclosed by the terms of AS 37.07.050(g). *Capital Info. Group v. State, Office of Governor*, 923 P.2d 29 (Alaska 1996).

Alaska Public Records Act, AS 40.25.110(a), required disclosure of documents used to prepare a city petition for annexation; the deliberative process privilege did not apply because the public's interest in having access to these documents outweighed the city's interest in confidentiality. *Fuller v. City of Homer*, 75 P.3d 1059 (Alaska 2003).

Application to municipalities. - The provisions of AS 09.25.110 (now AS 40.25.110) and this section are applicable to municipalities. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

In light of the common law rule, legislative history, and the court's reading of the sections, the state supreme court will construe AS 09.25.110 (now AS 40.25.110) and this section as that court would have construed them prior to 1957, which is as a strong legislative declaration that records in the possession of municipalities shall be available for public inspection, subject to exceptions based on need. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Criminal records. - Even if the superior court had the power to seal a court file for a convicted criminal, if presented with extraordinary circumstances to override public access, the superior court could reasonably conclude that defendant had not shown such extraordinary circumstances and the state laws and the court rules expressed a clear preference for public

records to remain accessible; thus, the superior court did not abuse its discretion when it denied defendant's motion to seal his court records. *Johnson v. State*, 50 P.3d 404 (Alaska Ct. App. 2002).

Disclosure of applications for public posts. - Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular requires public disclosure and inspection of applications for posts having substantial discretionary authority. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Lawsuit settlement agreement terms. - A public agency may not circumvent the statutory disclosure requirements by agreeing to keep the terms of a lawsuit settlement agreement confidential. *Anchorage Sch. Dist. v. Anchorage Daily News*, 779 P.2d 1191 (Alaska 1989).

University of Alaska. - The legislature intended to include the University of Alaska within the scope of state agencies subject to the public records statute. *Carter v. Alaska Pub. Employees Ass'n*, 663 P.2d 916 (Alaska 1983).

Documents concerning citizen's petition to oust police chief were not subject to inspection since the citizens had a reasonable expectation that their contacts with the police department would not be publicly disclosed. *Ramsey v. City of Sand Point*, 936 P.2d 126 (Alaska 1997).

Letters sent by citizens to governor regarding appointments are public records within the scope of the public records statute, AS 09.25.110 - 09.25.120 (now AS 40.25.110 - 40.25.120). *Doe v. Alaska Superior Court*, 721 P.2d 617 (Alaska 1986).

Exceptions to disclosure requirements. - Exceptions to the disclosure requirements of this section are construed narrowly in furtherance of the legislature's expressed bias in favor of broad public access. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

The Open Meetings Act, which provides for closed executive sessions when subjects potentially prejudicial to reputation are discussed, does not establish an express exception to the pro-disclosure requirements of the Public Records Act or otherwise permit the suppression of documents produced at such sessions. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Report of mayor's blue ribbon fiscal policy committee, appointed to investigate city's economic condition, was not exempt from ordinary disclosure requirements, where the report

was the product of a public process and was intended for public dissemination. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Superior court order requiring city library advisory board to release to a newspaper a performance evaluation report pertaining to a head librarian was affirmed, where the evaluation did not in any way deal with the personal, intimate, or otherwise private life of the librarian. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Government bears burden of justifying denial of access. - When the government seeks to deny access to a particular public document, it is the government which bears the initial burden of presenting evidence justifying denial. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

A governmental agency is not entitled to delay access to a public document through the use of depositions where it has presented no prima facie defense to release. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Disclosure withheld from Office of Governor. - Because the seven disputed documents were all predecisional and deliberative, and because plaintiff's need for the documents did not outweigh the interest of the Office of the Governor in preventing interference with its decisionmaking process, the documents were properly withheld as privileged. *Gwich'in Steering Comm. v. State*, 10 P.3d 572 (Alaska 2000).

Governor's Reapportionment Board. - Where the Governor's Reapportionment Board ignored some written requests for records and released certain materials in an untimely manner, the Board violated the Public Records Act. *Hickel v. Southeast Conference*, 868 P.2d 919 (Alaska 1994).

Collateral Refs -

66 Am. Jur. 2d, Records and Recording Laws, Sec. 27-31.

76 C.J.S., Records, Sec. 8-20.

Validity, construction, and application of statutes making public proceedings open to the public. 38 ALR3d 1070.

Confidentiality of records as to recipients of public welfare. 54 ALR3d 768.

Validity, construction, and application of statutory provisions relating to public access to police records. 82 ALR3d 19.

Restricting access to judicial records of state courts. 84 ALR3d 598.

Payroll records of individual government employees as subject to disclosure to public. 100 ALR3d 699.

What constitutes "agency" for purposes of Freedom of Information Act (5 U.S.C. Sec. 552). 165 ALR Fed. 591.

Actions brought under Freedom of Information Act, 5 U.S.C.A. Sec. 522 et seq. - Supreme Court cases. 167 ALR Fed. 545.

What are interagency or intra-agency memorandums or letters exempt from disclosure under the Freedom of Information Act (5 U.S.C.A. 552(b)). 168 ALR Fed. 143.

What matters are exempt from disclosure under Freedom of Information Act (5 U.S.C.A. Sec. 552(b)) as "specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy." 169 ALR Fed. 495.

What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of confidential source and, in some instances, of information furnished by confidential source (5 U.S.C.A. Sec. 552(b)). 171 ALR Fed. 193.

Construction and application of FOIA exemption 7(f), 5 U.S.C.A. Sec. 552(b)(7)(F), which permits withholding of information compiled for law enforcement purposes if disclosure could reasonably be expected to endanger life or physical safety. 184 ALR Fed. 435.

Use of affidavits to substantiate federal agency's claim of exemption from request for documents under Freedom of Information Act (5 U.S.C.A. Sec. 552). 187 ALR Fed. 1.

When are government records reasonably "expected to interfere with enforcement proceedings" so as to be exempt from disclosure under Freedom of Information Act provision (5 U.S.C.A. Sec. 552(b)(7)(a)) exempting any information "compiled for law enforcement purposes" whenever it "could reasonably be expected to interfere with enforcement proceedings." 189 ALR Fed. 1.

Sec. 40.25.220. Definitions for AS 40.25.100 - 40.25.295.

In AS 40.25.100 - 40.25.295, unless the context otherwise requires,

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

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

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

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

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

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

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

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

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

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

History -

(Sec. 1 ch 115 SLA 1967; am Sec. 14 ch 59 SLA 1982; am Sec. 8 ch 200 SLA 1990; am Sec. 104 ch 4 FSSLA 1992; am E.O. No. 113 Sec. 18 (2005); am Sec. 21 ch 58 SLA 2010)

Revisors Notes -

Formerly AS 09.25.220. Renumbered in 2000, at which time "AS 40.25.100 - 40.25.220" was substituted for "AS 09.25.100 - 09.25.220" to reflect the 2000 renumbering of AS 09.25.100 - 09.25.220.

In 1994, former paragraphs (2)-(4) and (7) were renumbered as AS 09.25.390(1)-(4).

Amendment Notes -

The 2005 amendment, effective March 14, 2005, repealed former paragraph (4).

The 2010 amendment, effective June 10, 2010, in the section heading and in the introductory language, substituted "AS 40.25.100 - 40.25.295" for "AS 40.25.100 - 40.25.220".

AG Opinions -

Permanent fund dividend applications are most certainly included as records developed by a public agency preserved both for informational value and as evidence of the operation of the agency, i.e., they are public records. In 1990, the legislature passed laws directing the state to provide special notice when requiring a person to supply personal information so that the person may, among other things, challenge the accuracy or completeness of the information. As a part of this Act, the legislature adopted a definition of "personal information." This definition specifically excludes a person's name and address. Thus, a person's name and address are subject to disclosure, and the Department of Revenue must provide the names and addresses of PFD applicants to any member of the public who requests the information and pays the required fees. 1992 Inf. Op. Atty. Gen. 161 (April 1; 663-92-0163).

Decisions -

Public official. - The president of the University of Alaska is a public officer for purposes of AS 09.25.110 (now AS 40.25.110). *Carter v. Alaska Pub. Employees Ass'n*, 663 P.2d 916 (Alaska 1983).

Public records. - Time sheets which indicate merely the hours worked for a public employer are included in the definition of "public records" in this section, and they are not subject to the confidentiality provisions of AS 39.25.080. *Alaska Wildlife Alliance v. Rue*, 948 P.2d 976 (Alaska 1997).



LAWS OF ALASKA

2010

Source

SCS CSHB 369(FIN)

Chapter No.

AN ACT

Relating to an in-state natural gas pipeline, the office of in-state gasline project coordinator, and the Joint In-State Gasline Development Team; requiring the development of an in-state natural gas pipeline plan, to be delivered to the legislature by July 1, 2011, that provides for a natural gas pipeline that is operational by December 31, 2015; directing the Joint In-State Gasline Development Team to assume responsibilities under sec. 19, ch. 14, SLA 2009; requiring expedited review and action by state agencies or entities relating to the in-state natural gas pipeline project; clarifying the purpose of the Alaska Natural Gas Development Authority; relating to definitions of certain terms that relate to a project that may be developed by the Alaska Natural Gas Development Authority; relating to an exemption from application of AS 38.35 for certain natural gas carriers; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to an in-state natural gas pipeline, the office of in-state gasline project coordinator,
2 and the Joint In-State Gasline Development Team; requiring the development of an in-state
3 natural gas pipeline plan, to be delivered to the legislature by July 1, 2011, that provides for a
4 natural gas pipeline that is operational by December 31, 2015; directing the Joint In-State
5 Gasline Development Team to assume responsibilities under sec. 19, ch. 14, SLA 2009;
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7 natural gas pipeline project; clarifying the purpose of the Alaska Natural Gas Development
8 Authority; relating to definitions of certain terms that relate to a project that may be developed
9 by the Alaska Natural Gas Development Authority; relating to an exemption from application
10 of AS 38.35 for certain natural gas carriers; and providing for an effective date.

11

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

3 LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that

4 (1) by 2018, declining oil flow through the Trans Alaska Pipeline System will
5 seriously diminish state revenue;

6 (2) Cook Inlet natural gas reserves are depleting at a rate that could cause
7 significant short-term shortages for residential and commercial gas users in Southcentral
8 Alaska by 2013;

9 (3) a proposed natural gas pipeline to deliver North Slope gas reserves to the
10 North American domestic gas pipeline grid at a connection in central Alberta will not produce
11 revenue for the benefit of the state before 2020;

12 (4) the state's significant reserves of natural gas should be made available on a
13 priority basis in the state to enhance employment opportunities, expand the state's economy,
14 and supply a significant portion of community energy needs;

15 (5) the Alaska Railroad Corporation is a public corporation charged with
16 promoting economic development in the state, enjoys unique authority, and may issue
17 revenue bonds to finance construction of a natural gas pipeline;

18 (6) the Alaska Natural Gas Development Authority is studying a pipeline spur,
19 aggregating in-state demand for natural gas, and facilitating delivery of natural gas and
20 natural gas liquids to Alaskans; and

21 (7) in light of competing demands for future uses of the state's North Slope
22 natural gas reserves, an aggressive effort involving planning, permitting, and coordination of
23 information sharing, of necessary agreements and commitments, and of commercial
24 negotiations among interested parties is necessary for completion of construction of an in-
25 state natural gas pipeline that will provide significant direct benefit to the people of the state
26 at the earliest possible date.

27 (b) It is the purpose of sec. 4 of this Act

28 (1) to give general direction to the Joint In-State Gasline Development Team
29 to plan and develop construction of a high pressure in-state natural gas pipeline sufficient to
30 provide for the distribution of natural gas for residential and commercial purposes at locations
31 along the pipeline route;

1 (2) to give general direction to the Joint In-State Gasline Development Team
2 that, to the maximum extent practicable, the plan for development of an in-state natural gas
3 pipeline required under AS 38.34.040 is compatible but not competitive with the projects
4 described in AS 41.41 and AS 43.90; and

5 (3) to direct the executive director of the Alaska Housing Finance Corporation
6 to oversee all aspects of the project described in sec. 4 of this Act.

7 * **Sec. 2.** AS 18.56.086 is amended to read:

8 **Sec. 18.56.086. Creation of subsidiaries.** The corporation may create
9 subsidiary corporations for the purpose of financing or facilitating the financing of
10 school construction, facilities for the University of Alaska, facilities for ports and
11 harbors, prepayment of all or a portion of a governmental employer's share of
12 unfunded accrued actuarial liability of retirement systems, or other capital projects. A
13 subsidiary corporation may also be created for the purpose of planning,
14 constructing, and financing in-state natural gas pipeline projects or for the
15 purpose of aiding in the planning, construction, and financing of in-state natural
16 gas pipeline projects. A subsidiary corporation created under this section may be
17 incorporated under AS 10.20.146 - 10.20.166. The corporation may transfer assets of
18 the corporation to a subsidiary created under this section. A subsidiary created under
19 this section may borrow money and issue bonds as evidence of that borrowing, and
20 has all the powers of the corporation that the corporation grants to it. However, a
21 subsidiary created for the purpose of financing or facilitating the financing of
22 prepayment of a governmental employer's share of unfunded accrued actuarial liability
23 of retirement systems may borrow money and issue bonds only if the state bond rating
24 is the equivalent of AA- or better and subject to AS 37.15.903. A subsidiary
25 corporation created for the purpose of planning, constructing, and financing in-
26 state natural gas pipeline projects or for the purpose of aiding in the planning,
27 construction, or financing of in-state natural gas pipeline projects is exempt from
28 AS 36.30, including AS 36.30.015(d) and (f). Unless otherwise provided by the
29 corporation, the debts, liabilities, and obligations of a subsidiary corporation created
30 under this section are not the debts, liabilities, or obligations of the corporation.

31 * **Sec. 3.** AS 36.30.850(b) is amended by adding a new paragraph to read:

1 (48) a subsidiary of the Alaska Housing Finance Corporation created
2 under AS 18.56.086 for the purpose of planning, financing, or constructing in-state
3 natural gas pipeline projects or for the purpose of aiding in the planning, financing, or
4 constructing of in-state natural gas pipeline projects.

5 * **Sec. 4.** AS 38 is amended by adding new sections to read:

6 **Chapter 34. In-State Natural Gas Pipeline.**

7 **Sec. 38.34.010. In-state gasline project coordinator.** (a) The position of in-
8 state gasline project coordinator is created in the Office of the Governor. The Office of
9 the Governor shall provide administrative support for the position. The position shall
10 continue until one year after commencement of commercial operation of the in-state
11 natural gas pipeline.

12 (b) The governor shall appoint an individual to the position of in-state gasline
13 project coordinator. The coordinator is in the exempt service under AS 39.25.110. The
14 person serving as the in-state gasline project coordinator may be removed from the
15 position at the discretion of the governor, who shall appoint another person to the
16 position.

17 (c) The in-state gasline project coordinator shall collaborate with other state
18 agencies or entities to coordinate and facilitate the provisions of AS 38.34.020.

19 **Sec. 38.34.020. Expedited review and action by state agencies or entities.**

20 (a) A state agency or entity conducting a review or taking action relating to the in-state
21 natural gas pipeline project under this chapter shall expedite the review or action in a
22 manner consistent with the timely completion of the project.

23 (b) Notwithstanding any contrary provision of law, a state agency or entity
24 may not include in any project certificate, right-of-way, permit, or other authorization
25 a term or condition that is not required by law if the in-state gasline project
26 coordinator determines that the term or condition would prevent or impair, in any
27 significant respect, the expeditious construction and operation or expansion of the in-
28 state natural gas pipeline project.

29 (c) Unless required by law, a state agency or entity may not add to, amend, or
30 abrogate any certificate, right-of-way, permit, or other authorization if the in-state
31 gasline project coordinator determines that the action would prevent or impair, in any

1 significant respect, the expeditious construction, operation, or expansion of the in-state
2 natural gas pipeline project.

3 **Sec. 38.34.030. Joint In-State Gasline Development Team.** (a) The Joint In-
4 State Gasline Development Team is established in the Alaska Housing Finance
5 Corporation. The development team consists of five members as follows:

6 (1) the commissioner of transportation and public facilities, or the
7 commissioner's designee;

8 (2) the chair of the board of directors of the Alaska Railroad
9 Corporation;

10 (3) the chief executive officer of the Alaska Natural Gas Development
11 Authority;

12 (4) the in-state gasline project coordinator; and

13 (5) the executive director of the Alaska Housing Finance Corporation.

14 (b) The executive director of the Alaska Housing Finance Corporation is the
15 chair of the development team.

16 (c) The development team may hire staff, enter into contracts, and exercise
17 other powers necessary to carry out its functions. The development team shall
18 separately account for expenditures made to carry out its functions and submit to the
19 legislature a quarterly report of those expenditures. The development team shall also
20 submit to each member of the legislature monthly updates on the progress of the in-
21 state natural gas pipeline project.

22 **Sec. 38.34.040. Duties of the development team.** (a) The Joint In-State
23 Gasline Development Team shall produce a project plan for the development of an in-
24 state natural gas pipeline. The development team shall ensure that the project plan is
25 completed and delivered to the legislature by July 1, 2011. The project plan must
26 specify and document how an in-state natural gas pipeline can be designed, financed,
27 constructed, and made operational by December 31, 2015.

28 (b) The Joint In-State Gasline Development Team shall assume executive
29 authority over and managerial responsibility for all activities enumerated under sec.
30 19, ch. 14, SLA 2009, including work previously completed, work in process, and
31 work for which money has been encumbered but that is not completed on the effective

1 date of this subsection.

2 (c) The project plan must include specific plans to coordinate and facilitate
3 construction, ownership, operation, and management of a natural gas pipeline serving
4 Fairbanks, the Southcentral region of the state, and other communities whenever
5 practicable, connecting with or enhancing the existing gas pipeline system, and
6 reaching to tidewater in the Southcentral region of the state.

7 (d) The development team's work product must include an analysis of
8 alternative possible routes and the selection of a route that, consistent with the other
9 requirements of this section,

10 (1) is economically feasible;

11 (2) makes natural gas available to residents at the lowest possible cost;

12 (3) allows for connecting lines to serve industrial, residential, and
13 utility customers along the entire route, and in other regions of the state that can be
14 served at commercially feasible rates;

15 (4) uses state land and existing state highway and railroad rights-of-
16 way to the maximum extent feasible;

17 (5) uses existing highway and railroad bridges, gravel sources,
18 equipment yards, maintenance facilities, and other existing facilities and resources to
19 the maximum extent feasible.

20 (e) With the intent that any project-related assets acquired or developed be
21 available for transfer or sale to the entity best able to complete the project, the
22 development team shall

23 (1) prepare plans and designs necessary for construction of the in-state
24 natural gas pipeline project;

25 (2) coordinate with entities qualified to build, own, and operate the
26 natural gas pipeline;

27 (3) identify, apply for, and obtain rights-of-way and other permits for
28 the project route;

29 (4) work with other entities to promote gas supply and purchase
30 contracts required for the project to be commercially viable;

31 (5) prepare cost estimates for the project design, construction, and

1 operation to determine the project's economic feasibility and the projected cost of
2 natural gas to consumers;

3 (6) coordinate with and, to the fullest extent possible, use existing
4 work by other state agencies and entities before contracting for new reports and
5 research and analysis;

6 (7) determine regulatory authority over the pipeline project and
7 perform any necessary compliance requirements;

8 (8) identify and apply for, or support extension of, existing permits for
9 export of Alaska natural gas if that export improves project economics and will reduce
10 the price of natural gas to in-state consumers.

11 (f) Notwithstanding any other provision of law, any rights to a natural gas
12 pipeline corridor obtained by a state agency under eminent domain may be transferred
13 to a private entity.

14 (g) Notwithstanding any other provision of law, a state agency acquiring an
15 interest in land by eminent domain may grant a permit authorizing a private person to
16 construct, manage, and operate a gas pipeline over, under, along, across, or upon the
17 land.

18 (h) In preparing the project plan required in this section, the development team
19 may consider all aspects of the in-state natural gas pipeline project, including public,
20 private, or joint construction alternatives, marketing of natural gas, financing
21 alternatives for pipeline construction, procurement of natural gas from producers,
22 maximization of local hire, opportunities for promoting value-added industries, gas-to-
23 liquids manufacturing opportunities, production and delivery of liquefied natural gas
24 or propane to Yukon River, Interior, and coastal communities, alternatives for
25 transporting natural gas to other locations in the state, the acquisition of natural gas
26 commitments sufficient to ensure the long-term feasibility of the in-state natural gas
27 pipeline project, the development of a global natural gas trading hub in the state, and
28 facilitating the project developer's commitment, to the maximum extent permitted by
29 law, to

30 (1) hire qualified residents from throughout the state for management,
31 engineering, construction, operations, maintenance, and other positions on the

1 proposed project;

2 (2) contract with businesses located in the state;

3 (3) establish hiring facilities or use existing hiring facilities in the state;

4 and

5 (4) use, as far as is practicable, the job centers and associated services
6 operated by the Department of Labor and Workforce Development and an Internet-
7 based labor exchange system operated by the state.

8 (i) The Joint In-State Gasline Development Team shall take all action
9 necessary to complete its responsibilities under this section.

10 **Sec. 38.34.050. Cooperation and access to information.** (a) The Joint In-
11 State Gasline Development Team may have access to information of all state agencies
12 that is directly related to the planning, design, construction, or operation of the in-state
13 natural gas pipeline.

14 (b) All state agencies or entities shall cooperate with and, except for requests
15 from the Alaska Gasline Inducement Act coordinator (AS 43.90.250), give priority to
16 requests for information from the Joint In-State Gasline Development Team. The
17 development team shall avoid duplicating studies, plans, and designs that have already
18 been produced or otherwise obtained by other state entities.

19 (c) Notwithstanding any contrary provision of law, the Department of Natural
20 Resources shall grant the Alaska Housing Finance Corporation a right-of-way lease
21 under AS 38.35 for the gas pipeline transportation corridor if

22 (1) the corporation submits a complete right-of-way lease application
23 under AS 38.35.050;

24 (2) the lease application is made the subject of notice and other
25 reasonable and appropriate publication requirements under AS 38.35.070; and

26 (3) the corporation agrees to be bound by the right-of-way lease
27 covenants set out in AS 38.35.120.

28 (d) Notwithstanding any contrary provision of law, a right-of-way lease
29 granted under (c) of this section is subject to AS 38.05, except that the best interest
30 findings requirements of AS 38.05 and the permit requirements of AS 38.05.850 do
31 not apply to a lease made under this section.

1 **Sec. 38.34.060. Conflicts of interest.** (a) If a member of the Joint In-State
2 Gasline Development Team acquires, owns, or controls an interest, direct or indirect,
3 in property, an organization, or a business that might be affected by the in-state natural
4 gas pipeline project or other matter under consideration by the development team, the
5 member shall immediately disclose the interest to the development team. The
6 disclosure is a matter of public record and shall be included in the minutes of the first
7 meeting of the development team held after the disclosure.

8 (b) The members of the development team are subject to AS 39.50 and
9 AS 39.52.

10 **Sec. 38.34.099. Definitions.** In this chapter,

11 (1) "in-state natural gas pipeline" means a pipeline for transporting
12 natural gas that runs from the North Slope to tidewater in the state;

13 (2) "North Slope" means that area of Alaska lying north of 68 degrees
14 North latitude.

15 * **Sec. 5.** AS 38.35.220(a) is amended to read:

16 (a) Natural gas carriers **that operate as public utilities** holding easements,
17 rights-of-way, or permits for pipelines on state public land on May 20, 1972, are
18 unaffected by this chapter within the scope of their existing operations, normal
19 expansions, and extensions thereof so long as their original or present purpose and
20 function remains unchanged. **This exemption does not apply to a natural gas**
21 **pipeline constructed outside of the**

22 **(1) Southcentral region of the state;**

23 **(2) Matanuska-Susitna Borough;**

24 **(3) Kenai Peninsula Borough;**

25 **(4) Municipality of Anchorage;**

26 **(5) Chugach Regional Educational Attendance Area; or**

27 **(6) Copper River Regional Educational Attendance Area.**

28 * **Sec. 6.** AS 39.25.110 is amended by adding a new paragraph to read:

29 (43) the in-state gasline project coordinator appointed under
30 AS 38.34.010.

31 * **Sec. 7.** AS 41.41.010(a) is amended to read:

1 (a) There is established the Alaska Natural Gas Development Authority, the
2 purpose of which is to provide one or more of the following services and functions in
3 order to bring natural gas from the North Slope or other regions of the state to
4 market, including

5 (1) the acquisition and conditioning of [NORTH SLOPE] natural gas;

6 (2) the design and construction of the pipeline system;

7 (3) the operation and maintenance of the pipeline system;

8 (4) the design, construction, **and** operation [,] of other facilities
9 necessary for delivering the gas to market, including markets in the state [AND TO
10 SOUTHCENTRAL ALASKA]; and

11 (5) the acquisition of natural gas market share sufficient to ensure the
12 long-term feasibility of [THE] pipeline system projects [PROJECT].

13 * **Sec. 8.** AS 41.41.010(d) is amended to read:

14 (d) The acquisition of natural gas from the North Slope and other regions of
15 the state, including the Alaska outer continental shelf, and its delivery to markets
16 in the state for use by markets in the state or to tidewater for shipment to market by
17 the authority are [IS AN] essential government functions [FUNCTION] of the state.

18 * **Sec. 9.** AS 41.41.990(3) is amended to read:

19 (3) "project" means the gas transmission pipeline, together with all
20 related property and facilities, to extend from [THE PRUDHOE BAY AREA ON] the
21 North Slope of Alaska or other regions of the state to a market in the state, or be
22 available to a market in the state, and [EITHER] to tidewater at a point on Prince
23 William Sound [AND THE SPUR LINE FROM GLENNALLEN TO THE
24 SOUTHCENTRAL GAS DISTRIBUTION GRID] or [TO TIDEWATER AT A
25 POINT ON] Cook Inlet, and includes planning, design, and construction of the
26 pipeline and facilities as described in AS 41.41.010(a)(1) - (5).

27 * **Sec. 10.** AS 41.41.990 is amended by adding a new paragraph to read:

28 (4) "North Slope" means that part of the state that lies north of 68
29 degrees North latitude and includes the Brooks Range foothills.

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

1 TRANSITIONAL PROVISIONS. (a) In discharging its obligations, the Joint In-State
2 Gasline Development Team shall

3 (1) seek letters of intent from buyers and sellers of natural gas to ship gas
4 using the facilities of the project and, from information obtained, define the project
5 parameters that would allow the project to be commercially viable;

6 (2) seek letters of interest from private pipeline construction and operating
7 companies to develop the project;

8 (3) prepare and submit to the governor and the presiding officer of each house
9 of the legislature, by December 15, 2010, any initial legislation necessary to advance the
10 project;

11 (4) prepare and submit a report to the governor, the speaker of the house of
12 representatives, and the president of the senate when each duty set out in (1) - (3) of this
13 subsection is complete.

14 (b) The parties having responsibility for contracts, permit and acquisition
15 applications, and studies in progress on the effective date of this Act initiated or entered into
16 by the Office of the Governor or a state agency or entity that relate to an in-state natural gas
17 pipeline shall transfer those obligations and initiatives to the Alaska Housing Finance
18 Corporation. Transfer of those obligations and initiatives may not be unreasonably delayed. If
19 the corporation forms a subsidiary under AS 18.56.086, as amended by sec. 2 of this Act, for
20 the purpose of planning, constructing, and financing in-state natural gas pipeline projects or
21 for aiding those projects, the corporation shall transfer the obligations and initiatives to its
22 subsidiary.

23 * **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).