

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

3104 SCOMM 143: SENATE SPEC.COMM.ON NATURAL GAS DEV. 2005-2006

24-GS2095F

Bailey

8/3/06

CS FOR S FOR SENATE BILL NO. 3002(NGD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - THIRD SPECIAL SESSION

BY THE SENATE SPECIAL COMMITTEE ON NATURAL GAS DEVELOPMENT

Offered:

Referred:

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

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Stranded Gas Development Act, including clarifications
2 or provision of additional authority for the development of stranded gas fiscal contract
3 terms; making a conforming amendment to the Revised Uniform Arbitration Act;
4 relating to municipal impact money received under the terms of a stranded gas fiscal
5 contract; relating to determination of full and true value of property and required
6 contributions for education in municipalities affected by stranded gas fiscal contracts;
7 and providing for an effective date."

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

9 * **Section 1.** AS 09.43.300(a) is amended to read:

10 (a) AS 09.43.300 - 09.43.595 govern an agreement to arbitrate made on or
11 after January 1, 2005, except as otherwise provided in a contract term developed
12 under AS 43.82.200(a)(5) and (b).

13 * **Sec. 2.** AS 43.82.010 is amended to read:

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

2 (1) encourage new investment to develop the state's stranded gas
3 resources by authorizing establishment of fiscal terms related to oil and gas
4 agreements and taxes for a qualified sponsor, the members of a qualified sponsor
5 group, or a related party and related to their oil and gas business activity in the
6 state, including gas pipeline expansion pricing that encourages further gas
7 exploration [THAT NEW INVESTMENT WITHOUT SIGNIFICANTLY
8 ALTERING TAX AND ROYALTY METHODOLOGIES AND RATES ON
9 EXISTING OIL AND GAS INFRASTRUCTURE AND PRODUCTION];

10 (2) allow the fiscal terms applicable to a qualified sponsor or the
11 members of a qualified sponsor group, or a related party, with respect to a qualified
12 project, to be tailored to the particular economic conditions of the project and to
13 establish those fiscal terms in advance with as much certainty as the Constitution of
14 the State of Alaska allows; and

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

17 * **Sec. 3.** AS 43.82.100 is amended by adding a new subsection to read:

18 (b) A project may not be considered a qualified project under this chapter if
19 the pipeline to transport natural gas from land within the Prudhoe Bay oil and gas
20 lease area follows a route that

21 (1) traverses land beneath navigable waters (as defined in section 2 of
22 the Submerged Lands Act (43 U.S.C. 1301)) of the Beaufort Sea or traverses the
23 shoreline adjacent to the Beaufort Sea; or

24 (2) enters Canada at any point north of 64 degrees North latitude.

25 * **Sec. 4.** AS 43.82.200 is amended by adding a new subsection to read:

26 (b) Terms relating to arbitration and alternate dispute resolution may provide
27 for a waiver, with the concurrence of the attorney general, of the state's immunity from
28 suit. The waiver may include waiver of the state's sovereign or other immunity.

29 * **Sec. 5.** AS 43.82.210(a) is amended to read:

30 (a) If the commissioner approves an application and proposed project plan
31 under AS 43.82.140, the commissioner may develop proposed terms for inclusion in a

1 contract under AS 43.82.020 for periodic payment in lieu of one or more of the
2 following taxes that otherwise would be imposed by the state or a municipality on the
3 qualified sponsor, a [OR] member of a qualified sponsor group, or a related party
4 [AS A CONSEQUENCE OF PARTICIPATING IN AN APPROVED QUALIFIED
5 PROJECT]:

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

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

9 (3) [REPEALED]

10 (4)] Alaska net income tax under AS 43.20;

11 (4) [(5)] municipal sales and use tax under AS 29.45.650 - 29.45.710;

12 (5) [(6)] municipal property tax under AS 29.45.010 - 29.45.250 or
13 29.45.550 - 29.45.600;

14 (6) [(7)] municipal special assessments under AS 29.46;

15 (7) [(8)] a comparable tax or levy imposed by the state or a
16 municipality after June 18, 1998;

17 (8) [(9)] other state or municipal taxes or categories of taxes identified
18 by the commissioner.

19 * Sec. 6. AS 43.82.220(c) is amended to read:

20 (c) The commissioner of revenue shall include any proposed terms
21 [RELATING TO ROYALTY] developed in accordance with this section in the
22 proposed contract under AS 43.82.400.

23 * Sec. 7. AS 43.82.220 is amended by adding a new subsection to read:

24 (e) An agreement by the state to take royalty gas in kind as part of a contract
25 developed under this chapter that satisfies (a) of this section is not subject to the
26 provisions of AS 38, or regulations adopted under that title, relating to decisions to
27 take royalty in kind.

28 * Sec. 8. AS 43.82.230(a) is amended to read:

29 (a) The commissioner shall include in a contract under AS 43.82.020 a term
30 requiring the qualified sponsor, [OR] qualified sponsor group, or a related party, and
31 contractors of the qualified sponsor, [OR] qualified sponsor group, or a related party,

1 to comply with all valid federal, state, and municipal laws relating to hiring Alaska
2 residents and contracting with Alaska businesses to work in the state on the approved
3 qualified project and not to discriminate against Alaska residents or Alaska businesses.
4 Within the constraints of law, (1) the commissioner shall also include in a contract
5 under AS 43.82.020 a term that requires the qualified sponsor, [OR] qualified sponsor
6 group, or a related party, and contractors of the qualified sponsor, [OR] qualified
7 sponsor group, or a related party, to employ Alaska residents and to contract with
8 Alaska businesses to work in the state on the approved qualified project to the extent
9 the residents and businesses are available, competitively priced, and qualified and (2)
10 should the state acquire an ownership interest in the qualified projects as part of
11 a contract developed under this chapter, the parties shall agree to enter into
12 negotiations for project labor agreements to facilitate the construction of the
13 qualified project. To the extent lawful, the parties shall include provisions in any
14 project labor agreement that would promote hiring of Alaska residents and the
15 establishment of hiring halls in both rural and urban communities of the state.

16 * Sec. 9. AS 43.82.250 is amended to read:

17 Sec. 43.82.250. Term of contract; effective date. The term of a contract
18 developed under AS 43.82.020 [MAY BE FOR NO LONGER THAN IS
19 NECESSARY TO DEVELOP THE STRANDED GAS THAT IS SUBJECT TO THE
20 CONTRACT; HOWEVER, THE TERM OF THE CONTRACT] may not exceed 25
21 [35] years from the commencement of commercial operations of the approved
22 qualified project, excluding suspensions of contract obligations that are covered by
23 the force majeure terms of any contract developed under this chapter. However,
24 the term of contract may not exceed 35 years from the effective date of a contract
25 approved under AS 43.82.435.

26 * Sec. 10. AS 43.82.270 is amended to read:

27 Sec. 43.82.270. Project plans and work commitments. A contract under
28 AS 43.82.020 must include provisions for implementation of the qualified project
29 plan approved under AS 43.82.140, as may be modified as a result of the
30 development of a contract under this chapter, and provisions for updating the plan
31 at reasonable intervals until the commencement of commercial operations of the

1 approved qualified project. The commissioner of revenue, in consultation with the
2 commissioner of natural resources, may, as a term in a contract under AS 43.82.020,
3 include work commitments or other obligations in the contract to be accomplished
4 before the commencement of commercial operations of the approved qualified project.

5 **A minimum project expenditure commitment shall be included in a contract**
6 **under AS 43.82.020 that meets the requirements set out in (b) - (d) of this section.**

7 * **Sec. 11.** AS 43.82.270 is amended by adding new subsections to read:

8 (b) The sponsors of the Alaska Highway Natural Gas Pipeline Project shall
9 incur a minimum of \$1,500,000,000 in project expenditures beginning with the date
10 the contract is fully executed by the parties and continuing until December 31, 2010.
11 The project expenditures required by this subsection must be necessary to finance the
12 planning and permitting phase of the project leading up to the decision on full project
13 funding. The sponsors shall allocate and incur expenditures regularly throughout the
14 period covered by the minimum expenditure commitment. If the commissioner of
15 natural resources with the concurrence of the commissioner of revenue determines that
16 a sponsor breached the minimum expenditure commitment imposed by the contract,
17 the unexpended balance of the expenditure obligation attributed to that sponsor shall
18 be paid to the state treasury.

19 (c) The sponsors shall establish an escrow account, letter of credit, or other
20 form of financial security satisfactory to the commissioner of revenue to cover the
21 minimum project expenditure commitments imposed in (b) of this section.

22 (d) The sponsors shall provide the commissioner of natural resources with an
23 expenditure report at the end of each month containing enough information to permit
24 an audit of compliance with the expenditure commitments imposed in (b) of this
25 section.

26 * **Sec. 12.** AS 43.82.410 is amended to read:

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

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

31 (2) make copies of the proposed contract, the commissioner's

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

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

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

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

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

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

22 * Sec. 13. AS 43.82.430(a) is amended to read:

23 (a) Within 60 [30] days after the close of the public comment period under
24 AS 43.82.410(4), the commissioner of revenue shall

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

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

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

* **Sec. 14.** AS 43.82.500 is amended to read:

Sec. 43.82.500. Obligation to share payments with municipalities. If the commissioner develops a contract under AS 43.82.020 that includes terms that exempt a qualified sponsor, the members of a qualified sponsor group, or a related party to the contract, and the property, gas, products, and activities associated with the approved qualified project that is subject to the contract, from a municipal tax or assessment in accordance with AS 29.45.810 or AS 29.46.010(b), or AS 43.82.200 and 43.82.210, the commissioner shall include a term in the contract that provides for [THE PARTY PAY] a portion of the periodic payments to be made payable [DUE UNDER THE CONTRACT] to the revenue-affected municipality.

* **Sec. 15.** AS 43.82.505 is amended to read:

Sec. 43.82.505. Payments to economically affected municipalities. If the commissioner executes a contract under AS 43.82.020 that will produce one or more economically affected municipalities, the commissioner shall include a term in the contract that provides for [A PORTION OF THE] periodic impact payments to the economically affected municipalities under the principles in AS 43.82.520.

* **Sec. 16.** AS 43.82.510(c) is amended to read:

(c) Each municipal advisory group serves until the later of 90 days after final distribution of impact payment money under AS 43.82.505, or commencement of operations of the qualified project. Expenses of a municipal advisory group are eligible for reimbursement under AS 43.82.505 [A FINAL ACTION IS TAKEN ON THE APPLICATION FOR WHICH THE GROUP WAS APPOINTED].

* **Sec. 17.** AS 43.82 is amended by adding a new section to article 7 to read:

Sec. 43.82.650. Calculations of education funding. To determine the amount of required local contribution under AS 14.17.410(b)(2) and (c) for a school district in a revenue-affected municipality, and to perform its duties under AS 14.17.510, the Department of Commerce, Community, and Economic Development shall adopt

1 regulations. The regulations must establish assessment standards for any property that
2 would have been assessed under AS 43.56 but is instead generating a payment to a
3 revenue-affected municipality in lieu of a municipal property tax as provided in a
4 contract developed under this chapter. The regulations must ensure that the property is
5 included in the full and true value of the city or borough school district for the purpose
6 of determining required local contributions for education funding under
7 AS 14.17.410(b)(2) and (c).

8 * **Sec. 18.** AS 43.82.900 is amended by adding a new paragraph to read:

9 (14) "related party" means an entity, including a limited liability
10 company or similar incorporated or unincorporated entity, that

11 (A) is affiliated with a qualified sponsor or qualified sponsor
12 group;

13 (B) owns or operates a qualified project or any segment of a
14 qualified project; and

15 (C) is an intended beneficiary of the fiscal terms included in a
16 contract developed under this chapter.

17 * **Sec. 19.** The uncoded law of the State of Alaska is amended by adding a new section to
18 read:

19 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the
20 section heading of AS 43.82.220 from "Contract terms relating to royalty" to "Contract terms
21 relating to oil and gas lease, royalty provisions, and other agreements."

22 * **Sec. 20.** The uncoded law of the State of Alaska is amended by adding a new section to
23 read:

24 RETROACTIVITY. (a) Sections 2 - 14 and 16 - 18 of this Act are retroactive to
25 January 1, 2004.

26 (b) Section 1 of this Act is retroactive to January 1, 2005.

27 * **Sec. 21.** This Act takes effect immediately under AS 01.10.070(c).



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 4 Aug 2006 TIME: 4:55pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 2

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: Final Please
CS SB 3002 (NGD) 24-GS20951 Y
Bailey 8/4/06
plus 1 amendment - attached
Thanks
Mindy

Natural Gas Development
COMMITTEE #1
Amendment #
To Bill Number: SB3B02

24-GS2095\GSponsor: B. Stevens
7/28/06 Date: 7/28/06 Logged by: Mindy

Adopted

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR BEN STEVENS

TO: CSSB 3002(NGD) -Version G

- 1 Page 6, line 6:
- 2 Delete "35"
- 3 Insert "25"
- 4
- 7 Page 6, line 10:
- 8 Delete "45"
- 9 Insert "35"
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Special Committee on Natural Gas Development

7/28/2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	#1		
Motion	adopt		
<u>Motion by</u>	B. Stevens		
<u>Objection by</u>	Elton		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh			
Senator B. Stevens			
Senator Stedman			
Senator Bunde			
Senator Olson			
Senator Dyson			
Senator Wilken			
Senator Elton			
Senator Hoffman			
Vice-Chair Green			
Vice-Chair Wagoner			
Chair Seekins			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Passed		

Natural Gas Development
COMMITTEE
Amendment # #2
To Bill Number: SB 3002
Sponsor: B Stevens
Date: 7/29/06 Logged by: Mindy

AMENDMENT

OFFERED IN THE SENATE SPECIAL

BY B. STEVENS

COMMITTEE ON NATURAL GAS DEVELOPMENT

TO: CSSB 3002(NGD)(24-GS2095\G)

Page 8, following line 8:

Insert new bill sections to read:

**** Sec. 14.** AS 43.82.430(b) is amended to read:

(b) After considering the material described in (a) of this section and securing the agreement of the other parties to the proposed contract regarding any proposed amendments prepared under (a) of this section, if the commissioner determines that the contract is in the long-term fiscal interests of the state, the commissioner may execute [SHALL SUBMIT] the contract [TO THE GOVERNOR].

*** Sec. 15.** AS 43.82.430(c) is amended to read:

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

*** Sec. 16.** AS 43.82.440 is amended to read:

Sec. 43.82.440. Judicial review. An [A PERSON MAY NOT BRING AN] action challenging the constitutionality of a law authorizing a contract developed under this chapter [ENACTED UNDER AS 43.82.435] or the enforceability of a contract executed under a process authorized by [A] law may not be brought [AUTHORIZING A CONTRACT ENACTED UNDER AS 43.82.435] unless the action is commenced within 120 days after the date that the contract was executed by the state and the other parties to the contract."

1 Renumber the following bill sections accordingly.

2
3 Page 11, following line 30:

4 Insert new bill sections to read:

5 **"* Sec. 24.** The uncoded law of the State of Alaska is amended by adding a new section to
6 read:

7 **APPROVAL AND RATIFICATION.** The provisions of the Alaska Stranded Gas Fiscal
8 Contract between the State of Alaska and BP Exploration (Alaska) Incorporated, ConocoPhillips
9 Alaska, Incorporated, and ExxonMobil Alaska Production, Incorporated, as amended to conform
10 to the provisions of this Act, are approved and ratified.

11 *** Sec. 25.** The uncoded law of the State of Alaska is amended by adding a new section to
12 read:

13 **SUSPENSION OF OTHER LAW.** The provisions of the Alaska Stranded Gas Fiscal
14 Contract between the State of Alaska and BP Exploration (Alaska) Incorporated, ConocoPhillips
15 Alaska, Incorporated, and ExxonMobil Alaska Production, Incorporated, as amended to conform
16 to the provisions of this Act, are effective notwithstanding the provisions of any other law,
17 including AS 43.82.200 - 43.82.270. Any inconsistency between the Alaska Stranded Gas
18 Development Act (AS 43.82) and the fiscal contract executed under AS 43.82 are cured and
19 authorized by this section.

20 *** Sec. 26.** The uncoded law of the State of Alaska is amended by adding a new section to
21 read:

22 **ADVISORY VOTE.** At the 2006 general election to be held on November 7, 2006, in
23 substantial compliance with the election laws of the state, the lieutenant governor shall place
24 before the qualified voters of the state a question advisory to the governor and the commissioner
25 of revenue. Notwithstanding other laws relating to preparation of the ballot proposition, the
26 question shall appear on the ballot in the following form:

27 **Q U E S T I O N**

28 Shall the commissioner of revenue sign and make binding upon the State of Alaska the Alaska
29 Stranded Gas Fiscal Contract between the State of Alaska and BP Exploration (Alaska)
30 Incorporated, ConocoPhillips Alaska, Incorporated, and ExxonMobil Alaska Production,
31 Incorporated ?

1 Yes [] No []

2 * **Sec. 27.** If secs. 14 - 16 and 25 of this Act take effect, they take effect on the date that the
3 director of elections certifies the results of the 2006 general election at which a majority of the
4 votes cast on the proposition favor execution by the commissioner of revenue and binding effect
5 on the State of Alaska of the Alaska Stranded Gas Fiscal Contract between the State of Alaska
6 and BP Exploration (Alaska) Incorporated, ConocoPhillips Alaska, Incorporated, and
7 ExxonMobil Alaska Production, Incorporated."

8

9 Renumber the following bill sections accordingly.

10

11 Page 12, line 7:

12 Delete "Sections 2 - 14 and 17 - 20"

13 Insert "Sections 2 - 13, 17, and 20 - 23"

14

15 Page 12, following line 9:

16 Insert a new bill section to read:

17 "** **Sec. 30.** Sections 24, 25, and 26 of this Act take effect immediately under
18 AS 01.10.070(c)."

19

20 Page 12, line 10:

21 Delete "This"

22 Insert "Except as provided in sec. 30 of this Act, this"

Special Committee on Natural Gas Development

7/28/2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	#2		
Motion	adopt		
<u>Motion by</u>	B. Stevens		
<u>Objection by</u>	B. Stevens		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh			
Senator B. Stevens			
Senator Stedman			
Senator Bunde			
Senator Olson			
Senator Dyson			
Senator Wilken			
Senator Elton			
Senator Hoffman			
Vice-Chair Green			
Vice-Chair Wagoner			
Chair Seekins			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	WITHDRAWN		

7/28 - motion made to adopt
amendment HELD w/ no action
taken

8/1 11:45am Sen. Stevens
motion to table until after other
amendments considered

8/3 - Sen. Stevens withdrew motion to adopt
defer to amendment #6

Natural Gas Development
COMMITTEE
Amendment # 3
To Bill Number: 3002
Sponsor: Stedman
Date: 8/1/06 Logged by: Rose

AMENDMENT

Adopted

OFFERED IN THE SENATE

BY SENATOR STEDMAN

TO: CSSB 3002(NGD), Draft Version "G"

- 1 Page 4, lines 2 - 6:
- 2 Delete "and consent to entrance and enforcement of an arbitration award in any state
- 3 court in the United States that has jurisdiction over the State of Alaska. The authority granted
- 4 in this subsection is effective only after the arbitration award is entered and enforcement is
- 5 sought in the superior court of the state"

Special Committee on Natural Gas Development

8/1/2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	# 3		
Motion	adopt		
<i>Motion by</i>	Stedman		
<i>Objection by</i>	none		
<i>Removed</i>			
<i>Second Objection by</i>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh			
Senator B. Stevens			
Senator Stedman			
Senator Bunde			
Senator Olson			
Senator Dyson			
Senator Wilken			
Senator Elton			
Senator Hoffman			
Vice-Chair Green			
Vice-Chair Wagoner			
Chair Seekins			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

Natural Gas Development
COMMITTEE
Amendment # #4
To Bill Number: SB 3002
Sponsor: Seekins
Date: 8/1/00 Logged by: Mindy

AMENDMENT

OFFERED IN THE SENATE
TO: SB 3002 24-GS2095\G

BY SENATOR RALPH SEEKINS

AS 43.82.230(a) is amended to read:

Sec. 43.82.230. Contract terms relating to hiring of Alaska residents and contracting with Alaska businesses. (a) The commissioner shall include in a contract under AS 43.82.020 a term requiring the qualified sponsor, [OR] qualified sponsor group, or a related party, and contractors of the qualified sponsor, [OR] qualified sponsor group, or a related party, to comply with all valid federal, state, and municipal laws relating to hiring Alaska residents and contracting with Alaska businesses to work in the state on the approved qualified project and not to discriminate against Alaska residents or Alaska businesses. Within the constraints of law:

(1) [,] the commissioner shall also include in a contract under AS 43.82.020 a term that requires the qualified sponsor, [OR] qualified sponsor group, or a related party, and contractors of the qualified sponsor, [OR] qualified sponsor group, or a related party, to employ Alaska residents and to contract with Alaska businesses to work in the state on the approved qualified project to the extent the residents and businesses are available, competitively priced, and qualified; [.] and (2) should the state acquire an ownership interest in the qualified projects as part of a contract developed under this chapter, the parties shall agree to enter into negotiations for project labor agreements to facilitate the construction of the qualified project. To the extent lawful, the parties shall include provisions in any project labor agreement that would promote hiring of Alaska residents and the establishment of hiring halls in both rural and urban communities of the state.

Natural Gas Development
COMMITTEE
Amendment # # 4
To Bill Number: SB 3002
Sponsor: Seekins
Date: 8/1/00 Logged by: Mindy

AMENDMENT

OFFERED IN THE SENATE
TO: SB 3002 24-GS2095\G

BY SENATOR RALPH SEEKINS

Amend
failed

AS 43.82.230(a) is amended to read:

Sec. 43.82.230. Contract terms relating to hiring of Alaska residents and contracting with Alaska businesses. (a) The commissioner shall include in a contract under AS 43.82.020 a term requiring the qualified sponsor, [OR] qualified sponsor group, or a related party, and contractors of the qualified sponsor, [OR] qualified sponsor group, or a related party, to comply with all valid federal, state, and municipal laws relating to hiring Alaska residents and contracting with Alaska businesses to work in the state on the approved qualified project and not to discriminate against Alaska residents or Alaska businesses. Within the constraints of law:

(1) [,] the commissioner shall also include in a contract under AS 43.82.020 a term that requires the qualified sponsor, [OR] qualified sponsor group, or a related party, and contractors of the qualified sponsor, [OR] qualified sponsor group, or a related party, to employ Alaska residents and to contract with Alaska businesses to work in the state on the approved qualified project to the extent the residents and businesses are available, competitively priced, and qualified; [,] and (2) should the state acquire an ownership interest in the qualified projects as part of a contract developed under this chapter, ^{negotiate and} ~~the parties shall agree to enter into negotiations for~~ project labor agreements to facilitate the construction of the qualified project. To the extent lawful, the parties shall include provisions in any project labor agreement that would promote hiring of Alaska residents and the establishment of hiring halls in both rural and urban communities of the state.

Special Committee on Natural Gas Development

8 / 1 / 2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	#4		
Motion	adopt		
<i>Motion by</i>	Seekins		
<i>Objection by</i>	~~Wagner~~		
<i>Removed</i>	Wagner / Bunde		
<i>Second Objection by</i>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh		—	
Senator B. Stevens			✓
Senator Stedman	✓		
Senator Bunde	✓		
Senator Olson	✓		
Senator Dyson	✓		
Senator Wilken	✓		
Senator Elton	✓		
Senator Hoffman	✓		
Vice-Chair Green		—	
Vice-Chair Wagoner		—	
Chair Seekins	✓		
<u>Tally</u>			
Yea	8		
Nay	1		
Absent	3		
<u>MOTION</u>	Pass		

Special Committee on Natural Gas Development

8/1/2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	#4		
Motion	amend		
<u>Motion by</u>	Elton		
<u>Objection by</u>	Dyson		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh		—	
Senator B. Stevens			✓
Senator Stedman			✓
Senator Bunde			✓
Senator Olson	✓		
Senator Dyson			✓
Senator Wilken			✓
Senator Elton	✓		
Senator Hoffman	✓		
Vice-Chair Green		—	
Vice-Chair Wagoner		—	
Chair Seekins			✓
<u>Tally</u>			
Yea		3	
Nay		6	
Absent		3	
<u>MOTION</u>	Fail		

Natural Gas Development
COMMITTEE #5 amended
Amendment #
To Bill Number: SB 3002
Sponsor: Seekins
Date: 8/1/06 Logged by: Mindy

AMENDMENT

OFFERED IN THE SENATE
TO: SB 3002 24-GS2095\G

BY: SENATOR RALPH SEEKINS

(2ND amendment)

Sec. 43.82.100. Qualified project.

~~adopted~~
RESCINDED

Based on information available to the commissioner, the commissioner may determine that a proposal for new investment is a qualified project under this chapter if the project

(1) principally involves

(A) the transportation of natural gas by pipeline to one or more markets, together with any associated processing or treatment;

(B) the export of liquefied natural gas from the state to one or more other states or countries; or

(C) any other technology that commercializes the shipment of natural gas within the state or from the state to one or more other states or countries;

(2) would produce at least 500,000,000,000 cubic feet of stranded gas within 20 years from the commencement of commercial operations; [AND]

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

(4) no project may be considered a qualified project under this chapter if the project enters Canada at any point north of 68 degrees latitude.

pipe line to transport natural gas from land within the Prudhoe Bay oil and gas lease area follows a route that:

- enters Canada at any point north of 64 degrees north latitude; and

- traverses land beneath navigable waters, as defined in section 2 of the Submerged Lands Act 43 U.S.C 1301, beneath, or the adjacent shoreline of, the Beaufort Sea.

[Note: language taken from H.R. 4837-36, Division C, Section 103(d)]

AMENDMENT

OFFERED IN THE SENATE
TO: SB 3002 24-GS2095\G

BY: SENATOR RALPH SEEKINS

Sec. 43.82.100. Qualified project.

1st amendment
to the amendment
- replaced w/ 2nd amendment
to amendment

Based on information available to the commissioner, the commissioner may determine that a proposal for new investment is a qualified project under this chapter if the project

(1) principally involves

(A) the transportation of natural gas by pipeline to one or more markets, together with any associated processing or treatment;

(B) the export of liquefied natural gas from the state to one or more other states or countries; or

(C) any other technology that commercializes the shipment of natural gas within the state or from the state to one or more other states or countries;

(2) would produce at least 500,000,000,000 cubic feet of stranded gas within 20 years from the commencement of commercial operations; [AND]

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

(4) no project may be considered a qualified project under this chapter if the project enters Canada at any point north of 68 degrees latitude.

pipe line to
transport natural gas from land within
the Prudhoe Bay oil and gas lease
area follows a route that:

- enters Canada at any point north of
64 degrees latitude; and

- traverses land beneath navigable
waters, as defined in section 2 of the
Submerged Lands Act 43 U.S.C 1301, beneath,
or the adjacent shoreline of, the
Beaufort Sea.

Natural Development
COMMITTEE
Amendment # #5
To Bill Number: SB 3002
Sponsor: Seekins
Date: 8/1/06 Logged by: Mindy

AMENDMENT

OFFERED IN THE SENATE
TO: SB 3002 24-GS2095\G

BY: SENATOR RALPH SEEKINS corrected

Sec. 43.82.100. Qualified project.

Based on information available to the commissioner, the commissioner may determine that a proposal for new investment is a qualified project under this chapter if the project

(1) principally involves

(A) the transportation of natural gas by pipeline to one or more markets, together with any associated processing or treatment;

(B) the export of liquefied natural gas from the state to one or more other states or countries; or

(C) any other technology that commercializes the shipment of natural gas within the state or from the state to one or more other states or countries;

(2) would produce at least 500,000,000,000 cubic feet of stranded gas within 20 years from the commencement of commercial operations; **[AND]**

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

(4) no project may be considered a qualified project under this chapter if the project enters Canada at any point north of 68 degrees latitude.

64

Special Committee on Natural Gas Development

8/1/2006**COMMITTEE ACTION**

①

Bill Number	SB 3002		
Amendment	#5		
Motion	Amend		
<u>Motion by</u>	Olson		
<u>Objection by</u>			
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh		—	
Senator B. Stevens	✓		
Senator Stedman			✓
Senator Bunde			✓
Senator Olson	✓		
Senator Dyson			✓
Senator Wilken			✓
Senator Elton	✓		
Senator Hoffman	✓		
Vice-Chair Green		—	
Vice-Chair Wagoner		—	
Chair Seekins	✓		
<u>Tally</u>			
Yea		5	
Nay		4	
Absent		3	
<u>MOTION</u>	Pass		

Special Committee on Natural Gas Development

8/1 /2006

COMMITTEE ACTION

(2)

Bill Number	SB 3002		
Amendment	Amendment to #5		
Motion	rescind action in amending #5		
<u>Motion by</u>	Bunde		
<u>Objection by</u>	Olson		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh		—	
Senator B. Stevens			✓
Senator Stedman			✓
Senator Bunde	✓		
Senator Olson			✓
Senator Dyson		—	
Senator Wilken	✓		
Senator Elton			✓
Senator Hoffman			✓
Vice-Chair Green		—	
Vice-Chair Wagoner			✓
Chair Seekins			✓
<u>Tally</u>			
Yea	2		
Nay	7		
Absent	3		
<u>MOTION</u>	failed		

Special Committee on Natural Gas Development

8/1/2006

COMMITTEE ACTION

3

Bill Number	SB 3002		
Amendment	#5		
Motion	2ND amend		
<u>Motion by</u>	Seekins		
<u>Objection by</u>	none		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh			
Senator B. Stevens			
Senator Stedman			
Senator Bunde			
Senator Olson			
Senator Dyson			
Senator Wilken			
Senator Elton			
Senator Hoffman			
Vice-Chair Green			
Vice-Chair Wagoner			
Chair Seekins			
<u>Tally</u>			
<u>Yea</u>			
<u>Nay</u>			
<u>Absent</u>			
<u>MOTION</u>	Pass		

Special Committee on Natural Gas Development

8 / 1 / 2006

(4)

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	#5		
Motion	adopt		
<u>Motion by</u>	Seekins		
<u>Objection by</u>			
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh		→	
Senator B. Stevens	✓		
← Senator Stedman	✓		
- Senator Bunde			✓
Senator Olson	✓		
Senator Dyson	✓		
Senator Wilken	✓		
Senator Elton	✓		
Senator Hoffman	✓		
Vice-Chair Green		→	
Vice-Chair Wagoner			✓
Chair Seekins	✓		
<u>Tally</u>			
Yea	8		
Nay	2		
Absent	2		
<u>MOTION</u>	Pass		

Special Committee on Natural Gas Development

8/3/2006**COMMITTEE ACTION**

54

Bill Number	SB 3002		
Amendment	#5 amended		
Motion	Rescind		
<u>Motion by</u>	Seekins		
<u>Objection by</u>	None		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh			
Senator B. Stevens			
Senator Stedman			
Senator Bunde			
Senator Olson			
Senator Dyson			
Senator Wilken			
Senator Elton			
Senator Hoffman			
Vice-Chair Green			
Vice-Chair Wagoner			
Chair Seekins			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

Natural Gas Development
COMMITTEE
Amendment # # 5 ft
To Bill Number: SB 3002
Sponsor: Sen. Seekins
Date: 8/3/06 Logged by: Mindy

AMENDMENT

OFFERED IN THE SENATE
TO: SB 3002 24-GS2095\G

BY: SENATOR RALPH SEEKINS

Adopted

Sec. 43.82.100. Qualified project.

Based on information available to the commissioner, the commissioner may determine that a proposal for new investment is a qualified project under this chapter if the project

(1) principally involves

(A) the transportation of natural gas by pipeline to one or more markets, together with any associated processing or treatment;

(B) the export of liquefied natural gas from the state to one or more other states or countries; or

(C) any other technology that commercializes the shipment of natural gas within the state or from the state to one or more other states or countries;

(2) would produce at least 500,000,000,000 cubic feet of stranded gas within 20 years from the commencement of commercial operations; [AND]

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

(4) no project may be considered a qualified project under this chapter if the pipeline to transport natural gas from land within the Prudhoe Bay oil and gas lease area follows a route that:

(1) traverses land beneath navigable waters (as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301)) beneath, or adjacent shoreline of, the Beaufort Sea; or

(2) enters Canada at any point north of 64 degrees north latitude.

Special Committee on Natural Gas Development

8/ 3 /2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	#5 ft		
Motion	adopt		
<u>Motion by</u>	Seekins		
<u>Objection by</u>	none		
<u>Removed</u>	.		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh			
Senator B. Stevens			
Senator Stedman			
Senator Bunde			
→ Senator Olson			
Senator Dyson			
Senator Wilken			
Senator Elton			
Senator Hoffman			
Vice-Chair Green			
Vice-Chair Wagoner			
Chair Seekins			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

Natural Gas Development
COMMITTEE
Amendment # #16
To Bill Number: SB 3002
Sponsor: B. Stevens
Date: 8/3/06 Logged by: Mindy

August 3, 2006
(8:10 AM)

AMENDMENT

Failed

BY B. STEVENS

OFFERED IN THE SENATE SPECIAL

COMMITTEE ON NATURAL GAS DEVELOPMENT

TO: CSSB 3002(NGD) (24-GS2095\G)

1 Page 1, line 3, following "terms;":

2 Insert "providing for an advisory vote, treatment of certain laws, and approval and
3 ratification regarding a stranded gas fiscal contract;"
4

5 Page 8, following line 8:

6 Insert new bill sections to read:

7 "** Sec. 14. AS 43.82.430(b) is amended to read:

8 (b) After considering the material described in (a) of this section and securing the
9 agreement of the other parties to the proposed contract regarding any proposed
10 amendments prepared under (a) of this section, if the commissioner determines that the
11 contract is in the long-term fiscal interests of the state, the commissioner may execute
12 [SHALL SUBMIT] the contract [TO THE GOVERNOR].

13 * Sec. 15. AS 43.82.430(c) is amended to read:

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

17 * Sec. 16. AS 43.82.440 is amended to read:

18 Sec. 43.82.440. Judicial review. An [A PERSON MAY NOT BRING AN]
19 action challenging the constitutionality of a law authorizing a contract developed under
20 this chapter [ENACTED UNDER AS 43.82.435] or the enforceability of a contract
21 executed under a process authorized by [A] law may not be brought [AUTHORIZING

1 A CONTRACT ENACTED UNDER AS 43.82.435] unless the action is commenced
2 within 120 days after the date that the contract was executed by the state and the other
3 parties to the contract."
4

5 Renumber the following bill sections accordingly.
6

7 Page 11, line 30:

8 Delete all material and insert the following:

9 **"*Sec. 23.** (a) AS 43.82.435 is repealed.

10 (b) AS 43.82.445 is repealed."
11

12 Page 11, following line 30:

13 Insert new bill sections to read:

14 **"* Sec. 24.** The uncoded law of the State of Alaska is amended by adding a new section to
15 read:

16 APPROVAL AND RATIFICATION. Notwithstanding AS 43.82.435, repealed by sec.
17 23(a) of this Act, the provisions of the Alaska Stranded Gas Fiscal Contract between the State of
18 Alaska and BP Exploration (Alaska) Incorporated, ConocoPhillips Alaska, Incorporated, and
19 ExxonMobil Alaska Production, Incorporated, as amended to conform to the provisions of this
20 Act, are approved, and the process and procedures followed in formulating that contract are
21 ratified.

22 *** Sec. 25.** The uncoded law of the State of Alaska is amended by adding a new section to
23 read:

24 SUSPENSION OF OTHER LAW. The provisions of the Alaska Stranded Gas Fiscal
25 Contract between the State of Alaska and BP Exploration (Alaska) Incorporated, ConocoPhillips
26 Alaska, Incorporated, and ExxonMobil Alaska Production, Incorporated, as amended to conform
27 to the provisions of this Act, are effective notwithstanding the provisions of any other law,
28 including AS 43.82.200 - 43.82.270. Any inconsistency between the Alaska Stranded Gas
29 Development Act (AS 43.82) and the fiscal contract executed under AS 43.82 are cured and
30 authorized by this section.

31 *** Sec. 26.** The uncoded law of the State of Alaska is amended by adding a new section to

1 read:

2 ADVISORY VOTE. At the 2006 general election to be held on November 7, 2006, in
3 substantial compliance with the election laws of the state, the lieutenant governor shall place
4 before the qualified voters of the state a question advisory to the governor and the commissioner
5 of revenue. Notwithstanding other laws relating to preparation of the ballot proposition, the
6 question shall appear on the ballot in the following form:

7 QUESTION

8 Shall the commissioner of revenue sign and make binding upon the State of Alaska the Alaska
9 Stranded Gas Fiscal Contract between the State of Alaska and BP Exploration (Alaska)
10 Incorporated, ConocoPhillips Alaska, Incorporated, and ExxonMobil Alaska Production,
11 Incorporated ?

12 Yes [] No []"

13

14 Renumber the following bill sections accordingly.

15

16 Page 12, line 7:

17 Delete "Sections 2 - 14 and 17 - 20"

18 Insert "Sections 2 - 13, 17, 20 - 22, and 23(b)"

19

20 Page 12, following line 9:

21 Insert new bill sections to read:

22 **"* Sec. 29. CONDITIONAL EFFECT.** Sections 14 - 16, 23(a), and 24 of this Act take effect
23 only if a majority of the votes cast in the 2006 general election on the ballot proposition in sec.
24 26 of this Act favor execution by the commissioner of revenue and binding effect on the State of
25 Alaska of the Alaska Stranded Gas Fiscal Contract between the State of Alaska and BP
26 Exploration (Alaska) Incorporated, ConocoPhillips Alaska, Incorporated, and ExxonMobil
27 Alaska Production, Incorporated.

28 *** Sec. 30.** If secs. 14 - 16, 23(a), and 24 of this Act take effect under sec. 29 of this Act, they
29 take effect on the date that the director of elections certifies the results of the 2006 general
30 election."

31

1 Page 12, line 10:

2 Delete "This"

3 Insert "Except as provided in sec. 30 of this Act, this"

Special Committee on Natural Gas Development

8/3/2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	#6		
Motion	adopt		
<u>Motion by</u>	B. Stevens		
<u>Objection by</u>	B. Stevens		
<u>Removed</u>			
<u>Second Objection by</u>	Elton / Wagner		
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh			✓
Senator B. Stevens	✓		
Senator Stedman	✓		
Senator Bunde		—	
Senator Olson			✓
Senator Dyson			✓
Senator Wilken			✓
Senator Elton			✓
→ Senator Hoffman	✓		
Vice-Chair Green		—	
Vice-Chair Wagoner			✓
Chair Seekins	.		✓
<u>Tally</u>			
Yea	3		.
Nay	7		
Absent	2		
<u>MOTION</u>	Failed		

8/3 10:15 am - HELD

9:45 pm - WITHDRAWN

8/4 4:10 pm - reoffered by B. Stevens
objection by B. Stevens

Special Committee on Natural Gas Development

8/3/2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	#6		
Motion	adopt		
<u>Motion by</u>	B. Stevens		
<u>Objection by</u>	B. Stevens		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh			
Senator B. Stevens			
Senator Stedman			
Senator Bunde			
→ Senator Olson			
Senator Dyson			
Senator Wilken			
Senator Elton			
Senator Hoffman			
Vice-Chair Green			
Vice-Chair Wagoner			
Chair Seekins			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Withdrawn		

8/3 10:15 am HELD

8/3 9:45 pm W/drawn

8/4 4:10 pm re-offered-B. Stevens

AMENDMENT

OFFERED IN THE SENATE SPECIAL
COMMITTEE ON NATURAL
GAS DEVELOPMENT

BY SENATOR BEN STEVENS

TO: CSSB3002(NGD) – Version G

Natural Gas Development
COMMITTEE # 7 Amended
Amendment # 33 3002
To Bill Number: 33 3002
Sponsor: B. Stevens
Date: 8/3/06 Logged by: Mindy

Adopted

Page 7, lines 3 – 12”

Delete all material and insert the following new material in its place:

“ * Sec. 12. AS 43.82.270 is amended to read:

Sec. 43.82.270. Project plans and work commitments. A contract under AS 43.82.020 must include provisions for implementation of the qualified project plan approved under AS 43.82.140, as may be modified as a result of the development of a contract under this chapter, and provisions for updating the plan at reasonable intervals until the commencement of commercial operations of the approved qualified project. The commissioner of revenue, in consultation with the commissioner of natural resources, may, as a term in a contract under AS 43.82.020, include work commitments or other obligations in the contract to be accomplished before the commencement of commercial operations of the approved qualified project. A minimum project expenditure commitment shall be included in a contract under AS 43.82.020 that meets the requirements set out in (b) – (d) of this section.

*Sec.13 . AS 43.82.270 is amended by adding new subsections to read:

(b) The sponsors of the Alaska Highway Natural Gas Pipeline Project shall incur a minimum of \$1,500,000,000 in project expenditures beginning with the date the contract is fully executed by the parties and continuing until December 31, 2010. The project expenditures required by this subsection must be necessary to finance the planning and permitting phase of the project leading up to the decision on full project funding. The sponsors shall allocate and incur expenditures regularly throughout the period covered by the minimum expenditure commitment. If the commissioner of natural resources determines that a sponsor breached the minimum expenditure commitment imposed by the contract, the unexpended balance of the expenditure obligation attributed to that sponsor shall be paid to the state treasury.

(c) The sponsors shall establish an escrow account, letter of credit, or other form of financial security satisfactory to the commissioner of revenue to cover the minimum project expenditure commitments imposed in (b) of this section.

(d) The sponsors shall provide the commissioner of natural resources with an expenditure report at the end of each month containing enough information to permit an audit of compliance with the expenditure commitments imposed in (b) of this section.”

Renumber remaining sections.

* insert: “With the concurrence of the commissioner of the department of revenue”

Natural Gas Development
COMMITTEE #7
Amendment #
To Bill Number: SB 3002
Sponsor: B. Stevens
Date: 8/3/06 Logged by: Mindy

AMENDMENT

OFFERED IN THE SENATE SPECIAL
COMMITTEE ON NATURAL
GAS DEVELOPMENT

BY SENATOR BEN STEVENS

TO: CSSB3002(NGD) – Version G

Page 7, lines 3 – 12”

Delete all material and insert the following new material in its place:

“ * Sec. 12. AS 43.82.270 is amended to read:

Sec. 43.82.270. Project plans and work commitments. A contract under AS 43.82.020 must include provisions for implementation of the qualified project plan approved under AS 43.82.140, as may be modified as a result of the development of a contract under this chapter, and provisions for updating the plan at reasonable intervals until the commencement of commercial operations of the approved qualified project. The commissioner of revenue, in consultation with the commissioner of natural resources, may, as a term in a contract under AS 43.82.020, include work commitments or other obligations in the contract to be accomplished before the commencement of commercial operations of the approved qualified project. A minimum project expenditure commitment shall be included in a contract under AS 43.82.020 that meets the requirements set out in (b) – (d) of this section.

*Sec.13 . AS 43.82.270 is amended by adding new subsections to read:

(b) The sponsors of the Alaska Highway Natural Gas Pipeline Project shall incur a minimum of \$1,500,000,000 in project expenditures beginning with the date the contract is fully executed by the parties and continuing until December 31, 2010. The project expenditures required by this subsection must be necessary to finance the planning and permitting phase of the project leading up to the decision on full project funding. The sponsors shall allocate and incur expenditures regularly throughout the period covered by the minimum expenditure commitment. If the commissioner of natural resources determines that a sponsor breached the minimum expenditure commitment imposed by the contract, the unexpended balance of the expenditure obligation attributed to that sponsor shall be paid to the state treasury.

(c) The sponsors shall establish an escrow account, letter of credit, or other form of financial security satisfactory to the commissioner of revenue to cover the minimum project expenditure commitments imposed in (b) of this section.

(d) The sponsors shall provide the commissioner of natural resources with an expenditure report at the end of each month containing enough information to permit an audit of compliance with the expenditure commitments imposed in (b) of this section.”

Renumber remaining sections.

Special Committee on Natural Gas Development

8/3/2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	#7		
Motion	adopt as amended		
<u>Motion by</u>	B. Stevens		
<u>Objection by</u>	B. Stevens		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh	✓		
Senator B. Stevens	✓		
Senator Stedman	✓		
Senator Bunde	✓		
→ Senator Olson	✓		
Senator Dyson			✓
Senator Wilken	✓		
Senator Elton	✓		
Senator Hoffman	✓		
Vice-Chair Green	✓		
Vice-Chair Wagoner	✓		
Chair Seekins	✓		
<u>Tally</u>			
Yea	11		
Nay	1		
Absent			
<u>MOTION</u>	Pass		

8/3 10:10 am held (also held: motion to amend)

Special Committee on Natural Gas Development

8/3/2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	#7		
Motion	amend		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	none		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh			
Senator B. Stevens			
Senator Stedman			
Senator Bunde			
Senator Olson			
Senator Dyson			
Senator Wilken			
Senator Elton			
Senator Hoffman			
Vice-Chair Green			
Vice-Chair Wagoner			
Chair Seekins			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

8/3 10:10 am held
7:15pm brought up again

AMENDMENT

Offered by Senator Ben Stevens

SB 3002 version 24-GS2095\G

Natural Gas Development
COMMITTEE
Amendment # #8
To Bill Number: SB 3002
Sponsor: B. Stevens
Date: 2/3/06 Logged by: Mindy

Adopted

Delete "30"

Insert "60"

In the following section:

Sec. 43.82.430. Final findings, determination, and proposed amendments;
execution of the contract. (a) within [30] 60 days after the close of the public comment
period under AS 43.82.410(4), the commissioner of Revenue shall

Special Committee on Natural Gas Development

8/ /2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	#8		
Motion	adopt		
<u>Motion by</u>	B. Stevens		
<u>Objection by</u>	B. Stevens		
Removed	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh			
Senator B. Stevens			
Senator Stedman			
Senator Bunde			
→ Senator Olson			
Senator Dyson			
Senator Wilken			
Senator Elton			
Senator Hoffman			
Vice-Chair Green			
Vice-Chair Wagoner			
Chair Seekins			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

Natural Gas Development
COMMITTEE #19
Amendment #
To Bill Number: SB 3002
Sponsor: B. Stevens
Date: 8/3/06 Logged by: Mindy
Adopted

AMENDMENT

OFFERED IN THE SENATE
TO: SB 3002 24-GS2095\C

BY SENATOR BEN STEVENS

1 AS 43.82 is amended by adding a new section to read:

2 **Sec. 43.82.255. Term of contract provisions related to oil.** (a) The
3 provisions of this section apply to a contract developed under AS 43.82.020 that
4 provides for periodic payment in lieu of taxes on oil under AS 43.55.

5
6 (b) For the part of the contract term beginning immediately after the date
7 of full project funding or the date of issuance of a certificate of public convenience
8 and necessity for construction and initial operation of the Alaska Natural Gas pipeline,
9 whichever date is later, and ending 14 years after that date, the commissioner may
10 develop a term for the contract that provides for payments in lieu of the taxes on oil
11 set out in AS 43.55. For the part of the contract term established with as much
12 certainty as the Constitution of the State of Alaska allows.

13
14 (c) For the part of the contract term beginning immediately after the period
15 described in (b) of this section, and ending on a date not later than 25 years after the
16 effective date of the contract, the amount of the payment in lieu of tax on oil under
17 AS 43.55 must be equal to the amount of the tax levied by the law. However, the
18 commissioner may develop a contract term that, in the event of a material change in
19 the taxes enacted after the effective date of the contract, establishes a procedure for
20 restoring the parties to substantially the same economic position they had as of the
21 end of the period described in (b) of this section immediately before the change.

22
23 (d) Implementation of a contract provision authorized in this section may
24 be made subject to the dispute resolution procedures of the contract.

Special Committee on Natural Gas Development

8/3/2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	#9		
Motion	adopt		
<u>Motion by</u>	B. Stevens		
<u>Objection by</u>	B. Stevens		
<u>Removed</u>	✓		
<u>Second Objection by</u>	Dyson / removed		
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Kookesh			
Senator B. Stevens			
Senator Stedman			
Senator Bunde			
Senator Olson			
→ Senator Dyson			
Senator Wilken			
Senator Elton			
Senator Hoffman			
Vice-Chair Green			
Vice-Chair Wagoner			
Chair Seekins			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

~~adopted~~

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

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

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

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

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

19 (4) establish a period of at least ~~60~~⁷⁵ [30] days for the public and
20 members of the legislature to comment on the proposed contract and the preliminary
21 findings and determination made under AS 43.82.400.

22 * Sec. 13. AS 43.82.430(a) is amended to read:

23 (a) Within 60 [30] days after the close of the public comment period under
24 AS 43.82.410(4), the commissioner of revenue shall

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

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

Special Committee on Natural Gas Development

8/3/2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	#10		
Motion	adopt		
<u>Motion by</u>	B. Stevens		
<u>Objection by</u>	none		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh			
Senator B. Stevens			
Senator Stedman			
Senator Bunde			
Senator Olson			
Senator Dyson			
Senator Wilken			
Senator Elton			
Senator Hoffman			
Vice-Chair Green			
Vice-Chair Wagoner			
Chair Seekins			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

Amendment #11

adopted

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

* Sec. 14. AS 43.82.500 is amended to read:

Sec. 43.82.500. Obligation to share payments with municipalities. If the commissioner develops a contract under AS 43.82.020 that includes terms that exempt a qualified sponsor, the members of a qualified sponsor group, or a related party to the contract, and the property, gas, products, and activities associated with the approved qualified project that is subject to the contract, from a municipal tax or assessment in accordance with AS 29.45.810 or AS 29.46.010(b), or AS 43.82.200 and 43.82.210, the commissioner shall include a term in the contract that provides for [THE PARTY PAY] a portion of the periodic payments to be made payable [DUE UNDER THE CONTRACT] to the revenue-affected municipality.

* ~~Sec. 15. AS 43.82.505 is amended to read:~~

delete

~~**Sec. 43.82.505. Payments to economically affected municipalities.** If the commissioner executes a contract under AS 43.82.020 that will produce one or more economically affected municipalities, the commissioner shall include a term in the contract that provides for [A PORTION OF THE] periodic impact payments to the economically affected municipalities under the principles in AS 43.82.520.~~

* Sec. 16. AS 43.82.510(c) is amended to read:

Insert Sec. 15 + Sec. 16 of CS Version "G"

(c) Each municipal advisory group serves until the later of 90 days after final distribution of impact payment money under AS 43.82.505, or commencement of operations of the qualified project. Expenses of a municipal advisory group are eligible for reimbursement under AS 43.82.505 [A FINAL ACTION IS TAKEN ON THE APPLICATION FOR WHICH THE GROUP WAS APPOINTED].

* Sec. 17. AS 43.82 is amended by adding a new section to article 7 to read:

Sec. 43.82.650. Calculations of education funding. To determine the amount of required local contribution under AS 14.17.410(b)(2) and (c) for a school district in a revenue-affected municipality, and to perform its duties under AS 14.17.510, the Department of Commerce, Community, and Economic Development shall adopt

Special Committee on Natural Gas Development

8/3/2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	# 11		
Motion	adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	none		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh			
Senator B. Stevens			
Senator Stedman			
Senator Bunde			
Senator Olson			
Senator Dyson			
Senator Wilken			
Senator Elton			
Senator Hoffman			
Vice-Chair Green			
Vice-Chair Wagoner			
Chair Seekins			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

delete: Version "F" Sec 15
Page 7, lines 14 - 19

insert: Version "G" Sec. 15 & Sec. 16
Page 8, line 19 through
Page 11, line 1

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

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

9 * Sec. 14. AS 43.82.500 is amended to read:

10 **Sec. 43.82.500. Obligation to share payments with municipalities.** If the
11 commissioner develops a contract under AS 43.82.020 that includes terms that exempt
12 a qualified sponsor, the members of a qualified sponsor group, or a related party
13 to the contract, and the property, gas, products, and activities associated with the
14 approved qualified project that is subject to the contract, from a municipal tax or
15 assessment in accordance with AS 29.45.810 or AS 29.46.010(b), or AS 43.82.200
16 and 43.82.210, the commissioner shall include a term in the contract that provides for
17 [THE PARTY PAY] a portion of the periodic payments to be made payable [DUE
18 UNDER THE CONTRACT] to the revenue-affected municipality.

19 * Sec. 15. AS 43.82.505 is amended to read: **Insert to CS "F"**

20 **Sec. 43.82.505. Payments to economically affected municipalities.** If the
21 commissioner executes a contract under AS 43.82.020 that will produce one or more
22 economically affected municipalities, the commissioner shall include a term in the
23 contract that provides for [A PORTION OF THE] periodic impact payments to the
24 state that may be appropriated to the Alaska natural gas pipeline construction
25 impact fund established in (c) of this section to benefit the economically affected
26 municipalities under the principles in AS 43.82.520.

27 * Sec. 16. AS 43.82.505 is amended by adding new subsections to read:

28 (b) A special account is established in the general fund into which the
29 Department of Revenue shall deposit impact payments received by the state under (a)
30 of this section.

31 (c) The Alaska natural gas pipeline construction impact fund is established in

1 the Department of Commerce, Community, and Economic Development. The
2 legislature may appropriate money deposited in the special account established in (b)
3 of this section, as well as any additional money considered necessary, to the Alaska
4 natural gas pipeline construction impact fund to address the economic and social
5 impacts incurred by an economically affected municipality, or incurred by a nonprofit
6 organization serving the unorganized borough, during the construction of a project that
7 is the subject of a proposed contract developed under this chapter.

Insert
to
CS" F"

8 (d) The Department of Commerce, Community, and Economic Development
9 shall adopt regulations under which economically affected municipalities and
10 nonprofit organizations may apply for and be eligible to receive grants to alleviate
11 impact caused by construction of a gas pipeline. The department shall give priority in
12 the allocation of grants to municipalities and organizations that are experiencing or
13 will experience the most direct or severe impact from gas pipeline construction. The
14 department shall finance, under (e) of this section, all meritorious grant applications
15 each year, to the extent money is available in the Alaska natural gas pipeline
16 construction impact fund. Within 10 days after the convening of each regular session
17 of the legislature, the department shall submit to the legislature a list of all
18 municipalities and organizations that have received grants, a list of all municipalities
19 and organizations determined by the department to be eligible for further grants, a
20 recommendation of the amount of money to be granted for those additional
21 applications, and written justification of each past and potential grant.

22 (e) The commissioner of commerce, community, and economic development,
23 in consultation with the relevant municipal advisory group established under
24 AS 43.82.510, shall use money appropriated to the Alaska natural gas pipeline
25 construction impact fund to make grants to municipalities, and to nonprofit
26 organizations serving the unorganized borough, for impacts on transportation,
27 infrastructure, law enforcement, emergency services, health and human services,
28 education, the labor force, population, wages, and subsistence and for socio-cultural
29 impacts, brought about by the construction of the gas pipeline. In determining whether
30 an expenditure or proposed expenditure by a municipality or nonprofit organization is
31 eligible for a grant under this subsection and in allocating available money among

1 grant proposals, the commissioner shall consider the recommendations of the relevant
2 municipal advisory group established under AS 43.82.510 and whether the proposed
3 expenditure meets the purposes of this section.

4 (f) Before making awards of grants under this section for a fiscal year, the
5 commissioner of commerce, community, and economic development shall provide
6 reasonable public notice of all grant applications received, the recommendations of the
7 relevant municipal advisory group, preliminary determinations made concerning the
8 eligibility of each municipality or organization for a grant, the eligibility of each
9 expenditure or proposed expenditure for a grant, and the proposed allocation of
10 available money among grant proposals. The public notice must specify a time and
11 place for a public hearing during which the commissioner will receive comments
12 concerning the preliminary determinations and allocations of the department. The
13 commissioner shall give reasonable public notice of the final awards of grants made
14 under this section. Thirty days after such public notice is given, final awards take
15 effect and may be paid to the grantees according to procedures established by
16 regulation.

17 (g) Grant money received under this section may not be used for the
18 retirement of municipal debt.

19 (h) Amounts appropriated to the Alaska natural gas pipeline construction
20 impact fund under (c) of this section for a fiscal year that are not used for grants to
21 municipalities and organizations under (d) and (e) of this section shall be retained in
22 the Alaska natural gas pipeline construction impact fund and remain available for
23 distribution as grants under this section in succeeding fiscal years.

24 (i) Nothing in this chapter exempts money deposited into the special account
25 in the general fund established in (b) of this section from the requirements of AS 37.07
26 (Executive Budget Act) or dedicates that money, or money appropriated to the Alaska
27 natural gas pipeline construction impact fund, for a specific purpose.

28 (j) In this section, "direct or severe impact" means a clearly demonstrable
29 effect on a community that proximately contributes to a material change to
30 transportation, infrastructure, law enforcement, emergency services, health and human
31 services, education, the labor force, population, wages, subsistence, or for socio-

Insert
to
CS"F"

Insert
to
CS"F"

cultural impacts brought about by the construction of a gas pipeline.

* ~~Sec. 17.~~ AS 43.82.510(c) is amended to read:

(c) Each municipal advisory group serves until the later of 90 days after final distribution of impact payment money under AS 43.82.505, or commencement of operations of the qualified project. Expenses of a municipal advisory group are eligible for reimbursement under a grant made under AS 43.82.505 [A FINAL ACTION IS TAKEN ON THE APPLICATION FOR WHICH THE GROUP WAS APPOINTED].

* Sec. 18. AS 43.82 is amended by adding a new section to article 7 to read:

Sec. 43.82.650. Calculations of education funding. To determine the amount of required local contribution under AS 14.17.410(b)(2) and (c) for a school district in a revenue-affected municipality, and to perform its duties under AS 14.17.510, the Department of Commerce, Community, and Economic Development shall adopt regulations. The regulations must establish assessment standards for any property that would have been assessed under AS 43.56 but is instead generating a payment to a revenue-affected municipality in lieu of a municipal property tax as provided in a contract developed under this chapter. The regulations must ensure that the property is included in the full and true value of the city or borough school district for the purpose of determining required local contributions for education funding under AS 14.17.410(b)(2) and (c).

* Sec. 19. AS 43.82.900 is amended by adding a new paragraph to read:

(14) "related party" means an entity, including a limited liability company or similar incorporated or unincorporated entity, that

(A) is affiliated with a qualified sponsor or qualified sponsor group;

(B) owns or operates a qualified project or any segment of a qualified project; and

(C) is an intended beneficiary of the fiscal terms included in a contract developed under this chapter.

* Sec. 20. AS 43.82.445 is repealed.

* Sec. 21. The uncodified law of the State of Alaska is amended by adding a new section to

Natural Gas Development
COMMITTEE
Amendment # 12
To Bill Number: SB 3002
Sponsor: Sen. Wilken
Date: 8/3/06 Logged by: Rose

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR WILKEN

TO: Any version of CSSB 3002(NGD)

1 * ⁶Sec. ~~A~~. AS 43.82.210 is amended by adding a new subsection to read:

2 (d) A contract developed under this chapter may not contain a provision for

3 distribution of payments received in lieu of taxes. The method of distribution of

4 payments received in lieu of taxes are not effective unless the methods are

5 enacted by law.

page 3 , following line 18
insert: ↑

Special Committee on Natural Gas Development

8/3/2006

COMMITTEE ACTION

Bill Number	SB 3002		
Amendment	# 12		
Motion	adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>			
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Kookesh			✓
Senator B. Stevens			✓
Senator Stedman			✓
Senator Bunde	✓		
Senator Olson			✓
Senator Dyson	✓		
Senator Wilken	✓		
Senator Elton			✓
Senator Hoffman			✓
Vice-Chair Green	✓		
Vice-Chair Wagoner	✓		
Chair Seekins	✓		
<u>Tally</u>			
Yea	6		
Nay	0		
Absent	0		
<u>MOTION</u>	Failed		

Natural Gas Development
COMMITTEE
Amendment # # 13
To Bill Number: SB 3002
Sponsor: Wilken
Date: 8/4/00 Logged by: Mindy

AMENDMENT

TO SENATE BILL 3002

By Senator Gary Wilken

"An Act amending the time allowed, under the Alaska Stranded Gas Development Act, for the commissioner of revenue to summarize public comments, propose amendments, if any, and make findings; and providing for an effective date."

Special Committee on Natural Gas Development

8/4/2006

COMMITTEE ACTION

Bill Number		SB 3002		
Amendment		# 13		
Motion		adopt		
<u>Motion by</u>		Wilken		
<u>Objection by</u>		Seekins		
<u>Removed</u>		✓		
<u>Second Objection by</u>		Stedman		
<u>Committee Member</u>		Y	Vote	N
→ Senator Kookesh		✓		
Senator B. Stevens				✓
Senator Stedman				✓
Senator Bunde			—	
Senator Olson			—	
Senator Dyson		✓		
Senator Wilken		✓		
Senator Elton		✓		
Senator Hoffman				✓
Vice-Chair Green			—	
Vice-Chair Wagoner		✓		
Chair Seekins				✓
<u>Tally</u>				
Yea		4 5		
Nay		4		
Absent		3		
<u>MOTION</u>		Pass		

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 7/12/06

Date of 5-Day Notice: Special Session
(in accordance with Uniform Rule 23)

FURTHER:

DATE TURNED
IN TO OFFICE: 4 Aug 2006

Senate Special Committee on Natural Gas Development considered SENATE BILL NO. 3002

SB 3002 STRANDED GAS AMENDMENTS

"An Act relating to the Alaska Stranded Gas Development Act; relating to municipal impact money received under the terms of a stranded gas fiscal contract; relating to determination of full and true value of property and required contributions for education in municipalities affected by stranded gas fiscal contracts; and providing for an effective date."

and recommends:

☒ be replaced with ☐ SCS or ☒ CS SB 3002 (NGD)

☐ adopt previous ☐ SCS or ☐ CS _____ (_____)

☐ attached amendment(s)

☐ adopt _____ Letter of Intent

☐ further referral to _____ Committee

SENATE BILL:

☐ Same Title
☒ New Title

HOUSE BILL:

☐ Same Title
☐ Technical Title Change
☐ New Title w/ SCR #

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Revenue	7/12/06			✓	#1
Net. Res.	7/12/06			✓	#2

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	No REC	AMEND
		✓			
		✓			
		✓			
		✓			
		✓			
				✓	
		✓			
		✓			
		✓			
CHAIR:		✓			

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

August 4, 2006

SUBJECT: Technical correction to amended title (CSSB 3002(NGD)
(Work Order No. 24-GS2095U))

TO: Senator Seekins
Chairman of the Senate Special Committee on Natural Gas
Development
Attn: Brian Hove

FROM: Dennis C. Bailey *DCB*
Legislative Counsel

This memo is to bring to your attention a technical amendment to the title change approved by Amendment 13. We have added "and determinations" to the descriptive language of the commissioner's duties in order to conform more closely with the existing statutory language.

If you have any concerns about this technical amendment please let me know.

DCB:lmb
06-203.lmb

Enclosure

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

August 3, 2006

SUBJECT: Questions concerning amendment #6 (CSSB 3002(NGD), Draft version "G"; Work Order No. 24-GS2095\G)

TO: Senator Ben Stevens

FROM: Dennis C. Bailey 
Legislative Counsel

I prepared a memo for Senator Olson and one for Senator French responding to their questions related to Amendment #2 to CSSB 3002, version G, which you have copies of. You have asked me to review the same questions posed by Senator Olson and Senator French as they pertain to Amendment #6 to CSSB 3002(NGD), version G, which has now been substituted for Amendment #2.

1. Does the amendment approve the contract without a public vote?

Because sec. 25 states that the provisions of the contract "are effective," it is possible that this section -- which is effective immediately -- would be construed as an approval without a public vote. If sec. 25 were added to sec. 29 or reworded to make it clear that it is not an approval, then a public vote would be required to trigger the approval of the contract. Sec. 29 gives effect to sections 14 - 16, 23(a) and 24 only on receipt of a favorable vote in the 2006 general election. Assuming the public vote is favorable, secs. 14 - 16, 23(a) and 24 become effective on the date the election results are certified by the director of elections. The sections that are subject to the condition are as follows:

Sec. 14 allows the commissioner to execute the contract within 30 days after the public comment period is closed. Since the public comment period has already closed, the commissioner would be permitted to sign the contract immediately after addressing the requirements of AS 43.82.430(a) and (b).

Sec. 15 states that the commissioner's decision is the final agency action.

Sec. 16 limits the time period for judicial challenges to 120 days.

Sec. 23(a) repeals the requirement that legislative authorization is required to execute the contract.

Sec. 24, slightly modified by Amendment #6, reads as follows:

APPROVAL AND RATIFICATION. Notwithstanding AS 43.82.435, repealed by sec. 23(a) of this Act, the provisions of the Alaska Stranded Gas Fiscal Contract between the State of Alaska and BP Exploration (Alaska) Incorporated, ConocoPhillips Alaska, Incorporated, and Exxon

Mobil Alaska Production, Incorporated, as amended to conform to the provisions of this Act, are approved and procedures followed in formulating that contract are ratified.

2. Are the results of the public vote binding?

The vote is binding in the sense that it triggers the amendments to statutory law in secs. 14 - 16 and 23(a), as well as the approval in sec. 24. If these amendments occur, the commissioner will be authorized, but not required, to sign the contract.

State general law does not address the issue of advisory votes.

The attorney general is of the opinion that the Alaska Supreme Court would uphold a delegation of legislative power to the people by submitting a question for a binding vote, at least when the topic is not an appropriation, Attorney General Opinion J66-479-82 (Feb. 9, 1982) and Attorney General Opinion J66-545-82 (April 23, 1982). The courts give due respect to that office's conclusions:

While opinions of the attorney general are not controlling as to the meaning of the statute the fact that his opinions have not been challenged and that he is the officer charged by law with advising the officers charged with the enforcement of the law as to the meaning of it, entitle his opinions to great weight. (internal cites omitted)

Allison v. State, 583 P.2d 813, 816, n.15 (Alaska 1978).

However, it is possible that a provision of a bill making the Act effective only if approved by the voters would be held unconstitutional because such a referendum is not specifically authorized by the state constitution. Section 1 of Article II of the Constitution of the State of Alaska provides that the legislative power of the state is vested in the legislature. Laws may be enacted in Alaska in two ways: by the legislature acting under the power vested in it by Article II and by the people acting under the power of initiative and referendum as established in Article XI.

The constitution provides the method for proposing an initiative or referendum in sections 1, 2, and 3 of Article XI:

SECTION 1. The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum. (Emphasis added)

SECTION 2. An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred qualified voters as sponsors,

and shall be filed with the lieutenant governor. If he finds it in proper form he shall so certify. Denial of certification shall be subject to judicial review.

SECTION 3. After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by qualified voters, equal in number to ten per cent of those who voted in the preceding general election and resident in at least two-thirds of the election districts of the State, it may be filed with the lieutenant governor.

Since the constitution reserves the power of initiative and referendum to the people, the legislature may not usurp that power. A court might well hold that the method for exercising the power of initiative and referendum set out in those sections is exclusive.

In U.S. v. Northern Commercial Co., 6 Alaska 94 (1918), the territorial legislature provided that an act be submitted to a referendum vote of the people. The court struck the act down, holding that neither the organic law creating the legislature, nor any other Act of Congress authorized the submission of such an act to the popular vote. In People v. Barnett, 176 N.E. 108 (Ill. 1931), the court struck down a statute on similar grounds. The court concluded that the legislature alone has the power, duty, and responsibility to legislate.

Under the constitution of the State of Alaska, I think it likely that the courts would hold that neither the governor nor the legislature is authorized to submit an act to the popular vote for binding effect. This conclusion is bolstered by the fact that the delegates to the Alaska Constitutional Convention considered and rejected a proposal that would have authorized bills to be referred to the voters.

Section 21 of Committee Proposal 5, dated December 14, 1955, stated:

SECTION 21. Any bill failing of passage by the legislature may be submitted to referendum by order of the governor either in its original form or with such amendments which were considered by the legislature, as he may designate. Any bill which, having passed the legislature, is returned thereto by the governor with objections, and, upon reconsideration is not approved by the majorities required by this constitution, may be submitted to referendum by a majority of all the members sitting as one body. Bills thus submitted to referendum shall be voted on at the next succeeding regular election occurring at least sixty days after action is taken to submit them, unless the legislature shall provide for their submission at an earlier date. This section shall not apply to bills containing appropriations, raising or earmarking revenues, nor to local or special bills.

This section on legislative referendum was considered by the delegates as a body on January 11, 1956, recorded at pages 1737, 1777-1778, Minutes of the Daily Proceedings, Alaska Constitutional Convention. In explaining the intent of Section 21, Committee Proposal 5, Delegate McCutcheon stated, at page 1777 of the Proceedings:

MCCUTCHEON: The terminology is taken directly out of the model constitution. The point is that at the time our Committee was drafting this particular section, or considering it I should say, there was some doubt in my mind, and I think in the minds of others on our Committee, that there may not be an initiative device in the constitution. With the initiative device, this certainly may be stricken in toto. You do have initiative protection. This device was placed in the legislative article in the event that there was no initiative. It was a device that was designed to get good legislation out before public opinion to react on, but since there is an initiative device, the public can take any bill that is offered in the legislature and put it as an initiative measure.

Based on Delegate McCutcheon's statement, Delegate Gray moved to delete Section 21, stating at page 1778:

Taking Mr. McCutcheon's suggestion and word, that if this article is unnecessary, if it is already cured by initiative, why I'll make a motion to strike Section 21 because it is superfluous.

Delegate Gray's motion carried, indicating that the Alaska Constitution does not allow the governor or the legislature to refer legislation to a popular vote for binding effect.

Except for the areas in which the Constitution expressly authorizes submission of questions to the voters, the legislature arguably may not constitutionally avoid its responsibility and the requirements of section 2 of Article XI of the Constitution by placing questions on the ballot for a decision of the voters, particularly when the vote is binding.

While there may be a difference of opinion as to the outcome of litigation on this question, there appears to be little doubt that the question is an open one in this state and any legislation made dependent on a vote of the people would be subject to legal challenge.

3. Are there any grounds remaining for a statutory challenge to the contract under the amendment?

Sec. 25 states that after a contract is amended to conform with CSSB 3002, its terms are effective notwithstanding any other law or AS 43.82.200 - 43.82.270, (the Stranded Gas Development Act sections related to contract development). Sec. 25 also states that any inconsistency between the Stranded Gas Development Act and the fiscal contract are

"cured and authorized" by sec. 25. In addition, sec. 24 states that the process and procedures in formulating the contract are ratified. These sections should preclude legal challenges and application of the Stranded Gas Development Act to the fiscal contract.

4. *Is the "approval and ratification" provision of sec. 24 equivalent to giving the governor authority to execute the contract under AS 43.82.435?*

Approval and ratification under sec. 24 differs from SGDA approval. The SGDA now requires the commissioner to summarize comments, list proposed amendments, if any, and make final findings before submitting the contract to the governor. AS 43.82.430. If the commissioner's actions are not completed before sec. 24 is effective, the approval and ratification action probably does not comply with the SGDA. Assuming the approval does not comply with the SGDA, sec. 25 of the bill is apparently included in order to "cure and authorize" any inconsistency between the SGDA and the fiscal contract.

5. *Under sec. 25 of the amendment is there any requirement for the state to abide by the provisions of the Stranded Gas Development Act?*

As discussed in under item 3 above, any requirement to comply with the Stranded Gas Development Act would be overcome by the provision in sec. 25 stating that the approval of the contract is effective notwithstanding any other law, combined with the provision that any inconsistency between the Stranded Gas Development Act and the fiscal contract is cured and authorized. Basically sec. 25 says that the contract is effective.

6. *Is there anything in the amendment that is statutorily or constitutionally problematic?*

The issue of making law dependent on voter approval is discussed above.

In addition, sec. 25 is ambiguous as to whether it constitutes immediate approval of the contract.

It is not clear from the language of sec. 24 whether the existing contract or an amended contract would receive approval. Although sec. 24 appears to approve the fiscal contract in its existing state, this section requires the contract receiving approval and ratification to be amended to conform to CSSB 3002, i.e., "this Act." Apparently, after CSSB 3002 is enacted, the parties could, or must, revise the contract to conform to CSSB 3002. Only then would the contract be approved and ratified. It is not clear what terms of the contract would need to be amended to comply with CSSB 3002. By approving the fiscal contract under sec. 24 with the amendment provision, the legislature may be approving and ratifying a contract with terms to which the parties have not agreed.

Sec. 24 does not address what would happen to the contract if it does not conform to the provisions of CSSB 3002 or if certain provisions did not conform to CSSB 3002.

In a similar vein, the question has arisen, whether the descriptive language in both sec. 24 and sec. 25, "the provisions of the contract," creates a distinction between the provisions of a contract and the contract itself? In other words, is something less than the entire contract approved in sec. 24 by the reference to "the provisions of the contract." Although debatable, in my view, this is a distinction without a difference. There is no real difference between "approving the contract" and "approving the terms of the contract." Since a contract is only made up of its terms or provisions, using the language "the provisions of" is nothing more than referring to the contract. One could refer to either "the contract" or "the provisions of the contract" interchangeably; using both is redundant. Only an excessively technical analysis could change the meaning of a contract or its provisions based on this distinction. The potential problem can be removed by referring to "the contract" when referring to the whole contract and refer to "a provision" or "the provision" when referring to a particular provision.

You might want to include sec. 25 within the conditional provisions of sec. 29. This may eliminate a potential problem because, without a change, sec. 25 would become effective immediately. As currently drafted, if the popular vote were not in favor of approving the contract sec. 25 would still be effective.

If I may be of further assistance, please advise.

DCB:ljw

06-288.ljw

1. Chapter 9, SLA 1987 -- curative statute authorizing and ratifying a prior act of the governor.
2. Fairbanks North Star Borough v. State -- curative legislation is valid.
3. Minutes of Constitutional Convention -- referral of an act to the people by the legislature would be allowed under Alaska Constitution.
4. 1982 Informal AG Opinion -- effect of legislature conditional on voter approval likely valid.



LAWS OF ALASKA

1987

Source

Chapter No.

CSHB 132 (Fin) am S

9

AN ACT

Approving and ratifying executive restrictions on the fiscal year 1987 operating budget; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 10

Approved by the Governor: May 15, 1987
Actual Effective Date: May 16, 1987, retroactive
to July 1, 1986

AN ACT

Approving and ratifying executive restrictions on the
fiscal year 1987 operating budget; and providing for an
effective date.

* Section 1. LEGISLATIVE FINDINGS, PURPOSE, AND INTENT. (a) The
legislature finds that

(1) estimated receipts and surpluses will not be sufficient to
cover appropriations for fiscal year 1987;

(2) in response to the anticipated deficit, Governor Sheffield
issued Administrative Order Number 90 on August 22, 1986, which restricted
the rate of obligation or expenditure of a number of appropriations under
the authority conferred by AS 37.07.080; Governor Cowper made a similar but
more limited reduction in Administrative Order Number 91 on December 8,
1986;

(3) the orders were in response to a fiscal crisis that was
facing the state;

(4) the orders have been challenged in court by the Fairbanks
North Star Borough and others, and the supreme court has invalidated those
orders;

(5) if the restrictions on the one-year appropriations for
fiscal year 1987 in Administrative Orders Numbers 90 and 91 are overturned
in full or in part, the consequences would impede rational state fiscal
management.

(b) It is the purpose of this Act to approve and ratify the order

Chapter 9

1 and the actions taken by the governor and the executive branch under t
2 orders and to remove any uncertainty about the status of the money w
3 held, insofar as the orders concern the restrictions on one-year approp
4 tions for fiscal year 1987.

5 (c) In approving the restrictions on the one-year appropriations
6 fiscal year 1987, the legislature intends that the unobligated portion
7 those appropriations restricted by Administrative Orders Numbers 90 and
8 lapse in accordance with AS 37.25.010.

9 * Sec. 2. APPROVAL AND RATIFICATION. The actions of the governor
10 the executive branch in restricting one-year appropriations for fiscal
11 1987 by issuing and implementing Administrative Orders Numbers 90 and 9
12 reflected in the budget workbooks submitted to the legislature under AS
13 07.040 and entitled "Operating Budget FY 87 Revised" are approved
14 ratified.

15 * Sec. 3. SUSPENSION OF OTHER LAW. The provisions of sec. 2 of
16 Act are effective notwithstanding the provisions of any other law, inc
17 ing but not limited to AS 37.05.315, 37.05.316, and 37.05.317.

18 * Sec. 4. This Act is retroactive to July 1, 1986.

19 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
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security claims. Frick, acting on behalf of ARCO, sent a form to the Employment Security Division indicating the reason for Akers' discharge as insubordination in willful disregard of the employer's interest.

At trial, Akers claimed that ARCO had, in bad faith, attempted to prevent Akers from obtaining unemployment compensation. At the close of Akers' case, however, this claim was dismissed because insufficient evidence had been presented. ARCO later moved that the Frick report be removed from the jury's consideration because the unemployment compensation claim had been dismissed and because there had been no evidence connecting the content of the report to any of the individuals responsible for the discharge. The trial court rejected this argument and allowed the jury to consider the report.

ARCO argues that since none of the individual defendants had anything to do with the filing of the Frick report, this evidence could not be probative of bad faith by either those individuals or ARCO.

Akers argues that the report is attributable to ARCO. The report was ARCO's response to Akers' claim for unemployment compensation. Akers claims that since the report is attributable to ARCO, the fact that the reason for termination stated in the report was different from the reason Akers was given is relevant to the claim that ARCO acted in bad faith. "Obviously, if an employer gives inconsistent reasons for the discharge of the employee, this inconsistency casts doubt on whether reasons exist for the discharge and which, if either, is the true reason."

Although the Frick report may not be attributable to any of the individuals involved in the termination of Akers, the report was nonetheless attributable to ARCO. The fact that this report listed a reason for termination that was different from the reason Akers was previously given by ARCO is relevant to the issue of whether ARCO was acting in good faith.

3. We have reviewed the issues raised by Akers on cross-appeal and find they do not warrant

Thus, the trial court did not err in allowing the jury to consider the Frick report.

CONCLUSION

The award of punitive damages is REVERSED. In all other respects the judgment of the trial court is AFFIRMED.³



**FAIRBANKS NORTH STAR BOROUGH
and Fairbanks North Star Borough
School District, Appellants,**

v.

STATE of Alaska, William Sheffield Governor of the State of Alaska, Marshall Lind, Commissioner of Education, Eleanor Andrews, Commissioner of Administration, Emil Notti, Commissioner of Community and Regional Affairs, Loren Lounsbury, Commissioner of Commerce and Economic Development, Milton Barker, Acting Commissioner of Revenue, all in their official capacities, Appellees.

No. S-2254.

Supreme Court of Alaska.

May 6, 1988.

Borough and borough school district brought suit challenging the constitutionality of Executive Budget Act section pursuant to which governors withheld or reduced appropriations to state agencies in view of anticipated revenue shortfalls. The Superior Court, Fourth Judicial District, Fairbanks, James R. Blair, J., found the statute an unconstitutional delegation of legislative power. State appealed. The Supreme Court, 736 P.2d 1140, affirmed and remanded. On remand, the Superior Court concluded that later legislation was a valid

the granting of a new trial in this case.

concluded that H.B. 132 was a valid curative act, and modified its earlier judgment to affirm the withholdings. Now, with the governor and the legislature in complete agreement on the cuts, appellant local governments approach this court seeking compelled payment of the originally appropriated funds. We affirm the modified decision of the trial court.

A curative statute is

a statute passed to cure defects in prior law, or to validate legal proceedings, instruments, or acts of public and private administrative authorities which, in the absence of such an act would be void for want of conformity with existing legal requirements, but which would have been valid if the statute had so provided at the time of enacting.

2 C. Sands, Sutherland Statutory Construction § 41.11 (4th ed. 1973); see generally *School District No. 26 Bouse Elementary of Yuma County v. Strohm*, 106 Ariz. 7, 469 P.2d 826, 828 (1970); *McCormack v. Houston*, 84 Cal.App.2d 665, 191 P.2d 569, 576-77, cert. denied, 335 U.S. 868, 69 S.Ct. 138, 93 L.Ed. 412 (1948). In this case, the state legislature passed H.B. 132 with the express intention of validating the governor's impoundment orders, which had been rendered void by the *Fairbanks I* decision. See ch. 9, § 1(b), SLA 1987. Thus, if the statute qualifies as a valid curative act, it should be given its intended retroactive effect, thereby legitimizing the governor's heretofore improper exercise of executive power.

Courts have uniformly upheld the validity of curative legislation where (1) the legislature originally had the power to authorize the acts done, and (2) there is no unconstitutional impairment of vested rights as a result of the act's passage. See *State ex rel. Tomasic v. Kansas City*, 230 Kan. 404, 636 P.2d 760, 775 (1981); accord *Strohm*, 469 P.2d at 828; *Hoffman v. City of Red Bluff*, 63 Cal.2d 584, 47 Cal.Rptr. 553, 558, 407 P.2d 857, 862 (1965); *Labor Inv. Corp. v. Russell*, 405 P.2d 1008, 1012

We denied the motion, but we expressly noted that our denial was "without prejudice to appellants' right to move for a modified judgment in the superior court" on remand.

(Okla.1965); 2 C. Sands, Sutherland Statutory Construction § 41.11-12 (4th ed. 1973), see also *Zurfluh v. State*, 620 P.2d 690, 692-93 (Alaska 1980) (applying retroactively a curative statute relating to criminal sentencing). H.B. 132 easily satisfies both requirements.

[1] First, it can hardly be argued that the legislature is without power to enact a statute authorizing the governor to withhold payment on specific appropriations. See, e.g., *State ex rel. Holmes v. State Board of Finance*, 69 N.M. 430, 367 P.2d 925, 929 (1961); *State ex rel. Boyle v. Ernst*, 195 Wash. 214, 78 P.2d 526, 528 (1938); see also *Fairbanks I*, 736 P.2d at 1144 ("[t]his court does not hold that the legislature could not draft a statute which would permit the executive to exercise limited authority to control expenditures as [the governor has] done"). H.B. 132 does not grant the governor "sweeping power over the entire budget with no guidance or limitation," as did AS 37.07.080(g)(2). *Fairbanks I*, 736 P.2d at 1142-43. Rather, it is narrowly tailored to authorize only those impoundments specified in Administrative Orders 90 and 91. See ch. 9, § 2, SLA 1987. The Borough's argument that H.B. 132 "is unconstitutional for the same reasons AS 37.07.080(g)(2) was unconstitutional" is therefore unconvincing.

[2] Second, H.B. 132 does not unconstitutionally impair any vested rights. The Borough's claimed violations of due process and equal protection fail for a number of reasons, not the least of which is our recent holding in *Kenai Peninsula Borough v. State, Department of Community and Regional Affairs*, 751 P.2d 14, 18-19 (Alaska 1988), wherein we concluded that political subdivisions of the state are prohibited from asserting due process and equal protection claims against their creator. In sum, we see no bar to enforcement of H.B. 132 as a valid curative act.⁴

4. We reject as meritless the Borough's numerous other claims of error.

Our decision in *Fairbanks I* comports with our analysis here. In *Fairbanks I*, we affirmed the trial court's finding that the governor acted unconstitutionally in withholding the Borough's funds because he purported to act under the authority of a statute so broadly worded as to amount to an abrogation of the legislature's responsibility over appropriations. 736 P.2d at 1142-43. The legislature has since recognized its responsibility, and has taken it upon itself to consider and approve each of the heretofore unconstitutional impoundments. To now hold, as the Borough suggests, that our earlier decision gave the Borough some inviolate right to receipt of the funds, would be to effectively place the purse strings in the hands of the judiciary,

a branch no more qualified to possess them than was the executive.

We conclude that H.B. 132 is a valid and constitutional exercise of the legislative power, which effectively cured any constitutional infirmities in the governor's earlier actions. Accordingly, the judgment of the superior court is AFFIRMED.

RABINOWITZ, J., not participating.



appropriations would have to be included --

PRESIDENT EGAN: Mrs. Sweeney.

SWEENEY: Point of order, Mr. President.

PRESIDENT EGAN: Your point of order.

SWEENEY: The enrolled copy is in error in that last portion of that sentence, the material after "health and safety", beginning with the word "and" to the word "institution" should not have been on the enrolled copy. Through the mechanics of engrossing and enrolling in the early stages this was an error that we did not pick up. I have just checked the enrolled copy and also the journal and for those who wish to check they will find that on December 17 all the words after "safety" were stricken and they should not have been shown on the enrolled copy. So it is probably not in order even to discuss that motion, Mr. Sundborg.

SUNDBORG: Mr. President, we proceeded in our Committee without knowing that. After analyzing it, those words were redundant and unnecessary, and they are not included in our draft because we figured they are covered fully by the word "appropriations" on line 2 of the page 3.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: A point of information through the Chair as to the question by Mr. Sundborg. Mr. Sundborg, on that "local or special legislation", would that refer that the legislature could not refer to the people any legislation under the referendum, on say, a bonding issue, a Territorial or statewide bonding issue for a specific purpose, or referring to them a road project as to taking part in, perhaps, a national road program that would revert to the state.

SUNDBORG: Mr. President and Mr. Coghill, I believe that the restriction here is upon the referendum; the referendum as defined in this article which requires the filing of an application, the preparation of a petition, and the obtaining of a lot of signatures to get a proposition on the ballot. Now, I think there is nothing in this, and nothing elsewhere, that would prevent the legislature from simply saying in the law that, "This law shall become effective after it has been approved at the general election of such-and-such a date." That is not really the referendum as it is described in this article which is one on direct legislation initiated by the people. I am sure the legislature has that power without any reference to what is in this article.

PRESIDENT EGAN: Are there other questions with relation to Section 7? Mr. Poulsen.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

April 23, 1982

Hon. Samuel R. Cotten
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Voter approval of capital
appropriations
Our file: J66-545-82

Dear Representative Cotten:

You have requested our opinion concerning the validity of appropriation bills, the enactment of which is conditioned upon approval of the voters at a general election. As you are no doubt aware, Legislative Resolve No. 1, Twelfth Alaska State Legislature, First Session (FSS-FCCSSJR 4) has been passed by the Twelfth Alaska State Legislature. This joint resolution proposes an amendment to the Alaska Constitution relating to limitations on appropriations of state money. Under the proposed amendment, appropriations for capital projects which exceed the spending limit must be approved by the voters. The existing provisions of the Alaska Constitution place in doubt the validity of appropriations which must be approved by the voters before they are enacted. See art. XI, § 7, of the Alaska Constitution.

We have earlier given an informal opinion that the legislature may refer to the voters a general law on any subject which is capable of direct legislation under article XI of the Alaska Constitution. Inf. Opin. Atty. Gen., Feb. 9, 1982 (our file J66-479-82). Clearly, the voters may not refer a capital appropriation enacted by the legislature. A question which remains unanswered in the courts of this state is whether the prohibition set out in article XI, section 7 prevents the legislature from passing a capital appropriation with enactment conditioned on the approval of the voters.

The Alaska Supreme Court has cited with favor the rule set out in 16 C.J.S. Constitutional Law § 133 (1956), which provides:

. . . a legislature . . . may not delegate purely legislative powers in the absence of constitutional authorization.

DeArmond v. Alaska State Dev. Corp., 376 P.2d 717, 723, n. 16 (Alaska 1962). However, during the debate on the adoption of article XI, section 7, the opinion was expressed, and not challenged, that the prohibitions contained in section 7 applied only to action taken directly by the voters and not to matters referred to them by the legislature. */

We believe that it is consistent with the Alaska Constitution for the legislature to enact an appropriation on the condition that it take effect only upon approval of the voters. However, you should be aware that a significant number of jurisdictions in the United States have held that conditioning the enactment of general legislation on voter approval is an inval-

*/ During the floor debate on consideration of article XI, section 7, the following exchange occurred:

COGHILL: A point of information through the Chair as to the question by Mr. Sundborg. Mr. Sundborg, on that "local or special legislation", would that refer that the legislature could not refer to the people any legislation under the referendum, on say, a bonding issue, a Territorial or statewide bonding issue for a specific purpose, or referring to them a road project as to taking part in, perhaps, a national road program that would revert to the state.

SUNDBORG: Mr. President and Mr. Coghill, I believe that the restriction here is upon the referendum; the referendum as defined in this article which requires the filing of an application, the preparation of a petition, and the obtaining of a lot of signatures to get a proposition on the ballot. Now, I think there is nothing in this, and nothing elsewhere, that would prevent the legislature from simply saying in the law that, "This law shall become effective after it has been approved at the general election of such-and-such a date." That is not really the referendum as it is described in this article which is one on direct legislation initiated by the people. I am sure the legislature has that power without any reference to what is in this article.

Alaska Constitutional Convention, MINUTES at 2970.

id delegation of legislative power to the people. See the cases collected at 76 ALR 1053 -- 1058. These courts have reasoned that the legislature is attempting to evade its responsibility to exercise the law making power assigned to it under the state constitution. See Alaska Const., art. II, § 1.

There are a minority of jurisdictions that have found such a referral to be valid. See the cases collected at 76 ALR 1058 -- 1062. We believe the so-called minority rule has a high likelihood of being adopted by the Alaska Supreme Court if presented with the question. In many of the jurisdictions which have found an unconstitutional delegation of the law making power, the people in adopting the state constitution, did not reserve broad powers to initiate or refer laws enacted by the legislature.

Some jurisdictions have found that an improper delegation has not occurred if the legislature enacts a law but makes it effective only if it is approved by the voters. State v. Parker, 26 Vt. 357 (1854); 76 ALR 1059. This distinction has been criticized. People ex rel. Thompson v. Barnett, 176 N.E. 108 (Ill. 1931).

We suggest that if you wish to enact a capital appropriation subject to voter approval, all sections of the bill should take effect on a specified date. Then insert sections in the bill which

- (1) repeal the appropriations; and
- (2) make the repeal effective on a favorable vote of the people.

We believe this method of obtaining a popular vote will not invalidate the appropriation if the referral is successfully attacked as an improper delegation.

A second precaution could be taken by having the capital appropriation take effect 90 days after the spending limit amendment is approved by the voters. This condition would be in addition to the voter approval requirement. This means that the capital appropriation would be referred to and approved by the voters before the spending limit amendment takes effect (90 days after certification of election results). If there is a compelling public purpose, the legislature may implement by law a constitutional amendment before it is adopted by the voters.

Hon. Samuel R. Cotten

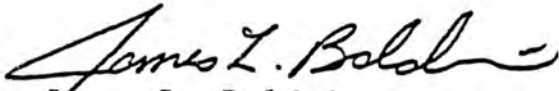
-4-

April 23, 1982

Assembly of Calif. v. Deukmejian, 639 P.2d 404 (Cal. 1982).

Sincerely yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

JLB/pjg

Options: Pipeline and LNG Economics

State of Alaska
August 4, 2006

Asia as an LNG Market

- Cannot compete with large reserves of LNG supply that has access to gas at tidewater and foreign tankers:
 - Qatar
 - Indonesia
 - Australia
 - Sakhalin