

ALASKA LEGISLATURE COMMITTEES 1999-2000 00/2

9392 HOUSE RESOURCES

28

IN ESSENCE, THE CHANGES WILL ACCOMPLISH THE FOLLOWING:

- ALL SEGMENTS OF ANADROMOUS STREAMS WILL NOW BE CLASSIFIED AS TO "TYPE" RANGING FROM TYPE A TO D, DEPENDING ON STREAM SIZE, STEEPNESS AND BANK STRUCTURE.
- NO-CUT BUFFER ZONES WILL BE EXTENDED TO ALL ANADROMOUS STREAMS, RELATIVE TO "TYPE".
(PREVIOUSLY BUFFERS WERE ONLY REQUIRED ONLY ON TYPE "A" STREAMS).
- LOW-VALUE TIMBER ALONG TYPE "C" AND "D" STREAMS
(TRIBUTARIES TO ANADROMOUS STREAMS) WILL BE RETAINED WHERE PRUDENT, SO THAT THE LARGE WOODY DEBRIS MAY EVENTUALLY TRAVEL DOWNSTREAM WHERE IS FORMS NATURAL POOLS, IMPORTATANT HABITAT FOR JUVENILE FISH.

WHILE THE 1990 FOREST PRACTICES ACT LEGISLATION REQUIRED A 66-FOOT NO-CUT ZONE ALONG THE MOST IMPORTANT SALMON STREAMS ON PRIVATE LANDS, THIS PROPOSED LEGISLATION WILL REQUIRE THIS BUFFER ALONG ALL STREAMS, REGARDLESS OF STREAM CHARACTERISTICS. ADDITIONALLY, OPERATIONS WITHIN 100 FEET OF THE STREAM, OR AT LEAST TO THE BREAK OF THE SLOPE MUST BE CONDUCTED IN COMPLIANCE WITH ESTABLISHED SLOPE STABILITY STANDARDS FOR EACH STREAM TYPE.

THE STATE OF ALASKA HAS ONE OF THE MOST EFFECTIVE FOREST PRACTICE ACTS IN THE NATION. THIS PROPOSED LEGISLATION IS THE FIRST STEP IN THE CONTINUED PATH TOWARD MANAGING OUR MARKETABLE TIMBER RESOURCES WHILE PROTECTING OUR NATURAL RESOURCES.

MADAME SPEAKER, DURING THE HEARING FOR THIS PROPOSED LEGISLATION IN THE RESOURCES COMMITTEE, WE HEARD FROM THE CHAIRMAN OF THE BOARD OF FORESTRY, THE ENVIRONMENTAL REPRESENTATIVE ON THE BOARD OF FORESTRY, THE DIVISION OF FORESTRY, THE COMMERCIAL FISHING COMMUNITY, AND THE TIMBER INDUSTRY. ALL WERE SUPPORTIVE OF THE PROVISIONS OF THE BILL.

I URGE THE SUPPORT OF THIS BODY IN PASSING HOUSE BILL 373: RELATING TO FORESTS AND FORESTRY PRACTICES.

Q: WHAT IS THE POLICY FOR AREAS WHERE BEETLE-
INFESTATION HAS KILLED ALL THE TIMBER?

A: ACCORDING TO ADF&G A TREE KILLED BY BEETLES
FALLS INTO A STREAM AND IS NOT A PROBLEM BECAUSE IT
ADDS TO THE LARGE WOODY DEBRIS WHICH PROVIDED
FISH SPAWNING HABITAT. THE QUESTION IS WHETHER NEW
TREES WOULD GROW WITHOUT SOME DISTURBANCE TO
PROVIDE LARGE WOODY DEBRIS FOR 50-YEARS FROM THE
PRESENT. MARTY WELLBORN, DNR DIVISION OF FORESTRY,
CITED THE WESTERN KENAI PENNINSULA, WHERE THE
MOST INTENSIVE BEETLE KILLS EXISTS, AS BEING
VIRTUALLY UNAFFECTED BECAUSE MOST OF THE STREAMS
ARE IN VALLEYS WHERE THERE IS A NON-FOREST STREAM
BANK. THESE STREAMS, THEREFORE, WILL NOT
NECESSARILY BE ADVERSELY AFFECTED.

Kenai, Alaska 99611
Telephone: (907) 283-7670
POSITION STATEMENT: Provided testimony in support of HB 285.

REPRESENTATIVE GENE THERRIALT
Alaska State Legislature
Capitol Building, Room 511
Juneau, Alaska 99801
Telephone: (907) 465-4797
POSITION STATEMENT: Sponsor of HB 28.

MARGY JOHNSON, Mayor
city of Cordova
P.O. Box 1210
Cordova, Alaska 99574
Telephone: (907) 424-6200
POSITION STATEMENT: Provided testimony in opposition to HB 28.

ACTION NARRATIVE

TAPE 98-13, SIDE A
Number 0001

CO-CHAIRMAN BILL HUDSON called the House Resources Standing Committee meeting to order at 1:14 p.m. Members present at the call to order were Representatives Hudson, Ogan, Barnes, Dyson, and Green. Representative Joule arrived at 1:16 p.m.

HB 373 - FOREST RESOURCES

CO-CHAIRMAN HUDSON announced the first order of business was House Bill No. 373, "An Act relating to forests and forestry practices."

Number 0069

REPRESENTATIVE GAIL PHILLIPS, Alaska State Legislature, sponsor of HB 373, stated she is pleased today to bring a bill that would greatly enhance protection of Alaska's salmon resources and water quality, thanks to a major cooperative effort between timber and fishing industries, environmental groups, and state agencies. House Bill 373 is designed to improve the present Forest Practices Act (FPA). The cooperative effort represents a commitment from

these groups to periodically reevaluate protection for Alaska's streams and new fish protection measures.

REPRESENTATIVE PHILLIPS explained in February of 1996, the Board of Fisheries heard reports from state agencies regarding the effectiveness of the FPA. The board found that the Act was working well, in general, to protect salmon habitat and water quality, but there were some concerns resulting in the formation of the Forest Practices Act Science and Technical Committee. The committee included scientists from timber, commercial fishing, and the environmental community, as well as federal and state research agencies. After intensive review, the committee identified opportunities to strengthen habitat and wildlife protection. A stakeholder meeting then convened to incorporate the findings into recommendations to present to the Board of Forestry. At last month's meeting, the board heard the recommendations and endorsed a series of amendments to the FPA with broad consensus support from all of the participants. The cooperation shown by board members and the implementation group is laudable. As a result, the state is now looking forward to better protection for its valuable salmon resources without unreasonable cost to industry or private land owners.

REPRESENTATIVE PHILLIPS explained the changes to the FPA would add several important protective measures to the riparian protection standards for private forest lands in the coastal forests of Region I. For clarification, "riparian" means living or located near a stream or river bank. In essence, the changes would accomplish the following:

- 1) Classify all segments of anadromous streams as to type, depending on size, deepness and bank structure.

REPRESENTATIVE PHILLIPS explained the scientific definitions of the streams are contained in the bill. In addition, the changes to the FPA would accomplish the following:

- 2) Extend the no-cut buffer zones to all anadromous streams relative to type.

REPRESENTATIVE PHILLIPS explained the 1990-FPA legislation required a 66-foot no-cut-zone along the most important salmon streams on private lands. House Bill 373 would require a buffer along all streams irrespective of their characteristics. In addition, operations within 100 feet of the streams, or at least to the break of the slope, would be conducted in compliance with established slope stability standards for Types A, B, C and D streams. In addition, the changes to the FPA would accomplish the following:

- 3) Retain low-value timber along Types C and D streams, where prudent, so that large woody debris (LWD) eventually travel down stream and form natural pools, an important habitat for juvenile fish.

REPRESENTATIVE PHILLIPS stated, in conclusion, the state of Alaska has one of the most effective Forest Practices Act in the nation. The collaborative process undertaken by the stakeholders is the first step forward in a path towards managing Alaska's marketable resources while protecting them for future generations.

Number 0451

CO-CHAIRMAN HUDSON commended Representative Phillips for putting together the different user groups and coming away with something that they are willing to sign off on.

CO-CHAIRMAN HUDSON announced for the record that Representative Reggie Joule arrived some time back.

Number 0499

REPRESENTATIVE RAMONA BARNES asked Representative Phillips whether HB 373 is like the dead trees bill.

REPRESENTATIVE PHILLIPS replied, "No." It is much better than the dead trees bill. It is to prevent dead fish.

Number 0590

DOUG YATES, Representative, Alaska Boreal Forest Council, testified via teleconference in Fairbanks. The council is in favor of the changes detailed to the FPA in HB 373. The measure demonstrates that the legislature supports scientific findings as they relate to sustaining Alaska's fisheries and wildlife, and protecting continued reliance on salmon fisheries in Southeast Alaska. However, as recognition of the need for adoptive management, there are significant gaps in scientific analysis for similar issues in Southcentral and the Interior - Regions II and III. Salmon spawning protection is needed statewide. There are no mandatory buffers north of the Alaska Range that ~~needs~~ to be corrected as soon as possible. In conclusion, he favors the passage of HB 373 and suggested that the science and technical committee process be used as a model for adaptive management for streams in the Interior and Southcentral.

Number 0708

DALE BONDURANT testified via teleconference in Kenai. He is glad

there is support for a wider no-cut portion along these streams. There is, now, recognition of the need for a continued supply of LWD into anadromous streams that is vital to the sustained yield principle of the state's fishery resources. He agreed with the previous speaker that it should be expanded to cover all of Alaska. It is well known that not enough LWD is going into anadromous streams where there are narrow protection zones. In conclusion, the bill should be supported and expanded.

Number 0810

CO-CHAIRMAN HUDSON called for a motion to adopt the proposed committee substitute.

Number 0821

REPRESENTATIVE BARNES made a motion to adopt the proposed committee substitute for HB 373, version 0-LS1461\E, Luckhaupt, 2/18/98, as a work draft. There being no objection, it was so adopted.

Number 0869

JEFF JAHNKE, State Forester, Division of Forestry, Department of Natural Resources, announced the Administration supports HB 373. The process and the resulting recommendations were based on the best available scientific information. It was open to the public and a wide range of interests were involved in each of the steps. The results were supported by the Board of Forestry with representation from commercial fishing, the forest industry, Native corporations, environmental organizations, mining, fish and wildlife biology, professional forestry, and recreation. The committee substitute was the result of consensus and any change to

it would make consensus difficult to sustain. The Administration urges the passage of the bill as written.

MR. JAHNKE introduced Martha Welbourn to talk about the specifics in the bill.

Number 1005

MARTHA WELBOURN, Deputy Director - Management, Division of Forestry, Department of Natural Resources, stated she was also the co-chair of the science and technical committee that made recommendations leading to HB 373. She explained the bill is not a wholesale revision of the FPA. The changes affect only the parts that address stream protection in terms of classification and ^{riparian} ~~repairing~~ management on private lands in Region I. It would only affect private lands, and lands under the regulations of the Mental Health Trust Commission. Under current protection standards, streams are classified into three types - A, B, and C. Types A and B are anadromous, and type C includes the steeper tributaries to anadromous streams. In addition, there are some streams, including anadromous streams, that are not classified under the existing Act. And there are buffer management practices that govern road construction, maintenance, and timber harvest that apply to both classified and unclassified streams. However, requirements to maintain tree cover apply only to classified streams. Tree cover is important because it provides woody debris for fish habitat, helps stabilize stream banks, and provides nutrients to the stream. Type A streams are the only ones that have a buffer covered under the Act. There are no buffer requirements for Type B streams, except under slope stability standards for road construction, timber yarding, and tree felling, to prevent erosion. The standards also direct the land owner to leave low-value timber

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according to the operators' discretion and where feasible. Slope stability standards also apply to Type C streams, except to a narrower zone than anadromous streams.

MS. WELBOURN further explained when the science and technical committee reviewed the issues dealing with the FPA, it kept with the legislative intent and looked at the Act periodically. For many issues, the committee recommended no changes to the Act, except for two. Firstly, the committee said that all anadromous streams and all tributaries to anadromous streams should be classified - about 20 percent are not classified under the FPA. The committee also stressed the scientific literature on the value of stream buffers to protect fish habitat. Secondly, the committee said that more woody debris was needed in Type B streams for fish habitat and for washing down stream into Type A channels.

MS. WELBOURN further explained that HB 373 would classify all tributaries to anadromous streams and all anadromous streams. She reiterated it would not affect Type A streams. It would classify all tributaries to anadromous streams as Type C or D, based on the slope's gradient. It would also change the management standards so that all anadromous waters would have a 66-foot buffer zone, or up to the slope break, whichever is less. Previously, buffers were only on Type A streams. In addition, the slope stability standards would apply up to 100 feet from the stream bank, or up to the slope break, whichever is less. The slope stability standards would apply to both Type C and D streams with different standards depending on the slope's gradient. It would also strengthen the standards to encourage retention of low-value timber along the streams by removing the operators' discretion criterion and saying the timber "shall" be retained, where prudent. It would also apply to all trees within 25 feet of Type C and D streams, or up to 100

feet for Type C, and up to 50 feet for Type D streams.

MS. WELBOURN further stated, in conclusion, that the changes matter because they help protect the main goals of the Act. They also support Alaska's timber industry. They would strengthen stream protection in coastal Alaska in a way that would be workable for the timber operators and the private land owners. The changes would also continue to ensure that the Act satisfies the requirements for non-point source pollution prevention under the Federal Clean Water Act and the Coastal Zone Management Act.

Number 1490

REPRESENTATIVE JOE GREEN referred to beetle kill of trees and asked Ms. Welbourn what would be the policy for areas that are virtually dead.

Number 1517

MS. WELBOURN replied, according to the Department of Fish and Game, a tree that is killed by beetles and falls into a stream is not a problem because it provides large woody debris. The question is whether new trees would grow without some disturbance to provide large woody debris for 50 years from now. She cited on the western Kenai Peninsula, where there is the most intensive beetle kill, it is not an issue because most of the streams are in valleys where there is a non-forest edge so it would not affect them.

Number 1561

CO-CHAIRMAN HUDSON asked Ms. Welbourn, for clarification, whether the bill would include mental health lands, as well as private

Alaska State Legislature



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Speaker of the House of Representatives

FEBRUARY 12, 1998

TO: REP. BILL HUDSON, CO-CHAIR
REP. SCOTT OGAN, CO-CHAIR
HOUSE RESOURCES COMMITTEE

Scott & Bill

FROM: REPRESENTATIVE GAIL PHILLIPS
SPEAKER OF THE HOUSE

Gail

RE: HOUSE BILL 373

Please schedule HB 373 at your earliest convenience. This bill strengthens water quality control and stream protections currently found in the Forest Protections Act.

Recommendations in the proposed legislation are supported by various stakeholders of timber, fishing and environmental interests and state agencies appointed to review the Act.

A "0" fiscal note accompanies the bill.

HB 373 is an important step forward in continued oversight of our fish habitat and water quality protections.

GP:ps

CS FOR HOUSE BILL NO. 373(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE PHILLIPS

A BILL

FOR AN ACT ENTITLED

1 "An Act making changes to the Forest Resources and Practices Act; classifying
2 anadromous streams and tributaries; relating to the designation of riparian areas;
3 establishing buffers and slope stability standards on certain streams; and requiring
4 retention of low value timber along certain water bodies where prudent."

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

6 * Section 1. AS 41.17.116(a) is amended to read:

7 (a) Private forest land adjacent to the following types of waters and located in
8 a coastal forest of spruce or hemlock is subject to the riparian protection standards
9 established in this section:

10 (1) along a Type A water body,

11 (A) operations within 100 feet of the stream or to the break
12 of the slope, whichever area is smaller, shall be conducted in compliance
13 with slope stability standards established in regulations adopted under this
14 chapter; and

1 (B) harvest of timber may not be undertaken within 66 feet of
2 the water body;

3 (2) along a Type B water body.

4 (A) [TIMBER HARVEST] operations within 100 feet of the
5 stream or to the break of the slope, whichever area is smaller, shall be
6 conducted in compliance with slope stability standards established in
7 regulations adopted under this chapter; and

8 (B) harvest of timber may not be undertaken within 66 feet
9 of the water body or to the break of the slope, whichever area is smaller;

10 (3) along a Type C water body,

11 (A) [TIMBER HARVEST] operations within 100 feet of the
12 stream or to the break of the slope, whichever area is smaller, shall be
13 conducted in compliance with slope stability standards established in
14 regulations adopted under this chapter; and

15 (B) the operator shall, where prudent, retain low value
16 timber within 25 feet of the stream or to the limit of the area described in
17 (A) of this paragraph, whichever area is greater, where the width of the
18 water body is

19 (i) greater than 13 feet at ordinary high water; or

20 (ii) greater than eight feet at ordinary high water if

21 the channel is incised;

22 (4) along a Type D water body.

23 (A) operations [IN THE AREA] within 50 feet of the stream
24 or to the break of the slope, whichever area is smaller, shall be conducted in
25 compliance with slope stability standards established in regulations adopted
26 under this chapter; and

27 (B) the operator shall, where prudent, retain low value
28 timber within 25 feet of the stream or to the limit of the area described in
29 (A) of this paragraph, whichever area is greater, where the width of the
30 water body is

31 (i) greater than 13 feet at ordinary high water; or

1 (ii) greater than eight feet at ordinary high water if
 2 the channel is incised.

3 * Sec. 2. AS 41.17.116 is amended by adding a new subsection to read:

4 (c) In this section,

5 (1) "low value timber" means timber that the owner or operator
 6 determines, at the time of harvest, to be uneconomic to harvest and market;

7 (2) "prudent" means that the requirement can be met using reasonably
 8 available means or technology, that complying with the requirement is not likely to
 9 create significant impairment of the productivity of the land and water, and that the
 10 cost of achieving the requirement is not out of proportion to the benefits that can
 11 reasonably be expected to be achieved in the particular situation.

12 * Sec. 3. AS 41.17.950(20) is amended to read:

13 (20) "Type B water body" means an anadromous water body that does
 14 not meet the definition of a Type A water body [IS A FISH STREAM OR RIVER
 15 OF ANY SIZE HAVING AN AVERAGE GRADIENT OF EIGHT PERCENT OR
 16 LESS, A CHANNEL THAT IS INCISED AND CONTAINED BY THE
 17 GEOMORPHOLOGY AND NOT BY VEGETATION, AND A SUBSTRATE THAT
 18 RANGES FROM RUBBLE TO BEDROCK]; and

19 * Sec. 4. AS 41.17.950(21) is amended to read:

20 (21) "Type C water body" means a water body [STREAM] that is not
 21 [TRIBUTARY TO] anadromous, [WATERS AND] that is a tributary to a Type A
 22 or Type B water body, and that has a gradient of 12 percent or less [INCISED
 23 GREATER THAN 28 DEGREES, HAS AN AVERAGE GRADIENT OF GREATER
 24 THAN EIGHT PERCENT, IS NARROWER THAN 20 FEET BETWEEN
 25 ORDINARY HIGH WATER MARKS, HAS A SUBSTRATE OF RUBBLE AND
 26 BEDROCK, AND IS A MOUNTAIN SLOPE STREAM AT THE UPPER END OF
 27 THE WATERSHED].

28 * Sec. 5. AS 41.17.950 is amended by adding a new paragraph to read:

29 (22) "Type D water body" means a stream that is not anadromous, that
 30 is tributary to a Type A or Type B water body and that has a gradient greater than 12
 31 percent.

Tim Robb
mile 72 Richardson hwy
Fairbanks Ak 99701
(907)-895-4135

Tenderfoot

It is dusk back there, the road
is empty and the log house quiet.

Jessie, the Indian girl, stands

at the doorway in silence,
her thin face turned to the earth.

No more than an aching shadow,
her father bends by the sawhorse,
cutting the last dry pole.

The swallow box has fallen,
the catalogue has lost its pages.

The black mouths of the rain barrels
are telling of migrations,
the whispering rush
of a lonely people toward the past.

1962

—John Haines
Fairbanks

Most of the slopes on the south face of Tenderfoot hill are non-sleddable rocky bluffs. High points giving wide vistas of the Tanana river valley and to the south, the white glaciers and mountains of the Alaska Range. On those rocky faces cling bits of sage here and there. There is at least one Peregrine Falcon nest and even a small population of shy Dall sheep that somehow use the steepness of the slopes as defense against the many coyotes that range from hillside dens to the river-trails.

The steepness of these bluffs shield the north bank of the Tanana from the Richardson highway traffic. Down on the sloughs there is a "canyon" feeling of being cut-off and much further away than the mere couple of miles it is to the asphalt three lane road (it is three lanes due to the steepness of the highway, a truck lane exists on both climbs). Perhaps it is the shield-like quality of the ridges and hiddenness of the sloughs that gave the Delta Forestry Department the idea to dub a proposed timber sale down on the banks of the river " Surprise Side. "

My awareness of the " Surprise Side" timber sale began during the 1997 moose hunting season when I discovered hundreds of red and orange flags flapping in the breezes that blow off the Tanana and through the side sloughs and wooded islands below the Tenderfoot hill ridge line. It marked the start of a greater awareness of the country that surrounds the five acres where I make my home. It is an awareness that I'm sure will grow as I come to understand more the workings of the world of fish, rivers, and timber.

There are many issues surrounding this sale, known also as NC-993-D, that deserve to be closely regarded during this interim time agreed upon to better educate everyone concerned. The sale was recently postponed due to the amount of public comment received by forestry before the deadline of December 22, 1997.

The issue I feel strongest about is one that as I learn more about, the more grateful I am that this sale was proposed, not only because it has prodded me to learn more of the country close to my home, but also to the attention it has brought, and will continue to bring to the importance of the public comment period on the way our forests are managed.

At its best, the public comment period promotes public involvement and is a reflection of a community's values, at its worst it raises emotional hackles and causes rifts between concerned citizens, The Division of Forestry, and proponents of the timber industry as they debate the multi-use management of our State Forest that the Alaska State Constitution calls for.

The challenge of The Citizen's Advisory Committee (the forum for public comment) it seems, is to be sensitive to concern over real issues without being overburdened with combative posturing. There must be a certain amount of endurance on the part of C.A.C. members as well as meetings are greatly lengthened by public involvement. Although both are extremely appropriate, the dynamic of spoken discourse is not replaceable by silently submitted text. There is a power to a well spoken dialogue and perhaps more conviction in the sound of a voice, and the expression of a face.

Are there enough "real" issues to warrant genuine public concern over current forest management? It is my objective to call to your attention the instances specific to the stretch of river below Tenderfoot hill and proposed timber sale NC-993-D with the idea that these same issues could apply for the whole Tanana Valley drainage. These issues are extremely timely as current forestry management plans call for logging over 90 percent of publicly owned riverside tracts of white spruce along the Tanana from Tok to the Kantishna.

First, let me very briefly tell who I am. For the past eight years I have made my living on the waters of the Gulf of Alaska and the Bering Sea, in both inshore and offshore fisheries from the Kodiak archipelago to the Aleutian Islands and most recently on the Yukon River where I worked as a riverboat captain for Steven's Village, hauling passengers to a cultural resources fish camp.

That my primary concern is with the impact on Salmon habitat surrounded by the aforementioned timber sale is not a surprise. What is a surprise is that The Forest Land Use Plan for the Surprise side sale (and currently required for all timber sales), completely failed to acknowledge the area slated for clear-cutting to the water's edge, as being well documented as a vital spawning and rearing area for both Fall chum and Coho salmon. Both of these runs are fished as a commercial and as a subsistence resource by the fisherman of the lower Tanana and Yukon Rivers.

Indeed, besides documentation in Tanana River, Alaska, Fall Chum Salmon Radio Telemetry Study by ADF&G biologist Louis H. Barton in 1992, the propose sale is nearly in the middle of a fifteen mile stretch recommended by ADF&G in a 1994 memo to Delta Forestry as an area where any timber harvest was inappropriate given the risk of impact on these important State resources.

That The Delta Division of Forestry not only failed to acknowledge the habitat study in the FLUP for NC-993-D, but also failed in anyway to respond to ADF&G's concerns...not even a phone call, could lead one to sumise that perhaps these are only considered as obstacles posed by another State agency, not as valid action attempting to protect an irreplaceable wild salmon resource.

It is important to raise these questions because current legislation regarding timber harvest in interior Alaska with regards to protection of fish habitat assumes not only input from ADF&G's Habitat Division, but enough genuine concern on the part of our foresters that they take seriously these recommendations in the early stages of planning a timber harvest. To wait until a specific sale can be commented upon by the public for a habitat issue to surface, such as in the case of the Surprise Side timber sale, or worse yet, after a sale when a contractor is attempting to obtain necessary title 16 permits from ADF&G that only *sometimes* allow access across sensitive habitat areas is an unfair burden to everyone involved and leaves open the potential for destruction of irreplaceable habitat.

Escapement guidelines of 11,000 fall chum and 9,000 coho salmon bound for the area around Delta Clearwater and the Delta River were not met in the Fall of 1997 and both runs were considered by ADF&G as being weak.

As to whether clear cutting to the water's edge of a glacial-fed river, whose banks and channels naturally erode and braid would have negative impacts upon this spawning and rearing area, it is necessary to carefully consider what a river or creek really is.

Besides the obvious surface waters that flow in changing channels, there are unseen "wings" of the under bank. These seeping waters are as much a part of the river as the graveled beds and sandbars that dictate the nature of a river's currents. It is no more revolutionary or hard to picture than stating that there is more to a tree than simply trunk, branches, and leaves, or that the roots that grow hidden under the earth are just as vital to their existence.

These river-wings can extend upwards to a quarter mile under a riverbank and can seriously alter the flow of a given stretch of river. That a river and to a lesser extent a creek, cannot be defined as ending simply at its banks is extremely relevant to anything that happens in a bywater ecosystem.

Riverside timber harvest must acknowledge this to successfully protect fish and wildlife habitat.

This is extremely essential to protection of salmon spawning and rearing grounds because in the right instances, as with the stretch of river within proposed timber sale NC-993-D, these active underground waters combine with spring-fed upwellings that not only add thermal energy that keeps shallow spawning grounds from freezing solid during deep winter cold, but also add oxygen flow vital to fish eggs and growing fry. The upwelling area's simple and consistent refusal to freeze is made all the more dramatic during extreme low temperatures by clouds of hazy steam pouring from the surface of open water surrounded by jagged ice and a world covered in snow and locked in finger freezing cold.

These areas with upwelling springs are returned to year after year by migrating salmon traveling over a thousand miles from the Bering Sea. They are both unusual in their occurrence and are vital to salmon spawning success in interior Alaska.

There is a power to the fast flowing rivers of the interior and the Tanana is no exception. In spring and summer, churning waters full of silt erode and undercut banks. Muddy rivers are testament to the powers of erosion, from the relative trickle of rain soaked hills to the sweaty summer pouring of glaciers. Side creeks and streams are swollen with spring melt-off and silt.

The amount of area that drains into the Tanana River basin is massive. There are strong forces at work as lone trees cave into the river, root systems and all, to pile up with others and groan and tumble into pin-cushion snags. Banks are jumped by floodwaters and backed up ice jams. Large amounts of sediment are deposited and channels change and braid chaotically it seems.

This storm time of the river shapes the land and refuses to be ignored by any who live close to it.

To call these torrents of water and their shapings merely powers of destruction is to entirely miss the nature of the land where we dwell. Everything is slowly seeking the sea...and the entire Tanana River Valley is sustained by this.

It is no more difficult to remember that beneath the boiling muddy waters is a complex system of life than it is to sense the rich workings that occur beneath violent ocean squalls and marching rhythms of heaving salt water.

It is important to acknowledge that these rivers also experience a season of relative winter calm, where subtle occurrences nurture lives whose beginnings are as fragile as the beginnings of any living creature.

The very nature of a glacial-fed river naturally challenges the agility of a salmon run's health.

The fact that down river, the salmon stocks that spawn in the stretch of the Tanana below Tenderfoot Hill are fished on a commercial and subsistence scale, dictate ADF&G's involvement monitoring the run's health. Clear-cutting the islands and sloughs of the proposed NC-993-D timber sale could have devastating effects on these fish runs. The risk of which is clearly not in the interests of the State.

Division of Forestry must be partner to managing the interconnectedness of the riverside forest with fish stocks and the health of the entire Tanana Valley watershed.

Along with this responsibility comes an accountability that cannot be ignored as DOF seeks to provide a growing interior timber industry with harvestable timber tracks and their access roads.

As for now? It seems that as public awareness grows to the concerns of a multi-use State Forest management plan, so too will the importance of public comment periods. A lively debate is sure to ensue, the results of which will be felt by generations to come.

The House Resources Committee
Legislative Information Office
Fairbanks, Alaska

Dear Committee Members,

I'm writing to urge you to consider the long-term consequences of failing to protect Alaska's Interior rivers with the same consideration and safeguards that are proposed for the rivers of Southeast Alaska.

HB 373 continues to ignore the legitimate and pressing need to protect our Interior rivers such as the Nenana, Chena, Chatanika, Tanana, Salcha, Goodpaster, and Kantishna.

Fishing, hunting, tourism, recreation and even logging interests are best served with sane and comprehensive measures to protect the riparian habitat that now has virtually no safeguards in place.

Please stop ignoring our rivers and amend the present legislative efforts to include a 1/2 mile "no-clearcut" buffer zone on our Interior rivers.

Thank you for your efforts.

Brad Snow, President
Fairbanks Paddlers
Box 81916
Fairbanks, AK 99708



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the _____
 Committee on HB 373 Committee Name
Bill / Subject Dated 19 Feb. 98

I support the HB 373
 as a first step, but I believe the buffer
 zones should be wider and should apply to
 interior streams in Alaska, to insure the long term
 viability of timber, fishing, recreational and other
 resources.

Valuable timber has been exported to asia after being
 sold at bargain basement prices to global corporate
 interests.

We still have habitats in the interior, but
 the amount of encroachment is accelerating,
 And the need for halting this is essential now.

SIGNED: Fred Carroll
 Testifier

self
 Representing

PO Box 3162 Kotzebue, AK 99503
 Address / Phone Number



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House Resources Committee
 Committee on HB 373 Committee Name
Dated 2-19-98
 Bill / Subject

My name is Sally Anderson and I am a lifelong resident of Fairbanks. I present this testimony to raise my concerns regarding HB 373. While the goal of this bill is honorable - to protect the rivers of Southeast Alaska - it is incomplete. The bill completely ignores Interior Alaska. At present there are no buffer zones mandated for Interior rivers and streams. We have an opportunity before us to prevent such disasters to our fish population as occurred in the Pacific Northwest. My question to you is, "why wait?" My request is simple: expand HB 373 to include Interior Alaska. Thank you.

SIGNED:

Sally C Anderson
 Testifier

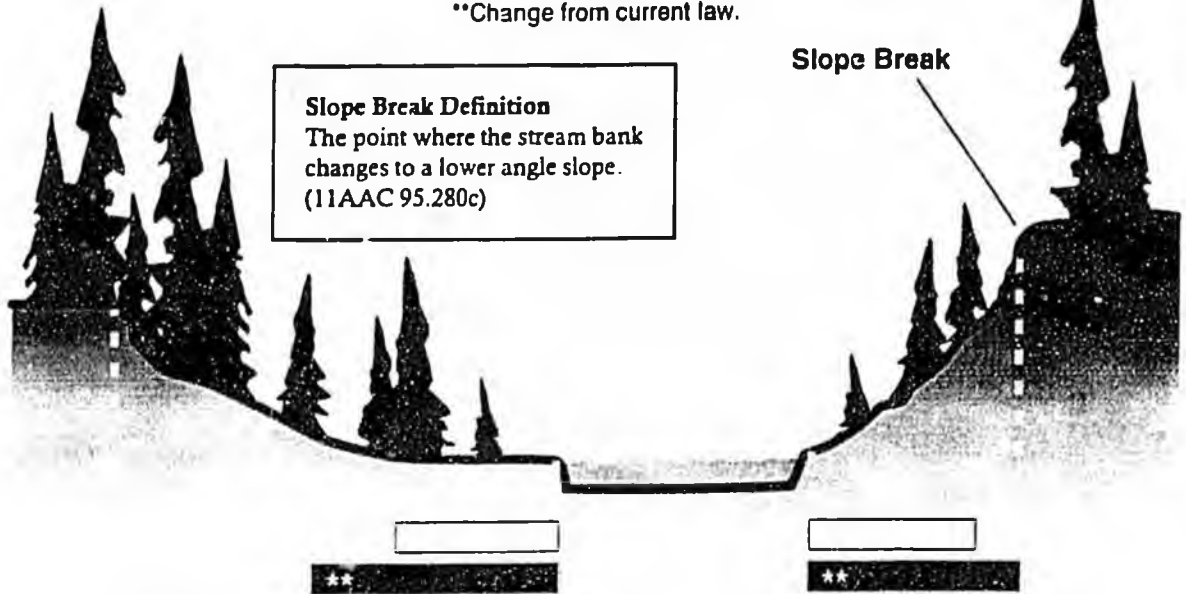
Representing

1712 Biltmore Trail, Phlox, AK 99712 458-5386
 Address / Phone Number

Alaska Forest Resources and Practices Act
 Revised Riparian Protection Standards
 Region I

Type A Water Body:

**Change from current law.



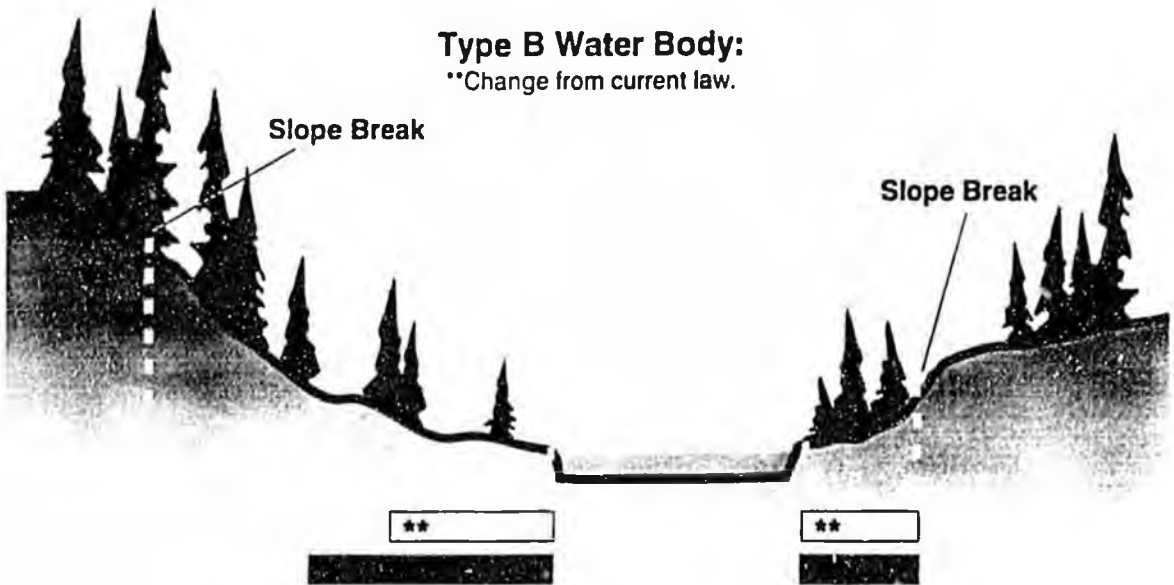
Type A Water Body:

 66' mandatory retention buffer.

 **Slope stability BMP's apply, 100' or to slope break, whichever is less.

Type B Water Body:

**Change from current law.



Type B Water Body:

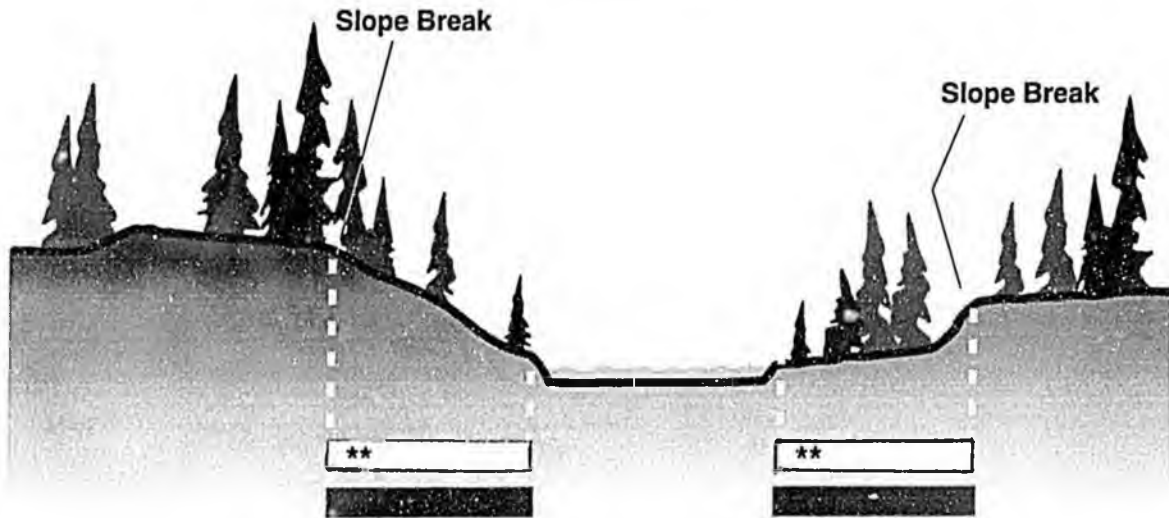
 **Mandatory retention buffer--66' or to slope break, whichever is less.

 Slope stability BMP's apply, 100' or to slope break, whichever is less.

Alaska Forest Resources and Practices Act
 Revised Riparian Protection Standards
 Region I

Type C Water Body:

**Change from current law.



Type C Water Body:



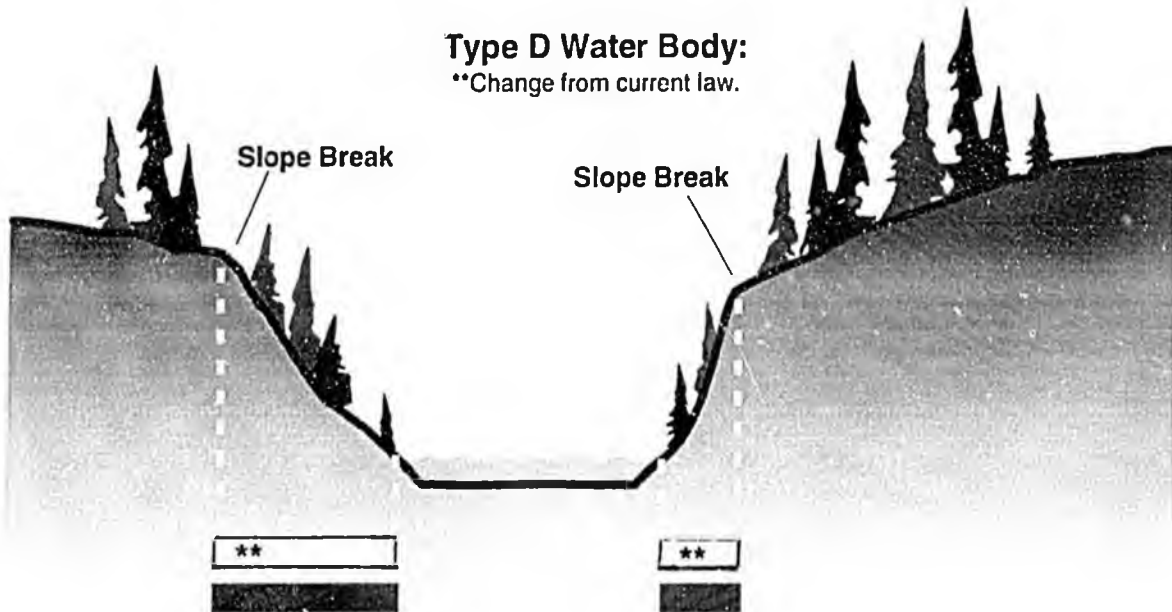
**For streams greater than 8' or 13' (based on channel characteristics), retain low economic value timber 25' up to 100' from the stream depending upon location of slope break.



Slope stability BMP's apply - 100' or to slope break, whichever is less.

Type D Water Body:

**Change from current law.



Type D Water Body:

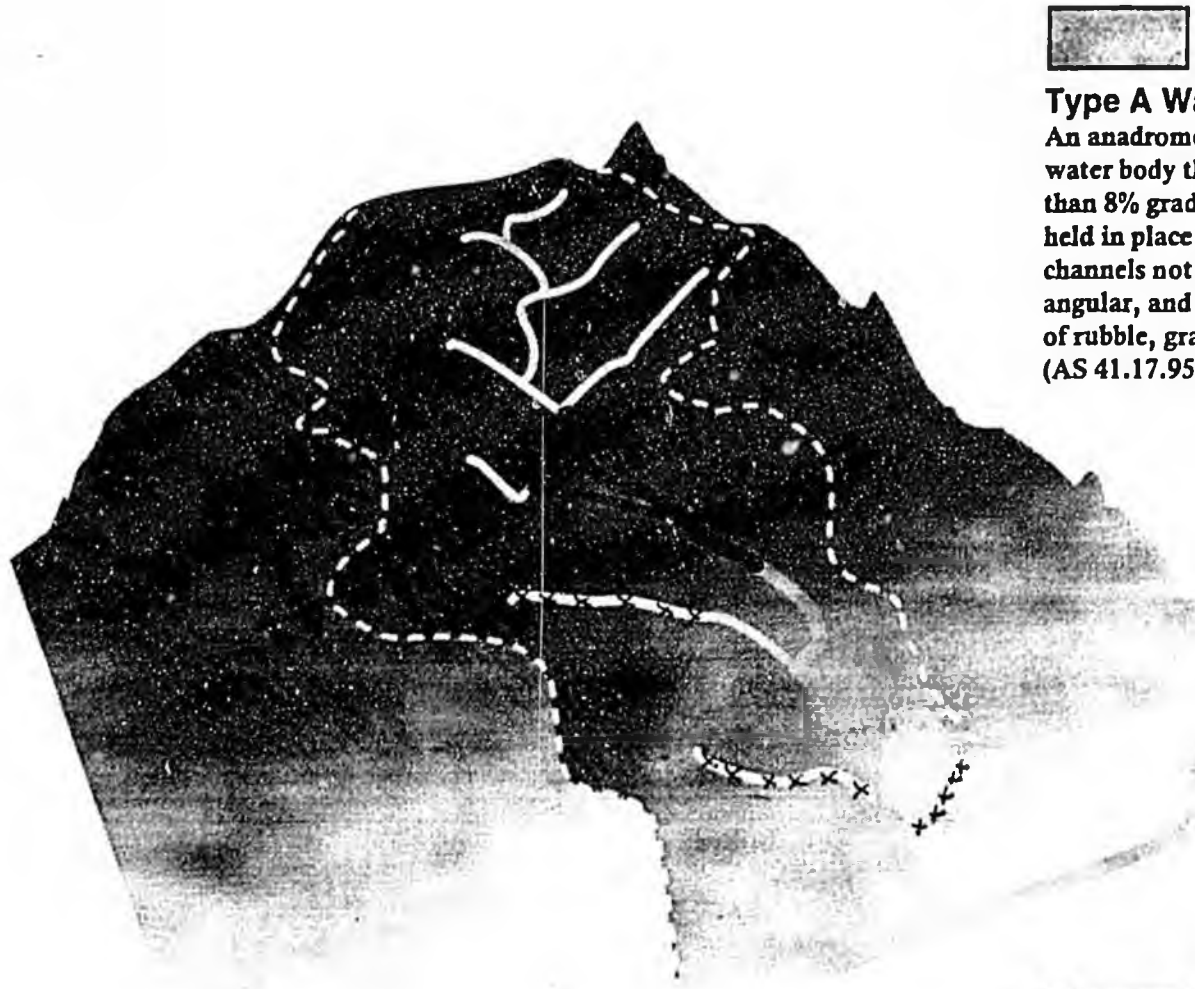


** For streams greater than 8' or 13' (based on channel characteristics), retain low economic value timber 25' up to 50' from the stream depending upon location of slope break.



Slope stability BMP's apply---50' or to slope break, whichever is less.

Stream Classification System



Type A Water Body
An anadromous (salmon) water body that is any size, less than 8% gradient, with banks held in place by vegetation, channels not incised or sharply angular, and having substrate of rubble, gravel, sand or silt. (AS 41.17.950 (19)).



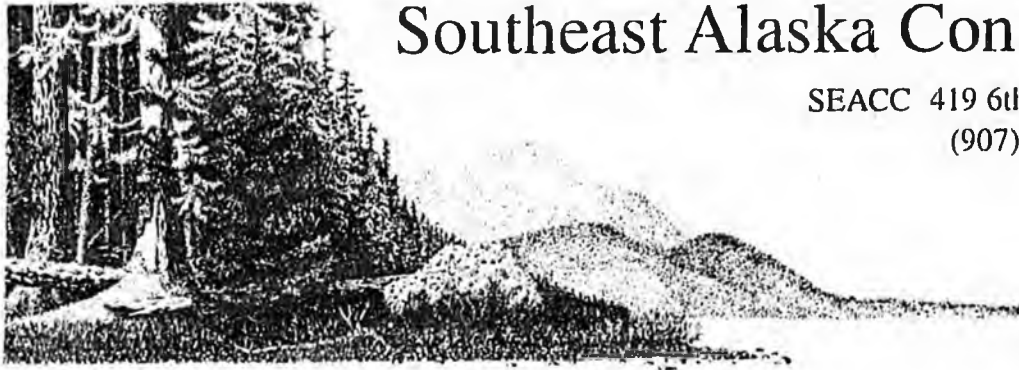
Type B Water Body
Any anadromous (salmon) water body whose physical characteristics do not meet the criteria for a Type A water body.



Type C Water Body
A water body that is not anadromous, is a tributary to a Type A or Type B water body, and has a gradient of 12% or less.



Type D Water Body
A water body that is not anadromous, is a tributary to a Type A or Type B water body, and has a gradient greater than 12%.



Southeast Alaska Conservation Council

SEACC 419 6th Street, Suite 328, Juneau, AK 99801
(907) 586-6942 phone (907) 463-3312 fax
info@seacc.org

**Statement of the Southeast Alaska Conservation Council (SEACC)
on HB 373
before the House Resources Committee
Alaska State Legislature
February 19, 1998**

Mr. Chairman, members of the House ^{Resources} ~~Finance~~ Committee, my name is Marc Wheeler and I represent the Southeast Alaska Conservation Council (SEACC). Thank you for the opportunity to testify before you today. I respectfully request that my written statement be entered into the official record for this Committee Hearing.

Founded in 1970, SEACC is a coalition of fifteen local community, volunteer conservation groups in twelve Southeast Alaska communities, from Ketchikan to Yakutat. SEACC's 1200 individual members include commercial fishermen, Native Alaskans, hunters and guides, tourism and recreation business owners, value-added wood product manufacturers, and Alaskans from all walks of life. SEACC is dedicated to safeguarding the integrity of Southeast Alaska's unsurpassed natural environment while providing for balanced, sustainable use of our region's resources.

While SEACC has always advocated for freshwater fish habitat protections in Southeast Alaska and we applaud any additional protections given to freshwater fish habitat, we must tell you today that this bill is too little, too late for buffer protections on private lands in our region. With most of Southeast Alaska's Class B streams on private lands already cut to the banks, the minimal additional protections afforded by this bill will not significantly improve quality of freshwater fish habitat. We urge the State Legislature to use the 1995 Report to Congress, the Anadromous Fish Habitat Assessment, as the guidebook for fish habitat protections in Southeast Alaska. The Forest Service recently adopted improved fish stream buffers with its new Tongass Plan to comply with the recommendations of this report. To protect the integrity of Alaska's public trust fisheries resources, the State Legislature should ultimately require private landowners to adopt fish habitat protections equivalent to the new Forest Service fish stream buffers. We also urge the State Legislature to begin a public process to consider freshwater fish habitat protections for lands in other parts of our state.

Respectfully submitted,

Marc Wheeler
SEACC

LYNN CANAL CONSERVATION, Haines • FRIENDS OF GLACIER BAY, Gustavus • FRIENDS OF BERNERS BAY, Juneau
WRANGELL RESOURCE COUNCIL • ALASKA SOCIETY OF AMERICAN FOREST DWELLERS, Point Baker • PELICAN FORESTRY COUNCIL,
ALASKANS FOR JUNEAU • NARROWS CONSERVATION COALITION, Petersburg • TONGASS CONSERVATION SOCIETY, Ketchikan
CHITLAGOF CONSERVATION COUNCIL, Tenakee • JUNEAU GROUP SIERRA CLUB • SITKA CONSERVATION SOCIETY
YAKU CONSERVATION SOCIETY, Juneau • PRINCE OF WALES CONSERVATION LEAGUE, Craig • YAKUTAT RESOURCE CONSERVATION COUNCIL

**TESTIMONY OF RICHARD P. HARRIS
Senior Vice President
SEALASKA CORPORATION**

**House Resources Committee
February 19, 1998**

HOUSE BILL 373 - FOREST PRACTICES ACT AMENDMENTS

I am Richard Harris, Senior Vice President of Sealaska Corporation, a Native Regional Corporation, organized under the Alaska Native Claims Settlement Act and under the laws of the State of Alaska. Sealaska Corporation has over 16,000 shareholders. Under the Settlement Act, Sealaska will receive over 330,000 acres of land all of which is private land. Approximately 220,000 acres of Sealaska's lands is commercial forestland. Harvest of timber from this land is regulated by the Forest Practices Act and the amendments proposed in House Bill 373.

Sealaska Corporation supports for HB 373. This bill establishes supplemental environmental protection standards on private lands in Region 1 (hemlock, spruce forests of coastal Alaska) and adds a new stream type.

Since 1992, the Alaska Forest Association, Sealaska and other timber owners have been conducting forest practices effectiveness monitoring to determine if the Act and the regulations are protecting fish habitat and water quality. I am pleased to advise you that the results show that the Act and the regulations are effectively protecting these public resources.

Our monitoring, as well as the two year process, directed by the Board of Forestry, to evaluate biological, environmental and economic issues associated with timber harvest and its interaction with fisheries habitat and water quality, concluded that there were opportunities to strengthen the Act. Through this collaborative process the timber industry and land owners could see that the proposed changes will yield measurable, beneficial results to fish habitat and water quality. Conversely the timber industry was

able to guide development of legislative changes to achieve protection objectives without unreasonable cost or burden on the industry or private landowners.

Sealaska endorses the process and supports the results that are embodied in HB 373. The State of Alaska already has one of the most comprehensive and effective Forest Practices Acts in the Nation. The proposed amendments will serve to strengthen that Act and still ensure a healthy timber industry.

Sealaska understands that there are a few clarifying amendments being proposed. These amendments do not change the intent of the legislation as recommended by the Board of Forestry. We support those amendments to the degree they do not alter the consensus objectives established by the Board.

Thank you for the opportunity to address this issue and speak in support of House Bill 373. I would be pleased to answer any questions that the committee members may have.

HB 373

**“An Act Relating to Forests
and Forestry Practices.”**

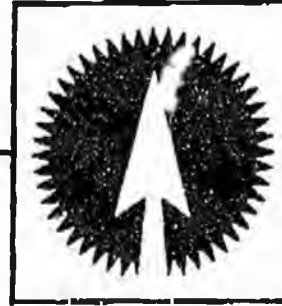
Rep. Gail Phillips

SPEAKER OF THE HOUSE

*To amend logging practices on private land in Alaska --
strengthening fish stream and water quality protections
currently found in state law.*

Introduced 1/30/98

Alaska Forest Association, Inc.



111 STEDMAN SUITE 200
KETCHIKAN, ALASKA 99901-8599
Phone 907-225-6114
FAX 907-225-5920

Statement of Support
House Bill 373
An Act relating to forests and forestry practices

Testimony before the House Resources Committee
February 19, 1998

The Alaska Forest Association desires to be on record in full support of House Bill 373, "An Act relating to forests and forestry practices." This bill is the direct result of a proposal set before the Alaska Board of Forestry after a collaborative process involving the timber industry, the fishing industry and the resource agencies of the state. Both the process and the substance of this effort were based upon sound science and a balancing of interests.

Alaska already has a very effective, science-based forest practices law which ensures protection of important fisheries habitat while recognizing the unique relationship between private land rights and related public resources. The current law, which was developed through a cooperative process in 1989 and 1990, involves the Division of Forestry, the Division of Habitat and Restoration, and the Division of Air and Water Quality in monitoring and enforcing the provisions of the law. It enables timber operators in Alaska who conduct their harvest activities according to best management practices to have the assurance that they are operating in compliance with a variety of laws under which they would otherwise be individually scrutinized. That alternative would cost both the industry and the state more time and money than is necessary under the current system.

Current law also provides for ongoing examination of the effectiveness of Alaska's forest practices standards, so that the law and regulations can be adjusted to reflect new scientific knowledge as it is developed. Over the past two years, the timber industry has participated in a thorough review of the science relating to logging along anadromous fish streams in the coastal forests of Alaska. This review was conducted under the rubric of the Science and Technical Committee appointed by the Board of Forestry with the support of Governor Knowles. The Committee's report and the subsequent stakeholders' meeting led to the introduction of House Bill 373.

It is important to note that the Science & Technical Committee did not specifically recommend 66 foot buffers on type B streams as provided in Section 1 of the bill. The

committee recommended that these streams be given some means of obtaining large woody debris. AFA member companies looked at the operational issues and concluded that buffers of 66 feet or to the slope break would satisfy the goals of the recommendation in a way that field personnel believe can be implemented without severe adverse affects on harvest economics. It does mean surrendering trees of value by leaving them in riparian buffers, but the standard can be applied in the field and can be readily monitored by the regulators. AFA believes this is a good solution, the effects of which can be evaluated over time.

A matter of great importance to AFA is the fact that House Bill 373 is the result of a collaborative process. The agreement that makes these changes in the Act possible depends upon the substance of the bill remaining as it is now. The amendments proposed by the Attorney General's office, which are before the committee today, only provide consistency and clarification and are therefore acceptable. AFA would urge the committee not to entertain any other amendments so that the underlying agreement between affected parties can remain intact.

In summary, House Bill 373 addresses a real need, and represents a balanced approach to resolving an important issue affecting Alaska's forest products sector. When this bill becomes law, it will be a model for broad-based cooperation between affected industries, the agencies, the Governor's office and the legislature. This is a bill that can and should enjoy full, bi-partisan support. I urge its speedy passage.



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545
E-Mail: ufa@alaska.net

February 17, 1998

Rep. Bill Hudson, Co-Chair
Rep. Scott Ogan, Co-Chair
House Resources Committee
State of Alaska
Juneau, AK 99801-1182

Dear Representative Hudson and Representative Ogan:

Today the Board of Directors of United Fishermen of Alaska (UFA) adopted a position in support of HB 373, relating to forests and forestry practices.

This bill, introduced by the Speaker of the House, is the achievement of industries, assisted by the Board of Forestry and state agency staff, working together to find common ground. The forest products industry and commercial fishing industry worked together to resolve their particular concerns with the proposals advanced by the Board of Forestry, and they were successful. The legislation, as introduced, is supported by United Fishermen of Alaska because it represents an improvement in the laws governing forest practices. It affords greater protection than now exists for sensitive fish habitat.

United Fishermen of Alaska's mission includes preserving fishery resources through research, development and habitat protection. We will continue to work with other industries, as we did in our work on the forest practices provisions embodied in HB 373, to pursue this important objective.

We hope that the members of the Legislature will acquaint themselves with the provisions of this legislation, the language of which was carefully crafted to meet concerns of commercial fishermen and representatives of the forest products industry, and we strongly support the passage of the legislation as introduced.

Sincerely

Theo Matthews, President
United Fishermen of Alaska

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fishermen's Association • Alaska Trollers Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kani Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association • Kodiak Seniors Association
North Pacific Fishermen's Association • Northern Southeast Regional Aquaculture Association • Northwest Seiners Association • Peninsula Marketing Association
Pelotonsburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Puga Sound Vessel Owners Association • Seaford Producers Cooperative
Southeast Alaska Seniors Association • Southern Southeast Regional Aquaculture Association • United Cook Inlet Drift Association • United Southeast Alaska Gillnetters

HB

393

Revision Date: February 13, 1998 Correction Dept. Affected: Revenue
 Title: Develop Stranded Gas Resources BRU: Administration and Support
 Component: Commissioner's Office
 Sponsor: Rules
 Requestor: (H) O&G COMPONENT SERIAL NO. 123

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	81.6	82.7	84.0	85.3	86.6	87.9
TRAVEL	30.0	30.0	30.0	30.0	30.0	30.0
CONTRACTUAL	375.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	5.0	5.0	5.0	5.0	5.0	5.0
TOTAL OPERATING	491.6	117.7	119.0	120.3	121.6	122.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*** 191.6	117.7	119.0	120.3	121.6	122.9
1001 CBRF						
1048 University of AK receipts						
Other	300.0					
TOTAL	491.6	117.7	119.0	120.3	121.6	122.9

Estimate of any current year cost \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

*** The legislation as currently drafted allows for the \$300,000 in contractual costs to be recovered from future applicants. This bill could be modified to provide that all costs would be borne by an applicant.

See Attached

Prepared by: Mary Marshburn, Roger Marks
 Division: Office of the Commissioner
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 343-9242
 Date: February 13, 1998
 Date: February 13, 1998

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

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This bill would authorize the executive branch to negotiate a contract with sponsors of proposed projects to develop stranded gas in Alaska. The payments required by the contract would replace some or all of the state and local taxes that would otherwise pertain to major economic activity engendered by the project.

A negotiated contract would make it possible to tailor the fiscal arrangements to meet the needs of the proposed project while, at the same time, ensuring the public benefits from the project. A set of arrangements providing for contractual payments in lieu of taxes is likely to provide fiscal terms that potential investors will believe are likely to remain permanently in place over the life of the project.

Given the extended time frame to develop and market the large volumes of stranded gas, revenues expected as a result of the bill are outside the time horizon of this fiscal note.

The fiscal note breakdown is as follows:

Personal Services: \$81,600.00

Salary and benefits to fund one DOR person devoted to the gas project.

Travel: \$30,000.00

The state must continue to inform Alaska communities of and involve them in discussion of contract and project issues. Some of the issues that affect them are community impacts induced by project development, payments to municipalities in lieu of taxes, availability of gas to communities and Alaska hire and contracting. In addition, the state will propose and advocate changes to the federal tax structure to improve project economics and evaluate federal regulatory changes to allow for regulatory certainty. This line item will fund travel within Alaska, to consultants and to Washington, D. C. for these purposes.

Contractual: \$375,000.00

\$75,000.00 to fund a socioeconomic study on the impacts induced on the local communities by project development. This study is a necessary step in constructing the foundation for discussion with municipalities and negotiations with project sponsors about payments to municipalities in lieu of taxes for the costs of and impacts from additional services and construction resulting from project development.

HB 393
Bill Analysis
February 13, 1998
Page 3

\$300,000 to fund contractual services and advice from experts in fiscal, regulatory, contract negotiation, legal, and financial areas. These technical and evaluative services would be necessary to the tax and regulatory work planned for the federal level; they would be required to assist the state in substantive and complex contract development and negotiation, potentially with multiple sponsors. The state does not have all of this expertise in-house. \$75,000 of these costs will be incurred in preparation for the application process regardless of whether there are applicants.

As per the proposed bill, contract applications may be made until June 30, 2004. Expenditures for contractual services, therefore, may be necessary any time between July 1, 1998 and June 30, 2004. Because there is no way of knowing now specifically when expenditures would be required, it may be beneficial to treat this \$300,000 as a continuing appropriation

The proposed legislation allows reimbursement of the state by the applicant for the expenses of an independent contractor used to assist in the evaluation of an application.

Miscellaneous: \$5000.00

To fund supplies, LNG conference participation, purchase of technical reports, etc.

0-GH2006\Q

Glover

4/1/98

CS FOR HOUSE BILL NO. 393(RES)**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTIETH LEGISLATURE - SECOND SESSION****BY THE HOUSE RESOURCES COMMITTEE****Offered:****Referred:****Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR****A BILL****FOR AN ACT ENTITLED**

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

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

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

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

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

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

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

*12 (5) Alaskans may desire a portion of the gas from a transportation project for
13 in-state uses; however, it is unlikely that markets will develop within the state that would need
/ 14 more than a relatively small proportion of the volume of stranded gas already discovered on
*15 the North Slope; therefore, the primary need for gas infrastructure for approximately the next
16 decade will be to provide access to markets outside the state;

17 (6) currently the principal mode anticipated for stranded North Slope gas to
18 access markets outside the state (is a gas pipeline to an ice-free Alaska port where the gas
19 would be turned into liquefied natural gas and exported using specially designed marine
20 tankers; although experimental research is being conducted on other alternative technologies
21 such as gas to liquids, this technology is not yet commercially viable; if this research results
22 in a commercially viable technology, and, after economic analysis by the state of the
23 application of this technology, it is shown that local or state tax or regulatory changes are
24 necessary to commercialize an Alaska project using this technology, then this technology may
25 be considered in regard to this legislation;)

26 (7) the size of the capital expenditure needed to get North Slope gas to market
27 by way of a liquefied natural gas project requires long-term contracts for gas on the order of
28 14,000,000 metric tons a year of liquefied natural gas; to be successful, a North Slope
29 liquefied natural gas project needs to reach this full annual volume in not more than six years
30 from the commencement of commercial operations;

31 (8) for a North Slope liquefied natural gas project to become economically

1 viable and competitive, the estimated costs of constructing such a project must be reduced
2 significantly; reducing the financial risk associated with the project would also improve the
3 project's chances of becoming economically viable and competitive;

4 (9) the state has contracted an extensive financial analysis of the
5 commercialization of North Slope gas; this analysis, performed by a recognized expert in
6 petroleum economics, Dr. Pedro Van Meurs, indicates that changes in the local, state, and
7 federal tax structure may be necessary to make commercialization of North Slope gas
8 resources economically viable;

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

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

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

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

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

4 (B) enable the state to customize the timing and burden of its fiscal
5 regime to fit the economic circumstances of a particular stranded gas develop.nent
6 project;

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

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

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

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

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

28 (18) good faith efforts by qualified sponsors, qualified sponsor groups, and
29 contractors of qualified sponsors and qualified sponsor groups that enter into a contract with
30 the state developed under this Act to undertake voluntary actions to provide employment
31 opportunities for Alaska residents and opportunities for Alaska businesses are in the long-term

1 interests of the state.

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

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

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

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

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

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

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

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

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

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

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

5 (2) allow the fiscal terms applicable to a qualified sponsor or the
6 members of a qualified sponsor group, with respect to a qualified project, to be tailored
7 to the particular economic conditions of the project and to establish those fiscal terms
8 in advance with as much certainty as the Constitution of the State of Alaska allows;
9 and

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

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

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

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

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

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

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

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

30 **Sec. 43.82.110. Qualified sponsor or qualified sponsor group.** The
31 commissioner may determine that a person or group is a qualified sponsor or qualified

1 sponsor group if the person or a member of the group

2 (1) intends to own an equity interest in a qualified project, intends to
3 commit gas that it owns to a qualified project, or holds the permits that the department
4 determines are essential to construct and operate a qualified project; and

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

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

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

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

12 (D) has a net worth equal to at least 33 percent of the estimated
13 cost of constructing a qualified project;

14 (E) has an unused line of credit equal to at least 25 percent of
15 the estimated cost of constructing a qualified project.

16 **Sec. 43.82.120. Applications.** (a) A qualified sponsor or qualified sponsor
17 group may submit to the department an application for development of a contract
18 under AS 43.82.020 evidencing that the requirements of AS 43.82.100 and 43.82.110
19 are met. The application must be submitted in the manner and form and contain the
20 information required by the department.

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

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

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

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

31 (4) a description of each lease or property that the applicant believes

1 to contain the stranded gas that would be developed if the project was built;

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

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

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

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

14 (A) the work accomplished as of the date of application, the
15 schedule of proposed development activity, and the development activity
16 proposed to be accomplished under the proposed project plan reflect a proposal
17 for diligent development on the part of the applicant;

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

21 (C) the proposed project plan describes satisfactory methods and
22 terms for accommodating reasonably foreseeable demand for gas in this state
23 within the economic proximity of the project during the term of the proposed
24 contract.

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

30 **Sec. 43.82.130. Qualified project plan.** A proposed project plan submitted
31 under AS 43.82.120 may be approved as a qualified project plan under AS 43.82.140

1 if the proposed project plan

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

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

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

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

10 (a) The commissioner shall review an application submitted under AS 43.82.120 to
11 determine whether the provisions of AS 43.82.100 concerning a qualified project and
12 AS 43.82.110 concerning a qualified sponsor or qualified sponsor group have been
13 met. The commissioner may approve an application only if those provisions have been
14 met.

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

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

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

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

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

31 (2) abuse of discretion that is so capricious, arbitrary, or confiscatory

1 as to constitute a denial of due process.

2 **Sec. 43.82.160. Multiple applications for similar or competing qualified**
3 **projects.** Nothing in this chapter prohibits different qualified sponsors or different
4 qualified sponsor groups from submitting applications under AS 43.82.120 relating to
5 similar or competing qualified projects or prohibits the commissioner of revenue or the
6 commissioner of natural resources from reviewing and approving applications and
7 proposed project plans under AS 43.82.140 relating to similar or competing qualified
8 projects.

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

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

21 **Article 3. Contract Development.**

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

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

27 (2) terms developed under AS 43.82.220 relating to

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

30 (B) royalty value;

31 (3) terms regarding the hiring of Alaska residents and contracting with

1 Alaska businesses under AS 43.82.230;

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

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

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

8 (7) other terms or conditions that are

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

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

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

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

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

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

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

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

24 (6) municipal property tax under AS 29.45.010 - 29.45.250 or
25 29.45.550 - 29.45.600;

26 (7) municipal special assessments under AS 29.46;

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

29 (9) other state or municipal taxes or categories of taxes identified by
30 the commissioner.

31 (b) If the commissioner chooses to develop proposed terms under (a) of this

1 section, the commissioner shall, if practicable and consistent with the long-term fiscal
2 interests of the state, develop the terms in a manner that attempts to balance the
3 following principles:

4 (1) the terms should, in conjunction with other factors such as cost
5 reduction of the project, cost overrun risk reduction of the project, increased fiscal
6 certainty, and successful marketing, improve the competitiveness of the approved
7 qualified project in relation to other development efforts aimed at supplying the same
8 market;

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

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

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

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

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

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

29 (8) while cost calculations for the approved qualified project under the
30 contract should be based on amounts that closely approximate actual costs, agreed-
31 upon formulas reflecting reasonable economic assumptions should be used if possible

1 to promote administrative certainty and efficiency.

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

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

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

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

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

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

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

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

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

4 **Sec. 43.82.230. Contract terms relating to hiring of Alaska residents and**
5 **contracting with Alaska businesses.** (a) The commissioner shall include in a
6 contract under AS 43.82.020 a term requiring the qualified sponsor or qualified
7 sponsor group and contractors of the qualified sponsor or qualified sponsor group to
8 comply with all valid federal, state, and municipal laws relating to hiring Alaska
9 residents and contracting with Alaska businesses to work in the state on the approved
10 qualified project and not to discriminate against Alaska residents or Alaska businesses.
11 Within the constraints of law, the commissioner shall also include in a contract under
12 AS 43.82.020 a term that requires the qualified sponsor or qualified sponsor group and
13 contractors of the qualified sponsor or qualified sponsor group to employ Alaska
14 residents and to contract with Alaska businesses to work in the state on the approved
15 qualified project to the extent the residents and businesses are available, competitively
16 priced, and qualified.

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

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

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

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

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

31 (e) For purposes of this section,

- 1 (1) "Alaska business" means a firm or contractor that
2 (A) has held an Alaska business license for the preceding 12
3 months;
4 (B) maintains, and has maintained for the preceding 12 months,
5 a place of business in the state that competently and professionally deals in
6 supplies, services, or construction of the nature required for the approved
7 qualified project; and
8 (C) is
9 (i) a sole proprietorship and the proprietor is an Alaska
10 resident;
11 (ii) a partnership and more than 50 percent of the
12 partnership interest is held by Alaska residents;
13 (iii) a limited liability company and more than 50
14 percent of the membership interest is held by Alaska residents;
15 (iv) a corporation that has been incorporated in the state
16 or is authorized to do business in the state; or
17 (v) a joint venture and a majority of the venturers
18 qualify as Alaska businesses under this paragraph;
19 (2) "Alaska job service organizations" means those offices maintained
20 by the state and recommended by the Department of Labor whose functions are to aid
21 the unemployed or underemployed in finding employment;
22 (3) "Alaska resident" means a natural person who
23 (A) receives a permanent fund dividend under AS 43.23; or
* 24 (B) is registered to vote under AS 15 and qualifies for a
25 resident fishing, hunting, or trapping license under AS 16;
26 (4) "available," as applied to an Alaska resident or Alaska business,
27 means that the resident or business is available for employment at the time required
28 and is located anywhere in the state, not just in the area of the state where the work
29 is to be performed;
30 (5) "qualified," as applied to an Alaska resident or Alaska business,
31 means that the resident or business possesses the requisite education, training, skills,

1 certification, or experience to perform the work necessary for a particular position or
2 to perform a particular service.

3 **Sec. 43.82.240. Use of an independent contractor.** (a) The commissioner
4 may use an independent contractor to assist in the evaluation of an application or in
5 the development of contract terms under AS 43.82.200. The commissioner may
6 condition the development of a contract under AS 43.82.020 on an agreement by the
7 applicant to reimburse the state for the expenses of an independent contractor under
8 this section.

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

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

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

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

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

26 (2) given prior written approval for the assignment, addition, or
27 withdrawal.

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

30 (c) Upon being added to an application under this section, a party becomes a
31 qualified sponsor or a member of a qualified sponsor group, as appropriate, for the

1 relevant project.

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

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

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

16 **Article 4. Requests for Information; Confidentiality;**

17 **Disclosure of Information.**

18 **Sec. 43.82.300. Requests for information.** The commissioner of revenue or
19 the commissioner of natural resources may request from an applicant information that
20 the respective commissioner determines is necessary to perform the respective
21 commissioner's responsibilities under AS 43.82.140. If the application is approved
22 under AS 43.82.140, the respective commissioner shall require the successful applicant
23 to provide financial, technical, and market information regarding the qualified project
24 that the respective commissioner determines is necessary for the purpose of developing
25 contract terms for the qualified project under AS 43.82.200. If requested information
26 is not provided, the commissioner of revenue may not continue to review the
27 application under AS 43.82.140 or develop the contract under AS 43.82.200 -
28 43.82.270, as applicable.

29 **Sec. 43.82.310. Disclosure of information; confidentiality.** (a) An applicant
30 may request confidential treatment of information that the applicant provides under
31 AS 43.82.300 by clearly identifying the information and the reasons supporting the

1 request for confidential treatment. The commissioner of revenue or the commissioner
2 of natural resources, as appropriate, shall keep the information confidential until the
3 commissioner determines whether the requirements of (b) of this section are met. If
4 the commissioner of revenue or the commissioner of natural resources has not made
5 a determination under (b) of this section within 14 days after receiving a request for
6 confidential treatment, the request is considered denied. If the appropriate
7 commissioner determines that the information does not meet the requirements of (b)
8 of this section or if the commissioner fails to make a determination within 14 days, the
9 commissioner shall return the information and any copies of it at the request of the
10 applicant. If the commissioner of revenue or the commissioner of natural resources,
11 as appropriate, returns information under this subsection, the commissioner shall cease
12 review of the application or cease contract development under AS 43.82.200 -
13 43.82.270, as appropriate, unless the commissioner determines that the returned
14 information is unnecessary to make a determination on the application or to develop
15 contract terms under AS 43.82.200 - 43.82.270.

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

- 20 (1) is a trade secret or other proprietary research, development, or
21 commercial information that the applicant treats as confidential;
22 (2) affects the applicant's competitive position; and
23 (3) has commercial value that may be significantly diminished by
24 public disclosure or that public disclosure is not in the long-term fiscal interests of the
25 state.

26 (c) Information determined to be confidential under (b) of this section is
27 confidential under that subsection only so long as is necessary to protect the
28 competitive position of the applicant, to prevent the significant diminution of the
29 commercial value of the information, or to protect the long-term fiscal interests of the
30 state. The commissioner of revenue or the commissioner of natural resources, as
31 appropriate, may not release information that the commissioner has previously

1 determined to be confidential under (b) of this section without providing the applicant
2 notice and an opportunity to be heard.

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

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

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

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

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

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

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

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

14 **Sec. 43.82.400. Preliminary findings and determination regarding the**
15 **contract.** (a) If the commissioner develops a proposed contract under AS 43.82.200 -
16 43.82.270, the commissioner shall

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

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

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

28 (c) In conjunction with the making of preliminary findings and determination
29 required by (a)(1) of this section, the commissioner shall describe the principal factors,
30 including the projected price of gas, projected production rate or volume of gas, and
31 projected recovery, development, construction, and operating costs, upon which the

1 determination made under (a)(1) of this section is based. If the commissioner has
2 previously submitted a proposed contract to the governor, the commissioner shall
3 describe any material differences between the terms of the currently proposed contract
4 and the previously proposed contract.

5 **Sec. 43.82.410. Notice and comment regarding the contract.** The
6 commissioner shall

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

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

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

16 (B) the chairs of the finance and resources committees of the
17 legislature; and

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

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

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

1 **Sec. 43.82.420. Coordination of public and legislative review.** To the extent
2 practicable, the commissioner shall coordinate the public comment opportunity
3 provided under AS 43.82.410(4) with a review by the Legislative Budget and Audit
4 Committee under AS 43.82.410(3).

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

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

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

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

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

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

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

1 **Sec. 43.82.440. Judicial review.** A person may not bring an action
2 challenging the constitutionality of a law authorizing a contract enacted under
3 AS 43.82.435 or the enforceability of a contract executed under a law authorizing a
4 contract enacted under AS 43.82.435 unless the action is commenced within 120 days
5 after the date that the contract was executed by the state and the other parties to the
6 contract.

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

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

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

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

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

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

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

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

31 (e) The commissioner may provide terms and conditions in a contract

1 developed under AS 43.82.020 upon which a party's rights under the contract may be
2 administratively terminated after the party commits full project funding.

3 **Article 6. Municipal Participation.**

4 **Sec. 43.82.500. Obligation to share payments with municipalities.** If the
5 commissioner develops a contract under AS 43.82.020 that includes terms that exempt
6 a party to the contract, and the property, gas, products, and activities associated with
7 the approved qualified project that is subject to the contract, from a municipal tax or
8 assessment in accordance with AS 29.45.810 or AS 29.46.010(b), or AS 43.82.200 and
9 43.82.210, the commissioner shall include a term in the contract that the party pay a
10 portion of the periodic payments due under the contract to the revenue-affected
11 municipality.

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

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

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

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

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

27 **Sec. 43.82.520. Duties of the commissioner of revenue in relation to**
28 **municipal participation.** (a) The commissioner shall meet with each municipal
29 advisory group periodically to report on the development of the contract provisions that
30 affect the municipalities.

31 (b) In developing a contract under AS 43.82.200 - 43.82.270, the commissioner

1 shall ensure that each revenue-affected municipality and economically affected
2 municipality receives a fair and reasonable share of the payments provided under
3 AS 43.82.210 in accordance with the following principles:

4 (1) the share of the payments to revenue-affected municipalities should
5 be given priority over payments to economically affected municipalities with due
6 regard to the anticipated size of the tax base that the contract would exempt from
7 municipal taxation by revenue-affected municipalities;

8 (2) the share of the payments to municipalities should be determined
9 with due regard to the anticipated economic and social burdens that would be imposed
10 on the municipality by construction and operation of the project;

11 (3) the respective shares of the total payments to the state and to
12 municipalities should be fixed in a manner to ensure that their respective interests are
13 aligned;

14 (4) to the extent practicable, the periodic amounts paid to each of the
15 municipalities should be stable and predictable; and

16 (5) to the extent practicable, the provisions for sharing payments with
17 municipalities should be consistent with the principles established in AS 43.82.210(b).

18 (c) In establishing the municipal shares under (b) of this section, the
19 commissioner shall consult with the pertinent municipal advisory group.

20 **Article 7. Miscellaneous Provisions.**

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

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

26 **Sec. 43.82.620. Procedures for collection of amounts due; security.** (a)
27 The commissioner may adopt procedures for the collection of amounts due the state
28 under a contract developed under AS 43.82.020, including the collection of interest and
29 penalties.

30 (b) The commissioner may require a party to a contract developed under
31 AS 43.82.020 to provide security sufficient to guarantee amounts due under the

1 contract.

2 **Sec. 43.82.630. Reports and audits.** The commissioner may require periodic
3 reports from and may at reasonable intervals conduct audits and inspect the books of
4 a party that has entered into a contract developed under AS 43.82.020 to ensure
5 compliance with the provisions of this chapter and the regulations adopted under this
6 chapter and of the terms of the contract.

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

*
16

Article 8. General Provisions.

17 **Sec. 43.82.900. Definitions.** In this chapter, unless the context requires
18 otherwise,

19 (1) "affected municipality" means an economically affected
20 municipality or a revenue-affected municipality;

21 (2) "commencement of commercial operations" means the start of
22 regular deliveries of marketable products from an approved qualified project;

23 (3) "cubic foot of gas" means the quantity of gas contained in a volume
24 of one cubic foot at a standard temperature of 60 degrees Fahrenheit and a standard
25 absolute pressure of 14.65 pounds per square inch;

26 (4) "economically affected municipality" means a municipality the
27 commissioner of revenue determines will be reasonably required to provide additional
28 public services under the terms proposed in an application approved under
29 AS 43.82.140(a); the commissioner may consider historical data from construction of
30 the Trans Alaska Pipeline System, and information submitted by a municipality in
31 making the determination;

1 (5) "economic proximity" means the distance within which a person
2 may be willing to design, construct, and operate a gas line to provide service to a local
3 consumer;

4 (6) "economic rent" means the estimated total gross revenue less
5 estimated total costs for a qualified project over the term of a contract under
6 AS 43.82.020, measured in undiscounted nominal dollars; for purposes of this
7 paragraph, total costs do not include a rate of return on capital, financing costs, or any
8 payments to governments;

9 (7) "full project funding" means full approval by a party to a contract
10 under AS 43.82.020 for the expenditure of the capital necessary for construction and
11 operation of the approved qualified project that is subject to the contract;

12 (8) "gas" has the meaning given in AS 43.55.900;

13 (9) "group" means two or more persons;

14 (10) "lease or property" has the meaning given in AS 43.55.900;

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

17 (12) "revenue-affected municipality" means a municipality that the
18 commissioner of revenue reliably expects will be restricted from imposing a tax, or a
19 portion of a tax, as a result of implementation of a contract developed under this
20 chapter;

21 (13) "stranded gas" means gas that is not being marketed due to
22 prevailing costs or price conditions as determined by an economic analysis by the
23 commissioner for a particular project.

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

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

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

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

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

30 **Sec. 29.45.810. Exemption from municipal taxation.** (a) A party to a
31 contract approved by the legislature as a result of submission of a proposed contract

1 developed under AS 43.82 or as a result of acts by the legislature in implementing the
2 purposes of AS 43.82, and the property, gas, products, and activities associated with
3 the approved qualified project that is subject to the contract, are exempt, as specified
4 in the contract, from all taxes identified in the contract that would be levied and
5 collected by a municipality under state law as a consequence of the participation by
6 the party in the approved qualified project.

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

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

9 (b) Notwithstanding (a) of this section, a party to a contract approved by the
10 legislature as a result of submission of a proposed contract developed under AS 43.82
11 or as a result of acts by the legislature in implementing the purposes of AS 43.82, is
12 exempt, as specified in the contract, from assessment under this chapter against real
13 property associated with the approved qualified project that is subject to the contract.

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

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

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

18 (h) A taxpayer that has signed a contract approved by the legislature as a result
19 of submission of a proposed contract developed under AS 43.82 or as a result of acts
20 by the legislature in implementing the purposes of AS 43.82, providing for payments
21 in lieu of the tax under this chapter and that has nexus with the state solely as the
22 result of the taxpayer's participation in the approved qualified project that is subject
23 to the contract or would not, but for such participation, be engaged in the production
24 of oil or gas from a lease or property in this state or engaged in the transportation of
25 oil or gas by pipeline in this state, is not required to file a return under this section
26 unless required to do so by the contract.

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

28 (h) A corporation that has signed a contract approved by the legislature as a
29 result of submission of a proposed contract developed under AS 43.82 or as a result
30 of acts by the legislature in implementing the purposes of AS 43.82, providing for
31 payments in lieu of the tax under this chapter and that has nexus with the state solely

1 as the result of the corporation's participation in the approved qualified project that is
2 subject to the contract is not required to file a return under this section unless required
3 to do so by the contract.

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

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

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 393(O&G), Draft Version

1 Page 2, line 19, following "tankers":

2 Insert "although experimental research is being conducted on other
3 alternative technologies such as gas to liquids, this technology is not yet
4 commercially viable; if this research results in a commercially viable technology,
5 and, after economic analysis by the state of the application of this technology, it is
6 shown that local or state tax or regulatory changes are necessary to commercialize
7 an Alaska project using this technology, then this technology may be considered in
8 regard to this legislation."

0-GH2006\B
Cook/Glover
3/11/98

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

9 * Section 1. FINDINGS. The legislature finds that

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

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

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

8 ~~(4) in the Cook Inlet area, which is Alaska's other currently producing oil and~~
9 ~~gas area, oil and gas exploration and development activities have also historically focused~~
10 ~~more on oil than gas, although there has been a relatively greater degree of exploration for and~~
11 ~~commercial development of gas in the Cook Inlet area than on the North Slope;~~

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

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

20 ⁶(7) currently the principal mode anticipated for stranded North Slope gas to
21 access markets outside the state is a gas pipeline to an ice-free Alaska port where the gas
22 would be turned into liquefied natural gas and exported using specially designed marine
23 tankers; ~~although experimental research is being conducted on other alternative technologies~~
24 ~~such as gas to liquids, this technology is not yet commercially viable; if this research results~~
25 ~~in a commercially viable technology, and, after economic analysis by the state of the~~
26 ~~application of this technology, it is shown that local or state tax or regulatory changes are~~
27 ~~necessary to commercialize an Alaska project using this technology, then this technology may~~
28 ~~be considered in regard to this legislation;~~

29 ⁷(8) the size of the capital expenditure needed to get North Slope gas to market
30 by way of a liquefied natural gas project requires long-term contracts for gas on the order of
31 14,000,000 metric tons a year of liquefied natural gas; to be successful, a North Slope

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 393(O&G), Draft Version

"L"

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13 basins, do not have oil and gas production and still remain largely unexplored for oil and gas;
14 exploration for gas in some of these areas might be facilitated if infrastructure were
15 economically available to provide access for the gas to markets;

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

20 ⁶(7) currently the principal mode anticipated for stranded North Slope gas to
21 access markets outside the state is a gas pipeline to an ice-free Alaska port where the gas
22 would be turned into liquefied natural gas and exported using specially designed marine
23 tankers; ~~although experimental research is being conducted on other alternative technologies~~
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29 ⁷(8) the size of the capital expenditure needed to get North Slope gas to market
30 by way of a liquefied natural gas project requires long-term contracts for gas on the order of
31 14,000,000 metric tons a year of liquefied natural gas; to be successful, a North Slope

1 liquefied natural gas project needs to reach this full annual volume in not more than six years
2 from the commencement of commercial operations;

3 ⁸
(9) for a North Slope liquefied natural gas project to become economically
4 viable and competitive, the estimated costs of constructing such a project must be reduced
5 significantly; reducing the financial risk associated with the project would also improve the
6 project's chances of becoming economically viable and competitive;

7 ⁹
(10) the state has contracted an extensive financial analysis of the
8 commercialization of North Slope gas; this analysis, performed by a recognized expert in
9 petroleum economics, Dr. Pedro Van Meurs, indicates that changes in the local, state, and
10 federal tax structure may be necessary to make commercialization of North Slope gas
11 resources economically viable;

12 ¹⁰
(11) although the state can do little now to reduce expected construction costs,
13 the state can reduce some of the financial risk associated with a North Slope liquefied natural
14 gas project or other stranded gas development projects by specifying with as much certainty
15 as possible the state taxes and royalties that would apply to such a project throughout its life;

16 ¹¹
(12) the state could improve the economics and competitiveness of a stranded
17 gas development project by adjusting the timing of the state's receipt of its share of the
18 economic rent of the project; the present fiscal regime is front-end loaded, which means that
19 the state and local governments take a significant part of their shares of the economic rent of
20 a project early in the life of the project, even before the project starts to generate an income
21 stream; the state and local governments could improve the economics of a stranded gas
22 development project by taking more of their shares of the economic rent of a project later in
23 the life of the project;

24 ¹²
(13) the state's present fiscal regime, as it would apply to a stranded gas
25 development project, is also regressive to the extent that it is insensitive to changes in the
26 profitability of the project, so that, in times of low profitability, the state and local
27 governments would take an excessive amount of the economic rent of the project, and, in
28 times of high profitability, they would take an inadequate amount of the economic rent of a
29 project; the state and local governments could improve the economics of a stranded gas
30 development project by making the overall fiscal system less regressive and more responsive
31 to the relative profitability of a project;

1 ¹³
 2 (14) establishing a fiscal regime applicable to a specific stranded gas
 3 development project under a long-term contract with the state, where payments would be made
 4 in lieu of other taxes, would

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

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

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

13 ¹⁴
 14 (15) authorizing the state, through the executive branch, to ~~enter into~~ ^{DEVELOP} a contract
 15 establishing the fiscal regime that would apply to a qualified stranded gas development project
 16 if it were built ~~is an~~ ^{WILL RESULT IN CONTRACTS THAT ARE AN} exercise of the legislature's taxing power that is consistent with art. IX,
 17 sec. 1, Constitution of the State of Alaska;

18 ¹⁵
 19 (16) authorizing the state, through the executive branch, to ~~enter into~~ ^{DEVELOP} a contract
 20 establishing a fiscal regime that reduces the risks and improves the economics of a stranded
 21 gas development project ~~is an~~ ^{WILL RESULT IN CONTRACTS THAT ARE} exercise of the legislature's power under art. IX, sec. 4,
 22 Constitution of the State of Alaska, to create tax exemptions by general law and is consistent
 23 with the legislature's responsibility under art. VIII, sec. 2, of the Constitution of the State of
 24 Alaska, to provide for the utilization, development, and conservation of all natural resources
 25 belonging to the state for the maximum benefit of its people;

26 ¹⁶
 27 (17) stranded gas development projects are a matter of statewide interest
 28 because they are an important potential source of revenue to the state, job opportunities for
 29 the people of the state, and gas for use by communities throughout the state;

30 ¹⁷
 31 (18) to the extent permissible under the Constitution of the United States and
 the Constitution of the State of Alaska, the legislature intends that state residents and
 businesses share in and not be excluded from the opportunities stemming from the
 development of the state's gas resources; and

¹⁸
 good faith efforts by qualified sponsors, qualified sponsor groups, and
 contractors of qualified sponsors and qualified sponsor groups that enter into a contract with

^{DEVELOPED}

1 the state^y under this Act to undertake voluntary actions to provide employment opportunities
 2 for Alaska residents and opportunities for Alaska businesses are in the long-term interests of
 3 the state.

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

13 (b) The legislature intends that, in order to provide the stable fiscal terms that will
 14 encourage development of stranded gas projects, any contract negotiated^y under this Act will
 15 express whether the state intends to be bound to the full extent allowed by the Constitution
 16 of the State of Alaska; however, the legislature further intends that the terms of a contract
 17 negotiated^y under this Act will not be binding on or enforceable against the state or the other
 18 parties to the contract unless the ^{GOVERNOR} ~~commissioner~~ of revenue is authorized to execute the contract
 19 by the legislature. ~~as provided in this Act.~~

20 (c) The legislature intends that a qualified sponsor or qualified sponsor group or a
 21 contractor of a qualified sponsor or qualified sponsor group that enters into a contract^y relating
 22 to a stranded gas project ~~under this Act~~ will, with respect to the project, voluntarily

23 (1) undertake reasonable measures to hire Alaska residents to perform wo.
 24 that they are qualified to perform on a competitive basis;

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

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

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

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

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

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

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

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

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

Sec. 43.82.020. Contracts for payments in lieu of other taxes and for royalty adjustments. The commissioner may, under this chapter, ^{NEGOTIATE TERMS FOR INCLUSION IN A PROPOSAL} ~~enter into a contract~~ with a qualified sponsor or qualified sponsor group providing for

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

(2) certain adjustments regarding royalty under AS 43.82.220.

Article 2. Qualification and Application Procedures.

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 only if the project

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

(2) 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.

Sec. 43.82.110. Qualified sponsor or qualified sponsor group. The commissioner may determine that a person or group is a qualified sponsor or qualified

1 sponsor group if the person or a member of the group

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

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

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

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

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

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

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

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

17 **Sec. 43.82.120. Applications.** (a) A qualified sponsor or qualified sponsor
18 group may submit to the department an application for ^{DEVELOPMENT OF} a contract under AS 43.82.020
19 evidencing that the requirements of AS 43.82.100 and 43.82.110 are met. The
20 application must be submitted in the manner and form and contain the information
21 required by the department.

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

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

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

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

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

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

8 ~~DETAILED DESCRIPTION OF OPTIONS~~
(6) a ~~plan~~ to mitigate the increased demand for public services and
9 other negative effects caused by the project;

10 ~~DETAILED DESCRIPTION OF OPTIONS~~
(7) a ~~plan~~ for the safe management and operation of the project once
11 it is constructed;

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

15 (A) the work accomplished as of the date of application, the
16 schedule of proposed development activity, and the development activity
17 proposed to be accomplished under the proposed project plan reflect a proposal
18 for diligent development on the part of the applicant;

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

22 (C) the proposed project plan describes satisfactory methods and
23 terms for accommodating reasonably foreseeable demand for gas in this state
24 within the economic proximity of the project during the term of the proposed
25 contract.

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

31 **Sec. 43.82.130. Qualified project plan.** A proposed project plan submitted

1 under AS 43.82.120 may be approved as a qualified project plan under AS 43.82.140
2 if the proposed project plan

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

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

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

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

11 (a) The commissioner shall review an application submitted under AS 43.82.120 to
12 determine whether the provisions of AS 43.82.100 concerning a qualified project and
13 AS 43.82.110 concerning a qualified sponsor or qualified sponsor group have been
14 met. The commissioner may approve an application only if those provisions have been
15 met.

16 (b) If the commissioner approves an application under (a) of this section, the
17 commissioner and the commissioner of natural resources shall review the proposed
18 project plan submitted with the application to determine whether the provisions of
19 AS 43.82.130 have been met. The commissioner may approve the proposed project
20 plan as a qualified project plan only if the commissioner of natural resources concurs
21 in the approval.

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

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

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

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

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

3 Sec. 43.82.160. Multiple applications for similar or competing qualified
4 projects. Nothing in this chapter prohibits different qualified sponsors or different
5 qualified sponsor groups from submitting applications under AS 43.82.120 relating to
6 similar or competing qualified projects or prohibits the commissioner of revenue or the
7 commissioner of natural resources from reviewing and approving applications and
8 proposed project plans under AS 43.82.140 relating to similar or competing qualified
9 projects.

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

14 Sec. 43.82.180. Withdrawal of applications. Subject to the terms of a
15 reimbursement agreement under AS 43.82.240 or other agreement with the Department
16 of Revenue, the Department of Natural Resources, the commissioner of revenue, or the
17 commissioner of natural resources affecting the withdrawal of an application, a
18 qualified sponsor or qualified sponsor group may withdraw an application submitted
19 under AS 43.82.120 at any time before the date that the commissioner of revenue
20 ^{SUBMITS A CONTRACT TO THE GOVERNOR} enters into a contract under AS 43.82.430 without further obligation under this chapter.

21 Article 3. Contract Development.

22 Sec. 43.82.200. Contract development. If the commissioner approves an
23 application and proposed project plan under AS 43.82.140, the commissioner may
24 develop a contract under ~~AS 43.82.020~~ that may include

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

27 (2) terms developed under AS 43.82.220 relating to

28 (A) timing and notice of the state's right to take royalty in kind
29 or in value; ~~AND~~

30 (B) royalty value,

31 (3) terms regarding the hiring of Alaska residents and contracting with

1 Alaska businesses under AS 43.82.230:

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

4 (5) terms regarding arbitration or alternative dispute resolution
5 procedures:

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

8 (7) other terms or conditions that are

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

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

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

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

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

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

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

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

24 (6) municipal property tax under AS 29.45.010 - 29.45.250 or
25 29.45.550 - 29.45.600;

26 (7) municipal special assessments under AS 29.46;

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

29 (9) other state or municipal taxes or categories of taxes identified by
30 the commissioner.

31 (b) If the commissioner chooses to develop proposed terms under (a) of this

1 section, the commissioner shall, if practicable and consistent with the long-term fiscal
2 interests of the state, develop the terms in a manner that attempts to balance the
3 following principles:

4 (1) the terms should, in conjunction with other factors such as cost
5 reduction of the project, cost overrun risk reduction of the project, increased fiscal
6 certainty, and successful marketing, improve the competitiveness of the approved
7 qualified project in relation to other development efforts aimed at supplying the same
8 market;

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

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

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

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

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

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

29 (8) while cost calculations for the approved qualified project under the
30 contract should be based on amounts that closely approximate actual costs, agreed-
31 upon formulas reflecting reasonable economic assumptions should be used if possible