

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 86/2

9393 HOUSE RESOURCES

27

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<sup>ON GAS</sup> in  
11 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 to meet the reasonably foreseeable demand in this state for gas within  
22 economic proximity of the project during the term of the contract <sup>DEVELOPED</sup> ~~entered into~~ under  
23 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.

INSERT (see following page)

**INSERT D:**

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

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

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

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

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

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

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

28           (e) For purposes of this section,

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

30                           (A) has held an Alaska business license for the preceding 12  
31 months;

1 (B) maintains, and has maintained for the preceding 12 months,  
2 a place of business in the state that competently and professionally deals in  
3 supplies, services, or construction of the nature required for the approved  
4 qualified project; and

5 (C) is

6 (i) a sole proprietorship and the proprietor is an Alaska  
7 resident;

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

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

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

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

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

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

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

21 (B) has a current Alaska

22 (i) voter registration card; and

23 (ii) resident fishing, hunting, or trapping license under  
24 AS 16;

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

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

1 to perform a particular service.

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

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

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

14 **Sec. 43.82.250. Term of contract; effective date.** (a) <sup>THE TERM OF A CONTRACT DEVELOPED</sup> A contract under  
15 AS 43.82.020 may be entered <sup>FOR</sup> into for a term no longer than is necessary to develop  
16 the stranded gas that is subject to the contract; however, the term of the contract may  
17 not exceed 35 years from the commencement of commercial operations of the  
18 approved qualified project.

19 ~~(b) The effective date of a contract under AS 43.82.020 is the date the~~  
20 ~~commissioner executes the contract unless another date is set out in the contract. The~~  
21 ~~commissioner may condition the effective date of a contract under AS 43.82.020 on~~  
22 ~~the enactment of a federal law that improves the economic feasibility or~~  
23 ~~competitiveness of stranded gas projects in the state.~~

24 **Sec. 43.82.260. Change of parties to an application or a contract;**  
25 **assignment of interests.** (a) A qualified sponsor or member of a qualified sponsor  
26 group may assign an interest in or add or withdraw a party to an application under  
27 AS 43.82.120 ~~or a contract under AS 43.82.020~~ only if the commissioner has

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

30 (2) given prior written approval for the assignment, addition, or  
31 withdrawal.

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

1           <sup>c</sup>  
2           ~~(b)~~ Upon being added to an application ~~or contract~~ under this section, a party  
3 becomes a qualified sponsor or a member of a qualified sponsor group, as appropriate,  
4 for the relevant project.

5           <sup>d</sup>  
6           ~~(c)~~ The commissioner may not unreasonably withhold approval under (a) of  
7 this section, but may condition the approval in any way reasonably necessary to protect  
8 the fiscal interests of the state and to further the purposes of this chapter.

9           <sup>e</sup>  
10           ~~(d)~~ For purposes of this section, an assignment includes a transfer of stock or  
11 a partnership interest in a manner that changes control of a qualified sponsor or  
12 member of a qualified sponsor group.

13           **Sec. 43.82.270. Project plans and work commitments.** A contract under  
14 AS 43.82.020 must include the qualified project plan approved under AS 43.82.140  
15 and provisions for updating the plan at reasonable intervals until the commencement  
16 of commercial operations of the approved qualified project. The commissioner of  
17 revenue, in consultation with the commissioner of natural resources, may, as a  
18 ~~condition~~ <sup>TERM IN</sup> of a contract under AS 43.82.020, include work commitments or other  
19 obligations in the contract to be accomplished before the commencement of  
20 commercial operations of the approved qualified project.

#### 21           **Article 4. Requests for Information; Confidentiality;**

##### 22                           **Disclosure of Information.**

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

**Sec. 43.82.310. Disclosure of information; confidentiality.** (a) An applicant

1 may request confidential treatment of information that the applicant provides under  
 2 AS 43.82.300 by clearly identifying the information and the reasons supporting the  
 3 request for confidential treatment. The commissioner of revenue or the commissioner  
 4 of natural resources, as appropriate, shall keep the information confidential until the  
 5 commissioner determines whether the requirements of (b) of this section are met. If  
 6 the commissioner of revenue or the commissioner of natural resources has not made  
 7 a determination under (b) of this section within 14 days after receiving a request for  
 8 confidential treatment, the request is considered denied. If the appropriate  
 9 commissioner determines that the information does not meet the requirements of (b)  
 10 of this section or if the commissioner fails to make a determination within 14 days, the  
 11 commissioner shall return the information and any copies of it at the request of the  
 12 applicant. If the commissioner of revenue or the commissioner of natural resources,  
 13 as appropriate, returns information under this subsection, the commissioner shall cease  
 14 review of the application or cease contract development under AS 43.82.200 -  
 15 43.82.270, as appropriate, unless the commissioner determines that the returned  
 16 information is unnecessary to make a determination on the application or to develop  
 17 contract terms under AS 43.82.200 - 43.82.270.

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

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

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

25 (3) has commercial value that may be significantly diminished by  
 26 public disclosure. OR PUBLIC DISCLOSURE IS NOT IN THE LONG-TERM  
 27 FISCAL INTERESTS OF THE STATE

28 (c) Information determined to be confidential under (b) of this section is  
 29 confidential under that subsection only so long as is necessary to protect the  
 30 competitive position of the applicant and to prevent the significant diminution of the  
 31 commercial value of the information, OR TO PROTECT THE LONG-TERM FISCAL INTERESTS  
 The commissioner of revenue or the  
 commissioner of natural resources, as appropriate, may not release information that the

1 commissioner has previously determined to be confidential under (b) of this section  
2 without providing the applicant 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,<sup>TO THE LEGISLATURE</sup> and to the Office of the Governor any information provided under  
6 AS 43.82.300 relevant to the implementation of this chapter or to the enforcement of  
7 state or federal laws. Information that is exchanged under this subsection that was  
8 determined to be confidential under (b) of this section remains confidential except as  
9 provided in (c) of this section. The portions of the records and files of the Department  
10 of Revenue, the Department of Natural Resources, the Department of Law,<sup>THE LEGISLATURE</sup> and the  
11 Office of the Governor that reflect, incorporate, or analyze information that is  
12 determined to be confidential under (b) of this section are not public records except  
13 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<sup>SHALL BE DISCLOSED ON REQUEST</sup> ~~may be disclosed~~ by the  
16 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

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

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

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

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

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

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

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

(2) prepare a proposed contract that includes those terms and shall ~~announce that, under AS 43.82.020, the commissioner intends to submit the contract to the legislature together with a request from the governor for authority to enter into the proposed contract under AS 43.82.435.~~ SUBMIT THE CONTRACT TO THE GOVERNOR

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

(c) In conjunction with the making of preliminary findings and determination required by (a)(1) of this section, the commissioner shall describe the principal factors,

1 including the projected price of gas, projected production rate or volume of gas, and  
 2 projected recovery, development, construction, and operating costs, upon which the  
 3 determination made under (a)(1) of this section is based. If the commissioner has  
 4 previously submitted ~~a contract to the legislature together with a request from the~~  
<sup>A PROPOSED CONTRACT TO THE GOVERNOR,</sup>  
 5 ~~governor for authority to enter into the proposed contract under AS 43.82.435 or has~~  
 6 ~~entered into a contract under AS 43.82.020 relating to another approved qualified~~  
 7 ~~project that is similar to or would compete with the approved qualified project that is~~  
 8 ~~the subject of the commissioner's preliminary findings and determination, the~~  
 9 commissioner shall describe any material differences between the terms of the existing  
<sup>CURRENTLY PROPOSED</sup>  
 10 contract and the <sup>PREVIOUSLY</sup> proposed contract.

11 **Sec. 43.82.410. Notice and comment regarding the contract.** The  
 12 commissioner shall

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

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

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

22 (B) the chairs of the finance and resources committees of the  
 23 legislature; and

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

26 (3) offer to appear before the Legislative Budget and Audit Committee  
 27 to provide the committee a review of the commissioner's preliminary findings and  
 28 determination, the proposed contract, and the supporting financial, technical, and  
 29 market data; if the Legislative Budget and Audit Committee accepts the commissioner's  
 30 offer, the committee shall give notice of the committee's meeting to the public and all  
 31 members of the legislature; if the financial, technical, and market data that is to be

1 provided must be kept confidential under AS 43.82.310, the commissioner may not  
2 release the confidential information during a public portion of a committee meeting;  
3 and

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

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

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

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

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

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

24 (b) After considering the material described in (a) of this section and securing  
25 the agreement of the other parties to the proposed contract regarding any proposed  
26 amendments prepared under (a) of this section, if the commissioner determines that the  
27 contract is in the long-term fiscal interests of the state, the commissioner shall ~~under~~  
28 SUBMIT THE CONTRACT TO THE GOVERNOR ~~AS 43.82.435, submit the contract to the legislature, together with a request from the~~  
29 ~~governor for authorization to execute the contract.~~

30 (c) The commissioner's final findings and determination under (a) of this  
31 section ~~and decision regarding whether to execute the contract under (b) of this section~~

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are final agency decisions under this chapter.

~~Sec. 43.82.435. Legislative authorization. The commissioner may not execute a contract developed under this chapter and a contract developed under this chapter is not binding upon or enforceable against the state or other parties to the contract unless the commissioner is authorized to execute the contract by law. The state and the other parties to the contract may execute the contract within 60 days after the effective date of the law authorizing the contract.~~

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

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

- (1) ceased to meet the requirements of AS 43.82.110 as a qualified sponsor or qualified sponsor group;
- (2) intentionally or fraudulently misrepresented, in whole or in part, material facts or circumstances upon which the contract was made;
- (3) failed to comply with a condition or material term of the contract or a provision of this chapter; or
- (4) failed to comply with the approved qualified project plan or any updated project plan.

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

(c) Notwithstanding (a) and (b) of this section, the commissioner may not

THE GOVERNOR MAY TRANSMIT A  
SUBST. FOR REVIEW TO CURE THE CONTRACT.

1 administratively terminate a contract after the party has committed full project funding  
2 except as provided in (e) of this section.

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

6 (e) The commissioner may provide terms and conditions in a contract <sup>DEVELOPED</sup> ~~entered~~  
7 ~~into~~ under AS 43.82.020 upon which a party's rights under the contract may be  
8 administratively terminated after the party commits full project funding.

9 **Article 6. Municipal Participation.**

10 **Sec. 43.82.500. Obligation to share payments with municipalities.** If the  
11 commissioner <sup>DEVELOPS</sup> ~~executes~~ a contract under AS 43.82.020 that includes terms that exempt  
12 a party to the contract, and the property, gas, products, and activities associated with  
13 the approved qualified project that is subject to the contract, from a municipal tax or  
14 assessment in accordance with AS 29.45.810 or AS 29.46.010(b), or AS 43.82.200 and  
15 43.82.210, the commissioner shall <sup>INCLUDE A TERM IN</sup> ~~require as a condition of~~ the contract that the party  
16 pay a portion of the periodic payments due under the contract to the <sup>REVENUE</sup> affected  
17 municipality.

18 <sup>INSERT (A): (SEE FOLLOWING PAGE)</sup>

19 **Sec. 43.82.510. Municipal advisory group.** (a) If the commissioner approves  
20 an application and proposed project plan under AS 43.82.140 and decides to develop  
21 a contract under AS 43.82.020 and 43.82.200, the commissioner shall notify each <sup>REVENUE</sup>  
22 affected municipality <sup>and ECONOMICALLY AFFECTED MUNICIPALITY</sup> ~~and~~ <sup>A MUNICIPALITY</sup>

23 (b) The mayor of each of the affected municipalities notified by the  
24 commissioner under (a) of this section may appoint one representative to a municipal  
25 advisory group in relation to the application.

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

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

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

INSERT A:

New:

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

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(b) In developing a contract under AS 43.82.200 - 43.82.270, the commissioner shall ensure that each <sup>REVENUE AND ECONOMICALLY AFFECTED MUNICIPALITY</sup> affected municipality receives a fair and reasonable share of the payments provided under AS 43.82.210 in accordance with the following principles:

to economically affected municipalities

(1) the share of the payments to <sup>REVENUE AFFECTED</sup> municipalities should be <sup>given priority over payments</sup> determined with due regard to the anticipated size of the tax base that the contract would exempt from municipal taxation <sup>by REVENUE AFFECTED MUNICIPALITIES;</sup>

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

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

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

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

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

**Article 7. Miscellaneous Provisions.**

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

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

**Sec. 43.82.620. Procedures for collection of amounts due; security.** (a) The commissioner may adopt procedures for the collection of amounts due the state under a contract <sup>DEVELOPED</sup> ~~entered into~~ under AS 43.82.020, including the collection of interest and penalties.

(b) The commissioner may require a party to a <sup>DEVELOPED</sup> contract under AS 43.82.020 to provide security sufficient to guarantee amounts due under the contract.

**Sec. 43.82.630. Reports and audits.** The commissioner may require periodic

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reports from and may at reasonable intervals conduct audits and inspect the books of a party that has entered into a contract<sup>DEVELOPED</sup> under AS 43.82.020 to ensure compliance with the provisions of this chapter and the regulations adopted under this chapter and of the terms of the contract.

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

Article 8. General Provisions.

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

(1) "affected municipality" means <sup>AN ECONOMICALLY AFFECTED MUNICIPALITY OR A REVENUE AFFECTED MUNICIPALITY</sup> a municipality for which it is reliably expected by the commissioner that, after the commencement of activities under AS 43.82.200, a contract entered into under AS 43.82.020 will, under AS 43.82.210, affect taxes that otherwise would be imposed by that municipality;

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

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

(4) "economic proximity" means the <sup>DISTANCE WITHIN</sup> area to which a party to a contract <sup>A PERSON</sup> under AS 43.82.020 <sup>MAY BE</sup> is willing to design, construct, and operate a gas line to provide service to a local consumer;

(5) "economic rent" means the estimated total gross revenue less estimated total costs for a qualified project over the term of a contract under AS 43.82.020, measured in undiscounted nominal dollars; for purposes of this

1 paragraph, "total costs" do not include a rate of return on capital, financing costs, or  
2 any payments to governments;

~~INSERT (5): (SEE FOLLOWING PAGE)~~

3 (7)(6) "full project funding" means full approval by a party to a contract  
4 under AS 43.82.020 for the expenditure of the capital necessary for construction and  
5 operation of the approved qualified project that is subject to the contract;

6 (7) "gas" has the meaning given in AS 43.55.900;

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

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

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

~~INSERT (11): (SEE FOLLOWING PAGE)~~

NOT BEING MARKETED DUE TO

11 (11) "stranded gas" means gas that is ~~uneconomic or uncompetitive to~~

PREVAILING COST OR PRICE CONDITIONS

12 develop as determined by the commissioner for a particular project;

AN ECONOMIC ANALYSIS BY

13 (12) ~~"uneconomic or uncompetitive" means gas that is not being~~  
14 ~~marketed due to prevailing cost or price conditions as determined by an economic~~  
15 ~~analysis by the commissioner.~~

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

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

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

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

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

22 Sec. 29.45.810. Exemption from municipal taxation. (a) A party to a  
23 approved by the legislature as a result of submission of a proposed contract developed under AS 43.82  
24 contract ~~with the commissioner of revenue under AS 43.82.020~~, and the property, gas,  
25 products, and activities associated with the approved qualified project that is subject  
26 to the contract, are exempt, as specified in the contract, from all taxes identified in the  
27 contract that would be levied and collected by a municipality under state law as a  
28 consequence of the participation by the party in the approved qualified project.

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

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

31 (b) Notwithstanding (a) of this section, a party to a contract with the  
approved by the legislature as a result of submission of a proposed contract developed under AS 43.82  
~~commissioner of revenue under AS 43.82.020~~ is exempt, as specified in the contract,

**INSERT B:**

New:

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

**INSERT C:**

New:

(11) "revenue affected municipality" means a municipality for which it is reliably expected by the commissioner of revenue that, after the commencement of activities under AS 43.82.200, a contract entered into under AS 43.82.020 will affect taxes, under AS 43.82.210, that otherwise would be imposed by that municipality;

1 from assessment under this chapter against real property associated with the approved  
2 qualified project that is subject to the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 pipeline transportation is a part of the proposed project;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (2) terms developed under AS 43.82.220 relating to

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

25 (B) royalty value;

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

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

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

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

3 (7) other terms or conditions that are

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

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

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

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

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

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

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

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

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

21 (7) municipal special assessments under AS 29.46;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (e) For purposes of this section,

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

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

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

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

3 (C) is

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

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

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

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

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

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

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

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

19 (B) has a current Alaska

20 (i) voter registration card; and

21 (ii) resident fishing, hunting, or trapping license under

22 AS 16;

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

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

31 **Sec. 43.82.240. Use of an independent contractor.** (a) The commissioner

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 records until the commissioner of revenue gives public notice under AS 43.82.410 of  
 2 the commissioner's preliminary findings and determination under AS 43.82.400.  
 3 Nothing in this subsection

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

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

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

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

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

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

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

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

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

1 and the previously proposed contract.

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

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

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

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

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

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

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

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

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

1 Committee under AS 43.82.410(3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **Article 6. Municipal Participation.**

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

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

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

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

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

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

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

28           (b) In developing a contract under AS 43.82.200 - 43.82.270, the commissioner  
29 shall ensure that each revenue-affected municipality and economically affected  
30 municipality receives a fair and reasonable share of the payments provided under  
31 AS 43.82.210 in accordance with the following principles:

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

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

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

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

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

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

17 **Article 7. Miscellaneous Provisions.**

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

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

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

27 (b) The commissioner may require a party to a contract developed under  
 28 AS 43.82.020 to provide security sufficient to guarantee amounts due under the  
 29 contract.

30 **Sec. 43.82.630. Reports and audits.** The commissioner may require periodic  
 31 reports from and may at reasonable intervals conduct audits and inspect the books of

1 a party that has entered into a contract developed under AS 43.82.020 to ensure  
2 compliance with the provisions of this chapter and the regulations adopted under this  
3 chapter and of the terms of the contract.

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

### 13 **Article 8. General Provisions.**

14 **Sec. 43.82.900. Definitions.** In this chapter, unless the context requires  
15 otherwise,

16 (1) "affected municipality" means an economically affected  
17 municipality or a revenue-affected municipality;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **Sec. 29.45.810. Exemption from municipal taxation.** (a) A party to a  
 28 contract approved by the legislature as a result of submission of a proposed contract  
 29 developed under AS 43.82, and the property, gas, products, and activities associated  
 30 with the approved qualified project that is subject to the contract, are exempt, as  
 31 specified in the contract, from all taxes identified in the contract that would be levied

1 and collected by a municipality under state law as a consequence of the participation  
2 by the party in the approved qualified project.

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

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

5 (b) Notwithstanding (a) of this section, a party to a contract approved by the  
6 legislature as a result of submission of a proposed contract developed under AS 43.82  
7 is exempt, as specified in the contract, from assessment under this chapter against real  
8 property associated with the approved qualified project that is subject to the contract.

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

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

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

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

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

22 (h) A corporation that has signed a contract approved by the legislature as a  
23 result of submission of a proposed contract developed under AS 43.82 providing for  
24 payments in lieu of the tax under this chapter and that has nexus with the state solely  
25 as the result of the corporation's participation in the approved qualified project that is  
26 subject to the contract is not required to file a return under this section unless required  
27 to do so by the contract.

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

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

# Alaska State Legislature

## House Resources Committee

**Co-Chair Scott Ogan**  
(907) 465-3715  
FAX (907) 465-3265  
Capitol Building, Room 124  
Juneau, Alaska 99801



**Co-Chair Bill Hudson**  
(907) 465-6820  
FAX (907) 465-2273  
Committee Meetings  
T/Th 1 - 4 p.m.

Vice Chair: Beverly Masck.

Representatives Ramona Barnes, Fred Dyson, Joe Green, Reggie Joule, Irene Nicholia, William Williams

### MEMORANDUM

**TO:** House Resources Committee Members

**FROM:** Representative Scott Ogan,  
Co-Chairman House Resources Committee

**RE:** CSHB 393 (RES)  
Summary of Changes

**DATE:** March 31, 1998

---

Page 7, line 2:

Permit possession was previously included in the list of criteria a qualified sponsor or qualified sponsor group must have one or more of. The new language states that to be a qualified sponsor or qualified sponsor group, the applicant must hold the necessary permits determined by the department.

Page 15, line 23:

Defines Alaska resident as a person who is qualified to register to vote in the State of Alaska and qualifies for a resident license under AS 16. \*see new amendment

Page 26, lines 15-18:

This change allows the Legislature to negotiate its own contracts with a qualified sponsor or qualified sponsor group. A qualified sponsor or qualified sponsor group will have the option of applying through the legislature as well as the executive branch.

15T

0-GH2006P.1  
Glover  
3/30/98

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 393(RES), Draft Version "P"

- 1 Page 15, line 23:
- 2 Delete "qualified to register to vote in this state"
- 3 Insert "registered to vote under AS 15"

# LEGAL SERVICES

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

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

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

March 30, 1998

**SUBJECT:** Alaska Stranded Gas Act (CSHB 393(RES))

**TO:** Representative Scott Ogan  
Attn: David Stancliff

**FROM:** Richard A. Glover *-RAG*  
Legislative Counsel

Enclosed is the CS you requested.

AS 43.82.220 limits the scope of this bill to gas royalties only. A specific statement regarding this appears in AS 43.82.220(d), prohibiting modification of oil royalty under the provisions of the bill.

I would also like to bring to your attention that the bill as introduced does not seem to comply with Art. IX, sec. 1 of the state constitution which states:

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

Under AS 43.82.210 of the bill, or as negotiated by the legislature as contemplated by the new AS 43.82.650, a contract may contain terms that substitute periodic payments in lieu of taxes. These contract terms will, I suppose, be expected to prevent the state from later changing the law and imposing those taxes as a result of the federal and state prohibitions on the impairment of contracts. (Art. I, sec. 15, Constitution of the State of Alaska) The problem is that this is exactly the kind of contract that is prohibited under Art. IX, sec. 1. While the state may certainly provide for a tax exemption, I do not think it is possible for the state to give up its power to repeal the exemption and impose the tax in the future. Any contract that has that effect will probably be void as against public policy.

If I may be of further assistance, please advise.

RAG:jdr:glc  
98-202.jdr

Enclosure

# LEGAL SERVICES

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130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

March 30, 1998

**SUBJECT:** Sectional Summary of Alaska Stranded Gas Act. (HB 393(O&G))

**TO:** Representative Ramona Barnes  
Attn: Eleanor

**FROM:** Richard A. Glover *RA G*  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill states legislative findings.

Section 2 of the bill states legislative intent.

Section 3 of the bill inserts a new chapter into title 43 of the Alaska Statutes for the development of contracts for the development of gas resources in the state. A brief description of the sections in the new AS 43.82 are as follows:

**AS 43.82.010 Purpose.**

This section states the purpose of the chapter.

**AS 43.82.020. Contracts for payments in lieu of other taxes and for royalty adjustments.**

This section specifies that the commissioner of the department of revenue may negotiate contracts that provide for periodic payments instead of taxes, and reductions in royalty payments under existing leases with qualified persons. Contracts that contain such terms may violate art. I, sec. 15, or art. IX, sec. 1, Constitution of the State of Alaska, or both. Failure to comply with the terms of such contracts may violate the contracts clause of the U.S. Constitution.

Representative Ramona Barnes

March 30, 1998

Page 2

**AS 43.82.100. Qualified project.**

This section specifies the criteria that a proposed project must meet to be considered a qualified project. The criteria are in terms of a projected quantity of gas to be produced and the objective need of the state for the gas.

**AS 43.82.110. Qualified sponsor or qualified sponsor group.**

This section specifies which persons may negotiate with the commissioner to develop a proposed contract for the development of state gas resources. The sponsor or sponsor group must have ownership interest in the gas to be developed, or intend to acquire an ownership in the gas in the future. The sponsor or sponsor group must also meet financial resources criteria.

**AS 43.82.120. Applications.**

This section describes the process that a qualified sponsor or sponsor group must complete in submitting a proposed project plan for consideration by the commissioner of revenue as a first step to developing a contract for the development of gas resources. The sponsor or sponsor group must demonstrate that the gas resources to be developed meet the required criteria, and that the sponsor or sponsor group meets the criteria for qualification. Specific provisions are listed that must be contained in a proposed project plan.

**AS 43.82.130. Qualified project plan.**

This section describes the evaluation criteria to be used to determine if a proposed project plan may be approved as a qualified project plan.

**AS 43.82.140. Review of applications and determination of qualifications.**

This section specifies that the commissioner of revenue reviews an application for determination of qualifications of the sponsor or sponsor group and the qualification of the proposed project. The proposed project plan is reviewed by the commissioner of revenue and commissioner of natural resources. The commissioner of revenue approves a plan only if the commissioner of natural resources concurs with the approval. Written notice of the determinations is to be sent to the applicants.

**AS 43.82.150. Actions challenging determinations on applications.**

This section restricts the grounds for judicial review of determinations made on applications by a sponsor or sponsor group. The section may be inoperative as violative of constitutional guarantees, such as equal protection under the law.

**AS 43.82.160. Multiple applications for similar or competing qualified projects.**

Specifies that sponsors or sponsor groups may submit multiple competing or similar applications, and approval may be granted to any such applications.

**AS 43.82.170. Application deadline.**

States that applications are due no later than June 30, 2001.

**AS 43.82.180. Withdrawal of applications.**

States that applications may be freely withdrawn without further obligation of a party, if withdrawn prior to the submission of a contract to the governor.

**AS 43.82.200. Contract development.**

This section generally specifies the terms that may be included in a proposed contract.

**AS 43.82.210. Contract terms relating to payment in lieu of one or more taxes.**

This section lists certain taxes that may be waived by the proposed contract, and replaced with periodic payments. General principles for negotiating the terms are provided in subsection (b).

**AS 43.82.220. Contract terms relating to royalty.**

This section provides for the inclusion of terms in a proposed contract that modify royalty rights with respect to the state's right to receive royalty on gas. The terms may also specify the means for determining royalty value.

**AS 43.82.230. Contract terms relating to hiring of Alaska residents and contracting with Alaska businesses.**

This section requires a term in a proposed contract that requires a sponsor, sponsor group, and their contractors to comply with anti-discrimination laws regarding local hire. The contract must also contain a term requiring employment of Alaska workers and businesses to the maximum extent permitted by law. The proposed contract is to require local advertisement of employment opportunities. Alaska residents and businesses are defined.

It is unlikely local hire preference terms will be required, as they are generally disfavored by the courts as an abridgment of the privileges and immunities clause of the U.S. Constitution.

**AS 43.82.240. Use of an independent contractor.**

This section allows the commissioner of revenue to employ an independent contractor to assist in evaluating proposed contracts. The commissioner may require a promise of reimbursement from an applicant for the cost of employment of the contractor as a condition of considering an application. A contractor must sign a confidentiality agreement.

**AS 43.82.250. Term of contract; effective date.**

This section specifies the maximum term of the proposed contract.

**AS 43.82.260. Change of parties to an application or a contract; assignment of interests.**

This section provides for the alienation of an interest in an application, and for inclusion of terms in a proposed contract that provide for alienation of interests in the contract.

Representative Ramona Barnes

March 30, 1998

Page 4

**AS 43.82.270. Project plans and work commitments.**

This section requires terms in a proposed contract that incorporate the approved project plan, and for periodic review of the plan at reasonable intervals. Terms requiring work commitments or other obligations may be included in the proposed contract.

**AS 43.82.300. Requests for information.**

This section specifies that submission of financial, technical and market information regarding the project upon request by the commissioner of revenue is a condition of continued review of an application for approval as a qualified project.

**AS 43.82.310. Disclosure of information; confidentiality.**

This section allows applicants for a qualified project to request confidential treatment of information submitted in response to a request by the state. The conditions for treating the information as confidential is specified.

**AS 43.82.400. Preliminary findings and determination regarding the contract.**

This section requires that the commissioner of revenue prepare a preliminary findings for a proposed contract that the contract is in the long term fiscal interests of the state, and that the contract furthers the purposes of the chapter. If a contract is prepared, the commissioner must transmit it to the governor. The commissioner must describe the effects of the contract in a preliminary findings report. Material differences from a previously proposed contract must be described in the findings.

**AS 43.82.410. Notice and comment regarding the contract.**

The commissioner is to give reasonable public notice of the preliminary findings regarding the proposed contract, and a comment process, with provisions for the confidentiality of certain information, is to be provided. The commissioner is to report the proposed contract and supporting information to the legislature and certain bodies within the legislature, and to offer to appear before the legislature.

**AS 43.82.420. Coordination of public and legislative review.**

The public and legislative review of the proposed contract is to be coordinated to the extent practicable.

**AS 43.82.435. Legislative authorization.**

This section allows the governor to transmit a proposed contract to the legislature to seek approval to execute it. A contract developed under the chapter is not binding until authorized by law.

**AS 43.82.440. Judicial review.**

This section forecloses certain judicial remedies regarding the contracts developed under this chapter unless brought within 120 days after the date the contract was executed.

**AS 43.82.445. Administrative termination of a contract.**

This section requires terms in a contract that allow for termination of the state's obligations under the contract if certain conditions are met. The terms are to provide due process prior to terminating the contract. Limitations to the power to terminate are made upon full funding by a party in default. An appeals provision is specified.

**AS 43.82.500-505. Obligation to share payments with municipalities; payments to economically affected municipalities.**

The proposed contracts must provide for payments to certain affected municipalities.

**AS 43.82.510. Municipal advisory group.**

Municipal advisory groups are established.

**AS 43.82.520. Duties of the commissioner of revenue in relation to municipal participation.**

This section describes the duties of the municipal advisory groups and the duties of the commissioner of revenue in consulting with the groups.

**AS 43.82.600. Governing law.**

AS 43.82 is given precedent over conflicting statutes or ordinances.

**AS 43.82.610. Regulations.**

The commissioners of revenue, natural resources, and labor are given regulatory powers to carry out the provisions of the chapter.

**AS 43.82.620. Procedures for collection of amounts due; security.**

This section allows the commissioner of revenue to establish procedures for the collection of amounts due under a contract developed under the chapter and subsequently executed, and to require a party to an executed contract to provide reasonable security for those amounts.

**AS 43.82.630. Reports and audits.**

This section allows the commissioner of revenue to require periodic inspection of the records of a party to a contract developed under the chapter and subsequently executed.

**AS 43.82.640. Annual report of the commissioner of labor.**

This section requires an annual report to the legislature by the commissioner of labor on the status of the state residency of the employees working on a project under a contract developed under AS 43.82 and subsequently executed.

**AS 43.82.900. Definitions.**

Provides definitions of certain terms used in AS 43.82.

Representative Ramona Barnes

March 30, 1998

Page 6

**AS 43.82.990. Short title.**

AS 43.82 may be cited as the Alaska Stranded Gas Development Act.

Section 4 of the bill makes technical amendments to AS 29.10.200 to allow for contractual exemptions from certain taxes.

Section 5 of the bill makes technical amendments to AS 29.45 to allow for contractual exemptions from certain taxes.

Section 6 of the bill makes technical amendments to AS 29.46.010 to allow for contractual exemptions from certain taxes.

Section 7 of the bill makes technical amendments to AS 36.30.850(b) to allow for contractual exemptions from certain provisions of the state procurement code.

Section 8 of the bill amends AS 43.20.072 to exempt certain taxpayers from filing a state income tax return.

Section 9 of the bill amends AS 43.20.073 to exempt certain corporations from filing a state income tax return.

Section 10 of the bill provides for severability of the Act.

Section 11 of the bill provides for an immediate effective date.

RAG:pl

98-072.plm

0-GH2006P  
Glover  
3/30/98

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

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

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

30 (8) for a North Slope liquefied natural gas project to become economically  
31 viable and competitive, the estimated costs of constructing such a project must be reduced

1 significantly; reducing the financial risk associated with the project would also improve the  
2 project's chances of becoming economically viable and competitive;

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

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

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

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

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

31 (A) enable the state to create a fiscal regime that is less front-end

1 loaded and less regressive for a project without rewriting the tax laws for gas already  
2 being developed and produced;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (1) encourage new investment to develop the state's stranded gas

1 resources by authorizing establishment of fiscal terms related to that new investment  
2 without significantly altering tax and royalty methodologies and rates on existing oil  
3 and gas infrastructure and production;

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

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

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

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

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

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

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

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

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

29 **Sec. 43.82.110. Qualified sponsor or qualified sponsor group.** The  
30 commissioner may determine that a person or group is a qualified sponsor or qualified  
31 sponsor group if the person or a member of the group

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 20                                   **Article 3. Contract Development.**

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

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

26                           (2) terms developed under AS 43.82.220 relating to

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

29   (B) royalty value;

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

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

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

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

7 (7) other terms or conditions that are

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

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

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

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

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

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

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

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

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

25 (7) municipal special assessments under AS 29.46;

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

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

30 (b) If the commissioner chooses to develop proposed terms under (a) of this  
31 section, the commissioner shall, if practicable and consistent with the long-term fiscal

1 interests of the state, develop the terms in a manner that attempts to balance the  
2 following principles:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (d) Nothing in this chapter permits modification of the state's rights that relate

1 to timing, notice, and rights to receive oil royalty in kind or in value under oil and gas  
2 leases or unit agreements.

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

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

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

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

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

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

30 (e) For purposes of this section,

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

1 (A) has held an Alaska business license for the preceding 12  
2 months;

3 (B) maintains, and has maintained for the preceding 12 months,  
4 a place of business in the state that competently and professionally deals in  
5 supplies, services, or construction of the nature required for the approved  
6 qualified project; and

7 (C) is

8 (i) a sole proprietorship and the proprietor is an Alaska  
9 resident;

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

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

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

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

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

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

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

\* 23

24 (B) is qualified to register to vote in this state and qualifies for  
25 a 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  
is to be performed;

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

1 to perform a particular service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 notice and an opportunity to be heard.

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

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

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

1 revenue, the commissioner of natural resources, or the attorney general with respect  
2 to a particular provision that may be incorporated into the contract are not public  
3 records until the commissioner of revenue gives public notice under AS 43.82.410 of  
4 the commissioner's preliminary findings and determination under AS 43.82.40'.  
5 Nothing in this subsection

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

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

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

#### 12 **Article 5. Contract Review, Approval, and Termination.**

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

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

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

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

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

1 previously submitted a proposed contract to the governor, the commissioner shall  
2 describe any material differences between the terms of the currently proposed contract  
3 and the previously proposed contract.

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

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

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

13 .o

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

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

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

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

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

31 **Sec. 43.82.420. Coordination of public and legislative review.** To the extent

1 practicable, the commissioner shall coordinate the public comment opportunity  
2 provided under AS 43.82.410(4) with a review by the Legislative Budget and Audit  
3 Committee under AS 43.82.410(3).

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

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

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

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

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

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

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

31 **Sec. 43.82.440. Judicial review.** A person may not bring an action

1 challenging the constitutionality of a law authorizing a contract enacted under  
2 AS 43.82.435 or the enforceability of a contract executed under a law authorizing a  
3 contract enacted under AS 43.82.435 unless the action is commenced within 120 days  
4 after the date that the contract was executed by the state and the other parties to the  
5 contract.

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

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

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

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

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

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

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

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

30 (e) The commissioner may provide terms and conditions in a contract  
31 developed under AS 43.82.020 upon which a party's rights under the contract may be

1 administratively terminated after the party commits full project funding.

2 **Article 6. Municipal Participation.**

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

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

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

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

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

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

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

30 (b) In developing a contract under AS 43.82.200 - 43.82.270, the commissioner  
31 shall ensure that each revenue-affected municipality and economically affected

1 municipality receives a fair and reasonable share of the payments provided under  
2 AS 43.82.210 in accordance with the following principles:

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

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

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

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

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

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

19 **Article 7. Miscellaneous Provisions.**

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

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

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

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



1 AS 43.82.140(a); the commissioner may consider historical data from construction of  
2 the Trans Alaska Pipeline System, and information submitted by a municipality in  
3 making the determination;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2       **Sec. 29.45.810. Exemption from municipal taxation.** (a) A party to a  
3 contract approved by the legislature as a result of submission of a proposed contract  
4 developed under AS 43.82 or as a result of acts by the legislature in implementing the  
5 purposes of AS 43.82, and the property, gas, products, and activities associated with  
6 the approved qualified project that is subject to the contract, are exempt, as specified  
7 in the contract, from all taxes identified in the contract that would be levied and  
8 collected by a municipality under state law as a consequence of the participation by  
9 the party in the approved qualified project.

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

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

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

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

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

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

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

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

31       (h) A corporation that has signed a contract approved by the legislature as a

1 result of submission of a proposed contract developed under AS 43.82 or as a result  
2 of acts by the legislature in implementing the purposes of AS 43.82, providing for  
3 payments in lieu of the tax under this chapter and that has nexus with the state solely  
4 as the result of the corporation's participation in the approved qualified project that is  
5 subject to the contract is not required to file a return under this section unless required  
6 to do so by the contract.

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

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