

11861 SENATE JUDICIARY

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 316(), Draft Version "Y"

- 1 Page 3, line 6, following "challengir.g":
- 2 Insert "the final findings and determination of the commissioner of revenue made
- 3 under AS 43.82.430(a)."

24-LS1842Y
Chenoweth
4/24/06

CS FOR SENATE BILL NO. 316()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 "An Act amending provisions of the Alaska Stranded Gas Development Act relating to
2 establishing when records and files relevant to development of a contract for payments
3 in lieu of taxes and for the other purposes described in that Act become public records,
4 to legislative review of, and authorization to execute, a proposed contract negotiated
5 under that Act, and to judicial review of the findings and recommendation that support
6 a proposed contract, its authorization, and its enforceability; and providing for an
7 effective date."

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

9 * Section 1. AS 43.82.310(f) is amended to read:

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

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

7 (1) makes a record or file of the Department of Revenue, the
 8 Department of Natural Resources, or the Department of Law a public record that
 9 otherwise would not be a public record under AS 40.25.100 - 40.25.220;

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

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

13 * Sec. 2. AS 43.82.435 is repealed and reenacted to read:

14 **Sec. 43.82.435. Legislative authorization.** (a) The governor may transmit a
 15 contract developed under this chapter to the legislature together with a request for
 16 authorization to execute the contract.

17 (b) Concurrent with transmittal of the contract and request for authorization
 18 under (a) of this section, the governor shall

19 (1) submit to the legislature the commissioner's final findings and
 20 determination and the financial, technical, and market data, including the work papers,
 21 analyses, and recommendations of any independent contractors used under
 22 AS 43.82.240, that were considered by the commissioner to make the findings and
 23 determination; and

24 (2) make available to the public copies of the proposed contract and
 25 the material described in (1) of this subsection.

26 (c) After considering the material described in (b)(1) of this section and other
 27 information that the legislature considers relevant that it has requested from the
 28 governor and state agencies and received, the legislature may, by law, authorize the
 29 state to execute the contract transmitted by the governor.

30 (d) A contract developed under this chapter is not binding on or enforceable
 31 against the state or other parties to the contract unless the governor is authorized to

Supporting info

1 execute the contract by law.

2 (e) The state and the other parties to the contract may execute the contract
3 within 60 days after the effective date of the law authorizing the contract.

4 * Sec. 3. AS 43.82.440 is amended to read:

5 **Sec. 43.82.440. Judicial review. Notwithstanding any other provision of**
6 **law, a [A] person may not bring an action challenging the findings and**
7 **determinations relied on by the legislature to authorize the execution of a**
8 **contract developed under this chapter,** the constitutionality of a law authorizing a
9 contract enacted under AS 43.82.435, or the enforceability of a contract executed
10 under a law authorizing a contract enacted under AS 43.82.435 **until that contract**
11 **has been executed and** unless the action is commenced within 120 days after the date
12 that the contract was executed by the state and the other parties to the contract.

13 * Sec. 4. AS 43.82.430(c) is repealed.

14 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

~~contracts~~

*we have affirm. final
preserved that challenge
but limited the time...*

severability

LEGAL SERVICES

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

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

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

MEMORANDUM

April 24, 2006

SUBJECT: Draft CSSB 316(JUD)
(Work Order No. 24-LS1842\Y)

TO: Senator Ralph Seekins
Chair of the Senate Judiciary Committee

FROM: Jack Chenoweth
Assistant Revisor

With inclusion of material in AS 43.55.435(b)(1), you invite a conflict between AS 43.82.310(f), making "public records" out of

the portions of the records and files of the Department of Revenue, the Department of Natural Resources, the Department of Law, and a municipal advisory group established under AS 43.82.510 that reflect, incorporate, or analyze information that is relevant to the development of the position or strategy of [specific public officers] with respect to a particular provision that may be incorporated into the contract

once the commissioner of the Department of Revenue "gives public notice under AS 43.82.410 of the commissioner's preliminary findings and determination under AS 43.82.400," and proposed AS 43.82.435(b)(1) that, under (b)(2), requires the commissioner to make available to the public

the financial, technical, and market data, including the work papers, analyses, and recommendations of independent contractors . . . that the commissioner considered.

To the extent that these provisions identify different subsets of records and information, it is not clear to me that public release, and the identity of the documents to be released, will occur (1) when notice is given or (2) when actual submission is made to the legislature. My point is this: you may be able to do with one or the other, but having both may open the door to argument that a record or information need not be disclosed -- at least "not now" -- because a condition hasn't been met.

If you decide to retain both references, identification of what should be released should be precise. There are differences between the material described in AS 43.82.310(f) and the material described in AS 43.82.435(b)(1). You should consider eliminating those

Senator Ralph Seekins

April 24, 2006

Page 2

differences. If what you want to be released to the public is that which is described in proposed AS 43.82.435(b)(1), then those same records and sources of information should either be set out again in AS 43.82.310(f) or should be cross-referenced.

Do you want to require release "sooner" rather than "later"? If so, then, it seems to me, you'll want to require release under AS 43.82.310(f), which seems to me to be a point in time that will always be earlier than release under proposed AS 43.82.435(b)(1).

JBC:med

06-333.med

Enclosure

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

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

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

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

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

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

Notwithstanding other provisions of this section to the contrary, the Department of Commerce, Community, and Economic Development may continue to charge the same fees that the former Department of Commerce and Economic Development was charging on July 1, 1999, for performing record searches for matters related to banking, securities, and corporations, and may increase the fees as necessary to recover agency expenses on the same basis that was used by the former Department of Commerce and Economic Development immediately before July 1, 1999.

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

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

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

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

Sec. 40.25.115. Electronic services and products.

(a) Notwithstanding AS 40.25.110 (b) - (d) to the contrary, upon request and payment of a fee established under (b) of this section, a public agency may provide electronic services and products involving public records to members of the public. A public agency is encouraged to make information available in usable electronic formats to the greatest extent feasible. The activities authorized

under this section may not take priority over the primary responsibilities of a public agency.

(b) The fee for electronic services and products must be based on recovery of the actual incremental costs of providing the electronic services and products, and a reasonable portion of the costs associated with building and maintaining the information system of the public agency. The fee may be reduced or waived by the public agency if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.

(c) Notwithstanding (b) of this section, the fee for duplicating a public record in the electronic form kept by a public agency may not exceed the actual incremental costs of the public agency.

(d) Public agencies shall include in a contract for electronic services and products provisions that

(1) protect the security and integrity of the information system of the public agency and of information systems that are shared by public agencies; and

(2) limit the liability of the public agency providing the services and products.

(e) Each public agency shall notify the state library distribution and data access center established under \S 14.56.090 of the electronic services and products offered by the public agency to the public under this section. The notification must include a summary of the available format options and the fees charged.

(f) When offering on-line access to an electronic file or data base, a public agency also shall provide without charge on-line access to the electronic file or data base through one or more public terminals.

(g) Each public agency shall establish the fees for the electronic services and products provided under this section. The governor may cancel the fees established by a public agency in the executive branch, except the fees of the University of Alaska and the Alaska Railroad Corporation, if the governor determines that the fees are unreasonably high.

(h) A public agency may not make electronic services and products available to one member of the public and withhold them from other members of the public.

(i) A public agency other than a municipality or the Alaska Railroad Corporation shall separately account for the fees received by the agency under this section and deposited in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the agency to carry out the activities of the agency.

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

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

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

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

(3) medical and related public health records;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Recorders shall permit memoranda, transcripts, and copies of the public records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the records and to prevent interference with the regular discharge of the duties of the recorders and their employees.

Sec. 40.25.121. Copies of public records for veterans.

When a copy of a public record is required by the Department of Military and Veterans' Affairs, the Department of Commerce, Community, and Economic Development, or by the United States Department of Veterans Affairs to be used in determining the eligibility of a person to participate in benefits, the official custodian of the public record shall, without charge, provide the applicant for the benefits, a person acting on behalf of the applicant, or an authorized representative of the department or the United States Department of Veterans Affairs with a certified copy of the record.

Sec. 40.25.122. Litigation disclosure.

A public record that is subject to disclosure and copying under AS 40.25.110 - 40.25.120 remains a public record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement proceedings, involving a public agency, except that with respect to a person involved in litigation, the records sought shall be disclosed in accordance with the rules of procedure applicable in a court or an administrative adjudication. In this section, "involved in litigation" means a party to litigation or representing a party to litigation, including obtaining public records for the party.

Sec. 40.25.123. Supervision and regulation.

(a) The Department of Administration shall supervise and adopt regulations for the operation and implementation of AS 40.25.110 - 40.25.140 by public agencies in the executive branch, except the Alaska Railroad Corporation.

(b) The legislative council shall supervise and adopt procedures for the operation and implementation of AS 40.25.110 - 40.25.140 by public agencies in the legislative branch.

(c) The administrative director of courts shall supervise and adopt procedures for the operation and implementation of AS 40.25.110 - 40.25.140 by public agencies in the judicial branch.

(d) The Board of Regents of the University of Alaska shall supervise and adopt procedures for the operation and implementation of AS 40.25.110 - 40.25.140 by the University of Alaska.

(e) The regulations and procedures adopted under this section must include the establishment of procedures for making an administrative appeal of public agency action that is taken under AS 40.25.110 - 40.25.140.

(f) In this section,

(1) "action" includes the calculation of a fee, the denial of a fee reduction or waiver, and the denial of a request to inspect or copy a public record;

(2) "public agency" does not include a municipality.

Sec. 40.25.124. Appeals.

A person may appeal to the superior court the final administrative order made by a public agency under AS 40.25.110 - 40.25.140.

Sec. 40.25.125. Enforcement: Injunctive relief.

A person having custody or control of a public record who denies, obstructs, or attempts to obstruct, or a person not having custody or control who aids or abets another person in denying, obstructing, or attempting to obstruct, the inspection of a public record subject to inspection under AS 40.25.110 or 40.25.120 may be enjoined by the superior court from denying, obstructing, or attempting to obstruct, the inspection of public records subject to inspection under AS 40.25.110 or 40.25.120. A person may seek injunctive relief under this section without exhausting the person's remedies under AS 40.25.123 - 40.25.124.

Sec. 40.25.140. Confidentiality of library records.

(a) Except as provided in (b) of this section, the names, addresses, or other personal identifying information of people who have used materials made available to the public by a library shall be kept confidential, except upon court order, and are not subject to inspection under AS 40.25.110 or 40.25.120. This section applies to libraries operated by the state, a municipality, or a public school, including the University of Alaska.

(b) Records of a public elementary or secondary school library identifying a minor child shall be made available on request to a parent or guardian of that child.

Sec. 40.25.151. Confidentiality of retirement records.

(a) Except as provided in (b) - (d) of this section, public records, including electronic services and products involving public records, containing information about a person and maintained under AS 14.25, AS 22.25, AS 26.05.222 - 26.05.229, AS 39.35, or former AS 39.37 shall be kept confidential and are not subject to inspection or copying under AS 40.25.110 - 40.25.120.

(b) Records described in (a) of this section concerning a person who is a member or former member of a state retirement system who is still living may only be released to

- (1) the person or the person's guardian;
- (2) the person's employer or former employer;
- (3) a state agency authorized to obtain confidential information;
- (4) another person if the person has

(A) written authorization for release from the affected member or former member or the member's or former member's guardian; or

(B) a court order or subpoena to obtain the information.

(c) Records described in (a) of this section concerning a member or former member of a state retirement system who is deceased or a deceased member's named beneficiary may only be released to

- (1) the member's named beneficiary or the beneficiary's guardian;
- (2) the member's or former member's former employer;
- (3) a state agency authorized to obtain confidential information;
- (4) the personal representative of the member's or former member's estate;
- (5) another person if the person has

(A) written authorization for release from the member or former member, the member's named beneficiary, or the personal representative of the member's or former member's estate; or

(B) a court order or subpoena to secure the information.

(d) The name and address of a living person who is a member or former member of a state retirement system may be released to a retirement organization representing persons receiving benefits under a state retirement system if the retirement organization is affiliated with an organization representing employees of the employer under AS 23.40.070 - 23.40.260 (Public Employment Relations Act).

(e) In this section, "state retirement system" means the teachers' retirement system under AS 14.25, the judicial retirement system under AS 22.25, the retirement system for members of the national guard under AS 26.05.222 - 26.05.229, the public employees' retirement system under AS 39.35, or the elected public officers retirement system under former AS 39.37.

Sec. 40.25.220. Definitions for AS 40.25.100 - 40.25.220.

In AS 40.25.100 - 40.25.220, unless the context otherwise requires,

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

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

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

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

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

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

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

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

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

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

(4) *[Repealed, E.O. No. 113 Sec. 18 (2005)].*

AMENDMENT

OFFERED IN THE SENATE
TO: SB 316

BY SENATOR FRENCH

1 Page 1, line 1:

2 Delete "eliminate"

3 Insert "limit"

4

5 Page 1, line 7, through page 2, line 28:

6 Delete all material and insert:

7 **"* Section 1.** AS 43.82.430(c) is amended to read:

8 (c) The commissioner's final findings and determination under (a) of this
9 section

10 (1) are final agency decisions under this chapter; and

11 (2) may be made the subject of judicial review under AS 44.62, as
12 authorized by AS 44.62.560(a) and applicable rules of court governing appeals in
13 civil matters, only if a proposed contract negotiated with a qualified sponsor or
14 qualified sponsor group under this chapter is executed as authorized by law.

15 * **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c)."

SENATE BILL NO. 316

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced: 4/13/06

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act amending the Alaska Stranded Gas Development Act to eliminate the
2 opportunity for judicial review of the findings and determination of the commissioner of
3 revenue on which are based legislative review for a proposed contract for payments in
4 lieu of taxes and for the other purposes described in that Act; and providing for an
5 effective date."

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

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

9 **LEGISLATIVE FINDINGS AND PURPOSE.** (a) The legislature finds that
10 (1) when introduced in 1998 at the request of the governor, the bill to enact the
11 Alaska Stranded Gas Development Act provided that the commissioner of revenue, after
12 making preliminary findings and a determination, providing opportunity for public review of
13 and comment on those preliminary decisions, and making final findings and a determination,

1 had the discretionary authority to execute the contract for payments in lieu of taxes and for the
2 other purposes described in the proposed Alaska Stranded Gas Development Act if the
3 commissioner determined that a contract authorized by that Act would serve the long-term
4 fiscal interests of the state; the proposed Act declared that the commissioner's final findings
5 and determinations and decisions as to whether or not to execute the contract constituted final
6 agency decisions; the declaration was consistent with the notion that the commissioner's
7 conclusion would constitute a final administrative decision that might be subject to judicial
8 review; and

9 (2) legislative action on the bill to enact the Alaska Stranded Gas
10 Development Act incorporated a provision allowing for legislative review of the
11 commissioner's determination and withholding of the authority to execute a contract for
12 payments in lieu of taxes and for the other purposes described in the Act until the legislature,
13 by law, authorizes the governor to execute it; consequently, the commissioner's final
14 determination was substantially changed so that it is no longer to be regarded as a final
15 administrative decision, but rather a recommendation subject to legislative review.

16 (b) It is the purpose of this Act to

17 (1) affirm that, consistent with AS 43.82.435, it is the legislature that must
18 exercise final authority over direction to execute any contract for payment in lieu of taxes and
19 for the other purposes described in the Alaska Stranded Gas Development Act; and

20 (2) assert that the reaffirmation of that legislative authority is made without
21 amendment or compromise of AS 43.82.440 regarding judicial review of a law enacted under
22 AS 43.82.435 or the enforceability of a contract executed under that law.

23 * Sec. 2. AS 43.82.430(c) is repealed and reenacted to read:

24 (c) Notwithstanding another provision of law, and except for a claim based on
25 the United States Constitution or the Constitution of the State of Alaska, the
26 commissioner's final findings and determination under (a) of this section are not
27 subject to review, stay, or injunction by any court.

28 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

unless a contract is authorized by the Legislature
no challenge $\frac{1}{0}$

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 16-DNR-O&G-04-17-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title Court Review of Stranded Gas Decision RDU Resource Development
 Component Oil and Gas Development
 Sponsor Senate Judiciary
 Requester Senate Judiciary Component No. 439

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact for DNR associated with implementation of this bill.

Prepared by: William Van Dyke, Acting Director
 Division Oil and Gas
 Approved by: Michael Menge, Commissioner
 Agency Natural Resources

Phone 269-8800
 Date/Time 4/17/2006
 Date 4/17/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB316-LAW-OGM-4-17-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title *An Act amending the Alaska Stranded Gas RDU CIVIL
Development Act to eliminate the opportunity for judicial review..* Component Oil, Gas & Mining
 Sponsor Senate Judiciary
 Requester Senate Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill repeals and reenacts AS 43.82.430 (c) of the Alaska Stranded Gas Development Act in order to clarify the legislature's role as the entity that authorizes execution of a contract proposed by the Commissioner of Revenue under the Alaska Stranded Gas Development Act. The change would make clear that, except for claims based on the U.S. or Alaska constitutions, the commissioner's findings and determination with respect to a proposed contract are not judicially reviewable.

Passage of this legislation will not have a fiscal impact on the Department of Law

Prepared by: Kathryn Daughhettee, Director Phone 465-3673
 Division Administrative Services Division Date/Time 4/17/06 4:27 PM
 Approved by: Kathryn Daughhettee for David Márquez, Attorney General Date 4/17/2006
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 316
 () Publish Date: _____

Revision Date/Time (None if correction): _____ Dept. Affected: Revenue
 Title COURT REVIEW OF STRANDED GAS DECISION RDU
 Component Commissioners Office
 Sponsor Senate Judiciary
 Requester Senate Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
Bond Proceeds						
Bond Bank Investment Earnings						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 316 properly recognizes that any final contract under the Alaska Stranded Gas Development Act is not a final contract until approved by the Legislature. The Commissioner's determination is a recommendation to the Governor and Legislature, not a "final administrative decision" and thus should not be subject to judicial review.

Prepared by: Jerry Burnett Phone 465-2312
 Division Administrative Services Date/Time 4/14/06 12:00 AM
Steve Porter Date _____
 Agency Department of Revenue

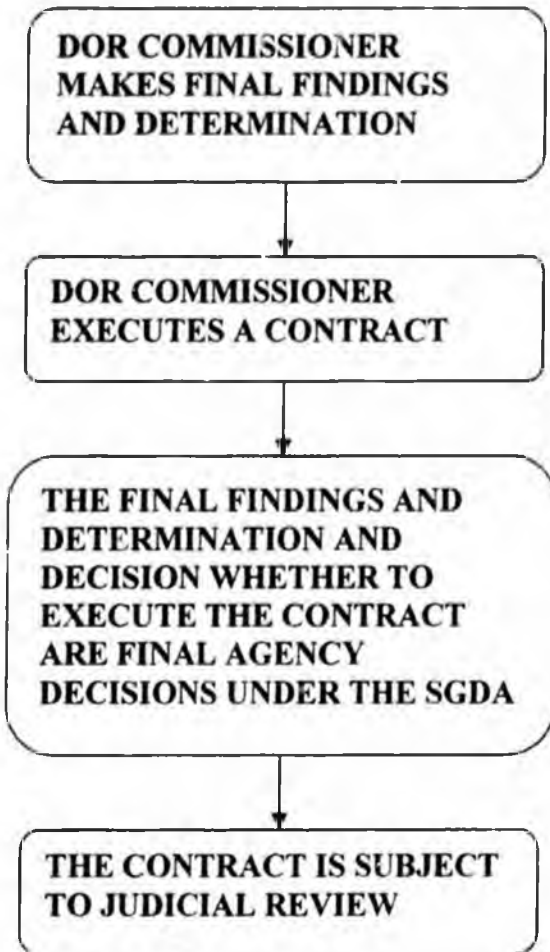
**S.B. 316
AMENDING STRANDED GAS DEVELOPMENT ACT
SECTION AS 43.82.430(c)**

FEBRUARY 11, 1998 (ORIGINAL) VERSION OF AS 43.82.430

COMPARED WITH

MARCH 26, 1998 (ENACTED) VERSION OF AS 43.82.430 AND AS 43.82.435

ORIGINAL VERSION



ENACTED VERSION



**ORIGINAL VERSION (02/11/1998) OF THE
SGDA - SECTION 430(c) AUTHORIZES
THE DOR COMMISSIONER TO
EXECUTE A CONTRACT WITHOUT
LEGISLATIVE AUTHORIZATION**

0-GH2006.A

HOUSE BILL NO. 393

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/11/98

Referred: House Special Committee on Oil and Gas, Finance

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 such
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 such projects; relating to the effect of such contracts on municipal taxation; and
7 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, which 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) on the North Slope, in the absence of an economic development
9 opportunity, gas produced along with oil has been used for pressure maintenance and enhanced
10 oil recovery, resulting in greater ultimate hydrocarbon recovery and higher rates of oil
11 production, to the benefit of the people of Alaska;

12 (5) in the Cook Inlet area, which is Alaska's other currently producing oil and
13 gas area, oil and gas exploration and development activities historically also have focused
14 more on oil than gas, although there has been a relatively greater degree of exploration for and
15 commercial development of gas in the Cook Inlet area than there has been on the North Slope;

16 (6) large areas of Alaska, encompassing a number of geologic provinces and
17 basins, do not have oil and gas production and still remain largely unexplored for oil and gas;
18 exploration for gas in some of these areas might be facilitated if infrastructure was
19 economically available to provide access for such gas to markets;

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

24 (8) although developing technology may offer other alternatives, such as gas-
25 to-liquids (GTL), currently the principal mode anticipated for stranded North Slope gas to
26 access markets outside the state is a gas pipeline to an ice-free Alaska port where the gas
27 would be turned into liquefied natural gas (LNG) and exported using specially designed
28 marine tankers;

29 (9) the gas pipeline required by a North Slope LNG project would be 800
30 miles long and expensive, with some estimates placing the construction cost for the project
31 as a whole as high as \$15 billion; at that cost, given the prevailing price levels in the East

1 Asian LNG market and the fact that most of the pipeline system costs must be incurred before
2 any gas is delivered to that market, the project is not economic;

3 (10) in addition, the size of the capital expenditure needed to get North Slope
4 gas to market via an LNG project requires long-term contracts for an enormous volume of gas,
5 on the order of 14 million metric tons per year of LNG; that volume of gas represents
6 approximately one-quarter of the entire East Asian LNG market today and probably cannot
7 be placed into that market all at once; to be successful, a North Slope LNG project needs to
8 reach this full annual volume in not more than six years from the commencement of
9 commercial operations (the "ramp up" period), which means that the project must secure most,
10 if not all, of the projected growth in demand for LNG in the East Asian market over the ramp
11 up period;

12 (11) for a North Slope LNG project to become economically viable and
13 competitive, the estimated costs of constructing such a project must be reduced significantly;
14 reducing the financial risk associated with the project would also improve its chances of
15 becoming economically viable and competitive;

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

20 (13) the state may also improve a stranded gas development project's
21 economics and competitiveness by adjusting the timing of the state's receipt of its share of
22 such a project's economic rent; for example, Alaska's present fiscal regime is "front-end
23 loaded," which means that the state and local governments take a significant part of their share
24 of a project's economic rent early in the project's life, even before such a project starts to
25 generate an income stream; the state and local governments may improve the economics of
26 a stranded gas development project by taking more of their share of a project's economic rent
27 later in the project's life;

28 (14) the state's present fiscal regime, as it would apply to a stranded gas
29 development project, also is regressive to the extent that it is insensitive to changes in a
30 project's profitability, so that in times of low profitability the state and local governments may
31 take an excessive amount of a project's economic rent, and in times of high profitability they

1 may take an inadequate amount of a project's economic rent; the state and local governments
2 may improve the economics of a stranded gas development project by making the overall
3 fiscal system less regressive and more responsive to the relative profitability of a project;

4 (15) establishing a fiscal regime applicable to a specific stranded gas
5 development project under a long-term contract with the state, where payments would be made
6 in lieu of other taxes, would enable the state to create a less "front-end loaded" and less
7 regressive fiscal regime for a project without rewriting the tax laws for gas already being
8 developed and produced; it would also enable the state to customize the timing and burden
9 of its fiscal regime to fit the economic circumstances of a particular stranded gas development
10 project; finally, it would reduce the financial risk of such a project by reducing uncertainty
11 about the fiscal terms applicable to the project;

12 (16) authorizing the state, through the executive branch, to enter into a contract
13 establishing the fiscal regime that would apply to a qualified project if it was built is an
14 exercise of the legislature's taxing power that is consistent with art. IX, sec. 1, of the
15 Constitution of the State of Alaska;

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

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

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

30 (20) good faith efforts by qualified sponsors and qualified sponsor groups that
31 have entered into a contract with the state under this Act, and their contractors, to undertake

1 voluntary actions to achieve employment of Alaska residents and Alaska businesses are in the
2 long-term interests of the state.

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

12 (b) The legislature intends that a qualified sponsor or qualified sponsor group that
13 enters into a contract relating to a stranded gas project under this Act, and its contractors, will,
14 with respect to the project, voluntarily

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

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

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

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

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

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

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

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

29 (2) allow the fiscal terms applicable to a qualified sponsor or the
30 members of a qualified sponsor group, with respect to a qualified project, to be tailored
31 to the project's particular economic conditions and to establish those fiscal terms in

1 advance and with as much certainty as the Constitution of the State of Alaska allows;
2 and

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

5 **Sec. 43.82.020. Contracts for payments in lieu of other taxes and for**
6 **royalty adjustments.** The commissioner may, under this chapter, enter into a contract
7 with a qualified sponsor or qualified sponsor group providing for (1) periodic payment
8 in lieu of one or more taxes that otherwise would be imposed by the state or a
9 municipality upon the qualified sponsor or members of the qualified sponsor group as
10 a consequence of the sponsor's or group's participation in an approved qualified
11 project under this chapter; and (2) certain adjustments regarding royalty under
12 AS 43.82.220.

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

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

17 (1) would produce at least 500 billion cubic feet of stranded gas within
18 20 years from the commencement of commercial operations; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (6) other information that the commissioner of revenue, in consultation

1 with the commissioner of natural resources, considers necessary to make a
2 determination that

3 (A) the work accomplished as of the date of application, the
4 schedule of proposed development activity, and the development activity
5 proposed to be accomplished under the proposed project plan reflect a proposal
6 for diligent development on the part of the applicant;

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

10 (C) the proposed project plan describes satisfactory methods and
11 terms for accommodating reasonably foreseeable demand for gas in this state
12 within proximity of the project during the term of the proposed contract.

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

18 **Sec. 43.82.130. Qualified project plan.** A proposed project plan submitted
19 under AS 43.82.120 may be approved as a qualified project plan under AS 43.82.140
20 if the proposed project plan

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

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

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

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

29 (a) The commissioner of revenue shall review an application submitted under
30 AS 43.82.120 to determine whether the provisions of AS 43.82.100 concerning a
31 qualified project and AS 43.82.110 concerning a qualified sponsor or qualified sponsor

1 group have been met. The commissioner of revenue may approve an application only
2 if those provisions have been met.

3 (b) If the commissioner of revenue approves an application under (a) of this
4 section, the commissioner of revenue and the commissioner of natural resources shall
5 review the proposed project plan submitted with the application to determine whether
6 the provisions of AS 43.82.130 have been met. The commissioner of revenue may
7 approve the proposed project plan as a qualified project plan only if the commissioner
8 of natural resources concurs in the approval.

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

11 **Sec. 43.82.150. Actions challenging determinations on applications.** (a)
12 Only an applicant under AS 43.82.120 who is aggrieved by a determination of the
13 commissioner of revenue or the commissioner of natural resources under AS 43.82.140
14 has standing to seek judicial review of the determination.

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

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

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

21 **Sec. 43.82.160. Multiple applications for similar or competing qualified**
22 **projects.** Nothing in this chapter prohibits different qualified sponsors or different
23 qualified sponsor groups from submitting applications under AS 43.82.120 relating to
24 similar or competing qualified projects, or prohibits the commissioner of revenue or
25 the commissioner of natural resources from reviewing and approving applications and
26 proposed project plans under AS 43.82.140 relating to similar or competing qualified
27 projects.

28 **Sec. 43.82.170. Application deadline.** The commissioner of revenue or the
29 commissioner of natural resources may not act on an application for a contract
30 submitted under AS 43.82.120 unless the application is received by the Department of
31 Revenue no later than June 30, 2004.

1 **Sec. 43.82.180. Withdrawal of applications.** Subject to the terms of a
 2 reimbursement agreement under AS 43.82.240 or other agreement with the Department
 3 of Revenue, the Department of Natural Resources, the commissioner of revenue, or the
 4 commissioner of natural resources affecting the withdrawal of an application, a
 5 qualified sponsor or qualified sponsor group may withdraw an application submitted
 6 under AS 43.82.120 at any time before the date that the commissioner of revenue
 7 enters into a contract under AS 43.82.430 without further obligation under this chapter.

8 **Article 3. Contract Development.**

9 **Sec. 43.82.200. Contract development.** If the commissioner of revenue
 10 approves an application and proposed project plan under AS 43.82.140, the
 11 commissioner may develop a contract under AS 43.82.020 that may include

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

14 (2) terms developed under AS 43.82.220 relating to

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

17 (B) royalty value;

18 (3) terms regarding Alaska hire and Alaska contracting under
 19 AS 43.82.230;

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

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

24 (6) terms and conditions for administrative termination of a contract
 25 under AS 43.82.440; and

26 (7) other terms or conditions that are

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

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

29 **Sec. 43.82.210. Contract terms relating to payment in lieu of one or more**
 30 **taxes.** (a) If the commissioner of revenue approves an application and proposed
 31 project plan under AS 43.82.140, the commissioner may develop proposed terms, for

1 inclusion in a contract under AS 43.82.020, for periodic payment in lieu of one or
2 more of the following taxes that otherwise would be imposed by the state or a
3 municipality upon the qualified sponsor or a member of the qualified sponsor group
4 as a consequence of participating in an approved qualified project:

- 5 (1) oil and gas production taxes and oil surcharges under AS 43.55;
- 6 (2) oil and gas exploration, production, and pipeline transportation
7 property taxes under AS 43.56;
- 8 (3) oil and gas conservation tax under AS 43.57;
- 9 (4) Alaska net income tax under AS 43.20;
- 10 (5) municipal sales and use tax under AS 29.45.650 - 29.45.680 or
11 29.45.700 - 29.45.710;
- 12 (6) municipal property tax under AS 29.45.010 - 29.45.250 or
13 29.45.550 - 29.45.600;
- 14 (7) municipal special assessments under AS 29.46;
- 15 (8) a comparable tax or levy imposed by the state or a municipality
16 after the effective date of this bill section;
- 17 (9) other state or municipal taxes or categories of taxes identified by
18 the commissioner.

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

- 23 (1) the terms should, in conjunction with other factors such as cost
24 reduction of the project, cost overrun risk reduction of the project, and increased fiscal
25 certainty and successful marketing, improve the competitiveness of the approved
26 qualified project in relation to other development efforts aimed at supplying the same
27 market;
- 28 (2) the terms should accommodate the interests of the state, the affected
29 municipalities, and the project sponsors under a wide range of economic conditions,
30 potential project structures, and marketing arrangements;
- 31 (3) the state's and affected municipalities' combined share of the

1 approved qualified project's economic rent under the contract should be relatively
2 progressive; that is, the state's and affected municipalities' combined annual share of
3 the approved qualified project's economic rent generally should not increase when
4 there are decreases in project profitability, or decrease when there are increases in
5 project profitability;

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

9 (5) the terms should allow the project sponsors to retain a share of the
10 approved qualified project's economic rent that is sufficient to compensate the sponsors
11 for risks under a range of economic circumstances;

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

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

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

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

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

31 (1) the viability of the approved qualified project depends upon long-

1 term gas purchase and sale agreements;

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

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

8 (4) the modification does not impair the ability of the approved
9 qualified project to meet the reasonably foreseeable demand in this state for gas within
10 proximity of the project during the term of the contract entered into under
11 AS 43.82.020.

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

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

20 **Sec. 43.82.230. Contract terms relating to Alaska hire and Alaska**
21 **contracting.** (a) The commissioner shall include in every contract under
22 AS 43.82.020 a term requiring the qualified sponsor or qualified sponsor group, and
23 its contractors, to comply with all valid federal, state, and municipal laws in hiring
24 Alaska residents and contracting with Alaska businesses to work in the state on the
25 approved qualified project, and to not discriminate against Alaska residents or Alaska
26 businesses. Within the constraints of law, the commissioner shall also include in a
27 contract under AS 43.82.020 a term that requires the qualified sponsor or qualified
28 sponsor group, and its contractors, to employ Alaska residents and Alaska businesses
29 to work in the state on the approved qualified project to the extent they are available,
30 competitively priced, and qualified.

31 (b) The commissioner shall include a term in every contract under

1 AS 43.82.020 requiring the qualified sponsor or qualified sponsor group, and its
2 contractors, to

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

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

9 (c) This section does not create or abridge individual rights and does not create
10 a private right of action for any person.

11 (d) For purposes of this section,

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

13 (A) has held an Alaska business license for the preceding 12
14 months;

15 (B) maintains, and has maintained for the preceding 12 months,
16 a place of business within the state that competently and professionally deals
17 in the supplies, services, or construction of the nature required for the approved
18 qualified project; and

19 (C) is

20 (i) a sole proprietorship and the proprietor is an Alaska
21 resident;

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

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

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

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

30 (2) "Alaska job service organizations" means those offices maintained
31 by the state and recommended by the Department of Labor whose functions are to aid

1 the unemployed or underemployed in finding employment;

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

3 (A) receives a permanent fund dividend under AS 43.25, or

4 (B) has any two of the following:

5 (i) current Alaska voter registration card;

6 (ii) current Alaska resident fishing, hunting, or trapping
7 license under AS 16;

8 (iii) current Alaska driver's license; or

9 (iv) current Alaska motor vehicle registration;

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

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

18 **Sec. 43.82.240. Use of an independent contractor.** (a) The commissioner
19 may use an independent contractor to assist in the evaluation of an application or in
20 the development of contract terms under AS 43.82.200. The commissioner may
21 condition the development of a contract under AS 43.82.020 upon an agreement by the
22 applicant to reimburse the state for the expenses of an independent contractor under
23 this section.

24 (b) An independent contractor selected under this section must sign an
25 agreement regarding confidentiality and disclosures, consistent with the determinations
26 made under AS 43.82.310, before the contractor may review information that is
27 determined confidential under that section.

28 (c) Selection of an independent contractor under this section is not subject to
29 AS 36.30.

30 **Sec. 43.82.250. Term of contract; effective date.** (a) A contract under
31 AS 43.82.020 may be entered into for a term no longer than is necessary to develop

1 the stranded gas that is subject to the contract; however, the term of the contract may
2 not exceed 35 years from the commencement of commercial operations of the
3 approved qualified project.

4 (b) The effective date of a contract under AS 43.82.020 is the date the
5 commissioner executes the contract unless another date is set out in the contract. The
6 commissioner may condition the effective date of a contract under AS 43.82.020 upon
7 the enactment of a federal law that improves the economic feasibility or
8 competitiveness of stranded gas projects in this state.

9 **Sec. 43.82.260. Change of parties to an application or a contract;**
10 **assignment of interests.** (a) A qualified sponsor or member of a qualified sponsor
11 group may assign an interest in an application under AS 43.82.120 or a contract under
12 AS 43.82.020, or add or withdraw a party to such an application or contract only if the
13 commissioner has

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

16 (2) given prior written approval for the assignment, addition, or
17 withdrawal.

18 (b) Upon being added to an application or contract under this section, a party
19 becomes a qualified sponsor or a member of a qualified sponsor group, as appropriate,
20 for the relevant project.

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

24 (d) For purposes of this section, an assignment includes a transfer of stock or
25 a partnership interest in a manner that changes control of a qualified sponsor or
26 member of a qualified sponsor group.

27 **Sec. 43.82.270. Project plans and work commitments.** A contract under
28 AS 43.82.020 must include the qualified project plan approved under AS 43.82.140
29 and provisions for updating the plan at reasonable intervals until the commencement
30 of commercial operations of the approved qualified project. The commissioner of
31 revenue, in consultation with the commissioner of natural resources, may, as a

1 condition of a contract under AS 43.82.020, include work commitments or other
2 obligations in the contract to be accomplished before the commencement of
3 commercial operations of the approved qualified project.

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

5 **Sec. 43.82.300. Requests for information.** The commissioner of revenue or
6 the commissioner of natural resources may request from an applicant information that
7 the respective commissioner determines is necessary to perform the respective
8 commissioner's responsibilities under AS 43.82.140. If the application is approved
9 under AS 43.82.140, the respective commissioner shall require the successful applicant
10 to provide financial, technical, and market information regarding the qualified project
11 that the respective commissioner determines is necessary for the purpose of developing
12 contract terms for the qualified project under AS 43.82.200. If requested information
13 is not provided, the commissioner of revenue may not continue to review the
14 application under AS 43.82.140 or develop the contract under AS 43.82.200 -
15 43.82.270, as applicable.

16 **Sec. 43.82.310. Disclosure of information; confidentiality.** (a) An applicant
17 may request confidential treatment of information that the applicant provides under
18 AS 43.82.300 by clearly identifying the information and the reasons supporting the
19 request for confidential treatment. The commissioner receiving the request shall keep
20 the information confidential until the commissioner determines whether the
21 requirements of (b) of this section are met. If the commissioner has not made a
22 determination under (b) of this section within 14 days after receiving a request, the
23 request is considered denied. If the commissioner determines that the information does
24 not meet the requirements of (b) of this section, or fails to make a determination
25 within 14 days, the commissioner shall return the information and any copies of it at
26 the request of the applicant that provided the information. If a commissioner returns
27 information under this subsection, the commissioner shall cease review of the
28 application or cease contract development under AS 43.82.200 - 43.82.270, as
29 applicable, unless the commissioner determines that the returned information is
30 unnecessary to make a determination on the application or to develop contract terms
31 under AS 43.82.200 - 43.82.270.

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

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

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

8 (3) has commercial value that may be significantly diminished by
9 public disclosure.

10 (c) Information determined to be confidential under (b) of this section is
11 confidential under that subsection only so long as is necessary to protect the
12 competitive position of the applicant and to prevent the significant diminution of the
13 commercial value of the information. A commissioner may not release information
14 that the commissioner has previously determined to be confidential under (b) of this
15 section without providing the applicant notice and an opportunity to be heard.

16 (d) Notwithstanding the release of information limitation of (c) of this section,
17 the Department of Revenue and the Department of Natural Resources may provide to
18 one another, to the Department of Law, and to the Office of the Governor any
19 information provided under AS 43.82.300 relevant to the implementation of this
20 chapter or to the enforcement of state or federal laws. Information that is exchanged
21 under this subsection that was determined to be confidential under (b) of this section
22 remains confidential except as provided in (c) of this section. The portions of the
23 records and files of the Department of Revenue, Department of Natural Resources,
24 Department of Law, and the Office of the Governor that reflect, incorporate, or analyze
25 information that was determined to be confidential under (b) of this section are not
26 public records except as provided in (c) of this section.

27 (e) Notwithstanding the release of information limitation of (c) of this section,
28 information that was determined to be confidential under (b) of this section may be
29 disclosed by the commissioner of revenue, the commissioner of natural resources, or
30 the attorney general to a legislator; to the legislative auditor in the division of
31 legislative audit; and, as directed by the chair or vice-chair of the Legislative Budget

1 and Audit Committee, to the director of the division of legislative finance, to the
 2 permanent employees of those divisions who are responsible for evaluating a contract
 3 made under AS 43.82.020, and to agents or contractors of the legislative auditor or the
 4 director of legislative finance who are engaged to evaluate such a contract.
 5 Information that was determined to be confidential under (b) of this section also may
 6 be disclosed by the commissioner of revenue or the commissioner of natural resources
 7 to an independent contractor under AS 43.82.240. Before confidential information is
 8 disclosed under this subsection, the person receiving the information must sign an
 9 appropriate confidentiality agreement.

10 (f) If the commissioner of revenue chooses to develop a contract under
 11 AS 43.82.020, the portions of the records and files of the Department of Revenue, the
 12 Department of Natural Resources, and the Department of Law that reflect, incorporate,
 13 or analyze information that is relevant to the development of a commissioner's position
 14 or strategy with respect to any particular provision that may be incorporated into the
 15 contract are not public records until the commissioner of revenue gives public notice
 16 under AS 43.82.410 of the commissioner's preliminary findings and determination
 17 under AS 43.82.400. Nothing in this subsection (1) makes a record or file of the
 18 Department of Revenue, the Department of Natural Resources, or the Department of
 19 Law a public record that otherwise would not be a public record under AS 09.25.100 -
 20 09.25.220; (2) affects the confidentiality provisions of (a) - (e) of this section; or (3)
 21 abridges a privilege recognized under the laws of this state, whether at common law
 22 or by statute.

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

24 **Sec. 43.82.400. Preliminary findings and determination regarding the**
 25 **contract.** (a) If the commissioner develops a proposed contract under AS 43.82.200 -
 26 43.82.270, the commissioner

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

30 (2) shall prepare a proposed contract that includes those terms and shall
 31 announce that, under AS 43.82.020, the commissioner intends to enter into the

1 proposed contract.

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

8 (c) In conjunction with the making of preliminary findings and determination
9 required by (a)(1) of this section, the commissioner shall describe the principal factors,
10 including the projected price of gas, projected production rate or volume of gas, and
11 projected recovery, development, construction, and operating costs, upon which the
12 determination made under (a)(1) of this section is based. If the commissioner has
13 previously entered into a contract under AS 43.82.020 relating to another approved
14 qualified project that is similar to or would compete with the approved qualified
15 project that is the subject of the commissioner's preliminary findings and
16 determination, the commissioner shall describe any material differences between the
17 terms of the existing contract and the proposed contract.

18 **Sec. 43.82.410. Notice and comment regarding the contract.** The
19 commissioner shall

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

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

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

29 (B) the chairs of the legislature's standing committees on
30 finance and resources; and

31 (C) the chairs of the legislature's special committees on oil and

1 gas, if any;

2 (3) establish a period of at least 30 days for the public to comment on
3 the proposed contract and the preliminary findings and determination made under
4 AS 43.82.400; and

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

13 **Sec. 43.82.420. Coordination of public and legislative review.** To the extent
14 practicable, the commissioner shall coordinate the public comment opportunity
15 provided under AS 43.82.410(3) with any proposed review by the Legislative Budget
16 and Audit Committee of the contract and the preliminary findings and determination
17 under AS 43.82.410(4).

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

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

23 (2) after consultation with the commissioner of natural resources if
24 appropriate, prepare a list of proposed amendments, if any, to the proposed contract
25 that the commissioner determines are necessary to respond to public comments;

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

29 (b) After considering the material described in (a) of this section and securing
30 the agreement of the other parties to the proposed contract regarding any proposed
31 amendments prepared under (a) of this section, the commissioner may execute the

1 contract if the commissioner determines that the contract is in the long-term fiscal
2 interests of the state.

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

6 **Sec. 43.82.440. Administrative termination of a contract.** (a) The
7 commissioner may terminate a party's rights under a contract under AS 43.82.020 if
8 the procedures and conditions set out in this section are met and the party has

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

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

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

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

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

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

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

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

1 **Article 6. Payment to Municipalities; Equity or**
 2 **Other Participation by Municipalities.**

3 **Sec. 43.82.500. Payment to municipalities; equity or other participation by**
 4 **municipalities.** (a) If the commissioner executes a contract under AS 43.82.020 that
 5 includes terms that exempt a party to the contract, and the property, gas, products, and
 6 activities associated with the approved qualified project that is subject to the contract,
 7 from a municipal tax in accordance with AS 29.45.810, AS 29.46.010(b),
 8 AS 43.82.200, and 43.82.210, the commissioner shall require, as a condition of the
 9 contract, that the party instead make periodic payment to the affected municipality in
 10 a fair and reasonable amount as determined by the commissioner under (b) of this
 11 section.

12 (b) After consultation with the affected municipality, the commissioner shall
 13 determine the amount of payment due under (a) of this section. In making the
 14 determination required by this subsection, the commissioner shall

15 (1) estimate the total operating and capital costs of additional services
 16 and construction that would be provided and paid for by that municipality during the
 17 term of the contract under AS 43.82.020 as a result of the construction and operation
 18 in the municipality of the approved qualified project that is subject to the contract; and

19 (2) amortize the total costs estimated under (1) of this section over the
 20 term of the contract or a portion of the term of the contract.

21 (c) In lieu of payments under (a) of this section, the commissioner, with the
 22 concurrence of the municipality, may include a term in a contract under AS 43.82.020
 23 that provides the municipality with an equity or other interest in the approved qualified
 24 project that is subject to the contract.

25 **Article 7. Miscellaneous Provisions.**

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

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

31 **Sec. 43.82.620. Procedures for collection of amounts due; security.** (a)

1 The commissioner may adopt procedures for the collection of amounts due the state
2 under a contract entered into under AS 43.82.020, including the collection of interest
3 and penalties.

4 (b) The commissioner may require a party to a contract under AS 43.82.020
5 to provide security sufficient to guarantee amounts due under the contract.

6 **Sec. 43.82.630. Reports and audits.** The commissioner may require periodic
7 reports from, and may at reasonable intervals conduct audits and inspect the books of,
8 a party that has entered into a contract under AS 43.82.020 to ensure compliance with
9 the provisions of this chapter and the regulations adopted under it and of the terms of
10 the contract.

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

20 **Article 8. General Provisions.**

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

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

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

28 (3) "economic rent" means the estimated total gross revenue less
29 estimated total costs for a qualified project over the term of a contract under
30 AS 43.82.020, measured in undiscounted nominal dollars; for purposes of this
31 paragraph, "total costs" do not include a rate of return on capital, financing costs, or

1 any payments to governments;

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

6 (5) "gas" has the meaning given that term in AS 43.55.900;

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

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

10 (8) "municipality" has the meaning given that term in AS 29.71.800;

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

13 (10) "stranded gas" means gas that is uneconomic or uncompetitive to
14 develop as determined by the commissioner for a particular project.

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

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

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

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

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

21 **Sec. 29.45.810. Exemption from municipal taxation.** (a) A party to a
22 contract with the Department of Revenue under AS 43.82.020, and the property, gas,
23 products, and activities associated with the approved qualified project that is subject
24 to the contract, are exempt, as specified in the contract, from all taxes identified in the
25 contract that would be levied and collected by a municipality under state law as a
26 consequence of the participation by the party in the approved qualified project.

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

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

29 (b) Notwithstanding (a) of this section, a party to a contract with the
30 Department of Revenue under AS 43.82.020 is exempt, as specified in the contract,
31 from assessment under this chapter against real property associated with the approved

1 qualified project that is subject to the contract.

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

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

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

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

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

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

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

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

**FIRST AMENDED VERSION (03/26/1998)
OF THE SGDA - A NEW SECTION
(43.82.435) MANDATES LEGISLATIVE
AUTHORIZATION BEFORE THE
GOVERNOR MAY SIGN A CONTRACT**

0-GH2006L

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: 3/26/98

Referred: Resources, Finance

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 52.110
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 (3) "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. 43.82.2.0. 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 those 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

44.62.560

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;

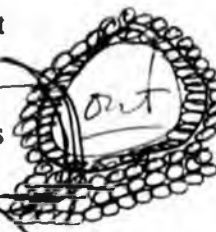
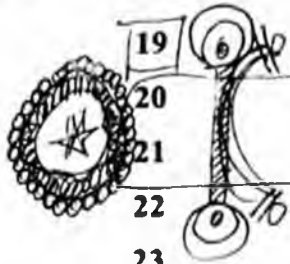
12 (3) make final findings and a determination as to whether the proposed
13 contract and any proposed amendment prepared under (2) of this subsection meet the
14 requirements and purposes of this chapter. *and findings...*

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, *after* 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.**

CORRECTION

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



Central Microfilm Services
Department of Education & Early Development
State of Alaska

44.62.960

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
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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. *and findings ...*

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16 the agreement of the other parties to the proposed contract regarding any proposed
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18 contract is in the long-term fiscal interests of the state, the commissioner shall submit
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30 challenging the constitutionality of a law authorizing a contract enacted under
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\$

Terribly wrong

43.82.101

SGDA...

- Oil certainty... we won't give oil certainty
- oil + gas linked for a purpose.....

* World Bank re-opening

15-25 years OK! 40 yrs = no!

* Pay off return + then a re-opening...

* stability on borough taxes = risk transfer.

☐ higher risk = higher reward...

☐ risk is transferred to state...

*

risk follows after the fact...

Way out...

- build leverage - in place reserve tax
- Pt. Thompson - 40% expansion... they had to drill - then just well this year.
- 800-300 mmbbl oil there...

*

we need to see their books...

McKenzie gas bid

2017 for Alaska.

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 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.**

- * Time value of money...
- * Clause in lease - "duty to develop"
we need to quit warehousing

Super way out...

- I can't go any further...
- do an upstream general public incentive
- give incentives to builder of pipeline
- royalty in value / royalty in kind switching

(when producer sells
 we get higher of the
 3 sellers.

problem ⊗

- open season - take or pay stream down the
 [Pipeline ...] ⊗ ⊗ ⊗

state has no storage for gas...

What is the language in the LLC ?

4 companies in J.V.

5-6 billion each in risk

Is it expandible?