

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 URLS 12299

legislative power was changed from "red light" to "green light" -- the ultimate power to go forward with the license became contingent upon legislative approval.

While it may be argued that the authority for the executive to issue a license under AGIA as originally enacted is not fully granted until the proposed license is approved by the legislature, there may still be a challenge to this approach under the separation of powers doctrine. Should the commissioners issue the license without legislative approval or without the change in assurances offered by your amendment, and the legislature or another party challenges the license, the commissioners could argue that issuing a license that is consistent with the original statutory requirements (other than the requirement of legislative approval) is authorized by the constitution under the separation of powers doctrine. If, after the contract has been implemented, a court finds the commissioners' argument persuasive, art. I, sec. 15, Constitution of the State of Alaska, would prohibit the legislature from passing a law that impairs the obligation of that contract by trying to change the terms of the license.

In the course of considering whether the executive has the power to issue the license without legislative approval, the court may also address whether the legislative approval in AS 43.90.190 is unconstitutional. Despite the severability provision in AGIA,⁶ the court could find that the legislative approval requirement was such an integral part of the intent of the legislature in enacting AGIA that the requirement could not be severed.⁷ However, given the elaborate requirements for the qualification of a licensee, the duties of the executive to solicit and evaluate proposed pipeline projects, and the enactment of a severability clause (as opposed to relying on the generally applicable severance clause in

⁶ Sec. 8, ch. 22, SLA 2007.

⁷ The court discussed legislative intent for an Act and the severability of a provision of that Act in *Alaskans for a Common Language, Inc. v. Kritz* as follows:

[T]he court's severance powers are restrained by the same constraints that fence its powers to adopt limiting constructions: "If a court finds a statute or portions of it unconstitutional, it has the power to strike it down or sever the invalid portion. It does not have the power to redraft the statute as that is the province of the legislature." *Thus, not only must the remaining portion of a severed statute be "valid as a law by itself," but it must also "give effect to the apparent intention of the legislature" that enacted the original provision.* Just as a court must do when it considers adopting a narrowing construction, a court contemplating severance must initially determine that "severing the invalid portion will not do violence to the intent of the legislature." If the court determines instead that "by sustaining only a part of a statute, the purpose of the act is changed or altered, the entire act is invalid."

170 P.3d 183, 219 (Alaska 2007) (emphasis added) (citations omitted).

Representative Jay Ramras

July 14, 2008

Page 6

AS 01.10.030), it is likely that the court would sever the legislative approval provision and uphold the remainder of the Act.

Conclusion

AGIA is a law like any other law subject to amendment and revision by the legislature. However, you should carefully consider the constitutional implications of a material amendment to the terms and conditions required by AGIA and the risk that a license may nevertheless be issued without the amendments under the doctrine of separation of powers.

Making the proposed amendment conditioned upon the rejection of the proposed license being considered by the legislature may reduce the risk of a due process challenge. The change would be effective if new license applications are solicited.

If I may be of further assistance, please advise.

DMB:ljw
08-295.ljw

Enclosure

AMENDMENT #2

OFFERED IN THE HOUSE

BY REPRESENTATIVE SAMUELS

TO: HB 3001

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

2 Insert "prohibiting the commissioner of natural resources from issuing a state
3 lease for a right-of-way for a natural gas pipeline project that has not been issued a
4 certificate of public convenience and necessity;"

5

6 Page 1, following line 5:

7 Insert new bill sections to read:

8 **** Section 1. AS 38.35.015 is amended to read:**

9 **Sec. 38.35.015. Powers of the commissioner.** The commissioner has all
10 powers necessary and proper to implement the policy, purposes, and provisions of this
11 chapter, so as to subserve, as the exercise of reasoned discretion determines, the public
12 interest, convenience, and necessity, including but not limited to

13 (1) granting leases of state land for pipeline right-of-way purposes,
14 except that a lease for right-of-way purposes for a natural gas pipeline may not
15 be granted before that pipeline has received a certificate of public convenience
16 and necessity from the Regulatory Commission of Alaska or the Federal Energy
17 Regulatory Commission, as appropriate;

18 (2) leasing, purchasing, or otherwise acquiring (including condemning
19 by declaration of taking) easements or other interests in land in this state for the
20 purpose of utilizing or granting leases of the land, easements, or interests for pipeline
21 right-of-way purposes;

22 (3) purchasing interests in pipelines in accordance with options
23 included in right-of-way leases;

1 (4) investigating any matters concerning any lessee with a view to
2 assuring compliance by it with its right-of-way lease, this chapter, and any other
3 applicable state or federal law;

4 (5) developing from time to time and maintaining a comprehensive
5 master plan for pipeline transportation development;

6 (6) developing and promoting programs to foster efficient, economical,
7 and safe pipeline transportation services in the state;

8 (7) coordinating the activities of the commissioner under this chapter
9 with the transportation and other relevant activities of other public agencies and
10 authorities;

11 (8) constructing, extending, enlarging, improving, repairing, acquiring,
12 operating, or engaging in transportation, service, or sale by any pipeline or providing
13 fo. these by contract, lease, or other arrangement on those terms that the commissioner
14 may consider necessary, convenient, or desirable with any agency, corporation, or
15 person, including but not limited to any carrier or any state agency, when the
16 commissioner determines that a lessee carrier is not willing to undertake and complete
17 the action within a reasonable time, and to sell, lease, grant, and dispose of any
18 property constructed or acquired in the exercise of this power.

19 * Sec. 2. AS 38.35.100(a) is amended to read:

20 (a) The commissioner shall promptly determine, in a written finding, on an
21 application filed under AS 38.35.050, whether the applicant is fit, willing, and able to
22 perform the transportation or other acts proposed in a manner that will be required by
23 the present or future public interest. In making a determination, the commissioner
24 shall consider whether or not

25 (1) the proposed use of the right-of-way will unreasonably conflict
26 with existing uses of the land involving a superior public interest;

27 (2) the applicant has the technical and financial capability to protect
28 state and private property interests;

29 (3) the applicant has the technical and financial capability to take
30 action to the extent reasonably practical to

31 (A) prevent any significant adverse environmental impact,

1 including but not limited to erosion of the surface of the land and damage to
2 fish and wildlife and their habitat;

3 (B) undertake any necessary restoration or revegetation; and

4 (C) protect the interests of individuals living in the general area
5 of the right-of-way who rely on fish, wildlife, and biotic resources of the area
6 for subsistence purposes;

7 (4) the applicant has the financial capability to pay reasonably
8 foreseeable damages for which the applicant may become liable on claims arising
9 from the construction, operation, maintenance, or termination of the pipeline;

10 (5) the applicant has agreed that, in the construction and operation of a
11 pipeline within the right-of-way, the applicant will comply with, and require
12 contractors and their subcontractors to comply with, applicable and valid laws and
13 regulations regarding the hiring of residents of the state then in effect or that take
14 effect subsequently; and

15 (6) if the proposed use of the right-of-way is for the construction
16 and operation of a natural gas pipeline, the applicant has received a certificate of
17 public convenience and necessity for that pipeline issued by the Regulatory
18 Commission of Alaska or the Federal Energy Regulatory Commission, as
19 appropriate.

20 * Sec. 3. AS 38.35.100(b) is amended to read:

21 (b). If the commissioner makes the determinations under (a) of this section
22 favorably to the applicant, then the commissioner may grant the whole or part of the
23 application. If the commissioner makes the determinations under (a)(1) - (5) of this
24 section favorably to the applicant but determines that the applicant is not then fit,
25 willing, and able to perform under the application, the commissioner may grant the
26 application under a conditional lease subject to conditions established by the
27 commissioner that will ensure that the applicant will, within a prescribed period of
28 time not exceeding 10 years, establish that the applicant is fit, willing, and able, under
29 (a) of this section, to perform the transportation or other acts that will be required by
30 the present or future public interest. An applicant is not entitled to a notice or
31 authorization to proceed to construction, or its equivalent, under a conditional lease

1 until the commissioner determines in writing that the applicant has satisfactorily
2 established that the applicant is then fit, willing, and able to perform under (a) of this
3 section. Otherwise, the commissioner shall deny the application. If the commissioner
4 finds under (a)(6) of this section that a certificate of public convenience and
5 necessity has not been issued to the applicant, he commissioner may not grant
6 the application."

7

8 Page 1, line 6:

9 Delete "Section 1"

10 Insert "Sec. 4"

11

12 Page 1, following line 11:

13 Insert a new bill section to read:

14 "* Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 PROVISIONS NOT SEVERABLE. Notwithstanding AS 01.10.030, secs. 1 - 4 of this
17 Act are not severable."

18

19 Renumber the following bill section accordingly.

AMENDMENT #3

OFFERED IN THE HOUSE
TO: HB 3001

BY REPRESENTATIVE JOHNSON

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

2 Insert "prohibiting the reimbursement of qualified expenditures before the
3 commissioner of natural resources finds that certain gas will be available to the project
4 on or before the commencement of commercial operations;"

5

6 Page 1, following line 11:

7 Insert new bill sections to read:

8 "* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 AVAILABILITY OF POINT THOMSON GAS BEFORE REIMBURSEMENT OF
11 QUALIFIED EXPENDITURES. (a) The commissioner of revenue and the commissioner of
12 natural resources may not reimburse the licensee for qualified expenditures under
13 AS 43.90.110(a)(1) before the commissioner of natural resources finds that natural gas
14 produced from the Point Thomson Unit will be available for transportation by the project on
15 or before the commencement of commercial operations.

16 (b) A dispute between the commissioner of natural resources, the licensee, and the
17 owners and operators of the Point Thomson Unit over the issue of whether natural gas from
18 the Point Thomson Unit will be available for transportation by the project on or before the
19 commencement of commercial operations shall be resolved under AS 44.62.330 - 44.62.630
20 (Administrative Procedure Act) or other form of alternative dispute resolution agreed to by
21 the licensee, the owners and operators of the Point Thomson Unit, and the commissioner of
22 natural resources, in consultation with the attorney general.

23 (c) In this section,

1 (1) "commencement of commercial operations," "licensee," and "project" have
2 the meanings given in AS 43.90.900;

3 (2) "Point Thomson Unit" means the Point Thomson Unit defined by the
4 Department of Natural Resources on the effective date of this Act.

5 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 PROVISIONS NOT SEVERABLE. Notwithstanding AS 01.10.030, secs. 1 and 2 of
8 this Act are not severable."

9

10 Renumber the following bill section accordingly.

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

July 21, 2008

SUBJECT: Amendment relating to availability of Point Thomson gas
(Amendment A.6 to HB 3001; Work Order No. 25-GH3055\A.6)

TO: Representative Craig Johnson
Attn: Debbie Higgins

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Enclosed is the amendment you requested requiring a determination that Point Thomson gas will be available to the project before qualified expenses are reimbursed. Please read this amendment carefully to ensure that it is consistent with your intent.

The amendment includes a nonseverability clause that was added after my discussion with Debbie. If a court were to strike down the provision regarding the availability of Point Thomson gas, the legislative approval of the license would also fail.

If I may be of further assistance, please advise.

DMB:med
08-314.med

Enclosure

AMENDMENT

#4

OFFERED IN THE HOUSE
TO: HB 3001

BY REPRESENTATIVE SAMUELS

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

2 Insert "requiring certain indemnification from TransCanada Alaska Company,
3 LLC and Foothills Pipe Lines Ltd., jointly as licensee, before the state reimburses
4 qualified expenditures;"

5
6 Page 1, following line 11:

7 Insert new bill sections to read:

8 "** Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 INDEMNIFICATION FOR LIABILITIES TO WITHDRAWN PARTNERS. (a) The
11 commissioner of revenue and the commissioner of natural resources may not reimburse the
12 licensee for qualified expenditures under AS 43.90.110(a)(1) before the licensee indemnifies
13 the state against any loss of revenue because of a liability of the licensee to withdrawn
14 partners. The indemnification is required regardless of whether the state receives its royalty
15 share of the production of natural gas in kind or in value. In this subsection, "licensee"
16 includes the licensee and a successor in interest to the licensee subject to AS 43.90.

17 (b) As soon as practicable after the license is issued, the commissioner of revenue, in
18 consultation with the commissioner of natural resources and the attorney general, shall

19 (1) review the partnership agreement and other documents associated with the
20 Alaskan Northwest Natural Gas Transportation Company, commonly referred to a ANNGTC;

21 (2) identify the partners and the successors in interest to the partners in the
22 Alaskan Northwest Natural Gas Transportation Company;

23 (3) determine the extent of any liability or potential liability of the licensee to

1 each partner or successor to a partner based on any partnership agreement or other agreement
2 between the partners of the Alaskan Northwest Natural Gas Transportation Company;

3 (4) determine the effect on revenue to the state should the licensee be found
4 liable to a partner or successor to a partner under the partnership agreement and other
5 agreements between the partners and their successors in the Alaskan Northwest Natural Gas
6 Transportation Company; the effect on revenue to the state includes

7 (A) the costs associated with delays in the construction of the project;

8 (B) an effect on the tariff;

9 (C) an effect on the state's taxes and royalties;

10 (D) the effect on a person acquiring an ownership interest in the
11 project; and

12 (E) other effects on revenue to the state identified by the
13 commissioner; and

14 (5) determine the form and amount of indemnification required to be provided
15 by the licensee to the state to shield the state from the possible effects on revenue determined
16 under (4) of this subsection.

17 (c) A dispute between the commissioner of revenue and the licensee over the extent of
18 any liability of the licensee determined under this section and the form and amount of
19 indemnification required by the licensee shall be resolved under AS 44.62.330 - 44.62.630
20 (Administrative Procedure Act) or other form of alternative dispute resolution agreed to by
21 the licensee and the commissioner of revenue, in consultation with the attorney general.

22 (d) The commissioner of revenue shall report to the legislature the finding of a
23 potential liability of the licensee to a partner or successor in interest to a partner of the
24 Alaskan Northwest Natural Gas Transportation Company, the potential effect on revenue to
25 the state, and the form and amount of indemnification required to be provided to the state by
26 the licensee. The report shall be made before the 10th day of the first special or regular
27 session of the legislature after the determination by the commissioner of revenue of the form
28 and amount of required indemnification.

29 (e) In this section,

30 (1) "licensee" and "project" have the meanings given in AS 43.90.900;

31 (2) "withdrawn partners" means the partners and successors in interest to the

1 partners of the Alaskan Northwest Natural Gas Transportation Company identified by the
2 commissioner of revenue in (b)(2) of this section.

3 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 PROVISIONS NOT SEVERABLE. Notwithstanding AS 01.10.030, secs. 1 and 2 of
6 this Act are not severable."

7

8 Renumber the following bill section accordingly.

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

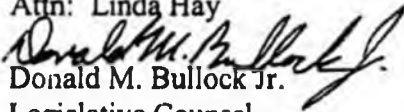
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

July 16, 2008

SUBJECT: Adding a condition precedent to the reimbursement of qualified expenditures (HB 3001; Work Order No. 25-GH3055\A.3)

TO: Representative Ralph Samuels
Attn: Linda Hay

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Enclosed is the amendment to HB 3001 you requested. The amendment requires the commissioner of revenue to determine the amount of any indemnity the licensee must provide before the reimbursement of qualified expenditures by the state. Please read the amendment carefully to ensure that it is consistent with your intent. Also, please be aware of the issues raised by this amendment.

The amendment makes the commissioner of revenue the lead individual with regard to the indemnification requirement. The commissioner of revenue is required to consult with both the commissioner of natural resources and the attorney general so that all legal and revenue implications are considered. Disputes over the liability and indemnification issue are to be resolved under the Administrative Procedure Act or an alternative form of dispute resolution agreed to by the parties. The amendment also requires the commissioner of revenue to make a report of findings and determinations to the legislature.

The amendment adds a condition precedent before the reimbursement of qualified expenditures by the state under AS 43.90.110(a)(1). There was no disclosure of a condition precedent in the request for applications published by the commissioner of revenue and the commissioner of natural resources under AS 43.90.120 or elsewhere in AS 43.90. The amendment retroactively changes the requirements of the license to make the offer by the state something other than what the proposed licensee and others proposed to accept.

The additional condition proposed by the amendment effectively amends AS 43.90.110(a)(2) by requiring a new commitment by the licensee. This commitment is not included in the "license proposed to be issued by the commissioners" that has been

Representative Ralphn Samuels
July 16, 2008
Page 2

submitted to the legislature for approval under AS 43.90.190. Under AS 43.90.190, the legislature's involvement at this point is to either approve or reject the proposed license.¹

To avoid due process issues that may be raised by changing the rules midstream, if the Alaska Gasline Inducement Act (AGIA) needs amendment to secure the licensee and project that maximizes the benefits to the people of the state, the current proposed license should be rejected, AGIA amended, and new applications solicited under the amended terms and conditions.

If I may be of further assistance, please advise.

DMB:med
08-310.med

Enclosure

¹ Because the proposed amendment changes the conditions of the offer the licensee accepted and affects the probability of success of the project, perhaps different from what was anticipated by the two commissioners when they found the project was in the state's best interests, you may wish to consider whether the licensee should be given the opportunity to withdraw its license application.

AMENDMENT # 5

OFFERED IN THE HOUSE

BY REPRESENTATIVE SAMUELS

TO: HB 3001

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

2 Insert "requiring TransCanada Alaska Company, LLC and Foothills Pipe Lines
3 Ltd., jointly as licensee, to fully disclose and tender to the commissioner of natural
4 resources all documents and other information provided to, exchanged with, or received
5 from the state relating to contract negotiations with the state during 2004 regarding the
6 construction of a natural gas pipeline to transport natural gas from the North Slope
7 before the state reimburses qualified expenditures;"

8

9 Page 1, following line 11:

10 Insert new bill sections to read:

11 "** Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 DISCLOSURE OF INFORMATION RELATING TO 2004 CONTRACT
14 NEGOTIATIONS WITH THE STATE. (a) The commissioner of revenue and the
15 commissioner of natural resources may not reimburse TransCanada Alaska Company, LLC,
16 and Foothills Pipe Lines Ltd., jointly as licensee, for qualified expenditures under
17 AS 43.90.110(a)(1) before the licensee fully discloses and tenders all documents and other
18 information provided to, exchanged with, or received from the state during 2004 relating to
19 contract negotiations with the state regarding the construction of a natural gas pipeline to
20 transport natural gas from the North Slope. In this subsection, "licensee" includes the licensee
21 and a successor in interest to the licensee subject to AS 43.90.

22 (b) The chief executive officers of TransCanada Alaska Company, LLC, and Foothills
23 Pipe Lines Ltd., or other person authorized to act on behalf of each, shall certify by sworn

1 affidavit that all documents and other information provided to, exchanged with, or received
2 from the state during 2004 relating to contract negotiations with the state regarding the
3 construction of a natural gas pipeline to transport natural gas from the North Slope have been
4 fully disclosed and tendered to the commissioner of natural resources.

5 (c) The commissioner of natural resources shall receive and review the documents
6 and other information described in (a) of this section and the affidavit required by (b) of this
7 section. Following review, the commissioner of natural resources shall notify the chair or the
8 vice-chair of the Legislative Budget and Audit Committee after making a finding

9 (1) that all documents and other information have been received and that
10 TransCanada Alaska Company, LLC, and Foothills Pipe Lines Ltd., are entitled to receive the
11 reimbursement for qualified expenditures under AS 43.90.110(a)(1); or

12 (2) that TransCanada Alaska Company, LLC, and Foothills Pipe Lines Ltd.,
13 after having been given a reasonable period in which to disclose and tender the documents
14 and other information required by this section, have failed to make the required disclosures
15 and tender of documents and other information required under this section.

16 (d) After notifying the chair or the vice-chair of the Legislative Budget and Audit
17 Committee of a finding under (c)(1) of this section, the commissioner of natural resources
18 shall provide a copy of all documents and other information received to the Legislative
19 Budget and Audit Committee. The Legislative Budget and Audit Committee shall make all
20 documents and other information received from the commissioner of natural resources under
21 this subsection available to the public, regardless of any claim of confidentiality, protection as
22 a trade secret, or other limitation.

23 (e) A dispute between the commissioner of natural resources and the licensee over the
24 disclosure and submission of information required by this section shall be resolved under
25 AS 44.62.330 - 44.62.630 (Administrative Procedure Act) or other form of alternative dispute
26 resolution agreed to by the licensee and the commissioner of natural resources, in consultation
27 with the attorney general.

28 (f) In this section, "licensee" has the meaning given in AS 43.90.900.

29 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 PROVISIONS NOT SEVERABLE. Notwithstanding AS 01.10.030, secs. 1 and 2 of

- 1 this Act are not severable."
- 2
- 3 Renumber the following bill section accordingly.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

July 21, 2008

SUBJECT: Public disclosure of contract negotiations (Amendment A.8 to HB 3001; Work Order No. 25-GH3055\A.8)

TO: Representative Ralph Samuels
Attn: Linda Hay

FROM: Donald M. Bullock Jr. *KK for DMB*
Legislative Counsel

Enclosed is the amendment based on amendment 25-GH3055\A.4 that would require the commissioner of natural resources to deliver a copy of all documents and other information received to the Legislative Budget and Audit Committee. The Legislative Budget and Audit Committee would then make everything received available to the public without restriction. Please review this amendment carefully to ensure that it is consistent with your intent.

Note that this amendment raises an issue under the privacy clause of the Alaska Constitution in art. I, sec. 22.

If I may be of further assistance, please advise.

DMB:ljw
08-302.ljw

Enclosure



LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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STATE OF ALASKA

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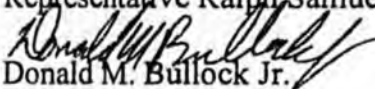
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 23, 2008

SUBJECT: Process for legislative approval of a license under AS 43.90
(Work Order No. 25-LS1375)

TO: Representative Ralph Samuels

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked whether the legislature may approve the issuance of a license under the Alaska Gasline Incentive Act (AS 43.90) (AGIA) and make the approval subject to a particular condition or contingency. You also asked how the legislature disapproves or approves of the issuance of a license.

Under AGIA, the legislature is required to either approve or disapprove the issuance of a license for a gas pipeline project. Approval is accomplished by passing a bill that accepts the administration's recommendation of a licensee. Disapproval is accomplished by defeating a bill that would approve the issuance of the license or by doing nothing.

The process for legislative approval of the issuance of a license under AGIA is set forth in AS 43.90.190. That section reads as follows:

Sec. 43.90.190. Legislative approval; issuance of license. (a)

After the presiding officer of each house of the legislature receives a determination from the commissioners under AS 43.90.180, the rules committee of each house of the legislature shall introduce a bill in the committee's respective chamber that provides for the approval of the license proposed to be issued by the commissioners.

(b) If a bill approving the issuance of the license passes the legislature within 60 days after the last date a presiding officer receives a determination by the commissioners under AS 43.90.180, the commissioners shall issue the license as soon as practicable after the effective date of the Act approving the issuance of the license.

(c) Notwithstanding a legislative rule that prohibits the carryover of a bill after the end of a special session or after the end of a regular session of a legislature, a bill introduced under (a) of this section that is not passed or not withdrawn, defeated, vetoed, or indefinitely postponed shall be carried over to any subsequent regular or special legislative session convened during the 60-day period described in (b) of this section

in the same reading or status it was in at the time of adjournment. However, a bill introduced under (a) of this section may not be carried over to the first regular session of a legislature.

(d) If the legislature fails to approve the issuance of the license, the commissioners

(1) may not issue the license that the legislature failed to approve; and

(2) may request new applications for a license under AS 43.90.120.

Under AS 43.90.190, the issuance of a license is subject to legislative approval and the approval must be in the form of a bill. If the legislature fails to approve the license, AS 43.90.190(d)(1) removes the authority of the commissioners to issue a license. The approval scheme in AS 43.90.190 was designed to allocate powers under AGIA in such a way that both the executive branch and the legislative branch can participate without contravening the separation of powers provisions in art. II, sec. 1, and art. III, sec. 1, Constitution of the State of Alaska.

Generally, the power to contract on behalf of the state is centered in the executive branch, while the authority to enter into a contract is created by the legislature.¹ AS 43.90.190 conditions the power to issue a license upon the approval by the legislature of the proposed license--if there is no approval, there is no power to issue the license. The legislature also has the power of appropriation, a power that must be exercised to fund the monetary inducement offered under AGIA.

Approval of the license by the legislature is discretionary. In the course of the review, some legislators may find that they disagree with the commissioner's determination and disapprove the application because the application does not propose a project that will sufficiently maximize the benefits to the people of the state.² Others, in the course of the legislative review, may find that AGIA should be amended to allow the consideration of additional applicants that were not qualified for consideration under AGIA as it was originally enacted. What happens after the disapproval by the legislature is up to the legislature. If the legislature does nothing, AS 43.90.190(d)(2) authorizes the commissioners to request new applications. If the legislature amends AGIA, new applications could be solicited with new criteria.

In conclusion, the legislative consideration of the issuance of a license under AGIA is limited to the approval or disapproval of the license. However, the legislature also has

¹ Of course, the legislature may also enter into contracts on its own behalf, and does so as a separate branch of state government. For example, the legislature, through the legislative council, leases office space for legislators and the legislative information offices.

² See AS 43.90.180(a).

Representative Ralph Samuels
January 23, 2008
Page 3

the power to amend AGIA if it finds that the existing law does not result in a project that the legislature finds is in the best interest of the state.

If I may be of further assistance, please advise.

DMB:med
08-039.med

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 3001
 (H) Publish Date: 6/3/08

Identifier (file name): 3001-DNR-O&G-05-28-08 Dept. Affected: Natural Resources
 Title: Alaska Gasline Inducement Act License RDU: Resource Development
 Component: Oil and Gas Development
 Sponsor: Rules Committee
 Requester: Governor Component Number: 439

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	0.0	0.0

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

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 Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This bill would give approval for issuance of a license by the commissioners of the departments of Natural Resources and Revenue under the Alaska Gasline Inducement Act (AGIA). The success of the state's gasline project could mean billions of dollars in future state revenues.

Prepared by: Kevin Banks, Acting Director
 Division: Division of Oil and Gas
 Approved by: Tom Irwin, Commissioner
Natural Resources

Phone 269-8800
 Date/Time May 28, 2008
 Date May 28, 2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 3001
 (H) Publish Date: 6/3/08

Identifier (file name): 08-0055-DOR-DAS-5-27-08 Dept. Affected: 04 Revenue
 Title: AGIA License Approval RDU: Admin and Support
 Component: Admin Services
 Sponsor: Rules
 Requester: Governor Component Number: 125

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES		500,000.0						
-----------------------------	--	------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
TOTAL								

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

Passage of this bill approves the issuance of a license by the Commissioners of Revenue and Natural Resources to TransCanada Alaska Company, LLC and Foothills Pipe Lines, LTD., jointly as licensee, under the Alaska Gasline Inducement Act. The approval of this license along with the appropriation of \$500 million in a separate bill entitles TransCanada Alaska Company, LLC and Foothills Pipe Lines, LTD to reimbursement of up to \$500 million of qualified expenditures under regulations adopted by the Department of Revenue (15 AAC 90.010- 15 AAC 90.030). The Department of Revenue will make these reimbursements with the cooperation of the Alaska Gasline Inducement Act coordinator in the Office of the Governor and with technical advice from the Department of Natural Resources. No additional staffing or funding will be required by the Department of Revenue as a result of the passage of this bill.

Prepared by: Jerry Burnett
 Division: Admin Services
 Approved by: Jerry Burnett
Department of Revenue

Phone 465-2312
 Date/Time 5/26/08 12:00 AM
 Date 5/26/2008

HB3001 Subcommittee Report

The House Rules Committee – HB 3001 – was referred to a subcommittee:

Rep. Harris – chair
Rep. Samuels
Rep. Kerttula

We have completed an extensive public hearing process:

- All members of the House were invited to attend...
- All meetings were held jointly with the Senate...
- All meetings were done with full public notice...
 - We travelled across the state...

We commend this bill back to the full Rules Committee...

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MEMORANDUM

July 14, 2008

SUBJECT: Questions relating to the Alaska Natural Gas Development Authority (ANGDA) (Work Order No. 25-LS1746)

TO: Representative John Coghill
Chair of the House Rules Committee
Attn: Rynniva Moss

FROM: Alpheus Bullard *LAB*
Legislative Counsel

You have asked a number of questions relating to the powers of the Alaska Natural Gas Development Authority (ANGDA) to pursue a natural gas pipeline project. In responding to your inquiry, I have taken the liberty below of answering your question of July 10th in three parts.

Does ANGDA have the authority to pursue the development of a pipeline project that would transport gas north from Cook Inlet and may it expend funds on a project other than one intended to transport gas from the North Slope?

No existing statute provides ANGDA the authority to bring Cook Inlet gas from Cook Inlet north to market or to expend funds on a pipeline project other than one intended to transport gas from the North Slope. AS 41.41.010 establishes ANGDA. AS 41.41.010(a) provides:

[t]here is established the Alaska Natural Gas Development Authority, *the purpose of which is to provide one or more of the following services and functions in order to bring natural gas from the North Slope to market, including*

- (1) the acquisition and conditioning of North Slope natural gas;
- (2) the design and construction of the pipeline system;
- (3) the operation and maintenance of the pipeline system;
- (4) the design, construction, operation, of other facilities necessary for delivering the gas to market and to Southcentral Alaska; and
- (5) the acquisition of natural gas market share sufficient to ensure the long-term feasibility of the pipeline system project.

(Emphasis added.) The authority's powers are codified at AS 41.41.200. AS 41.41.200(5) grants the authority to acquire real and personal property for a project site. AS 41.41.200(7) allows the authority to issue bonds and otherwise incur

indebtedness in order to pay for the costs of a project. "Project" is defined for the purposes of AS 41 41 as

[. . .] the gas transmission pipeline, together with all related property and facilities, to extend from the Prudhoe Bay area on the North Slope of Alaska either to tidewater at a point on Prince William Sound and the spur line from Glennallen to the Southcentral gas distribution grid or to tidewater at a point on Cook Inlet,¹ and includes planning, design, and construction of the pipeline and facilities as described in AS 41.41.010(a)(1) - (5).

AS 41.41.990(3) (emphasis added). It is possible that a pipeline that initially would serve to bring gas from Cook Inlet north to market and subsequently be used to bring gas from the North Slope south could be construed as (1) a pipeline project that brings North Slope gas to market or (2) as an action necessary to "acqui[re] natural gas market share sufficient to ensure the long-term feasibility of the pipeline project" (see AS 41.41.010(a)(5)). Notwithstanding practical and policy considerations that might favor such arguments, legally, these seem a stretch. However, nothing precludes the legislature from changing the purposes, scope of authority, or powers of the authority through legislation.

What authority does ANGDA have to partner with a private pipeline company?

Under AS 41.41.200, ANGDA may enter into contracts with a private individual or entity in furtherance of its corporate purposes.² The corporate purposes of the authority are provided by AS 41.41.010(a) (above). The corporate purposes of ANGDA to bring North Slope gas to tidewater is likely to be interpreted by a court as sufficient authority for ANGDA to enter into a variety of contractual relationships with a private pipeline company.

Could ANGDA choose to pursue a joint venture project with a single private company without soliciting competitive bids?

While it is my legal opinion that ANGDA may contract with a private company to further its corporate purposes, it is also my opinion that any such contracts³ must be awarded through competitive bid.

¹ The "or to Cook Inlet" language was added by HB 417 of the 23rd Legislature (Chapter 138, SLA 04), "An Act amending the definition of 'project' in the Act establishing the Alaska Natural Gas Development Authority; and providing for an effective date."

² See AS 41.41.200(5) and (9).

³ AS 36.30.990(7) defines "contract" to mean "all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies, equipment for the state fleet, services, professional services, or construction."

Representative John Coghill

July 14, 2008

Page 3

AS 36.30.100 provides "[e]xcept as otherwise provided in this chapter [AS 36.30. State Procurement Code], or unless specifically exempted by law, an agency contract shall be awarded by competitive sealed bidding." ANGDA is an "agency" under this title.⁴

This argument that ANGDA is required to employ a competitive bidding process is supported⁵ by the information presented to the electorate, the body which enacted ANGDA. The 2002 election pamphlet "statement in support" of the ANGDA initiative provided:

[t]he Authority this initiative would establish would be similar to the Alaska Permanent Fund Corporation with a governing body to set policy, a small administrative structure and the actual work to design and build the project contracted out by bid to private companies who are experts in their field and who are held strictly accountable.

Any "partnership" or "joint venture" involving ANGDA and a private company is more than likely to be interpreted by a court as subject to the same competitive bidding requirement as any other agency contract.

If I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw
08-292.ljw

⁴ AS 36.30.990(1) provides that a public corporation is an agency for purposes of the procurement code. ANGDA is a public corporation within the Department of Revenue. AS 41.41.010(b).

⁵ In construing ballot measures, which must be approved by the voters, it is necessary to look to the meaning that the voters would have placed on the statute in question. See State v. Lewis, 559 P.2d 630 (Alaska 1977). In regard to ballot measures proposed by initiative, there is not much in the way of legislative history for determining the intent of the voters. All that is available is the voters' pamphlet. However, the voters' pamphlet is a powerful tool for determining the electorate's intent. See also Gibson v. State, 930 P.2d 1300 (Alaska App. 1997) (the court looked to the history of a constitutional amendment before the Legislature and the "statement in support" language, which appeared in the voters' pamphlet, for assistance in determining whether the amendment intended to accomplish the result proposed by the plaintiff).

Alaska State House of Representatives
Twenty-Fifth Legislature
Fourth Special Session

RCS# 738
Item 2

7-23-08
13:01:28

(add fld)
HB 3001--RECONSIDERATION
Third Reading
House Letter of Intent

Yeas: 39 Buch, Chenault, Cissna, Coghill, Crawford,
Dahlstrom, Doll, Doogan, Edgmon, Fairclough,
Foster, Gara, Gardner, Gatto, Gruenberg,
Guttenberg, Harris, Hawker, Holmes, Johansen,
Johnson, Joule, Kawasaki, Keller, Kelly,
Kerttula, LeDoux, Lynn, Meyer, Neuman, Olson,
Ramras, Roses, Salmon, Samuels, Seaton,
Stoltze, Thomas, Wilson

Nays: 0

Excused: 1 Nelson

Absent: 0

Alaska State House of Representatives
Twenty-Fifth Legislature
Fourth Special Session

RCS# 737
Item 2

7-23-08
12:49:12

HB 3001--RECONSIDERATION
Third Reading
Effective Date

Yeas:	25	Buch, Cissna, Coghill, Crawford, Doll, Doogan, Edgmon, Gara, Gardner, Gatto, Gruenberg, Guttenberg, Holmes, Joule, Kawasaki, Keller, Kelly, Kerttula, Lynn, Meyer, Salmon, Seaton, Stoltze, Thomas, Wilson
Nays:	14	Chenault, Dahlstrom, Fairclough, Foster, Harris, Hawker, Johansen, Johnson, LeDoux, Neuman, Olson, Ramras, Roses, Samuels
Excused:	1	Nelson
Absent:	0	

Alaska State House of Representatives
Twenty-Fifth Legislature
Fourth Special Session

RCS# 736
Item 2

7-23-08
12:48:30

HB 3001--RECONSIDERATION
Third Reading
Final Passage

Yeas:	23	Buch, Cissna, Coghill, Crawford, Doll, Doogan, Edgmon, Gara, Gardner, Gatto, Gruenberg, Guttenberg, Holmes, Joule, Kawasaki, Keller, Kel' , Kerttula, Lynn, Meyer, Salmon, Seaton, Thomas
Nays:	16	Chenault, Dahlstrom, Fairclough, Foster, Harris, Hawker, Johansen, Johnson, LeDoux, Neuman, Olson, Ramras, Roses, Samuels, Stoltze, Wilson
Excused:	1	Nelson
Absent:	0	

Alaska State House of Representatives
Twenty-Fifth Legislature
Fourth Special Session

RCS# 734
Item 3

7-22-08
21:00:21

HB 3001
Third Reading
Effective Date

Yeas:	28	Buch, Cissna, Coghill, Crawford, Doll, Doogan, Edgmon, Foster, Gara, Gardner, Gatto, Gruenberg, Guttenberg, Harris, Holmes, Joule, Kawasaki, Keller, Kelly, Kerttula, Lynn, Meyer, Nelson, Salmon, Seaton, Stoltze, Thomas, Wilson
Nays:	12	Chenault, Dahlstrom, Fairclough, Hawker, Johansen, Johnson, LeDoux, Neuman, Olson, Ramras, Roses, Samuels
Excused:	0	
Absent:	0	

Alaska State House of Representatives
Twenty-Fifth Legislature
Fourth Special Session

RCS# 733
Item 3

7-22-08
20:59:36

HB 3001
Third Reading
Final Passage

Yeas:	24	Buch, Cissna, Coghill, Crawford, Doll, Doogan, Edgmon, Gara, Gardner, Gatto, Gruenberg, Guttenberg, Holmes, Joule, Kawasaki, Keller, Kelly, Kerttula, Lynn, Meyer, Nelson, Salmon, Seaton, Thomas
Nays:	16	Chenault, Dahlstrom, Fairclough, Foster, Harris, Hawker, Johansen, Johnson, LeDoux, Neuman, Olson, Ramras, Roses, Samuels, Stoltze, Wilson
Excused:	0	
Absent:	0	

Alaska State House of Representatives
Twenty-Fifth Legislature
Fourth Special Session

RCS# 729
Item 3

7-22-08
16:27:57

HB 3001
Second Reading
Amendment No. 1

Yeas:	9	Chenault, Hawker, Johansen, Johnson, Neuman, Olson, Ramras, Roses, Samuels
Nays:	30	Buch, Cissna, Coghill, Crawford, Dahlstrom, Doll, Doogan, Edgmon, Fairclough, Foster, Gara, Gardner, Gatto, Gruenberg, Guttenberg, Harris, Holmes, Joule, Kawasaki, Keller, Kerttula, LeDoux, Lynn, Meyer, Nelson, Salmon, Seaton, Stoltze, Thomas, Wilson
Excused:	0	
Absent:	1	Kelly

Alaska State House of Representatives
Twenty-Fifth Legislature
Fourth Special Session

RCS# 730
Item 3

7-22-08
17:17:51

HB 3001
Second Reading
Amendment No. 2

Yeas: 15 Chenault, Dahlstrom, Fairclough, Harris,
Hawker, Johansen, Johnson, Kawasaki, LeDoux,
Meyer, Neuman, Olson, Ramras, Roses, Samuels

Nays: 25 Buch, Cissna, Coghill, Crawford, Doll, Doogan,
Edgmon, Foster, Gara, Gardner, Gatto,
Gruenberg, Guttenberg, Holmes, Joule, Keller,
Kelly, Kerttula, Lynn, Nelson, Salmon, Seaton,
Stoltze, Thomas, Wilson

Excused: 0

Absent: 0

Alaska State House of Representatives
Twenty-Fifth Legislature
Fourth Special Session

RCS# 731
Item 3

7-22-08
17:21:04

HB 3001
Second Reading
Amendment No. 3

Yeas:	11	Chenault, Hawker, Johansen, Johnson, Meyer, Neuman, Olson, Ramras, Roses, Samuels, Wilson
Nays:	27	Buch, Cissna, Coghill, Crawford, Dahlstrom, Doll, Doogan, Edgmon, Foster, Gara, Gardner, Gatto, Gruenberg, Guttenberg, Harris, Holmes, Joule, Kawasaki, Keller, Kelly, Kerttula, LeDoux, Lynn, Nelson, Seaton, Stoltze, Thomas
Excused:	0	
Absent:	2	Fairclough, Salmon

Alaska State House of Representatives
Twenty-Fifth Legislature
Fourth Special Session

RCS# 732
Item 3

7-22-08
17:34:28

HB 3001
Second Reading
Amendment No. 4

Yeas: 17 Chenault, Dahlstrom, Fairclough, Harris,
Hawker, Johansen, Johnson, LeDoux, Meyer,
Neuman, Olson, Ramras, Roses, Samuels,
Stoltze, Thomas, Wilson

Nays: 23 Buch, Cissna, Coghill, Crawford, Doll, Doogan,
Edgmon, Foster, Gara, Gardner, Gatto,
Gruenberg, Guttenberg, Holmes, Joule,
Kawasaki, Keller, Kelly, Kerttula, Lynn,
Nelson, Salmon, Seaton

Excused: 0

Absent: 0

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MEMORANDUM

July 23, 2008

SUBJECT: Concurrence in an effective date for HB 3001

TO: Representative John Coghill
Chair of the House Rules Committee
Attn: Rynniewa Moss, Legislative Aide

FROM: Tamara Brandt Cook
Director *ABC*

(1) The House has transmitted to the Senate HB 3001 with effective date failed. If the Senate passes HB 3001 with the effective date added, does that create a situation where the House would have to vote to concur with the effective date clause or would the effective date clause fail?

Under Uniform Rule 41(a) when a bill passed in one house is amended in the other, the bill is returned to the first house with a request to concur in amendments. If the Senate amends HB 3001 by adding an effective date and that is the only amendment, despite the vote set out in Uniform Rule 41, the vote required to adopt the Senate amendment is at least two-thirds of the House membership because, under art. II, sec. 18 of the state constitution, that is the vote required to adopt an effective date. Furthermore, if the House fails to concur in the Senate amendment or, even, fails to take up the question of concurring in the amendment, the substance of HB 3001 will have been adopted by both houses without an effective date.

The Superior Court has had occasion to consider the relationship between passage of the substantive portions of a bill and its effective date in connection with the enactment of ch. 177, SLA 1980 (SCS HB 207 am S (H. failed eff. date)). In that instance, the bill was enrolled and transmitted to the governor. On July 1, 1980, the attorney general advised the governor that the House and Senate did not pass the same bill, as one version had an effective date and one did not, and the governor, acting on that advice, returned the bill to the House unsigned. The governor's transmittal letter is set out in 1980 House Journal 2240, and 1980 Senate Journal 1781. Legislative counsel advised that under art. II, secs. 17 and 18, Constitution of Alaska, the bill became law without the governor's signature. By judgment dated March 19, 1981, in Alaska Legislative Council v. Hammond, Case No. 4 FA-80-1689, the superior court for the fourth judicial district upheld the validity of the enactment. In this case, Judge VanHoomissen found that:

Representative John Coghill

July 23, 2008

Page 2

[the] failure of a special effective date clause in one house of the Alaska Legislature does not trigger a requirement that the other house concur in order for the bill itself to be effective.

The constitutional provision regarding adoption of a special effective date by two-thirds vote is similar to the provision in art. IV, sec. 15 with respect to the amendment of the rules of court by two-thirds vote. The court of appeals has ruled that if one house adopts a court rule change that is part of a longer bill and the other house does not adopt the court rule change but adopts the remainder of the bill, the first house need not concur in the second house's action. The houses are considered to have adopted the same bill (the bill minus the sections that changed court rules) for the purposes of sending a version to the governor for signature. Galbraith v. State, 693 P.2d 880 (Alaska App. 1985). Given the fact that court rule changes relate to the substantive effect of an Act, while effective date provisions relate only to when the Act becomes law, the superior court's judgment in Alaska Legislative Council v. Hammond is correct. A necessary ingredient in these rulings is the fact that the failure of or change to an effective date is not an amendment to the substantive provisions of the bill and that the legislature has the constitutional right to adopt substantive provisions by majority vote of the members.

Lastly, I note that the Senate might respond to the failure of the effective date in HB 3001 by passing the Senate version, with its effective date, to the House for consideration rather than amending the House bill and requesting concurrence.

TBC:med
08-326.med

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MEMORANDUM

July 24, 2008

SUBJECT: Conference committee consideration of an effective date
(HB 3001)

TO: Representative John Coghill
Chair of the House Rules Committee
Attn: Rynniva Moss, Legislative Aide

FROM: Tamara Brandt Cook *TBC*
Director

As a follow up to my memorandum dated July 23, 2008, you ask about the status of a bill that is sent to a conference committee when the only difference between the House passed version and the Senate passed version of the bill is the effective date. It is my conclusion that it is not appropriate for the legislature to use the conference committee process when the only difference between bills is the effective date but the substance of the bills is exactly the same.

The effective date clause of a bill, and the reference to a special effective date in the title of the bill, is required by Uniform Rule 39(f) of the Uniform Rules, implementing art. II, sec. 18, Constitution of Alaska. The constitution states:

SECTION 18. Effective date. Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date.

As I pointed out in the earlier memorandum, the Superior Court has concluded that failure of an effective date by one house when the effective date has passed in the other does not prevent enactment of the substance of the bill, without the effective date, by the majority vote required for passage of bills under art. II, sec. 14. (Alaska Legislative Council v. Hammond, Case No. 4 FA-80-1989, March 19, 1981) (See also ARCO Alaska, Inc. v. State, 824 P.2d 708 (Alaska 1992), holding that a retroactive clause takes effect upon approval of a majority vote of the members of each house despite failure of the effective date.)

A necessary ingredient in these rulings is the fact that the failure of an effective date is not an amendment to the bill itself. Obviously, if the second house adds a special effective date to a bill, that action amounts to an amendment and the first house has the opportunity to consider concurrence in that amendment under Uniform Rule 41(a).

Representative John Coghill

July 24, 2008

Page 2

However, if the first house fails to concur there no need for that house to return the bill to the second house with a request to recede from its amendment because the effective date will automatically be deleted from the bill--exactly the result that would be obtained if the second house receded. Thus the conference procedure set out in Uniform Rule 42 simply has no application when the only difference between bill versions involves an effective date.

You ask about the status of HB 3001 if, despite the foregoing analysis, the House and Senate embark upon the conference committee process and no conference committee report is adopted before adjournment of the special session. This situation will place the status of HB 3001 in doubt and should be avoided. The question will be whether the action of adopting HB 3001 by either house has been completed when the bill remains live for additional action as a result of the parliamentary move of engaging in the conference process. It is my opinion that a court would most likely conclude that, because all the constitutional requirements for passage of the bill have been accomplished and neither body has taken action to rescind its passage of the bill, upon adjournment the bill will have passed both bodies in identical form without an effective date. In short, the status of HB 3001 as legislation that has passed both houses will not have changed simply because the bill has been placed in a conference committee. Upon adjournment sine die, the opportunity of the legislature to change the status of HB 3001 will have ended.

TBC:med

08-330.med

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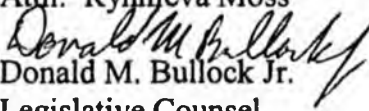

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

July 24, 2008

SUBJECT: Options for the administration if the bill approving the issuance of the AGIA license passes without an effective date (HB 3001)

TO: Representative John Coghill, Jr.
Attn: Rynnjeva Moss

FROM: 
Donald M. Bullock Jr.
Legislative Counsel
- and -
Tamara Brandt Cook
Director 

HB 3001 passed the House on reconsideration on July 23, 2008. The bill had an immediate effective date that failed to obtain the required two-thirds vote and was therefore deleted from the bill.

You asked what options are available to the administration if a bill that passes the legislature approving the issuance of the license under the Alaska Gasline Inducement Act (AGIA) fails to have an effective date that is within nine months after the AGIA license application deadline.¹ You asked the question in the context of the request for applications (RFA) by the commissioner of natural resources and the commissioner of revenue (commissioners) that required an applicant to commit "that the Application will remain valid for nine (9) months after the Application Deadline, or until an AGIA License is issued, whichever is sooner."²

¹ AS 43.90.190(b) requires legislative approval for the issuance of the license within 60 days after the date the speaker and the president received notice from the commissioners:

(b) If a bill approving the issuance of the license passes the legislature within 60 days after the last date a presiding officer receives a determination by the commissioners under AS 43.90.180, the commissioners shall issue the license as soon as practicable after the effective date of the Act approving the issuance of the license.

August 2, 2008, is the 60th day after the notice was received.

² Request for Applications, Alaska Gasline Inducement Act, sec. 1.13.2 (Rev. Oct. 26, 2007). The Request for Applications is hereafter referred to as "RFA."

Representative John Coghill, Jr.

July 24, 2008

Page 2

Next month, August 2008, is the last month of the nine-month period during which TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly as licensee (together, "TransCanada") were required to continue to hold out their application to the commissioners as valid.

In its application submitted in response to the RFA, TransCanada "confirms that the Application will remain valid for nine (9) months after the Application Deadline, or until an AGIA License is issued, whichever is earlier."³ If the bill approving the issuance of the license passes the legislature before August 3, 2008, but the bill does not have an effective date that is before September 1, 2008, TransCanada's commitment to hold out its application as valid will have expired. The effect of that expiration is not clear, and is therefore subject to speculation.

The crux of the issue presented in this situation is whether the license application must be valid only through the date a bill passes the legislature or whether the application must be valid from TransCanada's standpoint until the commissioners issue the license. This issue may be raised in litigation if TransCanada refuses the license if tendered after August 31, 2008, or if the commissioners and TransCanada agree to make the application valid for a period longer than required under the RFA or committed to by TransCanada in its application. In the former situation, the commissioners may seek to force TransCanada to perform; in the latter, a third party may challenge whether the state has the authority to issue a license based on an application that the plaintiff alleges has expired.

If the application must be valid only through the date of actual approval by the legislature's passage of a bill, which is the last date the application may actually be considered for the purposes of approval, then whether or not beyond that date the application is considered to be valid is no longer relevant. The effective date has no effect on the timing of the legislative approval, but does trigger the implementation of AGIA with regard to the licensee -- the license is issued and the licensee becomes eligible for the inducements offered in AS 43.90.110.

The failure to adopt an effective date for HB 3001 that is before September 1, 2008, opens the possibility for a choice among executive decisions affecting the proposed license.

³ Application for License, Alaska Gasline Inducement Act, submitted jointly by TransCanada Alaska Company, LLC and Foothills Pipe Lines, Ltd., sec. 1.11. The application was submitted November 30, 2007 and is hereafter referred to as "application."

The commissioners and TransCanada may evaluate their intent to go forward with the license and use the failure to issue the license within nine months as grounds for mutually terminating the process.

The first option is for the administration and TransCanada to evaluate their positions; does each want to proceed with the license at this point? The commissioners chose nine months as the maximum lifespan for the application and TransCanada committed to that period of validity. TransCanada provided a timeline for taking action based on the presumption that they would receive the license by April 1, 2008.⁴ If TransCanada expected the license within five months after filing the application, agreeing to a nine-month period would appear to have provided more than enough time.

Other than the administration's expressed desire to get a project going as soon as possible, I have found no explanation for the nine-month period or what specifically was expected to occur during that period. The commissioners may have expected, as did TransCanada, that the license would in fact be issued within that nine-month period and the effect of a license being issued is specifically addressed in the RFA requirement and the commitment.⁵

⁴ Application, sec. 2.1 2) a). Under "Project Development," the application states, "The Project Development Phase would be as generally illustrated on the following timeline. This timeline and any other timeline set forth in this Application are conditional on the License being issued on April 1, 2008."

⁵ In my opinion, the nine-month period is very optimistic, particularly if the commissioners expected to issue the license within that period. There are three intervals after the application that have defined or identifiable measures. A 60 day period for public review and comment is mandated by AS 43.90.160; the legislature has 60 days to pass a bill approving the issuance of a license under AS 43.90.190; and, if an effective date fails to receive an adequate number of votes in both houses (two-thirds of the membership of each house under art. II, sec. 18, Constitution of the State of Alaska), the Act would not take effect and the license issued until 90 days after enactment. These periods could add up to almost 210 days, nearly seven months. Within a nine month period, there would be slightly more than two months remaining for the commissioners to perform the initial application review, request additional information, and determine which applications are complete (AS 43.90.140); determine which information submitted by the applicant is proprietary or a trade secret and should be held confidential (AS 43.90.150); prepare and publish the notice for the 60-day comment period (AS 43.90.160); evaluate and rank the complete applications according to the net present value of the anticipated cash flow to the state from each project and the likelihood of success for the project (AS 43.90.170); make a finding that no application proposes or that one or more applications propose a project that will sufficiently maximize the benefits to the people of the state to merit the issuance of a license, publish a notice of intent to issue the license, and forward the notice and along with the findings, supporting documents to the legislature (AS 43.90.180).

The commissioners could request TransCanada to extend the period during which the application is valid.

The requirement of a period during which an application will be considered valid was to be satisfied by the applicant making the commitment. A request to TransCanada to amend its commitment to extend the period could, as a matter of form, result in TransCanada's consent to extend the life of its application through the effective date of the bill enacted under AS 43.90.190. Should this occur, the issue of whether the application is valid as between TransCanada and the commissioners might go away.

However, the extension of a period identified in the RFA to which other persons responded to or considered responding to changes the terms which an applicant may consider before applying and then address in a proposal. Changing the requirements after the fact raises a due process issue.

The commissioners could issue the license after approval but before the effective date because it is the passage of the bill (and its signature into law), not the effective date, that gives evidence of the approval of the license by the legislature.

By the time the bill passes the legislature, the commissioners had already selected the applicant that they believed should be issued the license. The legislature adds its approval by passing a bill approving the license. After the commissioners' and the legislature's approval of the license, the actual issuance of the license implements the intent of the parties -- the commissioners and the executive branch, the legislature, and TransCanada -- that the license should be issued. No more than a ministerial act is required to deliver the license to the person receiving approval.

Should a court agree that issuing the license is merely a ministerial act after all approvals have been given, the issuance before the effective date would not necessarily invalidate the license. No further review or approval is required after the commissioners determine that the license should be issued⁶ and the legislature agrees. Substance over form mandates that the license is issued as intended by all parties. Should a court disagree and suspend the license until the effective date, the license would not be voided, only delayed.

Relying on the doctrine of separation of powers, the commissioners may issue the license without legislative approval or with legislative approval, but at a time determined in the commissioners' discretion.

The commissioners may weigh the risk of issuing the license to TransCanada without the legislative approval required by AS 43.90.190 or a time determined by the

⁶ AS 43.90.180.

Representative John Coghill, Jr.

July 24, 2008

Page 5

commissioners, against the likelihood of success in defending the issuance of the license under the doctrine of separation of powers. There is support for the premise that the executive branch's power is to execute contracts and is distinct from legislative powers.

With regard to AGIA, Governor Palin wanted the legislature to participate in the process leading to the issuance of a license and appears to have initially waived the constitutional power to enter into a contract without legislative approval. That approval will have been obtained with the enactment of HB 3001, even if the bill takes effect at a later date. Please appreciate that any requirement of strict adherence to the effective date in issuing the license will deprive the members of the effect of their approval of the license by majority vote. (*ARCO Alaska, Inc. v. State*, 824 P.2d 708 (Alaska 1992)) Therefore, the executive branch in this instance does not need to urge that legislative approval is not required, only that the delayed effective date does not prevent the earlier issuance of the license under separation of powers analysis.

Conclusion

The discussion above contains much speculation concerning the effect of those issues raised by failing to make the Act approving the issuance of the license take effect before September 1, 2008. The unknowns include the reasons why an applicant's application was to be valid for a period of time that was relatively short considering all that must occur between the deadline for receiving applications and the effective date of a Act in which the legislature approves the license. Also unknown is the commitment of the commissioners and TransCanada to proceed with the license, although nearly all indications are that their commitment continues.

The failure to make the Act incorporating legislative approval take effect along with the limited period in which an application is valid raises the issues described above. However, the passage of a special effective date is clearly within the discretion of the legislature.

If I may be of further assistance, please advise.

DMB:lmb
08-195.lmb

HB 3001 SCORECARD

PRO HB 3001

CON HB 3001

License motivates producers to move forward with way to move product; opens competition; elephant in the doorway. If another line becomes viable and State gives incentives, treble damages buys the work product. If TransCanada is doing the job right we get something for our money.

License gives TransCanada control of fate of pipeline for ten years. There is a need for oversight on the part of the administration and legislature, so if the project becomes uneconomic loss to the State is minimal.

Timeline to open season and FERC certificate are commitments State has to get the process moving to build a gasline. If TransCanada looks at it and discovers the project isn't economical State has a way out through abandonment of and uneconomical project (AS 43.90.240) Need to monitor to minimize losses.

If AGIA's first open season fails; increases cost of project to get to second open season. Producers have incentive to have a successful first open season and fill the line with product. Successful open season without risk of treble damages.

Requires open access with an open season every two years and commitment for voluntary expansion with successful open season. Expansion will result in presumption of rolled in rates at FERC.

Congress has given FERC special authority to impose a mandatory expansion; mandatory expansion is less likely to have rolled in rates.

AGIA provides inducements to encourage construction of the gasline. TransCanada took advantage of those inducements and submitted a proposal.

State law specifies that nothing in AGIA forbids another pipeline from seeking approval without inducements from AGIA.

Legislature passed AGIA with one dissenting vote and following through with license shows good faith on the part of legislature. Rejection of the license could raise questions about business climate in Alaska and the State as a reliable business partner.

TransCanada's application has provisions other than the 20 must haves that also have risks and rewards. There is the limitation of treble damages if royalty inducements or gas production tax exemptions are offered to a company other than TransCanada. The application has provisions that were not approved by the legislature in AGIA.

Treble damages result in State ownership of engineering designs, contracts, permits and other data related to the project that become a marketable asset and limit liability to State if State abandons AGIA project.

Treble damages could cost State over \$800 million.

AGIA inducements are reimbursed based on submittal and approval of expenditures to the State in amount up to \$500 million that will not be applied to the tariff rate.

HB 3001 SCORECARD

PRO HB 3001

CON HB 3001

Rolled in rates spread the cost of expansion over all shippers and are beneficial for explorers that need to make investment decisions. Greater exploration provides both long-term jobs with associated multipliers and increased in-state gas opportunities.

Rolled in rates penalize the producers participating in open season resulting in construction of gas pipeline when rolled in tariff increases the original tariff.. Shippers want to be second not first. Shippers who elect negotiated rates cannot oppose rolled in rate before FERC.

AGIA requires TransCanada to minimize cost overruns and their impact on tariffs. Tariffs are based on allowable costs divided by volume (or through put). Operating costs are fixed except expansion costs.

Brings TransCanada to the table with State of Alaska in support of State's priorities as defined in AGIA.

Canadian ROW's, permits and pipe brings TransCanada to the table.

Assumes Point Thomson is not in production in ten years.

Point Thomson may have to be a contributor in ten years for project to be economically viable.

AGIA leveled the playing field and encouraged competition.

Ended up with one proposal and no competition.

TransCanada has ROW, permits, and pipe from Alberta to continental U.S. and ROW and permits in Yukon Territory. B.C. and Alberta have an established process for permitting and ROW's should be relatively straightforward.

TransCanada does not have ROW and permits in British Columbia and a small portion of Alberta. First Nation issues are unresolved.

Protection from cost overruns.

Best business practice encourages prevention of cost overruns.

TransCanada proposes 25 - 35 year FT but will negotiate terms with shippers to achieve commercially viable project.

TransCanada requires a 25 year FT. Denali would negotiate with each shipper to determine the shipping commitment, including all shippers, not just principles.

Art I, Section 15 states that no law making any irrevocable grant of special privileges or immunities shall be passed. The AGIA license is revocable under AS 43.90.200 (failure to sanction) and AS 43.90.240 (abandonment due to the project being uneconomic). Alaska courts would have jurisdiction should any ambiguities be identified.

Is sovereignty compromised? No

Federal off-shore leases don't generate revenue for the State (yet) but taking into consideration the tariff formula of allowable costs divided by volume federal leases do reduce tariffs for other users.

HB 3001 SCORECARD


PRO HB 3001

CON HB 3001

AGIA tilts the playing field and puts in place impediments preventing producers from proceeding.



ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE
REPRESENTATIVE JOHN COGHILL, CHAIRMAN
State Capitol Juneau, AK 99801-1182 (907) 465-3719
1292 Sadler Way, Fairbanks AK 99701 (907) 456-5081

Date: July 14, 2008
To: Suzi Lowell, Chief Clerk
From: Representative John Coghill, Chairman 
House Rules Committee
Re: House Rules Committee Meeting Notice

The following meeting is scheduled:

Monday, July 21st - 2:00 p.m. Room 120 State Capitol

HB 3001 "An Act approving issuance of a license by the commissioner of revenue and the commissioner of natural resources to TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly as licensee, under the Alaska Gasline Inducement Act; and providing for an effective date."



LAWS OF ALASKA

2007

Source
SCS CSHB 177(FIN)

Chapter No.

AN ACT

Relating to the Alaska Gasline Inducement Act; providing inducements for the construction of a natural gas pipeline and shippers that commit to use that pipeline; establishing the Alaska Gasline Inducement Act reimbursement fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Enrolled HB 177

AN ACT

1 Relating to the Alaska Gasline Inducement Act; providing inducements for the construction of
2 a natural gas pipeline and shippers that commit to use that pipeline; establishing the Alaska
3 Gasline Inducement Act reimbursement fund; providing for an Alaska Gasline Inducement
4 Act coordinator; making conforming amendments; and providing for an effective date.

5

6 * Section 1. AS 43 is amended by adding a new chapter to read:

7

Chapter 90. Alaska Gasline Inducement Act.

8

Article 1. Inducement to Construction of a Natural Gas Pipeline in This State.

9

Sec. 43.90.010. Purpose. The purpose of this chapter is to encourage expedited construction of a natural gas pipeline that

10

11

(1) facilitates commercialization of North Slope gas resources in the

12

state;

1 (2) promotes exploration and development of oil and gas resources on
2 the North Slope in the state;

3 (3) maximizes benefits to the people of the state from the development
4 of oil and gas resources in the state; and

5 (4) encourages oil and gas lessees and other persons to commit to ship
6 natural gas from the North Slope to a gas pipeline system for transportation to markets
7 in this state or elsewhere.

8 **Article 2. Alaska Gasline Inducement Act License.**

9 **Sec. 43.90.100. Gas project.** (a) The commissioners may award an Alaska
10 Gasline Inducement Act license as provided in this chapter. The person awarded a
11 license under this chapter is entitled to the inducement set out in AS 43.90.110.

12 (b) Nothing in this chapter precludes a person from pursuing a gas pipeline
13 independently from this chapter.

14 **Sec. 43.90.110. Natural gas pipeline project construction inducement.** (a)
15 Subject to the limitations of this chapter, a license issued under this chapter entitles the
16 licensee or its designated affiliate to receive

17 (1) subject to appropriation, state matching contributions in the form of
18 reimbursements in a total amount not to exceed \$500,000,000, paid to the licensee
19 during the seven-year period immediately following the date the license is awarded;
20 the payment period may be extended by the commissioners under an amendment or
21 modification of the project plan under AS 43.90.210; a payment under this paragraph
22 shall be made according to the following:

23 (A) on or before the close of the first binding open season, the
24 state shall reimburse the licensee's qualified expenditures at the level specified
25 in the license; however, the state's reimbursements may not exceed 50 percent
26 of the qualified expenditures incurred before the close of the first binding open
27 season;

28 (B) after the close of the first binding open season, the state
29 shall reimburse the licensee's qualified expenditures at the level specified in
30 the license; however, the state's reimbursements may not exceed 90 percent of
31 the qualified expenditures incurred after the close of the first binding open

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season;

(C) a qualified expenditure is a cost that is incurred after the license is issued under this chapter by the licensee or the licensee's designated affiliate, and is directly and reasonably related to pursuing firm transportation commitments in a binding open season, to securing financing for the project, or to obtaining a certificate of public convenience and necessity from the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska, as appropriate, or satisfying a requirement of an agency with jurisdiction over the project; in this subparagraph, "qualified expenditures" does not include overhead costs, lobbying costs, litigation costs, the cost of an asset or work product acquired or developed by the licensee before the license is issued, or civil or criminal penalties or fines; and

(2) the benefit of an Alaska Gasline Inducement Act coordinator who has the authority prescribed in AS 43.90.250.

(b) The commissioner of revenue in consultation with the commissioner of natural resources shall adopt regulations for determining whether an expenditure is a qualified expenditure for the purposes of (a) of this section.

Sec. 43.90.120. Request for applications for the license. (a) The commissioners shall commence a public process to request applications for a license under this chapter as soon as practicable after the effective date of this chapter.

(b) The commissioners may use independent contractors to assist them in developing the request for applications and in evaluating applications received under this chapter.

(c) The provisions of AS 36.30 do not apply to requests for applications under this chapter.

Sec. 43.90.130. Application requirements. An application for a license must be consistent with the terms of the request for applications under AS 43.90.120 and must

(1) be filed by the deadline established by the commissioners in the request for applications;

(2) provide a thorough description of a proposed natural gas pipeline

1 project for transporting natural gas from the North Slope to market, which description
2 may include multiple design proposals, including different design proposals for pipe
3 diameter, wall thickness, and transportation capacity, and which description must
4 include

5 (A) the route proposed for the natural gas pipeline, which may
6 not be the route described in AS 38.35.017(b);

7 (B) the location of receipt and delivery points and the size and
8 design capacity of the proposed natural gas pipeline at the proposed receipt and
9 delivery points, except that this information is not required for in-state delivery
10 points unless the application proposes specific in-state delivery points;

11 (C) an analysis of the project's economic and technical
12 viability, including a description of all pipeline access and tariff terms the
13 applicant plans to offer;

14 (D) an economically and technically viable work plan, timeline,
15 and associated budget for developing and performing the proposed project,
16 including field work, environmental studies, design, and engineering,
17 implementing practices for controlling carbon emissions from natural gas
18 systems as established by the United States Environmental Protection Agency,
19 and complying with all applicable state, federal, and international regulatory
20 requirements that affect the proposed project; the applicant shall address the
21 following:

22 (i) if the proposed project involves a pipeline into or
23 through Canada, a thorough description of the applicant's plan to obtain
24 necessary rights-of-way and authorizations in Canada, a description of
25 the transportation services to be provided and a description of rate-
26 making methodologies the applicant will propose to the regulatory
27 agencies, and an estimate of rates and charges for all services;

28 (ii) if the proposed project involves marine
29 transportation of liquefied natural gas, a description of the marine
30 transportation services to be provided and a description of proposed
31 rate-making methodologies; an estimate of rates and charges for all

1 services by third parties; a detailed description of all proposed access
2 and tariff terms for liquefaction services or, if third parties would
3 perform liquefaction services, identification of the third parties and the
4 terms applicable to the liquefaction services; a complete description of
5 the marine segment of the project, including the proposed ownership,
6 control, and cost of liquefied natural gas tankers, the management of
7 shipping services, liquefied natural gas export, destination,
8 regasification facilities, and pipeline facilities needed for transport to
9 market destinations, and the entity or entities that would be required to
10 obtain necessary export permits and licenses or a certificate of public
11 convenience and necessity from the Federal Energy Regulatory
12 Commission for the transportation of liquefied natural gas in interstate
13 commerce if United States markets are proposed; and all rights-of-way
14 or authorizations required from a foreign country;

15 (3) commit that if the proposed project is within the jurisdiction of the
16 Federal Energy Regulatory Commission, the applicant will

17 (A) conclude, by a date certain that is not later than 36 months
18 after the date the license is issued, a binding open season that is consistent with
19 the requirements of 18 C.F.R. Part 157, Subpart B (Open Seasons for Alaska
20 Natural Gas Transportation Projects) and 18 C.F.R. 157.30 - 1 - 39;

21 (B) apply for Federal Energy Regulatory Commission approval
22 to use the pre-filing procedures set out in 18 C.F.R. 157.21 by a date certain,
23 and use those procedures before filing an application for a certificate of public
24 convenience and necessity, except where the procedures are not required as a
25 result of sec. 5 of the President's Decision issued under 15 U.S.C. 719 et seq.
26 (Alaska Natural Gas Transportation Act of 1976); and

27 (C) apply for a Federal Energy Regulatory Commission
28 certificate of public convenience and necessity to authorize the construction
29 and operation of the proposed project described in this section by a date
30 certain;

31 (4) if the proposed project is within the jurisdiction of the Regulatory

1 Commission of Alaska, commit to

2 (A) conclude, by a date certain that is not later than 36 months
3 after the date the license is issued, a binding open season that is consistent with
4 the requirements of AS 42.06; and

5 (B) apply for a certificate of public convenience and necessity
6 to authorize the construction and operation of the proposed project by a date
7 certain;

8 (5) commit that after the first binding open season, the applicant will
9 assess the market demand for additional pipeline capacity at least every two years
10 through public nonbinding solicitations or similar means;

11 (6) commit to expand the proposed project in reasonable engineering
12 increments and on commercially reasonable terms that encourage exploration and
13 development of gas resources in this state; in this paragraph,

14 (A) "commercially reasonable terms" means that, subject to the
15 provisions of (7) of this section, revenue from transportation contracts covers
16 the cost of the expansion, including increased fuel costs and a reasonable
17 return on capital as authorized by the Federal Energy Regulatory Commission
18 or the Regulatory Commission of Alaska, as applicable, and there is no
19 impairment of the proposed project's ability to recover the costs of existing
20 facilities;

21 (B) "reasonable engineering increments" means the amount of
22 additional capacity that could be added by compression or a pipe addition
23 using a compressor size or pipe size, as applicable, that is substantially similar
24 to the original compressor size and pipe size;

25 (7) commit that the applicant

26 (A) will propose and support the recovery of mainline capacity
27 expansion costs, including fuel costs, from all mainline system users through
28 rolled-in rates as provided in (B) and (C) of this paragraph or through a
29 combination of incremental and rolled-in rates as provided in (D) of this
30 paragraph;

31 (B) will propose and support the recovery of mainline capacity

1 expansion costs, including fuel costs, from all mainline system users through
2 rolled-in rates; an applicant is obligated under this subparagraph only if the
3 rolled-in rates would increase the rates

4 (i) not described in (ii) of this subparagraph by not more
5 than 15 percent above the initial maximum recourse rates for capacity
6 acquired before commercial operations commence; in this sub-
7 subparagraph, "initial maximum recourse rates" means the highest cost-
8 based rates for any specific transportation service set by the Federal
9 Energy Regulatory Commission, the Regulatory Commission of
10 Alaska, or the National Energy Board of Canada, as appropriate, when
11 the pipeline commences commercial operations;

12 (ii) by not more than 15 percent above the negotiated
13 rate for pipeline capacity on the date of commencement of commercial
14 operations where the holder of the capacity is not an affiliate of the
15 owner of the pipeline project; for the purposes of this sub-
16 subparagraph, "negotiated rate" means the rate in a transportation
17 service agreement that provides for a rate that varies from the otherwise
18 applicable cost-based rate, or recourse rate, set out in a gas pipeline's
19 tariff approved by the Federal Energy Regulatory Commission, the
20 Regulatory Commission of Alaska, or the National Energy Board of
21 Canada, as appropriate; or

22 (iii) for capacity acquired in an expansion after
23 commercial operations commence, to a level that is not more than 115
24 percent of the volume-weighted average of all rates collected by the
25 project owner for pipeline capacity on the date commercial operations
26 commence;

27 (C) will, if recovery of mainline capacity expansion costs,
28 including fuel costs, through rolled-in rate treatment would increase the rates
29 for capacity described in (B) of this paragraph, propose and support the partial
30 roll-in of mainline expansion costs, including fuel costs, to the extent that rates
31 acquired before commercial operations commence do not exceed the levels

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described in (B) of this paragraph;

(D) may, for the recovery of mainline capacity expansion costs, including fuel costs, that, under rolled-in rate treatment, would result in rates that exceed the level in (B) of this paragraph, propose and support the recovery of those costs through any combination of incremental and rolled-in rates;

(E) will not enter into a negotiated rate agreement that would preclude the applicant from collecting from any shipper, including a shipper with a negotiated rate agreement, the rolled-in rates that are required to be proposed and supported by the applicant under (B) of this paragraph or the partial rolled-in rates that are required to be proposed and supported by the applicant under (C) of this paragraph;

(8) state how the applicant proposes to deal with a North Slope gas treatment plant, regardless of whether that plant is part of the applicant's proposal, and, to the extent that the plant will be owned entirely or in part by the applicant, commit to seek certificate authority from the Federal Energy Regulatory Commission if the proposed project is engaged in interstate commerce, or from the Regulatory Commission of Alaska if the project is not engaged in interstate commerce; for a North Slope gas treatment plant that will be owned entirely or in part by the applicant, for rate-making purposes, commit to value previously used assets that are part of the gas treatment plant at net book value; describe the gas treatment plant, including its design, engineering, construction, ownership, and plan of operation; the identity of any third party that will participate in the ownership or operation of the gas treatment plant; and the means by which the applicant will work to minimize the effect of the costs of the facility on the tariff;

(9) propose a percentage and total dollar amount for the state's reimbursement under AS 43.90.110(a)(1)(A) and (B) to be specified in the license;

(10) commit to propose and support rates for the proposed project and for any North Slope gas treatment plant that the applicant may own, in whole or in part, that are based on a capital structure for rate-making that consists of not less than 70 percent debt;

(11) describe the means for preventing and managing overruns in costs

1 of the proposed project, and the measures for minimizing the effects on tariffs from
2 any overruns;

3 (12) commit to provide a minimum of five delivery points of natural
4 gas in this state;

5 (13) commit to

6 (A) offer firm transportation service to delivery points in this
7 state as part of the tariff regardless of whether any shippers bid successfully in
8 a binding open season for firm transportation service to delivery points in this
9 state; and

10 (B) offer distance-sensitive rates to delivery points in the state
11 consistent with 18 C.F.R. 157.34(c)(8);

12 (14) commit to establish a local headquarters in this state for the
13 proposed project;

14 (15) to the maximum extent permitted by law, commit to

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

18 (B) contract with businesses located in the state;

19 (C) establish hiring facilities or use existing hiring facilities in
20 the state; and

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

24 (16) waive the right to appeal the rejection of the application as
25 incomplete, the issuance of a license to another applicant, or the determination under
26 AS 43.90.180(b) that no application merits the issuance of a license;

27 (17) commit to negotiate, before construction, a project labor
28 agreement to the maximum extent permitted by law; in this paragraph, "project labor
29 agreement" means a comprehensive collective bargaining agreement between the
30 licensee or its agent and the appropriate labor representatives to ensure expedited
31 construction with labor stability for the project by qualified residents of the state;

1 (18) commit that the state reimbursement received by a licensee may
2 not be included in the applicant's rate base, and shall be used as a credit against the
3 licensee's cost of service;

4 (19) provide a detailed description of the applicant, all entities
5 participating with the applicant in the application and the project proposed by the
6 applicant, and persons the applicant intends to involve in the construction and
7 operation of the proposed project; the description must include the nature of the
8 affiliation for each person, the commitments by the person to the applicant, and other
9 information relevant to the commissioners' evaluation of the readiness and ability of
10 the applicant to complete the project presented in the application;

11 (20) demonstrate the readiness, financial resources, and technical
12 ability to perform the activities specified in the application by describing the
13 applicant's history of compliance with safety, health, and environmental requirements,
14 the ability to follow a detailed work plan and timeline, and the ability to operate within
15 an associated budget.

16 **Sec. 43.90.140. Initial application review; additional information requests;**
17 **complete applications.** (a) After the deadline established by the commissioners for
18 filing an application has passed, the commissioners shall open and review each
19 application to determine whether it is consistent with the terms of the request for
20 applications and meets the requirements of AS 43.90.130. The commissioners shall
21 reject as incomplete an application that does not meet the requirements of
22 AS 43.90.130.

23 (b) To evaluate whether an application should be rejected under (a) of this
24 section, the commissioners may request additional information relating to the
25 application.

26 (c) If, within the time specified by the commissioners, the applicant fails to
27 provide the additional information requested under (b) of this section, or submits
28 additional information that is not responsive, the application shall be rejected.

29 (d) For an application not rejected under this section, the commissioners shall
30 make a determination that the application, including any requested additional
31 information, is complete.

1 (e) Except as provided under AS 43.90.150. and after determining which
2 applications are complete, the commissioners shall make all applications available to
3 the legislature.

4 **Sec. 43.90.150. Proprietary information and trade secrets.** (a) At the
5 request of the applicant, information submitted under this chapter that the applicant
6 identifies and demonstrates is proprietary or is a trade secret is confidential and not
7 subject to public disclosure under AS 40.25. After a license is awarded, all
8 information submitted by the licensee, retained under this chapter, and not determined
9 by the commissioners to be a proprietary or trade secret shall be made public.

10 (b) If the commissioners determine that the information submitted by the
11 applicant is not proprietary or is not a trade secret, the commissioners shall notify the
12 applicant and return the information at the request of the applicant.

13 **Sec. 43.90.160. Notice, review, and comment.** (a) The commissioners shall
14 publish notice and provide a 60-day period for public review and comment on all
15 applications determined complete under AS 43.90.140. Except as provided under
16 AS 43.90.150, all applications filed under this chapter shall be made public, including
17 applications rejected as incomplete under AS 43.90.140.

18 (b) Applications received under this chapter are not subject to public
19 disclosure under AS 40.25 until the commissioners publish notice under this section.
20 However, information that the commissioners have determined is proprietary or a
21 trade secret under AS 43.90.150 may not be made public even after the notice is
22 published under (a) of this section, except as otherwise provided in AS 43.90.150. If
23 information is proprietary or a trade secret and is held confidential under
24 AS 43.90.150, the applicant shall provide a summary of the confidential information
25 that is satisfactory to the commissioners, and the commissioners shall make the
26 summary of the information available to the public.

27 (c) After the commissioners determine that the applications are complete
28 under AS 43.90.140, information provided by an applicant to the commissioners under
29 this chapter, including information determined by the commissioners to be
30 confidential under AS 43.90.150, shall be disclosed to the legislative auditor, the fiscal
31 analyst who serves as head of the legislative finance division, members of the

1 legislature, and their respective agents and contractors, on request and after the
2 individual making the request signs a confidentiality agreement prepared by the
3 commissioners.

4 **Sec. 43.90.170. Application evaluation and ranking.** (a) The commissioners
5 shall evaluate all applications determined to be complete under AS 43.90.140,
6 consider public comments received under AS 43.90.160(a), and rank each application
7 according to the net present value of the anticipated cash flow to the state from the
8 applicant's project proposal using the factors in (b) of this section and weighted by the
9 project's likelihood of success based on the commissioners' assessment of the factors
10 listed in (c) of this section.

11 (b) When evaluating the net present value of anticipated cash flow to the state
12 from the applicant's project proposal, the commissioners shall use an undiscounted
13 value and, at a minimum, discount rates of two, five, six, and eight percent, and
14 consider

15 (1) how quickly the applicant proposes to begin construction of the
16 proposed project and how quickly the project will commence commercial operation;

17 (2) the net back value of the gas determined by the destination market
18 value of the gas and estimated transportation and treatment costs;

19 (3) the ability of the applicant to prevent or reduce project cost
20 overruns that would increase the tariff;

21 (4) the initial design capacity of the applicant's project and the extent
22 to which the design can accommodate low-cost expansion;

23 (5) the amount of the reimbursement by the state under
24 AS 43.90.110(a)(1)(A) and (B) proposed by the applicant under AS 43.90.130(9);

25 (6) economic value resulting from payments required to be made to the
26 state under the terms of the proposal; and

27 (7) other factors found by the commissioners to be relevant to the
28 evaluation of the net present value of the anticipated cash flow to the state.

29 (c) When evaluating the project's likelihood of success, the commissioners
30 shall consider

31 (1) the reasonableness, specificity, and feasibility of the applicant's

1 work plan, timeline, and budget required to be submitted under AS 43.90.130,
2 including the applicant's plan to manage cost overruns, insulate shippers from the
3 effect of cost overruns, and encourage shippers to participate in the first binding open
4 season;

5 (2) the financial resources of the applicant;

6 (3) the ability of the applicant to comply with the proposed
7 performance schedule;

8 (4) the applicant's organization, experience, accounting and operational
9 controls, technical skills or the ability to obtain them, and necessary equipment or the
10 ability to obtain the necessary equipment;

11 (5) the applicant's record of

12 (A) performance on projects not licensed under this chapter;

13 (B) integrity and good business ethics; and

14 (6) other evidence and factors found by the commissioners to be
15 relevant to the evaluation of the project's likelihood of success.

16 **Sec. 43.90.180. Notice to the legislature of intent to issue license; denial of**
17 **license.** (a) If, after consideration of public comments received under AS 43.90.160(a)
18 and evaluation of complete applications under AS 43.90.170, the commissioners
19 determine that an application proposes a project that will sufficiently maximize the
20 benefits to the people of this state and merits issuance of a license under this chapter,
21 the commissioners shall

22 (1) issue a determination, with written findings addressing the basis for
23 the determination; the determination becomes a final agency action on the effective
24 date of a bill approving the issuance of the license under AS 43.90.190;

25 (2) publish notice of intent to issue a license under this chapter with
26 written findings addressing the basis for the determination; and

27 (3) forward the notice under (2) of this subsection, along with the
28 findings, supporting documentation, and determination under (1) of this subsection, to
29 the presiding officer of each house of the legislature for action as provided in
30 AS 43.90.190.

31 (b) If, after evaluation of complete applications under AS 43.90.170, the

1 commissioners determine that no application sufficiently maximizes the benefits to the
2 people of this state and merits issuance of a license under this chapter, the
3 commissioners shall issue a written finding that addresses the basis for that
4 determination.

5 (c) The commissioners' determination under (b) of this section is a final
6 agency action.

7 **Sec. 43.90.190. Legislative approval; issuance of license.** (a) After the
8 presiding officer of each house of the legislature receives a determination from the
9 commissioners under AS 43.90.180, the rules committee of each house of the
10 legislature shall introduce a bill in the committee's respective chamber that provides
11 for the approval of the license proposed to be issued by the commissioners.

12 (b) If a bill approving the issuance of the license passes the legislature within
13 60 days after the last date a presiding officer receives a determination by the
14 commissioners under AS 43.90.180, the commissioners shall issue the license as soon
15 as practicable after the effective date of the Act approving the issuance of the license.

16 (c) Notwithstanding a legislative rule that prohibits the carryover of a bill after
17 the end of a special session or after the end of a regular session of a legislature, a bill
18 introduced under (a) of this section that is not passed or not withdrawn, defeated,
19 vetoed, or indefinitely postponed shall be carried over to any subsequent regular or
20 special legislative session convened during the 60-day period described in (b) of this
21 section in the same reading or status it was in at the time of adjournment. However, a
22 bill introduced under (a) of this section may not be carried over to the first regular
23 session of a legislature.

24 (d) If the legislature fails to approve the issuance of the license, the
25 commissioners

26 (1) may not issue the license that the legislature failed to approve; and

27 (2) may request new applications for a license under AS 43.90.120.

28 **Sec. 43.90.200. Certification by regulatory authority and project sanction.**

29 (a) A licensee that is awarded a certificate of public convenience and necessity from a
30 regulatory agency with jurisdiction over the project shall accept the certificate on or
31 before the date the order granting the certificate is no longer subject to judicial review.

1 (b) If the licensee has credit support sufficient to finance construction of the
2 project through ownership of rights to produce and market gas resources, firm
3 transportation commitments, or government financing, the licensee shall sanction the
4 project within one year after the effective date of the certificate of public convenience
5 and necessity issued by the regulatory agency with jurisdiction over the project.

6 (c) If the licensee does not have credit support sufficient to finance
7 construction of the project through ownership of rights to produce and market gas
8 resources, firm transportation commitments, or government financing, the licensee
9 shall sanction the project before the later of

10 (1) two years after the effective date of the certificate of public
11 convenience and necessity issued by the regulatory agency with jurisdiction over the
12 project; or

13 (2) five years after the close of the first binding open season of the
14 project.

15 (d) If the licensee fails to sanction the project as required under this section,
16 the licensee shall, upon request by the state,

17 (1) seek approval from the Federal Energy Regulatory Commission or
18 the Regulatory Commission of Alaska, as applicable, to abandon and transfer the
19 certificate to the state or the state's designee; and

20 (2) assign to the state or the state's designee all engineering designs,
21 contracts, permits, and other data related to the project that are acquired by the
22 licensee during the term of the license before the date of the abandonment or transfer.

23 (e) The transfer and assignments under (d) of this section as a result of failure
24 to comply with (a) or (b) of this section are at no cost to the state or the state's
25 designee. A transfer under (c) of this section shall be subject to the state's payment to
26 the licensee of the net amount of expenditures incurred and paid by the licensee that
27 are qualified expenditures for the purposes of AS 43.90.110.

28 (f) In this section, "effective date of the certificate of public convenience and
29 necessity" means the earlier of the date the order granting the certificate is no longer
30 subject to judicial review, or the date the licensee accepts the certificate.

31 **Sec. 43.90.210. Amendment of or modification to the project plan.** Subject

1 to the approval of the commissioners, a licensee may amend or modify its project plan
2 if the amendment or modification improves the net present value of the project to the
3 state, is necessary because of an order or requirement by a regulatory agency with
4 jurisdiction over the project or by the Alaska Oil and Gas Conservation Commission,
5 or is necessary because of changed circumstances outside the licensee's control and
6 not reasonably foreseeable before the license was issued. An amendment or
7 modification approved under this section must be consistent with the requirements of
8 AS 43.90.130 and, except for an amendment or modification required because of an
9 order or requirement of a regulatory agency with jurisdiction over the project or by the
10 Alaska Oil and Gas Conservation Commission, may not substantially diminish the
11 value of the project to the state or the project's likelihood of success.

12 **Sec. 43.90.220. Records, reports, conditions, and audit requirements.** (a) A
13 licensee shall maintain complete and accurate records of all expenditures and
14 commitments of state money received under this chapter, including receipts and
15 records showing the payment or cost of purchased items and services, the names and
16 addresses of the sellers and service providers, and the dates of service or delivery.

17 (b) Upon reasonable notice, the commissioners may audit the records, books,
18 and files of the entity receiving the state money or making the expenditures and
19 commitments of money received from the state under this chapter.

20 (c) The commissioners may do the following with respect to information
21 relating to the project: conduct hearings or other investigative inquiries; compel the
22 attendance of witnesses and production of documents; and require the licensee to
23 furnish information in paper copy or electronic format.

24 (d) After a license has been issued and until commencement of commercial
25 operations of a natural gas pipeline, the licensee shall allow the commissioners to

26 (1) have a representative present at all meetings of the licensee's
27 governing body or bodies and equity holders that relate to the project;

28 (2) receive all relevant notices and information when and as sent to the
29 governing body or bodies and equity holders;

30 (3) enjoy the same access to information about the licensee as the
31 governing body members and equity owners receive; and

1 (4) receive relevant reports or information from the licensee that the
2 commissioners reasonably request.

3 (e) All proprietary information, privileged information, and trade secrets
4 received by the commissioners or their representative under (d) of this section are not
5 subject to public disclosure under AS 40.25.

6 (f) A licensee shall maintain the records and reports required under this
7 section for seven years from the date the licensee receives state money under this
8 chapter.

9 **Sec. 43.90.230. License violations; damages.** (a) A licensee is in violation of
10 the license if the commissioners determine that the licensee has

11 (1) requested and received money from the state under this chapter for
12 an expenditure that is not a qualified expenditure under AS 43.90.110;

13 (2) except as required to conform with a requirement of a regulatory
14 agency with jurisdiction over the project, substantially departed from the
15 specifications set out in the application without state approval of a project plan
16 amendment or modification under AS 43.90.210;

17 (3) violated any provision of this chapter or any other provision of
18 state or federal law material to the license;

19 (4) failed to accept a certificate as required under AS 43.90.200(a) or
20 failed to sanction the project as required under AS 43.90.200(b); or

21 (5) otherwise violated a material term of the license.

22 (b) The commissioners shall provide written notice to the licensee identifying
23 a license violation. The commissioners and the licensee have 90 days after the date the
24 notice is issued to resolve the violation informally.

25 (c) The commissioners may suspend disbursement of state reimbursements to
26 the licensee beginning on the date that the notice of violation issued under (b) of this
27 section is sent to the licensee. The commissioners may resume disbursement on the
28 date that the commissioners determine that the violation is cured.

29 (d) If the commissioners and the licensee are unable to resolve the violation
30 within the period described in (b) of this section, the commissioners shall notify the
31 licensee that the violation has not been cured and provide the licensee with an

1 opportunity to be heard. If, after notice and hearing, the commissioners determine that
2 the violation has not been cured, the commissioners shall issue a written decision that
3 is a final administrative action for purposes of appeal to the superior court in the state.

4 (e) If the determination issued under (d) of this section finds an unresolved
5 violation, the commissioners may impose one or more of the following remedies:

6 (1) discontinuation of state reimbursements under this chapter;

7 (2) recoupment of state money that the licensee has received under this
8 chapter to date, with interest, regardless of whether the licensee has expended or
9 committed that money;

10 (3) license revocation;

11 (4) assignment to the state or the state's designee of all engineering
12 designs, contracts, permits, and other data related to the project that are acquired by
13 the licensee during the term of the license; and

14 (5) any other remedies provided by law or in equity.

15 **Sec. 43.90.240. Abandonment of project.** (a) If the commissioners and the
16 licensee agree that the project is uneconomic, the project shall be abandoned, the
17 inducement provided for in AS 43.90.110 shall be terminated, and, except for
18 requirements imposed on the licensee under (e) of this section and AS 43.90.220, the
19 state and the licensee no longer have an obligation under this chapter with respect to
20 the license.

21 (b) If the commissioners or the licensee determines that the project is
22 uneconomic and the other party disagrees, the disagreement shall be settled by
23 arbitration administered by the American Arbitration Association under the
24 substantive and procedural laws of this state, and judgment on the award rendered by
25 the arbitrators may be entered in superior court in the state. In the event of arbitration,
26 each party shall select an arbitrator from the American Arbitration Association's
27 National Roster, and the two arbitrators shall appoint a third arbitrator from the
28 American Arbitration Association's National Roster who shall serve as the chair of the
29 three-member arbitration panel. If the arbitration panel determines that the project is

30 (1) uneconomic, the state and the licensee no longer have an obligation
31 under this chapter with respect to the license, except for requirements imposed on the

1 licensee under (e) of this section and AS 43.90.220; or

2 (2) not uneconomic, the obligations of the licensee and the state
3 continue as provided under this chapter and the license.

4 (c) The arbitration panel in (b) of this section shall make a determination that
5 the project is uneconomic only if the panel finds that the party claiming the project is
6 uneconomic has proven by a preponderance of the evidence that the

7 (1) project does not have credit support sufficient to finance
8 construction of the project through firm transportation commitments, government
9 assistance, or other external sources of financing; and

10 (2) predicted costs of transportation at a 100 percent load factor, when
11 deducted from predicted gas sales revenue using publicly available predictions of
12 future gas prices, would result in a producer rate of return that is below the rate
13 typically accepted by a prudent oil and gas exploration and production company for
14 incremental upstream investment that is required to produce and deliver gas to the
15 project.

16 (d) If the state makes a payment to the licensee under AS 43.90.440, the
17 license is considered abandoned, and the state and the licensee no longer have any
18 obligations under this chapter with respect to the license, except that the licensee must
19 comply with the

20 (1) requirements imposed on the licensee under AS 43.90.220
21 regarding state money received by the licensee before the license was considered
22 abandoned; and

23 (2) requirements of AS 43.90.440.

24 (e) If the commissioners and the licensee agree that the project is uneconomic
25 or an arbitration panel makes a final determination that the project is uneconomic, the
26 licensee shall, upon the state's request, transfer to the state or the state's designee all
27 engineering designs, contracts, permits, and other data related to the project that are
28 acquired by the licensee during the term of the license upon reimbursement by the
29 state of the net amount of expenditures incurred and paid by the licensee that are
30 qualified expenditures for the purposes of AS 43.90.110.

31 **Sec. 43.90.250. Alaska Gasline Inducement Act coordinator.** (a) There is

1 created in the Office of the Governor the position of Alaska Gasline Inducement Act
2 coordinator. Administrative support for the position shall be provided by the Office of
3 the Governor. The position shall continue until one year after commencement of
4 commercial operations of the project.

5 (b) The governor shall appoint a person to the position of Alaska Gasline
6 Inducement Act coordinator. The individual serving as the Alaska Gasline Inducement
7 Act coordinator may be removed from the position at the discretion of the governor.

8 **Sec. 43.90.260. Expedited review and action by state agencies.** (a) A review
9 conducted and action taken by a state agency relating to the project shall be expedited
10 in a manner consistent with the completion of the necessary approvals in accordance
11 with this chapter.

12 (b) Notwithstanding any contrary provision of law, a state agency may not
13 include in any project certificate, right-of-way, permit, or other authorization issued to
14 the licensee a term or condition that is not required by law if the coordinator
15 determines that the term or condition would prevent or impair in any significant
16 respect the expeditious construction and operation or expansion of the project.

17 (c) Unless required by law, a state agency may not add to, amend, or abrogate
18 any certificate, right-of-way, permit, or other authorization issued to a licensee if the
19 coordinator determines that the action would prevent or impair in any significant
20 respect the expeditious construction, operation, or expansion of the project.

21 **Article 3. Resource Inducements.**

22 **Sec. 43.90.300. Qualification for resource inducements.** (a) Notwithstanding
23 any contrary provision of law, a lessee or other person that demonstrates to the
24 satisfaction of the commissioners that the person has committed to acquire firm
25 transportation capacity in the first binding open season of the project is qualified to
26 receive the resource inducement set out in AS 43.90.310 and 43.90.320 for gas
27 produced on the North Slope and shipped in firm transportation capacity acquired in
28 the first binding open season of the project. The inducement in AS 43.90.310 is
29 contractual.

30 (b) A gas producer receiving a voucher under AS 43.90.330 is qualified to
31 receive the resource inducement in AS 43.90.310 and 43.90.320 for the gas shipped in

1 the firm transportation capacity described in the voucher for the period described in
2 AS 43.90.330.

3 **Sec. 43.90.310. Royalty inducement.** (a) Before the start of the first binding
4 open season to be conducted by the licensee, the commissioner of natural resources
5 shall adopt regulations that establish a method to determine the monthly value of the
6 state's royalty share of gas production and establish terms under which the state will
7 exercise its right to switch between taking its royalty in value or in kind for gas
8 committed for firm transportation in the first binding open season of the project or
9 shipped in the firm transportation capacity described in a voucher received by the gas
10 producer under AS 43.90.330. The regulations must

11 (1) minimize retroactive adjustments to the monthly value of the state's
12 royalty share of gas production;

13 (2) provide a method for establishing a fair market value for each
14 component of the state's royalty gas that is based on pricing data from reliable and
15 widely available industry trade publications and that uses appropriate adjustments to
16 reflect

17 (A) deductions for actual and reasonable transportation costs
18 for the state's royalty gas, including a reasonable share of the costs associated
19 with unused capacity commitments on gas pipelines from the North Slope to
20 the first destination market with reasonable market liquidity;

21 (B) location differentials between the destination markets
22 where North Slope gas could be sold;

23 (C) reasonable and actual costs for gas processing; in this
24 subparagraph, "gas processing" means post-production treatment of gas to
25 extract natural gas liquids; and

26 (D) deductions permitted under the 1980 Royalty Settlement
27 Agreement for Prudhoe Bay gas; and

28 (3) establish terms under which the state will exercise its authority to
29 switch between taking its royalty gas in value and in kind to ensure that the state's
30 actions do not unreasonably

31 (A) cause the lessee or other person to bear disproportionate

1 transportation costs with respect to the state's royalty gas;

2 (B) interfere with the lessee's or other person's long-term
3 marketing of its production.

4 (b) If a lessee or other person qualified for a resource inducement under
5 AS 43.90.300 agrees under (c) of this section, the lessee or other person is entitled to
6 elect

7 (1) to calculate its gas royalty obligation under the regulations adopted
8 under (a) of this section for natural gas transported on a firm contract executed during
9 the project's first binding open season or under the methodology set out in the existing
10 leases from which the gas is produced, and

11 (A) upon the request of the lessee, the commissioner of natural
12 resources shall contractually amend the existing lease to effect the election
13 under this paragraph and incorporate as fixed contract terms the relevant
14 regulatory provisions; and

15 (B) the election under this paragraph remains in effect until
16 new regulations are adopted as a result of a review under (d) of this section, at
17 which time, a lessee or other person qualified under AS 43.90.300 may change
18 its election under this paragraph; upon the request of the lessee, the
19 commissioner of natural resources shall contractually amend the lease to
20 incorporate as fixed contract terms the relevant revised regulatory provisions;

21 (2) to enter into a contract with the state that amends the existing lease
22 terms by providing a mechanism that ensures that, when the state exercises its right to
23 switch between taking its royalty in value or in kind for gas committed for firm
24 transportation in the first binding open season of the project, the lessee or other person
25 does not bear disproportionate transportation costs with respect to the state's royalty
26 gas; and by modifying the required period of notice that the state must provide before
27 exercising the state's right to switch between taking its royalty in value or in kind for
28 gas committed for firm transportation in the first binding open season of the project.

29 (c) To claim the inducement under (b) of this section, a lessee or other person
30 qualified under AS 43.90.300 shall agree, on an application form provided by the
31 Department of Natural Resources, that the lessee or other person, and the lessee's or

1 other person's affiliates, successors, assigns, and agents, will not protest or appeal a
2 filing by the licensee to roll in expansion costs of the mainline up to a level that is
3 required in AS 43.90.130(7) if the Federal Energy Regulatory Commission does not
4 have a rebuttable presumption in effect that rolled-in treatment applies to the cost of
5 the expansion of the project. The agreement not to protest may not preclude the lessee
6 or other person, or the lessee's or other person's affiliates, successors, assigns, and
7 agents, from protesting a filing to roll in mainline expansion costs that the licensee is
8 not required to propose and support under AS 43.90.130(7).

9 (d) The commissioner of natural resources shall provide for review of the
10 regulations adopted under (a) of this section at least every two years after the
11 commencement of commercial operations to determine whether the regulations
12 continue to meet the requirements of (a) of this section under current conditions, and
13 shall amend the regulations when the requirements are not being met.

14 (e) No provision of this chapter precludes the election set out in (b) of this
15 section, nor may the commissioner of natural resources assert any provision of any
16 existing lease or unit agreement as precluding the elections set out in (b) of this
17 section.

18 **Sec. 43.90.320. Gas production tax exemption.** (a) If a person qualified for a
19 resource inducement under AS 43.90.300 agrees under (c) of this section, the person is
20 entitled to an annual exemption from the state's gas production tax in an amount equal
21 to the difference between the amount of the person's gas production tax obligation
22 calculated under the gas production tax in effect during that tax year and the amount of
23 the person's gas production tax obligation calculated under the gas production tax in
24 effect at the start of the first binding open season held under this chapter. If the
25 difference is less than zero, the gas production tax exemption is zero.

26 (b) The exemption under this section may be applied within 10 years
27 immediately following commencement of commercial operations and only applied to
28 production taxes that are levied on North Slope gas shipped through firm
29 transportation capacity the person acquired during the first binding open season or
30 shipped in the firm transportation capacity described in a voucher received by the gas
31 producer under AS 43.90.330.

1 (c) The person claiming the exemption under this section shall agree that the
2 person, and the person's affiliates, successors, assigns, and agents, will not protest or
3 appeal a filing by the licensee to roll in mainline expansion costs up to the level that
4 the licensee is required to propose and support under AS 43.90.130(7) if the Federal
5 Energy Regulatory Commission does not have a rebuttable presumption in effect that
6 rolled-in treatment applies to the cost of the expansion of the project. The agreement
7 required under this subsection may not preclude the person, or the person's affiliates,
8 successors, assigns, and agents, from protesting a filing to roll in mainline expansion
9 costs that the licensee is not required to propose and support under AS 43.90.130(7).

10 (d) In this section, "gas production tax" means the tax levied on the production
11 of gas under AS 43.55.

12 **Sec. 43.90.330. Inducement vouchers.** (a) A person that acquires firm
13 transportation capacity in the first binding open season of the project, that does not
14 hold an oil and gas lease on the North Slope, and that is not an affiliate of a person that
15 holds an oil and gas lease on the North Slope may apply to the commissioners for a
16 voucher under this section. A voucher issued by the commissioners must describe the
17 firm transportation capacity in the project to which the voucher is applicable.

18 (b) A voucher issued by the commissioners under this section entitles the
19 holder of the voucher to the resource inducements in AS 43.90.310 and 43.90.320 for
20 gas shipped in the firm transportation capacity acquired by the person applying for the
21 voucher during the first binding open season of the project and described in the
22 voucher. The voucher may be transferred to a gas producer that has a binding
23 obligation to sell gas to the person transferring the voucher under a gas purchase
24 agreement.

25 (c) A gas producer holding a voucher may claim the resource inducements for
26 gas shipped through the firm transportation capacity described in the voucher and only
27 on gas that is produced and delivered to the purchaser on the North Slope. A gas
28 producer may claim the resource inducements under this subsection until the earlier of
29 the termination of the binding gas purchase agreement or the expiration of the
30 inducements by operation of law.

31 (d) A person that receives a voucher under this section and a gas producer that

1 receives resource inducements under a voucher shall agree that the person and the gas
2 producer and their respective affiliates, successors, assigns, or agents will not protest
3 or appeal a filing by the licensee to roll in mainline expansion costs up to the level that
4 the licensee is required to propose and support under AS 43.90.130(7) if the Federal
5 Energy Regulatory Commission does not have a rebuttable presumption in effect that
6 rolled-in treatment applies to the cost of the expansion of the project. The agreement
7 required under this subsection may not preclude the person or gas producer or their
8 respective affiliates, successors, assigns, or agents from protesting a filing to roll in
9 mainline expansion costs that the licensee is not required to propose and support under
10 AS 43.90.130(7).

11 **Article 4. Miscellaneous Provisions.**

12 **Sec. 43.90.400. Alaska Gasline Inducement Act reimbursement fund;**
13 **disbursements; audits.** (a) There is established in the general fund an Alaska Gasline
14 Inducement Act reimbursement fund. The fund consists of money appropriated to it by
15 the legislature for disbursement to pay the state's reimbursements under AS 43.90.110.
16 Money appropriated to the fund may be spent for the purposes of the fund without
17 further appropriation. Appropriations to the fund do not lapse under AS 37.25.010, but
18 remain in the fund for future disbursements. Nothing in this subsection creates a
19 dedicated fund.

20 (b) The Department of Revenue shall manage the fund, and may invest money
21 in the fund so as to yield competitive market rates as provided in AS 37.10.071.
22 Income earned on the fund shall be accounted for separately and may be appropriated
23 annually to the fund.

24 (c) The commissioners shall adopt regulations that provide for application to
25 receive reimbursements for qualified expenditures as provided under AS 43.90.110,
26 and that provide for periodic audits of the use of money disbursed as reimbursements
27 under this chapter.

28 (d) Within 10 days after the convening of each regular session of the
29 legislature, the commissioners shall submit to the legislature a report that lists all the
30 disbursements from the fund during the preceding fiscal year with a written
31 justification for each disbursement and the projected amount of money that will be

1 required for reimbursements in each of the next three fiscal years.

2 **Sec. 43.90.410. Regulations.** The commissioners may jointly adopt or amend
3 regulations for the purpose of implementing the provisions of this chapter. The
4 commissioner of revenue and the commissioner of natural resources may adopt or
5 amend regulations adopted under authority outside of this chapter as necessary to
6 implement the provisions of this chapter.

7 **Sec. 43.90.420. Statute of limitations.** A person may not bring a judicial
8 action challenging the constitutionality of this chapter or the constitutionality of a
9 license issued under this chapter unless the action is commenced in a court of the state
10 of competent jurisdiction within 90 days after the date that a license is issued.

11 **Sec. 43.90.430. Interest.** When a payment due to the state under this chapter
12 becomes delinquent, the payment bears interest at the rate applicable to a delinquent
13 tax under AS 43.05.225.

14 **Sec. 43.90.440. Licensed project assurances.** (a) Except as otherwise
15 provided in this chapter, the state grants a licensee assurances that the licensee has
16 exclusive enjoyment of the inducements provided under this chapter before the
17 commencement of commercial operations. If, before the commencement of
18 commercial operations, the state extends to another person preferential royalty or tax
19 treatment or grant of state money for the purpose of facilitating the construction of a
20 competing natural gas pipeline project in this state, and if the licensee is in compliance
21 with the requirements of the license and with the requirements of state and federal
22 statutes and regulations relevant to the project, the licensee is entitled to payment from
23 the state of an amount equal to three times the total amount of the expenditures
24 incurred and paid by the licensee that are qualified expenditures for the purposes of
25 AS 43.90.110 that the licensee incurred in developing the licensee's project before the
26 date that the state first extended preferential treatment to another person. The payment
27 under this subsection is subject to appropriation. Upon payment by the state of the
28 amount owed under this section, the licensee shall, at no additional cost to the state,
29 assign to the state or the state's designee all engineering designs, contracts, permits,
30 and other data related to the project that were acquired by the licensee during the term
31 of the license. The payment under this subsection is in full satisfaction of all claims

1 the licensee may bring in contract, tort, or other law related to the events that gave rise
2 to the payment.

3 (b) The review, processing, or facilitation of a permit, right-of-way, or
4 authorization by a state agency in connection with a competing natural gas pipeline
5 project does not create an obligation on the part of the state under this section.

6 (c) In this section,

7 (1) "competing natural gas pipeline project" means a project designed
8 to accommodate throughput of more than 500,000,000 cubic feet a day of North Slope
9 gas to market;

10 (2) "preferential royalty or tax treatment" does not include

11 (A) the state's exercise of its right to resolve disputes involving
12 royalties and taxes; or

13 (B) the state's exercise of its right to modify royalties as
14 authorized by law in effect on the effective date of this section.

15 **Sec. 43.90.450. Assignments.** (a) A licensee may transfer all or part of the
16 license, including the rights and obligations arising under the license, if, after
17 publishing notice of the proposed transfer, providing notice to the presiding officer of
18 each house of the legislature, and providing a period of not less than 30 days for public
19 review and comment,

20 (1) the transfer is approved in writing in advance by the
21 commissioners; and

22 (2) the transfer does not increase or diminish the obligations created by
23 the license or diminish the likelihood of success of the project or the net present value
24 of the license to the state.

25 (b) Notwithstanding the commissioners' approval of a transfer of all or part of
26 a license under (a) of this section, the transferor of the license remains subject to the
27 requirements of AS 43.90.220 regarding all state money received by the licensee
28 before the effective date of the transfer.

29 (c) A person may transfer that person's rights to the royalty inducement under
30 AS 43.90.310 and the gas production tax exemption under AS 43.90.320 only in
31 connection with a sale or merger that results in transfer of all the person's assets in the

1 North Slope along with the person's firm transportation capacity contracts in the
2 project.

3 (d) Except for the transfer of a voucher to a producer under AS 43.90.330(b),
4 a person receiving a voucher under AS 43.90.330 based on the person's acquisition of
5 firm transportation capacity in the first binding open season of the project may transfer
6 the voucher only if the transfer is in connection with the permanent assignment by the
7 person of 100 percent of the firm transportation capacity acquired in the first binding
8 open season of the project.

9 **Sec. 43.90.460. Conflicting laws.** Nothing in this chapter shall be construed to
10 repeal or abrogate the administrative, regulatory, or statutory procedures and functions
11 of state and federal law governing the development and oversight of a project.

12 **Sec. 43.90.470. State pipeline employment development.** The commissioner
13 of labor and workforce development shall develop a job training program that will
14 provide training for Alaskans in gas pipeline project management, construction,
15 operations, maintenance, and other gas pipeline-related positions.

16 **Article 5. General Provisions.**

17 **Sec. 43.90.900. Definitions.** In this chapter, unless the context otherwise
18 requires,

19 (1) "affiliate" means another person that controls, is controlled by, or is
20 under common control with a person, and includes a division that operates as a
21 functional unit;

22 (2) "Alaska Gasline Inducement Act coordinator" or "coordinator"
23 means the person appointed under AS 43.90.250;

24 (3) "applicant" means a person or group of persons that files an
25 application for a license;

26 (4) "certificate of public convenience and necessity" and "certificate"
27 mean a certificate of public convenience and necessity issued by the Federal Energy
28 Regulatory Commission or the Regulatory Commission of Alaska and an amendment
29 to a certificate of public convenience and necessity issued by the Federal Energy
30 Regulatory Commission under 15 U.S.C. 719 et seq. (Alaska Natural Gas
31 Transportation Act of 1976);

1 (5) "commencement of commercial operations" means the first flow of
2 gas in the project that generates revenue to the owners;

3 (6) "commissioners" means the commissioner of revenue and the
4 commissioner of natural resources, acting jointly;

5 (7) "control" means the possession of ownership interest or authority
6 sufficient to, directly or indirectly, and whether acting alone or in conjunction with
7 others, direct or cause the direction of the management or policies of a company, and
8 is rebuttably presumed if the voting interest held is 10 percent or more;

9 (8) "equity holder" means the

10 (A) stockholders of a corporation;

11 (B) members of a limited liability company;

12 (C) partners of a partnership;

13 (D) joint venturers of a joint venture;

14 (E) members of a governmental authority and similar persons;

15 or

16 (F) holders of any other entity or person;

17 (9) "gas treatment plant" means a facility downstream of the point of
18 production that conditions gas and removes nonhydrocarbon substances from the gas
19 for the purpose of rendering the gas acceptable for tender and acceptance into a gas
20 pipeline system;

21 (10) "governing body" means a corporation's board of directors, a
22 limited liability company's managing members, a partnership's general partners, a joint
23 venturer's joint venturers, a governmental authority's board or council members, and
24 similar entities;

25 (11) "lease" means an oil and gas, or gas, lease issued by this state;

26 (12) "lessee" means a person that holds a working interest in an oil and
27 gas, or gas, lease issued by this state;

28 (13) "license" means a license issued under this chapter;

29 (14) "licensee" means the holder of a license issued under this chapter
30 and all affiliates, successors, assigns, and agents of the holder;

31 (15) "net present value" means the discounted value of a future stream

1 of cash flow;

2 (16) "North Slope" means that part of the state that lies north of 68
3 degrees North latitude;

4 (17) "open season" means the process that complies with 18 C.F.R.
5 Part 157, Subpart B (Open Seasons for Alaska Natural Gas Transportation Projects) or
6 a similar process for soliciting commitments for pipeline capacity under the
7 regulations, policies, rules, or precedent of the Regulatory Commission of Alaska;

8 (18) "point of production" has the meaning given in AS 43.55.900.

9 (19) "project" means a natural gas pipeline project authorized under a
10 license issued under this chapter;

11 (20) "proprietary," when used to describe information, means that the
12 information is treated by an applicant as confidential and the public disclosure of that
13 information would adversely affect the competitive position of the applicant or
14 materially diminish the commercial value of the information to the applicant;

15 (21) "recourse rates" means cost-based rates with a minimum and
16 maximum range that are approved by the Federal Energy Regulatory Commission, the
17 Regulatory Commission of Alaska, or the National Energy Board of Canada, as
18 appropriate, and set out in the pipeline's tariff; "recourse rates" includes only those
19 rates that the pipeline must make available to all shippers;

20 (22) "sanction" means to make financial commitments to go forward
21 with the project as evidenced by entering into financial commitments of at least
22 \$1,000,000,000 with third parties;

23 (23) "trade secret" has the meaning given in AS 45.50.940;

24 (24) "under common control with" has the meaning given "control" in
25 this section;

26 (25) "unit agreement" means an agreement executed by the working
27 interest owners and royalty owners creating the unit.

28 **Sec. 43.90.990. Short title.** This chapter may be cited as the Alaska Gasline
29 Inducement Act.

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

31 (45) contracts for an arbitration panel to determine whether a project is

1 uneconomic under AS 43.90.240, and contracts for the development of application
2 provisions for licensure and for the evaluation of those applications under AS 43.90.

3 * Sec. 3. AS 38.05.020(b) is amended to read:

4 (b) The commissioner may

5 (1) establish reasonable procedures and adopt reasonable regulations
6 necessary to carry out this chapter and, whenever necessary, issue directives or orders
7 to the director to carry out specific functions and duties; regulations adopted by the
8 commissioner shall be adopted under AS 44.62 (Administrative Procedure Act);
9 orders by the commissioner classifying land, issued after January 3, 1959, are not
10 required to be adopted under AS 44.62 (Administrative Procedure Act):

11 (2) enter into agreements considered necessary to carry out the
12 purposes of this chapter, including agreements with federal and state agencies;

13 (3) review any order or action of the director;

14 (4) exercise the powers and do the acts necessary to carry out the
15 provisions and objectives of this chapter;

16 (5) notwithstanding the provisions of any other section of this chapter,
17 grant an extension of the time within which payments due on any exploration license,
18 lease, or sale of state land, minerals, or materials may be made, including payment of
19 rental and royalties, on a finding that compliance with the requirements is or was
20 prevented by reason of war, riots, or acts of God;

21 (6) classify tracts for agricultural uses;

22 (7) after consulting with the Board of Agriculture and Conservation
23 (AS 03.09.010), waive, postpone, or otherwise modify the development requirements
24 of a contract for the sale of agricultural land if

25 (A) the land is inaccessible by road; or

26 (B) transportation, marketing, and development costs render
27 the required development uneconomic;

28 (8) reconvey or relinquish land or an interest in land to the federal
29 government if

30 (A) the land is described in an amended application for an
31 allotment under 43 U.S.C. 1617; and

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(B) the reconveyance or relinquishment is

(i) for the purposes provided in 43 U.S.C. 1617; and

(ii) in the best interests of the state;

(9) lead and coordinate all matters relating to the state's review and authorization of resource development projects;

(10) exercise the powers and do the acts necessary to carry out the provisions and objectives of AS 43.90 that relate to this chapter.

* Sec. 4. AS 39.25.110 is amended by adding a new paragraph to read:

(41) the Alaska Gasline Inducement Act coordinator appointed under AS 43.90.250.

* Sec. 5. AS 40.25.120(a) is amended to read:

(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;

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

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

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

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

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

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

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

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

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

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

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

31 (11) the written notification regarding a proposed regulation provided

1 under AS 24.20.105 to the Department of Law and the affected state agency and
2 communications between the Legislative Affairs Agency, the Department of Law, and
3 the affected state agency under AS 24.20.105;

4 **(12) records that are**

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

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

9 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 FIRST REQUEST FOR APPLICATIONS FOR THE LICENSE. It is the intent of the
12 legislature that the first request for applications for the license by the commissioners under
13 AS 43.90.120, as enacted in sec. 1 of this Act, be issued within 90 days after the effective date
14 of this Act.

15 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 EXPEDITED CONSIDERATION OF COURT CASES. It is the intent of the
18 legislature that the courts of the state, when considering a case related to the development and
19 construction of a natural gas pipeline under this Act or to the commitment of a shipper to
20 acquire firm transportation capacity during the first binding open season for a project
21 developed under this Act, expedite the resolution of the case by giving the case priority over
22 all other civil cases to the extent permitted under the Alaska Rules of Court.

23 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application
26 of it to any person or circumstance, is held invalid, the remainder of this Act and the
27 application to other persons or circumstances are not affected.

28 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

July 9, 2008

To: Tam Cook

From Rynneva

Re: HB 4002 Alaska Resource Rebate Program

What could be the ramifications of our IRS status with the Permanent Fund Account if HB 4002 is enacted?

Are we jeopardizing our tax-exempt status by adding yet another payment to citizens based on ownership of resources and distributing rebates for income from resources?

Are we creating legal problems by basing eligibility on criteria other than eligibility for PFD?

I am at Terry Miller Gym.
Will be here all day tomorrow.
Probably best place to deliver answer.

Thanks