

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SRES 12662

1 subject to public disclosure under AS 40.25 until the commissioners publish notice
2 under this section. However, information that the commissioners have determined is
3 confidential under AS 43.90.160 may not be made public even after the notice is
4 published under (a) of this section. If information is held confidential under this
5 subsection, the commissioners shall make available to the public a summary of the
6 information.

7 **Sec. 43.90.190. Notice to the legislature of intent to issue license; denial of**
8 **license.** (a) If, after evaluation of complete applications under AS 43.90.170 and
9 consideration of public comments received under AS 43.90.180, the commissioners
10 determine that an application would sufficiently maximize the benefits to the people of
11 this state and merits issuance of a license under this chapter, the commissioners shall

12 (1) issue a determination, with written findings addressing the basis for
13 the determination; the determination becomes a final agency action in accordance with
14 AS 43.90.200;

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

17 (3) forward the notice under (2) of this subsection, along with the
18 findings, supporting documentation, and the determination under (1) of this
19 subsection, to the legislature for action as provided in AS 43.90.200.

20 (b) If, after evaluation of complete applications under AS 43.90.170, the
21 commissioners determine that no application sufficiently maximizes the benefits to the
22 people of this state and merits issuance of a license under this chapter, the
23 commissioners shall issue a written finding that addresses the basis for that
24 determination.

25 (c) The commissioners' determination under this (b) of this section is a final
26 agency action for purposes of appeal to the court under the Alaska Rules of Appellate
27 Procedure.

28 **Sec. 43.90.200. Legislative action; issuance of license.** (a) A determination
29 and notice of intent to issue a license under AS 43.90.190 is a final agency action,
30 effective under this chapter on the 30th legislative day after the date of referral to the
31 legislature, unless the notice of intent is disapproved by joint resolution of the

1 legislature. After the determination and notice of intent are effective under this
2 subsection, the commissioners may issue the license under this chapter.

3 (b) If the legislature disapproves the notice of intent to issue a license before
4 the 30th legislative day after referral, the commissioners may commence another
5 public process under AS 43.90.130 to request applications.

6 (c) Upon becoming effective under (a) of this section, the commissioners'
7 notice of intent is appealable to the court under the Alaska Rules of Appellate
8 Procedure.

9 **Sec. 43.90.210. Certification by regulatory authority and project sanction.**

10 (a) A licensee that is awarded a certificate of public convenience and necessity for the
11 project shall accept a certificate issued by the Federal Energy Regulatory Commission
12 if the project is engaged in interstate commerce, or the Regulatory Commission of
13 Alaska if the project is not engaged in interstate commerce.

14 (b) If the licensee has credit support sufficient to finance construction of the
15 project through ownership of rights to produce and market gas resources, firm
16 transportation commitments, or government financing, the licensee shall sanction the
17 project within one year after the effective date of the certificate of public convenience
18 and necessity issued by the Federal Energy Regulatory Commission, or the Regulatory
19 Commission of Alaska, as applicable.

20 (c) If the licensee does not have credit support sufficient to finance
21 construction of the project through ownership of rights to produce and market gas
22 resources, firm transportation commitments, or government financing, the licensee
23 shall sanction the project within five years after the effective date of the certificate of
24 public convenience and necessity issued by the Federal Energy Regulatory
25 Commission, or the Regulatory Commission of Alaska, as applicable.

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

28 (1) seek approval from the Federal Energy Regulatory Commission or
29 Regulatory Commission of Alaska, as appropriate, to abandon and transfer the
30 certificate to the state or the state's designee; and

31 (2) assign to the state's designee all project data, engineering designs,

1 contracts, and permits owned or acquired by the licensee as of the date of the
2 abandonment or transfer.

3 (e) The transfer of any certificate or material as a result of failure to comply
4 with (a) or (b) of this section is at no cost to the state or the state's designee. A transfer
5 under (c) of this section is at the licensee's net cost.

6 **Sec. 43.90.220. Amendment of or modification to the project plan.** Subject
7 to the approval of the commissioners, a licensee may amend or modify its project plan
8 if the amendments or modifications are necessary as a result of changed circumstances
9 outside the licensee's control and not reasonably foreseeable before the license was
10 issued. An amendment or modification approved under this section must be consistent
11 with the requirements of AS 43.90.140 and may not diminish the value to the state of
12 the project.

13 **Sec. 43.90.230. Records, reports, conditions, and audit requirements.** (a) A
14 licensee shall maintain complete and accurate records of all expenditures and
15 commitments of state money received under this chapter, including receipts and
16 records showing the payment or cost of purchased items and services, the names and
17 addresses of the sellers and service providers, and dates of service or delivery.

18 (b) Upon reasonable notice, the commissioners may audit the records of a
19 licensee relating to the licensee's expenditures and commitments of money received
20 from the state under this chapter, and may

21 (1) examine all books, records, and files of the licensee;

22 (2) conduct hearings or other investigative inquiries, and complete the
23 attendance of witnesses and documents; and

24 (3) require the licensee to furnish information in paper copy or
25 electronic format.

26 (c) After a license has been issued, and until commencement of commercial
27 operations of a natural gas pipeline, the licensee shall allow the commissioners to have
28 a representative present at all meetings of the licensee's governing body and equity
29 holders that relate to the project, to receive all relevant notices and information sent to
30 the governing body and equity holders, to receive the same access to information
31 about the licensee as the governing body members and equity owners receive, and to

1 receive additional relevant reports or information from the licensee that the
2 commissioners reasonably request.

3 (d) A licensee shall maintain the records and reports required under this
4 section for seven years from the date the licensee received state money under this
5 chapter.

6 **Sec. 43.90.240. License violations; damages.** (a) A licensee is in violation of
7 the license if the commissioners determine that the licensee

8 (1) has committed state money received under this chapter for
9 purposes other than those set out in AS 43.90.110(1);

10 (2) has substantially departed from the specifications set out in the
11 application without state approval of a project plan amendment or modification under
12 AS 43.90.220;

13 (3) has violated any provision of this chapter or any other provision of
14 state or federal law material to the license; or

15 (4) has otherwise violated a material term of the license.

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

19 (c) The commissioners may suspend disbursement of state matching
20 contributions to the licensee beginning on the date that the notice of violation issued
21 under (b) of this section is sent to the licensee. The commissioners may resume
22 disbursement on the date that the commissioners determine that the violation is cured.

23 (d) If the commissioners and the licensee are unable to resolve the violation
24 within the time specified in (b) of this section, the commissioners shall, after providing
25 the licensee with notice and opportunity to be heard, make a written determination
26 regarding the violation. The written determination made under this subsection is the
27 final agency action for purposes of appeal to the court under the Alaska Rules of
28 Appellate Procedure.

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

31 (1) discontinuation of state matching contributions under this chapter;

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

4 (3) license revocation;

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

6 **Article 3. Resource Inducement; Alaska Gasline Inducement Act Coordinator.**

7 **Sec. 43.90.300. Qualification for resource inducement.** Notwithstanding any
8 contrary provision of law, a person that demonstrates to the commissioners'
9 satisfaction that the person has committed to acquire firm transportation capacity in
10 the first binding open season of the project is qualified to receive the resource
11 inducement set out in AS 43.90.310 and 43.90.320 for the gas shipped in firm
12 transportation capacity acquired in the first binding open season of the project.

13 **Sec. 43.90.310. Royalty inducement.** (a) Before the beginning of the first
14 binding open season to be conducted by the licensee, the commissioner of natural
15 resources shall adopt regulations to establish a method to determine the monthly value
16 of the state's royalty share of gas production and establish terms under which the state
17 will exercise its right to switch between taking its royalty in value or in kind for gas
18 committed for firm transportation in the first binding open season of the project.

19 (b) The regulations must

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

22 (2) contain provisions to establish a fair market value for each
23 component of the state's royalty gas that are based on pricing data from reliable and
24 widely available industry trade publications and use appropriate adjustments to reflect

25 (A) deductions for actual and reasonable transportation costs
26 for the state's royalty gas, including a fair share of the costs associated with
27 unused capacity commitments on pipelines from the North Slope of this state
28 to the first destination market with reasonable market liquidity;

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

31 (C) reasonable and actual costs for gas processing; and

1 (D) deductions permitted under the 1980 Royalty Settlement
2 Agreement for Prudhoc Bay gas;

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

6 (A) cause the lessee to bear disproportionate transportation
7 costs with respect to the state's royalty gas;

8 (B) interfere with the lessee's long-term marketing of its
9 production; and

10 (4) require that in order to exercise an election under this section, a
11 person shall agree, on an application form provided by the Department of Revenue,
12 that the person, and the person's affiliates, successors, assigns, and agents, will not
13 protest or appeal a filing by the licensee to roll in expansion costs of the mainline up to
14 a level that is required in AS 43.90.140(7); the agreement not to protest may not
15 preclude the person, or the person's affiliates, from protesting a filing to roll in
16 mainline expansion costs that licensee is not required to propose and support under
17 AS 43.90.140(7).

18 (c) The commissioner of natural resources shall provide for review of the
19 regulations adopted under this section at least every two years after the
20 commencement of commercial operations of the project to determine whether the
21 regulations continue to meet the requirements of this section under current conditions;
22 the commissioner shall amend the regulations as necessary.

23 (d) If new regulations are adopted as a result of the review required under (c)
24 of this section, a state oil and gas lessee qualified under AS 43.90.300 may change its
25 election to calculate its gas royalty obligation, as provided by regulation, for natural
26 gas transported on a firm contract negotiated during the project's first binding open
27 season or the methodology set out in the lessee's existing leases or unit agreements.
28 The election remains in effect until the regulations are amended.

29 (e) No provision of this chapter precludes the election set out in (d) of this
30 section, nor may the commissioner of natural resources assert any provision of any
31 existing lease or unit agreement as precluding that election.

1 **Sec. 43.90.320. Gas production tax exemption.** (a) If a person qualified for
2 resource inducement under AS 43.90.300 agrees under (c) of this section, the person is
3 entitled to an annual exemption from the state's gas production tax in an amount equal
4 to the difference between the amount of the person's gas production tax obligation
5 calculated under the gas production tax in effect during that tax year and the amount of
6 the person's gas production tax obligation calculated under the gas production tax in
7 effect at the conclusion of the first binding open season held under this chapter. If the
8 difference is less than zero, the gas production tax exemption is zero.

9 (b) The exemption under this section may be applied within 10 years
10 immediately following commencement of commercial operations of the project only
11 to production taxes that are levied on North Slope gas shipped through firm
12 transportation capacity the person acquired during the first binding open season.

13 (c) To claim the exemption under this section, a person shall agree, on an
14 application form provided by the Department of Revenue, that the person, and the
15 person's affiliates, successors, assigns, and agents, will not protest or appeal a filing by
16 the licensee to roll in mainline expansion costs up to the level that the licensee is
17 required to propose and support under AS 43.90.140(7); the agreement under this
18 subsection may not preclude the person, or the person's affiliates, successors, assigns,
19 and agents, from protesting a filing to roll in mainline expansion costs that the licensee
20 is not required to propose and support under AS 43.90.140(7).

21 **Sec. 43.90.330. Alaska Gasline Inducement Act coordinator.** (a) The
22 governor shall appoint, subject to legislative confirmation, an Alaska Gasline
23 Inducement Act coordinator. The person appointed as the Alaska Gasline Inducement
24 Act coordinator shall serve in that position until one year after commencement of
25 commercial operations of the project.

26 (b) The Alaska Gasline Inducement Act coordinator shall

- 27 (1) coordinate expeditious performance of all activities by state
28 agencies with respect to the project;
- 29 (2) ensure compliance by state agencies with the provisions of this
30 chapter; and
- 31 (3) coordinate with the federal coordinator for natural gas

1 transportation projects in this state.

2 **Sec. 43.90.340. Expedited review and action by state agencies.** (a) All
3 reviews conducted and actions taken by a state agency relating to a project shall be
4 expedited in a manner consistent with the completion of the necessary approvals in
5 accordance with this chapter.

6 (b) Notwithstanding any contrary provision of law, a state agency may not
7 include in any project certificate, right-of-way, permit, or other authorization issued to
8 the licensee any term or condition that is not required by law if the Alaska Gasline
9 Inducement Act coordinator determines that the term or condition would prevent or
10 impair in any significant respect the expeditious construction and operation or
11 expansion of the project.

12 (c) Unless required by law, a state agency may not add to, amend, or abrogate
13 any certificate, right-of-way, permit, or other authorization issued to a licensee if the
14 Alaska Gasline Inducement Act coordinator determines that the action would prevent
15 or impair in any significant respect the expeditious construction, operation, or
16 expansion of the project.

17 **Article 4. Miscellaneous Provisions.**

18 **Sec. 43.90.400. Alaska Gasline Inducement Act matching contribution**
19 **fund; disbursements; audits.** (a) There is established in the general fund an Alaska
20 Gasline Inducement Act matching contribution fund. The fund consists of money
21 appropriated to it by the legislature for disbursement to pay the state's matching
22 contributions under AS 43.90.110. Appropriations to the fund do not lapse under
23 AS 37.25.010, but remain in the fund for future disbursements.

24 (b) The Department of Revenue shall manage the fund, and may invest money
25 in the fund so as to yield competitive market rates as provided in AS 37.10.071.
26 Interest received on money in the fund shall be accounted for separately and may be
27 appropriated to the fund annually.

28 (c) The commissioners shall adopt regulations that provide for application to
29 receive matching contributions for qualified expenditures as provided under
30 AS 43.90.110, and that provide for periodic audits of the use of money disbursed as
31 matching contributions under this chapter.

1 (d) Within 10 days after the convening of each regular session of the
2 legislature, the commissioners shall submit to the legislature a report that lists all the
3 disbursements from the fund in the preceding year with a written justification of each
4 disbursement and the projected amount of money that will be needed for matching
5 contributions in each of the next three fiscal years.

6 **Sec. 43.90.410. Regulations.** The commissioners may jointly adopt
7 regulations for the purpose of implementing the provisions of this chapter. The
8 commissioner of revenue may change regulations adopted under existing authority in
9 this title as necessary to implement the provisions of this chapter. The commissioner
10 of natural resources may change regulations adopted under existing authority in AS 38
11 as necessary to implement the provisions of this chapter.

12 **Sec. 43.90.420. Statute of limitations.** A person may not bring a judicial
13 action challenging the constitutionality of this chapter or a license unless the action is
14 commenced in a court of proper jurisdiction in this state within 90 days from the date
15 that a license was issued.

16 **Sec. 43.90.430. Interest.** When a payment due to the state under this chapter
17 becomes delinquent, the payment bears interest in a calendar quarter at the annual rate
18 of five percentage points above the annual rate charged member banks for advances by
19 the 12th Federal Reserve District as of the first day of that calendar quarter, or at the
20 annual rate of 11 percent, whichever is greater, compounded quarterly as of the last
21 day of that quarter.

22 **Sec. 43.90.440. Licensed project assurances.** Except as otherwise provided in
23 this chapter, the state grants a licensee assurances that the licensee has exclusive
24 enjoyment of the inducement provided under this chapter. If the state extends to
25 another person preferential royalty, tax, or monetary treatment for the purpose of
26 facilitating the construction of a competing natural gas pipeline project in this state,
27 and if the licensee is in compliance with the requirements of the license and with the
28 requirements of state and federal statutes and regulations relevant to the project, the
29 licensee is entitled to payment from the state of an amount equal to three times the
30 total of the reasonable costs that the licensee has incurred in developing the licensee's
31 project as of the date that the state first extended preferential treatment to another

1 person. Upon payment by the state of the amount owed under this section, the licensee
2 shall, at no cost to the state, assign to the state all project data, engineering designs,
3 contracts, and permits related to the project that are owned or were acquired by the
4 licensee.

5 **Sec. 43.90.450. Assignments.** (a) A licensee may transfer all or part of the
6 license, including the rights and obligations arising under the license, if

7 (1) the transfer is approved in writing in advance by the
8 commissioners; and

9 (2) the transfer does not increase or diminish the obligations created by
10 the license or diminish the value of the license to the state.

11 (b) Notwithstanding the commissioners' approval of a transfer of all or part of
12 a license under (a) of this section, the transferor of the license remains subject to the
13 requirements of AS 43.90.230 regarding all state money received by the licensee
14 before the effective date of the transfer.

15 (c) A person may transfer that person's rights to the royalty inducement under
16 AS 43.90.310 and the gas production tax exemption under AS 43.90.320 only in
17 connection with a sale or merger that results in transfer of all the person's assets in the
18 North Slope of this state, include the firm transportation capacity contracts in the
19 project.

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

23 **Article 5. General Provisions.**

24 **Sec. 43.90.900. Definitions.** In this chapter, unless the context otherwise
25 requires,

26 (1) "affiliate" means another person that controls, is controlled by, or is
27 under common control with, a person; "affiliate" includes a division that operates as a
28 functional unit;

29 (2) "Alaska Gasline Inducement Act coordinator" means the person
30 appointed under AS 43.90.330;

31 (3) "commencement of commercial operations" means the first flow of

1 gas in the project that generates revenue to the owners;

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

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

9 (6) "equity holder" means the

10 (A) stock holders 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 (7) "gas processing" means post-production treatment of gas to extract
18 natural gas liquids;

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

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

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

26 (11) "license" means a license issued under this chapter;

27 (12) "licensee" means the holder of a license issued under this chapter
28 and all affiliates, successors, assigns, and agents of the holder;

29 (13) "project" means a natural gas pipeline project authorized under a
30 license issued under this chapter;

31 (14) "recourse rates" means cost-based rates with a minimum and

1 maximum range that are approved by the Federal Energy Regulatory Commission, the
 2 Regulatory Commission of Alaska, or the National Energy Board of Canada, as
 3 appropriate, and set out in the pipeline's tariff; "recourse rates" includes only those
 4 rates that the pipeline must make available to all shippers;

5 (15) "sanction" means procurement commitments to go forward with
 6 the project as evidenced by entering into procurement commitments of at least
 7 \$1,000,000,000 with third parties;

8 (16) "under common control with" has the meaning given "control" in
 9 this section;

10 (17) "unit agreement" means an agreement executed by the working
 11 interest owners and royalty owners creating the unit.

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

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

15 (45) contracts for an impartial third party to determine abandonment of
 16 a project under AS 43.90.120, and contracts for the development of application
 17 provisions for licensure under AS 43.90 and for the evaluation of those applications.

18 * **Sec. 3.** AS 39.25.110 is amended by adding a new paragraph to read:

19 (41) the Alaska Gasline Inducement Act coordinator appointed under
 20 AS 43.90.330.

21 * **Sec. 4.** AS 40.25.120(a) is amended by adding a new paragraph to read

22 (12) records that are

23 (A) proprietary or a trade secret in accordance with
 24 AS 43.90.160;

25 (B) applications that are received under AS 43.90 until
 26 AS 43.90.180.

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

*APK
Admin presentation*

The Palin-Parnell Administration presents

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The Alaska Gasline Inducement Act

Last Updated: March 12th, 2008

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The Alaska Gasline Inducement Act

Introduction

Presentation 1

**Need for the AGIA approach
State value for the \$500M (Part I)**

Presentation 2

**State value for the \$500M (Part II)
Increasing Resource Owner Predictability**



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Need for the AGIA Approach

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The Alaska Gasline Inducement Act

- **Get project built, quickly**
- **Open the North Slope gas basin**
- **Open and competitive process**
- **Low tariffs**
- **Gas for Alaska**
- **Jobs for Alaska**
- **Reduce uncertainties for the Producers**

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State Value for \$500 million

- Project moves forward
- Lower tariffs
- Expansion Commitments
- Rolled-in rates



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1. Project moves forward

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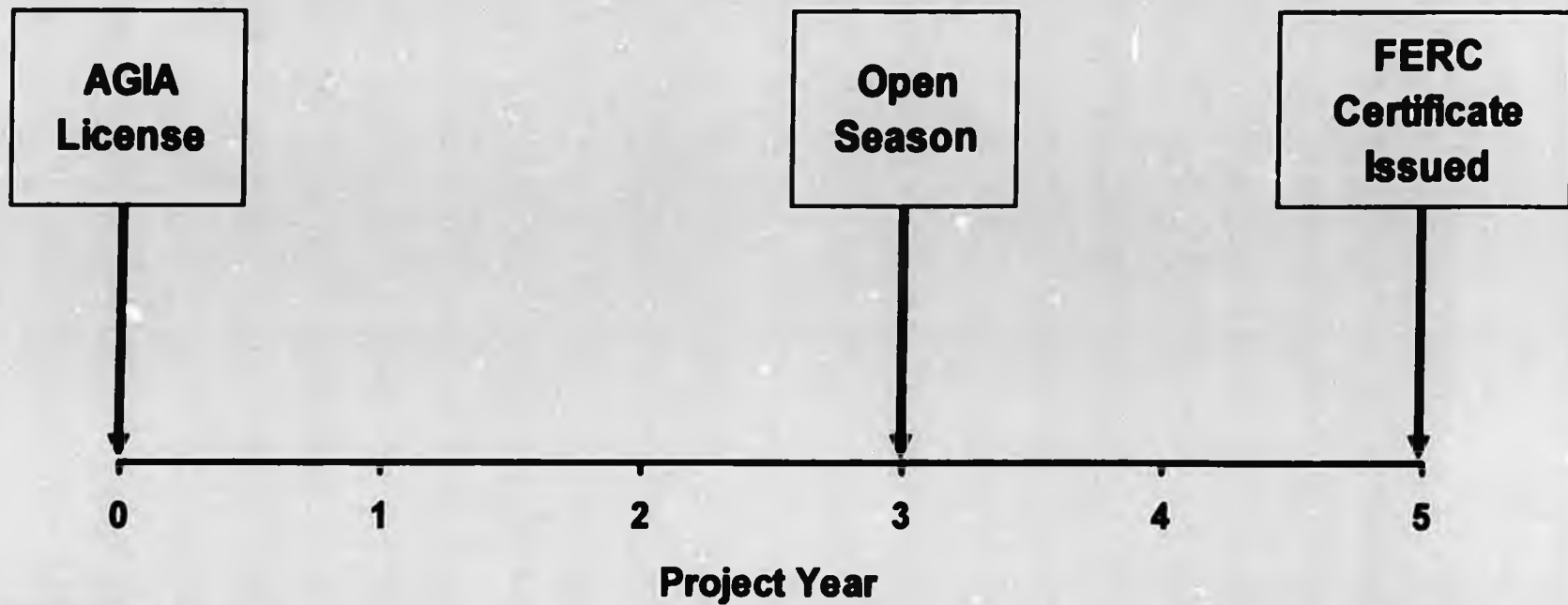
The Alaska Gasline Inducement Act



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The Alaska Gasline Inducement Act

AGIA Timeline

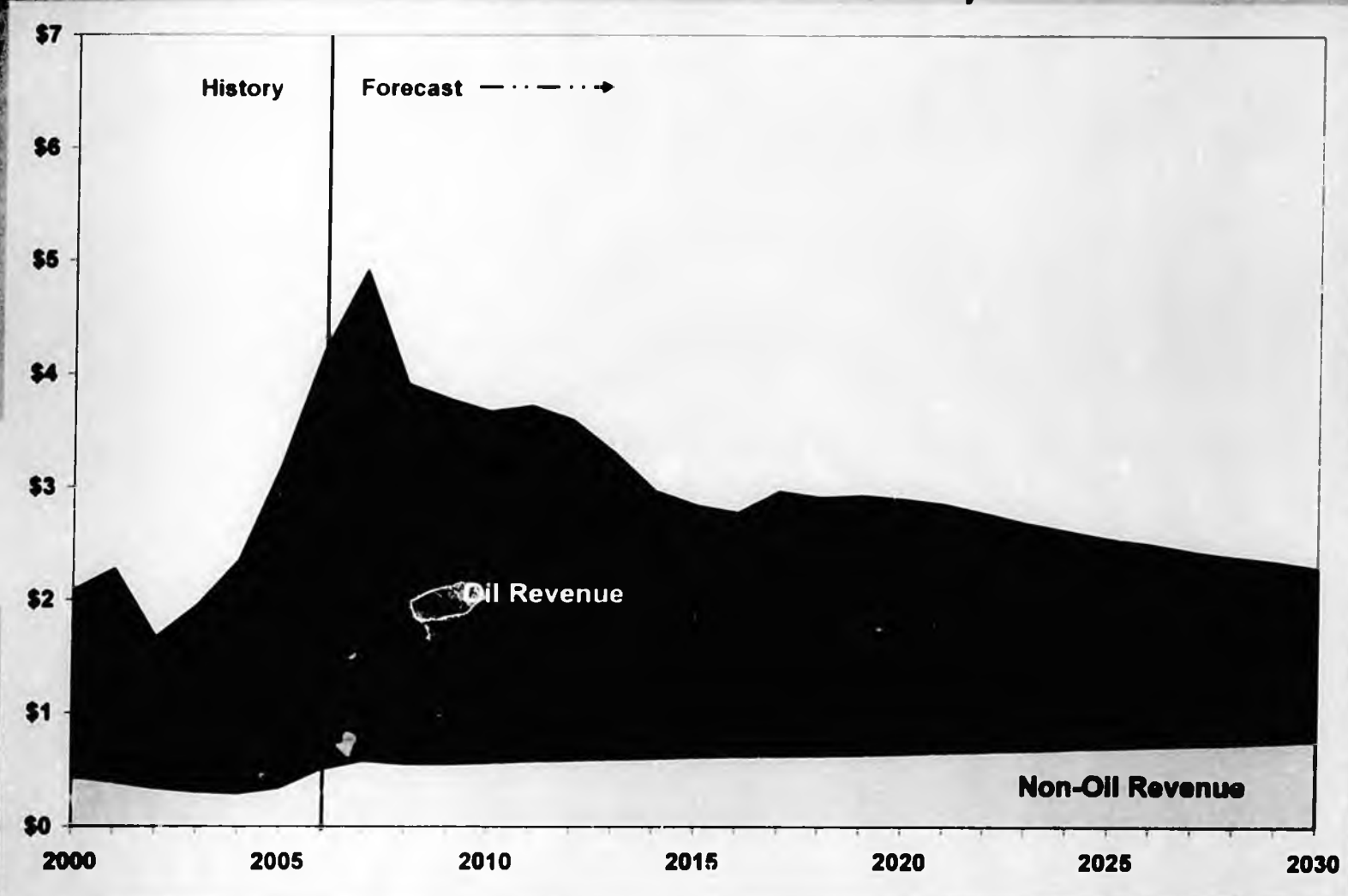


Oil Revenue

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General Fund Unrestricted Revenue, Billions of Dollars



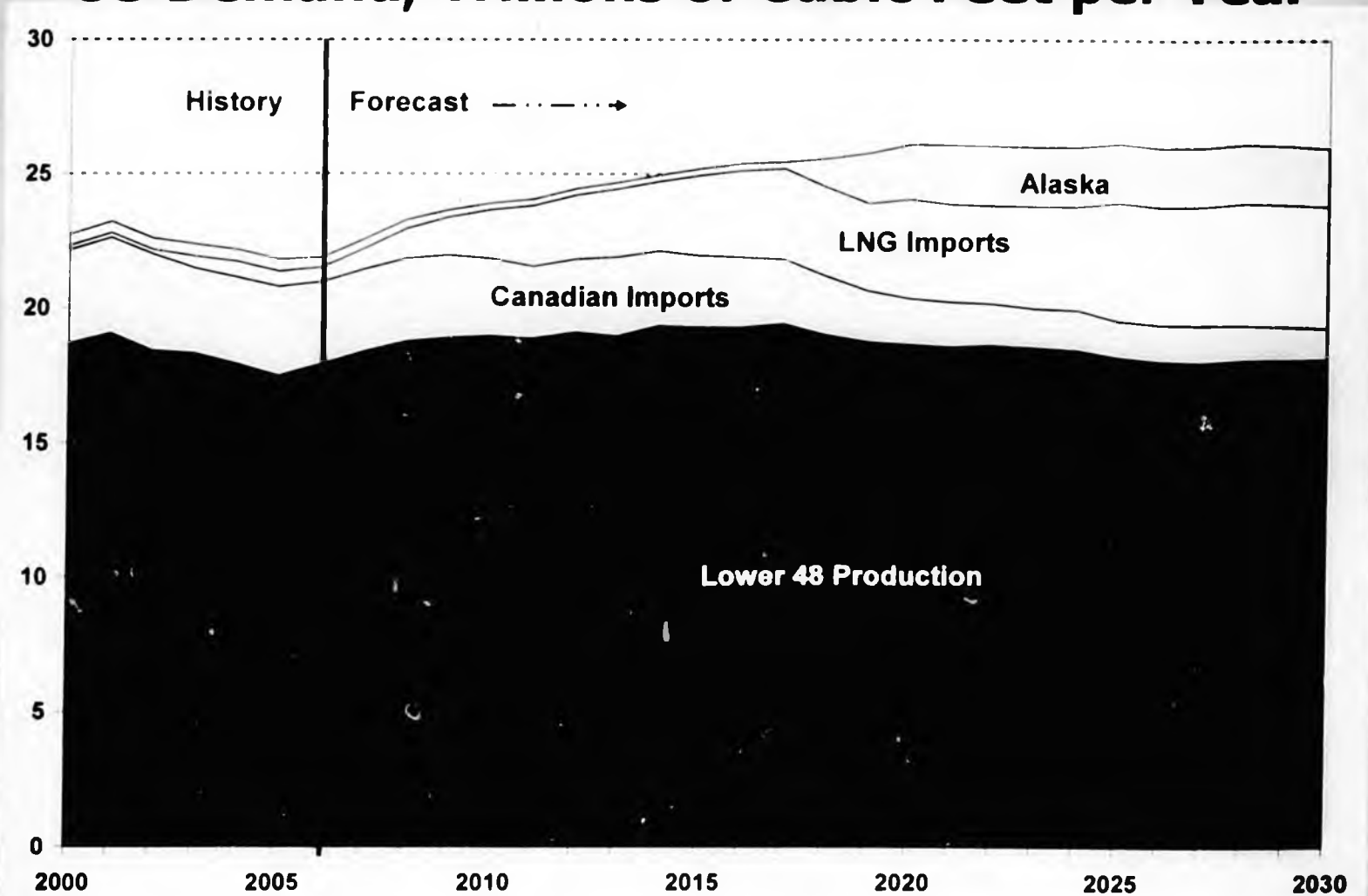
Source: Fall 2006 Revenue Sources Book, includes Cook Inlet

Need for Alaska Gas

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US Demand, Trillions of Cubic Feet per Year



Source: US Department of Energy, Energy Information Administration, *Annual Energy Outlook 2007*, February 2007.

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2. Lower tariffs

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How Transportation Charges Affect State Royalty and Production Tax - Illustration

Destination Price		\$6.25
Transportation Charges		
Gas Treatment Plant	\$0.44	
Pipeline Alaska-Canada	<u>\$2.14</u>	
Subtotal	\$2.58	
Netback Value of Gas		\$3.69

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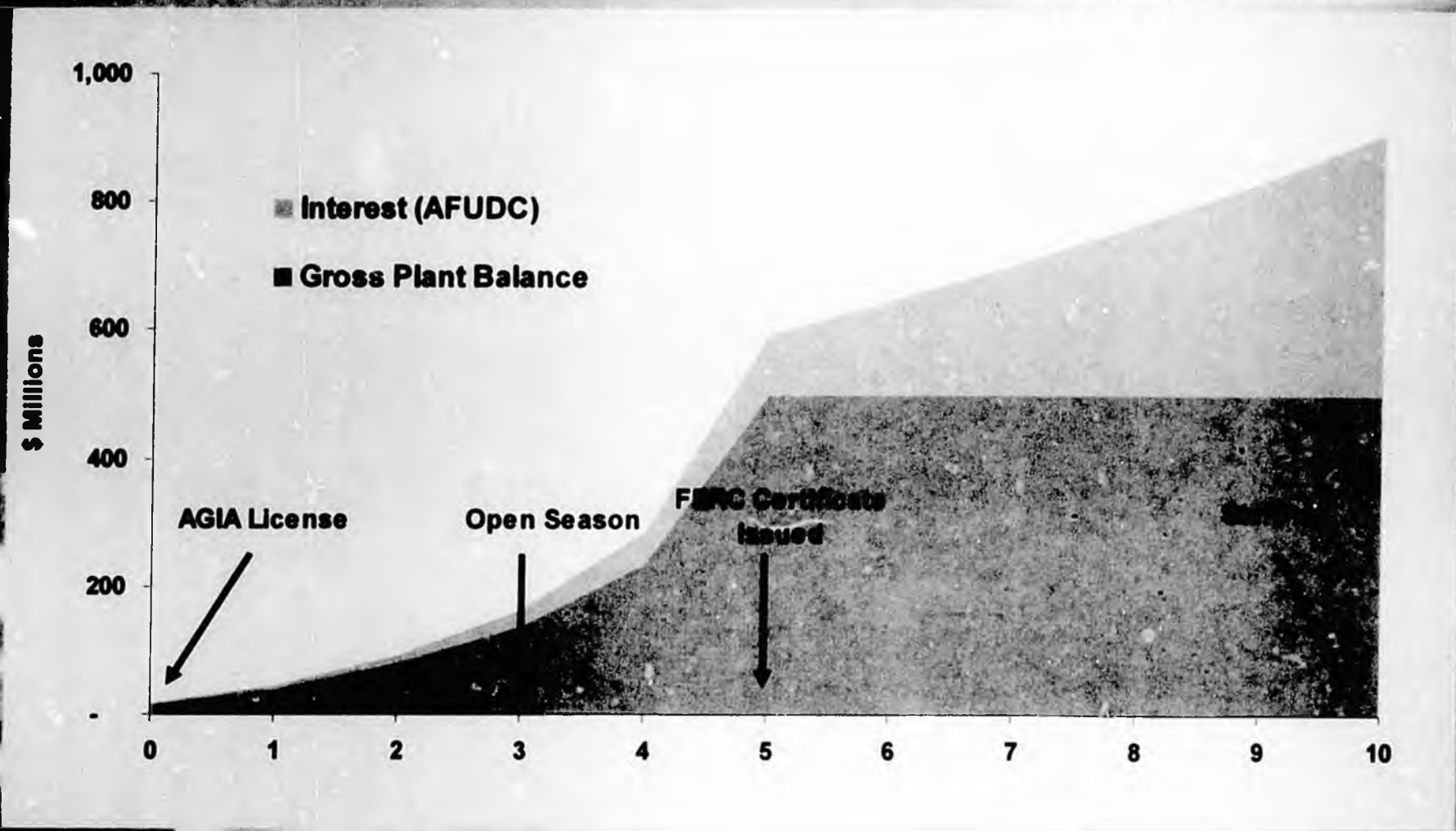
The Alaska Gasline Inducement Act

- Reduces pipeline tariff by 4-6¢ for next 30 years
- A 1¢ change in the tariff is worth \$45M in royalty and production tax to the state over project life
- At 5% discount rate, state receives 70% back

in \$300 mm

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The Alaska Gasline Inducement Act



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The Alaska Gasline Inducement Act

FERC has approved 70/30 capital structure for eight of fifteen recent major new-build or expansion projects

Three projects had 75/25 capital structures

- **Three had 50 percent equity or more, with one having 65 percent equity.**

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Debt%	Equity%	Tariff	Present Value State Revenue \$ Billions
█	█	█	█
65%	35%	\$2.73	35.8
60%	40%	\$2.89	35.1
55%	45%	\$3.06	34.5
█	█	█	█
45%	55%	\$3.43	33.1

AGIA protects the state's interest in low tariffs. It ensures that no less than 70/30 debt/equity structure will be used. Compared with 50/50, the associated tariff benefits of 66 cents and state revenue benefits of \$2.5 billion (5% discount rate).

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3. Expansion commitments

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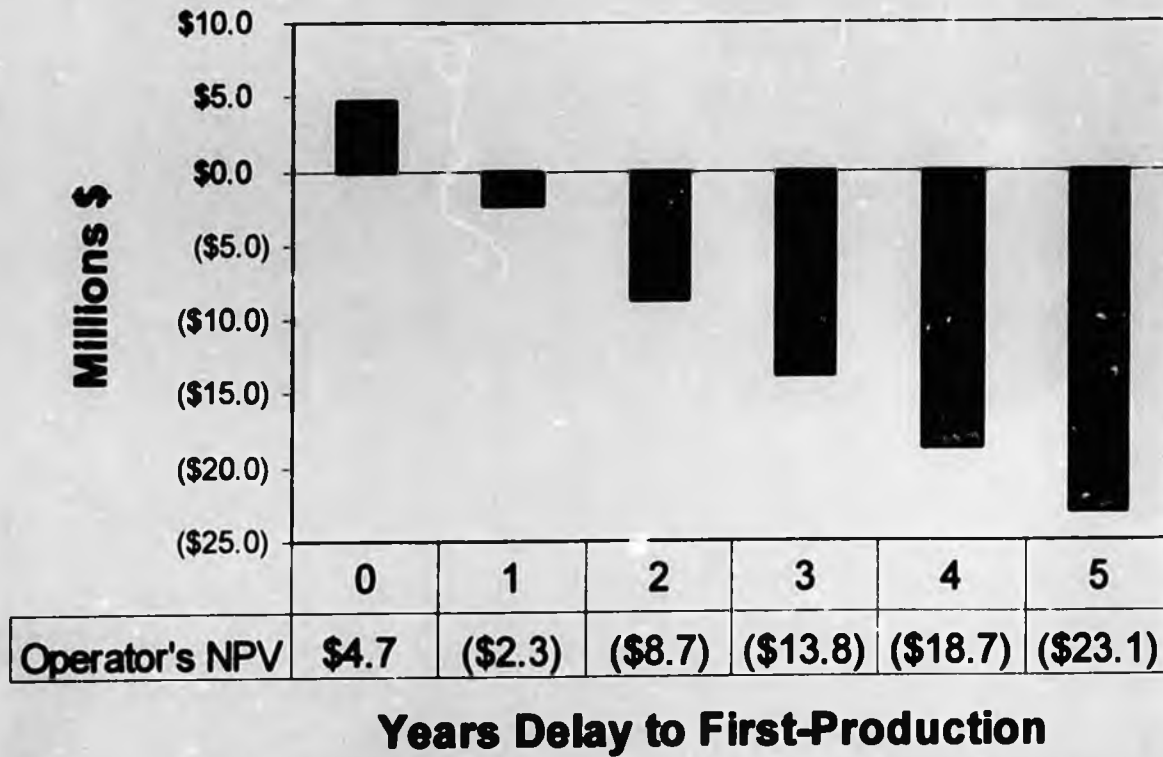
FERC mandatory expansion process requires shippers to make capacity commitment

- **Capacity commitment requires gas**
 - **Gas requires up-front investment in seismic, exploration drilling, and delineation drilling**
 - **Each year of delay in pipeline access after exploration investment reduces the expected net present value of a prospect by millions \$**
- Threat of delay is therefore enough to destroy exploration economics**

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Expected Net Present Value (NPV 12) Generic North Slope Prospect



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4. Rolled-in Rates

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Foster exploration and development

- Expansion shippers pay lower rates, increasing likelihood of exploration
- All shippers pay the same rate
- Incremental rates result in some shippers paying more than other shippers

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Initial Cost

\$100

Throughput

100

Initial Toll

\$100/100

= \$1.00/unit

Expansion Cost

\$30

Exp. Throughput

18

Rolled in Toll

$\$(100+30)/(100+18)$

= \$1.10/unit

Expansion Cost

\$30

Exp. Throughput

18

Increment. Toll

\$30/18 unit

= \$1.67/unit

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Rolled-in rates make exploration prospects economic, which would not be economic under incremental rate treatment

- The expected value of an exploration project is greater with rolled-in rates
- This is true for both explorers and producer

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Scenario 1: Add 1 Bcf/day with compression (from 4.5 to 5.5 Bcf/day)

Rolled-in

\$6.0 million

Incremental

\$6.5 million

Scenario 2: Add 1 Bcf/day with compression (from 5.5 to 6.5 Bcf/day)

Rolled-in

\$4.3 million

Incremental

-\$5.4 million

Scenario 3: Add 700 MMcf/day with looping (from 6.8 to 7.5 Bcf/day)

Rolled-in

\$.9 million

Incremental

-\$25.5 million

AGIA

The Alaska Gasline Inducement Act

Scenario 1

Add 1 Bcf/day with compression (from 4.5 to 5.5 Bcf/day)

	<i>Incremental</i>	<i>Rolled-in</i>
<i>Existing Shippers</i>		
Rate/Fuel Use	\$1.62 / 2.7%	\$1.47/4.3%
<i>Expansion Shippers</i>		
Rate/Fuel Use	\$1.07 / 11.6%	\$1.47/4.3%

Scenario 2

Add 1 Bcf/day with compression (from 5.5 to 6.5 Bcf/day)

	<i>Incremental</i>	<i>Rolled-in</i>
<i>Existing Shippers</i>		
Rate/Fuel Use	\$1.47 / 4.3%	\$1.51 / 5.6%
<i>Expansion Shippers</i>		
Rate/Fuel Use	\$1.73 / 13.3%	\$1.51 / 5.6%

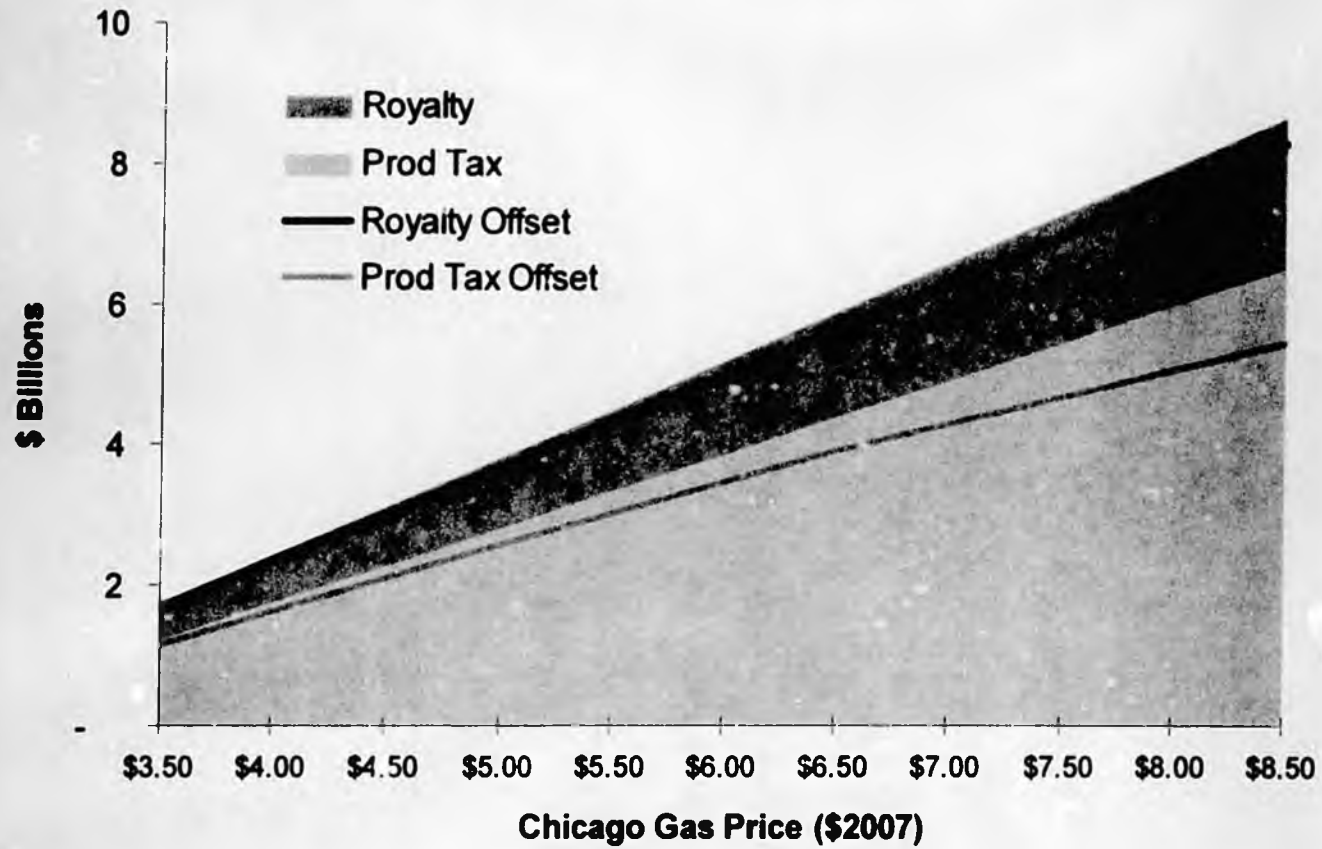
Scenario 3

Add 700 MMcf/day with looping (from 6.8 to 7.5 Bcf/day)

	<i>Incremental</i>	<i>Rolled-in</i>
<i>Existing Shippers</i>		
Rate/Fuel Use	\$1.57 / 6.1%	\$1.71 / 5.5%
<i>Expansion Shippers</i>		
Rate/Fuel Use	\$3.25 / 5.5%	\$1.71 / 5.5%

AGIA

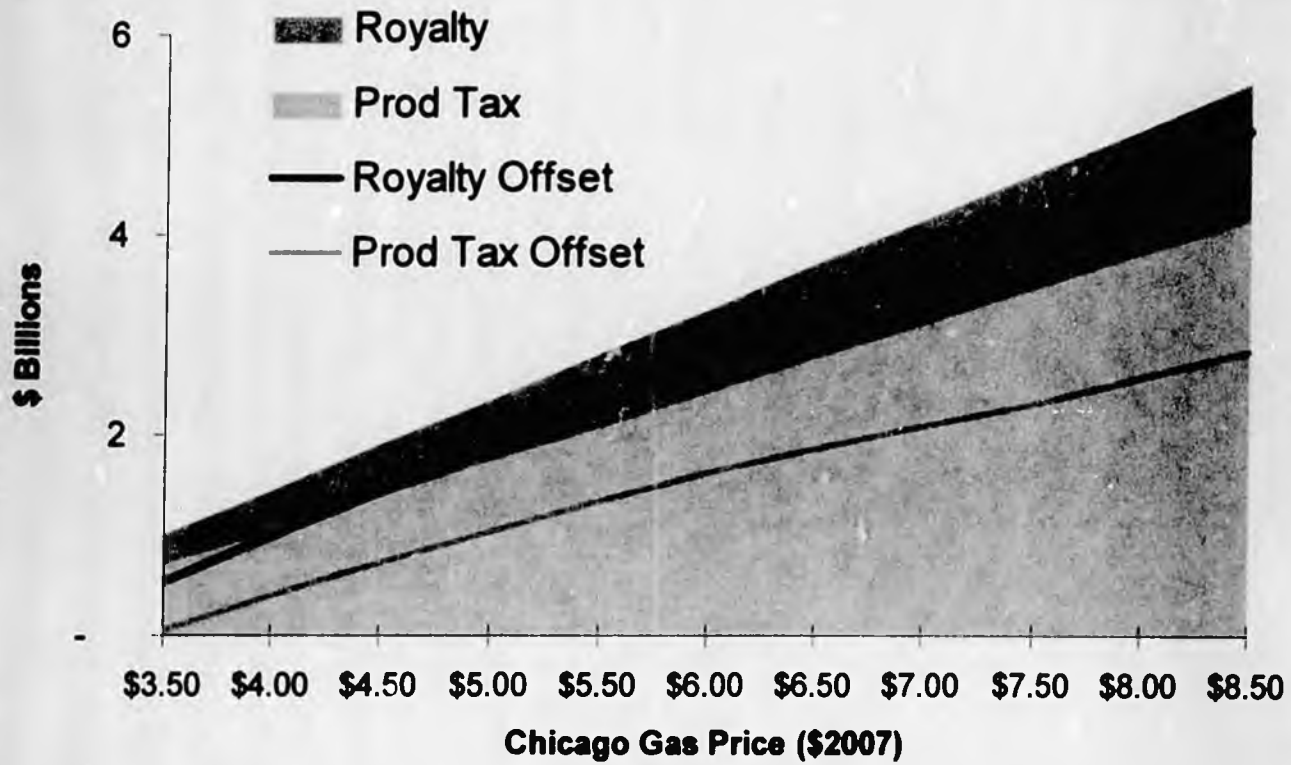
The Alaska Gasline Inducement Act



¹ Expansion through in-fill compression.

AGIA

The Alaska Gasline Inducement Act





MEMORANDUM
Department of Natural Resources

STATE OF ALASKA
Division of Oil and Gas

36104 vs B
analysis

TO: Representative Vic Kohring, Chair
House Oil and Gas Committee

DATE: March 2, 2007

FILE NO:

TELEPHONE: 269-8800

FAX NO: 269-8938

FROM: Kevin Banks, Acting Director

ATK KB

SUBJECT: Analysis of Alaska
Gasline
Inducements Act,
HB ___

Article 1 of the bill, if enacted, would add a new chapter to the state's Revenue and Taxation Code that induces the construction of a Natural Gas Pipeline in Alaska.

Section 010 describes the bill's purpose as facilitating commercialization and promoting exploration of Alaska's North Slope gas resources; maximizing the benefits of development to Alaskans and encouraging lessees to commit gas to a gas pipeline.

Article 2 of the bill describes the AGIA license.

Section 100 authorizes the Commissioners of Natural Resources and Revenue, acting jointly, to award an AGIA license.

Section 110 describes the inducements for construction of a pipeline. The state offers to contribute up to \$500 million to match reasonable costs the licensee incurs over five years toward obtaining a certificate of public convenience and necessity for a gas pipeline project in Alaska from the Federal Energy Regulatory Commission (FERC) or the Regulatory Commission of Alaska (RCA). The state will equally match costs incurred to get to the end of the first binding open season, and up to 80 percent of the costs incurred after the close of the first binding open season. The matching costs do not include the costs of overhead, litigation, existing assets, or fines and penalties. The state also offers the benefit of an AGIA coordinator and a state program to train employees for the gas pipeline project. Section 120 provides that the license may be abandoned by the mutual agreement of the state and licensee, or if one party seeks to abandon the license on grounds that the project has become uneconomic, an impartial third party will determine if the project has become uneconomic. If the license is abandoned, the licensee's receipt of funds to date from the state is still subject to audit, and the licensee must relinquish its project plans, data, contracts and permits to the state or its designee.

Section 130 requires the Commissioners issue a request for applications within 3 months of AGIA's effective date, and authorizes the Commissioners to hire independent contractors to develop the license provisions and evaluate the applications.

Section 140 lists the license requirements. All applications must: 1) be filed by the date set by the Commissioners; 2) include a detailed description of the project that includes its route, receipt and delivery points, economic analysis of its feasibility, timeline for completion, 3) if the application proposes an interstate pipeline, commit to hold an open season within 3 years after the license is issued, use the FERC's pre-filing procedures and apply for a FERC certificate, 4) if the application proposes an intrastate pipeline, hold an open season and apply for an RCA certificate, 5) commit to evaluate market demand for pipeline expansion every two years after the first open season, 6) commit to expand the pipeline in reasonable engineering increments and on commercially reasonable terms, 7) commit to fund the cost of expansions with rolled-in rates capped at 15 percent above the initial rates, 8) commit to apply to FERC or the RCA, 9) propose the percentage of the state's matching contribution, if any, after the first open season, 10) commit to offer rates that are based on a capital structure that includes at least 70 percent debt, 11) describe how the applicant will manage cost overruns, 12) commit to at least five offtake points in Alaska, 13) commit to offer distance sensitive rates to offtake points within Alaska, 14) commit to establish a local project headquarters, 15) commit to hire qualified Alaskans from all over the state, and 16) demonstrate licensee's ability to perform commitments.

Section 150 requires the Commissioners to review the applications based on the criteria in section 140 to determine if they are complete, and also to request additional information if necessary.

Section 160 allows applicants to request confidentiality for the portions of their applications that include proprietary information or trade secrets.

Section 170 states the criteria by which the Commissioner will evaluate the applications: 1) the proposed timeline for holding an open season, obtaining the certificate of public convenience and necessity, progressing the pipeline project, 2) the proposal for cost overrun management, 3) whether the proposal insures low tariff rates, 4) the design and whether it can accommodate expansion, 5) the percentage of state matching funds proposed after the first open season, 6) the feasibility of the work plan and budget, and 7) the applicant's financial ability.

Section 180 requires the Commissioners to publish notice of the applications and seek public comment for 60 days.

Section 190 requires the Commissioners to issue a written determination and notice of intent to award a license if an application merits issuance of a license after their review is complete.

Section 200 gives the legislature thirty days after the notice of intent to award a license is issued to disapprove the proposed award of the license by joint resolution. If the legislature disapproves the Commissioners' decision, they may begin the public process again.

Section 210 requires licensees to accept certification by the FERC or RCA, as appropriate. Licensees must sanction the project within one year of FERC or RCA certification if they have credit support sufficient to finance the project. If they lack credit support sufficient to finance the project, they have five years from certification to sanction the project or transfer the license to another entity designated by the state.

Section 220 allows amendments to the project proposal necessitated by unforeseeable changes, provided the proposal remains consistent with the Section 140 requirements and does not diminish the value of the project to the state.

Section 230 requires the licensee to maintain records for seven years of all expenditures that the state will be asked to match, and makes those records auditable.

Section 240 describes the circumstances that would violate the license and allows the state to halt its matching contributions and recover all matching funds distributed to date. If the licensee does not agree that a violation has occurred, it allows for an expedited hearing.

Article 3 of the bill describes the inducements and the AGIA coordinator's duties.

Section 300 states that any person that commits gas during the first open season is qualified for royalty and tax inducements.

Section 310 requires the state to adopt regulations defining the method of valuing its royalty share. The regulations must describe a methodology to value royalty that minimizes retroactive adjustments and is based on reliable industry sources. The regulations must also establish the methodology that the state will use to exercise its rights to alternate between taking its royalty in kind and in value in a way that will not cause the lessee to bear disproportionate transportation costs or interfere with the lessee's long term marketing plans. A person that commits gas in the first binding open season may elect to calculate the royalty on gas shipped in the project under the person's existing lease and unit agreements or under the regulations. The Commissioner of Natural Resources must review the regulations every two years after commercial production begins to make sure that they are accomplishing the statutory goals. A person may change its election when new regulations are adopted.

Section 320 entitles persons who made firm transportation commitments during the first open season to an exemption from the state's production tax on gas shipped in the project equal to the difference between the production tax rate in effect at the end of the first open season and the production tax rate in effect when taxes are due in each of the ten years after commercial production begins; provided they agree not to protest any rolled-in rate treatment of expansion costs subject to the limit in section 140(7).

Section 330 allows the Governor to appoint, subject to legislative confirmation, an AGIA coordinator who is empowered to coordinate among the state agencies that have regulatory authority and with the federal pipeline coordinator to insure that the pipeline project moves forward.

Section 340 requires all state agencies to conduct their reviews expeditiously and prevents them from imposing any unessential requirements that will result in delay.

Article 4 of the bill includes miscellaneous provisions.

Section 400 establishes a fund for appropriated matching funds.

Section 410 enables the Commissioners of Natural Resources and Revenue to implement regulations.

Section 420 requires legal actions challenging a license to be filed within 90 days of the license award.

Section 430 describes the applicable rate of interest.

Section 440 provides that if the state offers preferential tax or royalty treatment to facilitate construction of a competing pipeline project after a license has been awarded, the state must pay damages equal to three times the costs that the licensee has reasonably expended.

Section 450 allows licensee to transfer the license with the commissioners' approval and allows the licensee to transfer its rights to the royalty and tax inducements described in sections 310 and 320.

Section 460 resolves conflicting law disputes.

Article 5 of the bill is General Provisions.

Section 900 includes definitions.

Section 990 names the chapter the Alaska Gasline Inducements Act.

Other provisions make conforming amendments to other statutes and make the act effective upon passage.

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

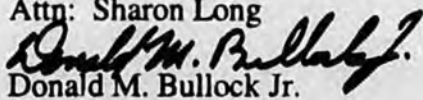
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 14, 2007

SUBJECT: SB 104 drafting issues and concerns
(Work Order No. 25-GS1060\B)

TO: Senator Charlie Huggins
Chair of the Senate Resources Committee
Attn: Sharon Long

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

I write to you in your capacity as the chair of the first committee for referral for SB 104, the governor's proposed Alaska Gasline Inducement Act.¹ This memorandum is a supplement to the sectional summary of the bill I have already provided to you.

As a general observation, the bill as drafted should be edited to conform to the 2007 edition of the Manual of Legislative Drafting. The use of the Manual of Legislative Drafting makes the form of the Alaska Statutes internally consistent and facilitates the interpretation of Alaska law by those responsible for the administration of the law and the courts. Nonsubstantive edits may be made by the attorneys and editor in the course of preparing amendments and new versions of the bill unless we are specifically directed not to. Should these edits not be included as this bill and the House companion bill proceed through the legislature, corrections may be required in a future Revisor's bill.

Although there is only a single tax provision relating to tax in the bill -- the gas production tax exemption in AS 43.90.320 on page 16 -- the bill places the Act in Title 43, relating to revenue and taxation. Based on the bill's purpose as an inducement for the construction of a natural gas pipeline, the substance of the bill may be more consistent with Title 31, relating to oil and gas, or Title 42, relating to public utilities and carriers.

What follows are specific revisions, comments, and questions arising from my review of the bill as introduced, Senate Bill 104, Version 25-GS1060\B. Suggested language is subject to review and revision as required by our review process and should not be accepted as final.

Sec. 43.90.010. Edits: change "this state" to "the state". "This state" is used when

¹ The bill proposes a new word for the Alaska Statutes. Although "gas pipeline" and "gas line" are present in existing law, "gasline" is a term not used in the current statutes.

referring to Alaska as opposed to another state; when only Alaska is addressed in a provision, "the state" is appropriate. "This state" should be changed to "the state" throughout the bill except where Alaska is to be distinguished from another state.

Sec. 43.90.100. This section could be expanded to include generally applicable provisions from sec. 43.90.130 on page 4 of the bill as follows:

Sec. 43.90.100. Gas project. (a) The commissioners may award an Alaska Gasline Inducement Act license as provided in this chapter.

(b) The commissioners may enter into contracts with independent contractors for the purpose of developing provisions for the application for a license under this chapter and for evaluating applications submitted to obtain a license.

(c) A person awarded a license under this chapter is entitled to the inducement set out in AS 43.90.110.

Sec. 43.90.110. I recommend restructuring of the section for clarity:

Sec. 43.90.110. Natural gas pipeline project construction inducement.

(a) A license issued under this chapter entitles the licensee or its designated affiliate to receive the benefits in this section as inducement to proceed with the development of the project.

(b) Subject to appropriation, the state shall provide a total of not more than \$500,000,000 in matching funds for qualified expenditures. Of this amount, the state shall contribute:

(1) 50 percent of the qualified expenditures incurred before the close of the first binding open season; and

(2) subject to an amount remaining after all payments have been made under (1) of this subsection, the lesser of 80 percent or the percentage proposed by the licensee under AS 43.90.140(9) of the qualified expenditures incurred after the close of the first binding open season and before the licensee receives a certificate of public convenience and necessity for the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska, as appropriate.

(c) The Alaska Gasline Inducement Act coordinator appointed under AS 43.90.330(a) shall work with the licensee and assist with the development of the project as required under AS 43.90.330(b).

(d) The licensee may benefit from a state program that provides training for employment in gas pipeline project management, construction, operation, maintenance, and other positions related to the development and operation of the project.

(e) In (b) of this section, "qualified expenditures" means costs incurred by a licensee after receiving a license under this chapter that are directly and reasonably related to receiving a certificate of public necessity and convenience from the Federal Regulatory Agency or the Regulatory Commission of Alaska, as appropriate, for the development of the project; "qualified expenditures" do not

include overhead costs, litigation costs, the cost of assets or work product incurred or paid before receiving the license, and civil or criminal penalties.

The commitment of \$500,000,000 to the project involves subsidizing the application process over two time intervals. The first interval starts when the license is issued and continues through the end of the first binding open season. The second interval starts when the first interval ends and continues until the certificate of public convenience and necessity is issued. You may wish to limit the amount dedicated for each interval because of the factor in AS 43.90.140(9) that makes the percentage of match during the second interval a factor for evaluating the application. Perhaps testimony during your hearings will provide insight into the reasons for the two intervals, the fixed 50 percent match in the first, and the flexible match in the second.

This section also refers to a state training program for gas pipeline-related jobs. Is there another bill coming that will create this program? If there is an existing program, reference to that program could be added here.

Sec. 43.90.120. This section seems out of place chronologically. I would expect that it should be inserted after AS 43.90.220, after the provisions that establish the project. Regardless of where the section ultimately falls, I recommend revising the section as follows:

Sec. 43.90.120. Abandonment of project. (a) The project shall be abandoned upon a determination that the project is uneconomic and should be abandoned or if the state extends to a person other than the licensee preferential royalty, tax, or monetary treatment for the purpose of facilitating the construction of a competing natural gas pipeline project in the state.

(b) If the project is abandoned under this section,

(1) the inducement under AS 43.90.110 terminates; and

(2) the licensee continues to be subject to the requirements imposed on the licensee under AS 43.90.230 for state money received by the licensee before the abandonment of the project.

(c) A determination that the project is uneconomic and should be abandoned may be made

(1) jointly by a written agreement between the licensee and the commissioners; or

(2) if the commissioners and the licensee are in disagreement as to whether the project should be abandoned, by an impartial third party selected and agreed upon by the commissioners and the licensee that makes the determination after taking evidence and receiving arguments on the economic viability of the project.

(d) The commissioners shall establish by regulation the procedures for the selection of and determination by the third-party in (c) of this section.

Sec. 43.90.130. Several comments:

Subsection (a) could be added as uncodified law at the end of the bill through a statement such as, "The legislature intends that the commissioners commence the public process to solicit applications for a license under this Act within three months of the effective date of this Act."

An uncodified provision expresses the same intent for acting quickly, but avoids the question that a provision like this raises, "what happens if the commissioners do not act timely"? What if the commissioners do not commence the public process within three months? If you want the provision in statutory form, you might direct the commissioners to begin the process "as soon as practicable," or similar language sufficient to get things moving in a timely manner.

The speed at which applications may be solicited may also be affected by the timeliness of the adoption of regulations that may be required to implement the Act.

The substance of subsections (b) and (c) could be moved to AS 43.90.100, which authorizes the commissioners to award the license.

Sec 43.90.140. A few comments:

For your information, the requirements for the application in the bill are similar to provisions that are required in a notice of open season under 18 C.F.R. 157.134(c). One difference is that the bill requires analyses and commitments that are impliedly firm and final in the application while the FERC regulation states, "[H]owever, to the extent that any item of such information is not known or determined at the time the notice is issued, the prospective applicant shall make a good faith estimate based on the best information available of all unknown or undetermined items of required information and further, must identify the source of information relied on, explain why such information is not presently known, and update the information when and if it is later determined during the open season period[.]"

On page 4, line 11, I suggest deleting the words "consistent with" and inserting "responsive to." The request for applications under AS 43.90.130 will include requirements that an applicant must meet to be considered; an application will be responsive if it meets the requirements in the application.

Some of the items listed in this section could be moved, and might be better placed in AS 43.90.130, if they are requirements that an applicant must meet in order to qualify for consideration. The deadline in AS 43.90.140(1) is a good example.

Some of the requirements of the application are very complex, particularly those in AS 43.90.140(2), and may affect the speed with which a potential applicant can respond.

The alternative routes, overland through Canada or the intrastate-LNG option,² are quite different and may be difficult to compare. There may be differences in economic life, the length of time before gas can be shipped, the economic life of the project, and netbacks that affect the wellhead value on which the state's royalties and production taxes are based. Does AS 43.90.170, in sec. 9 of the bill, provide the commissioners the criteria they need to consider to decide whether a viable overland route is better than the

² This is shorthand for a project that ships the gas via pipeline to tidewater, liquefies the gas, then uses marine transportation for the next leg of delivery.

intrastate LNG option or vice versa? For example, is the risk of cost overruns greater for one route over another? AS 43.90.140(12) provides for a minimum of five delivery points in the state; will the location of those points be different for the overland route compared with the intrastate LNG route?

Structurally, it may make the requirements more clear if one statutory section covers requirements applicable to all project proposals, and subsequent sections address issues that are specific to projects requiring FERC approval and those requiring RCA approval.

Sec. 43.90.140(9): With regard to my comments above concerning how much of the \$500,000,000 may be available during each of the two increments, you may wish to consider changing paragraph (9) to request an estimate of the amount of state money that would be required through the end of the first binding open season and then a percentage to be applied during the subsequent interval leading up to the certificate of public convenience and necessity.

Sec. 43.90.140(12): Do you want to specify where the five delivery points should be? You might use a standard such as how far apart they should be, or within certain mileage of, for example, Fairbanks, Tok, or Anchorage.

Sec. 43.90.140(13): What does firm transportation service to delivery points in the state mean? Does it only mean that there will be a filed tariff for delivery to those points or does this provision also require the applicant to solicit shippers that were not successful during the first open season to ship gas to the in-state delivery points?

Sec. 43.90.150. This section uses the phrase, at page 8, lines 22-23, "consistent with the terms of the request for applications" that could be replaced with language that addresses whether the application is "responsive." Although this solicitation is not subject to the State Procurement Code, AS 36.30, the request for applications is similar to a request for proposals and the standard for accepting an application is similar to determining whether an application is responsive to the solicitation.

Sec. 43.90.170. This section is important to the state's defense if an unsuccessful applicant challenges the award of the license by the commissioners.

I suggest inserting a reference to the criterion of maximizing the benefits to the state to tie into the determination reference in AS 43.90.190 on page 10, lines 9 - 11. On page 9, line 8, following "upon," you could add language such as, "whether the application sufficiently maximizes the benefits to the people of the state and merits issuance of a license, taking into consideration."

You may want to strengthen the language. For example, on page 9, line 11, you could replace "how the applicant plans to manage overruns in costs" with "how the applicant plans to minimize cost overruns." This criteria seems to overlap with the third criteria regarding cost overruns and the effect on the tariff.

Sec. 43.90.170(4). "Low cost" may be too vague to be a helpful standard for the commissioners to apply. Low relative to what?

Sec. 43.90.170(5). This paragraph requires speculation on the amount of the \$500,000,000 that may be available after the end of the first binding open season. As I suggested above, you may wish to expand this criteria to include the amount that is

expected to be used during the first interval and then the percentage or amount to be provided by the state during the second interval, up to the time when the certificate of public convenience and necessity is obtained.

Sec. 43.90.180. When would this notice, review, and comment period occur? Is it after the commissioners have applied their criteria, in which case a favored applicant may already be identified? Or is it earlier, after the commissioners have made a determination that an application is complete under AS 43.90.150?

If the notice, review, and comment follow the determination under AS 43.90.150(d), the public may help evaluate the applications using the same criteria the commissioners apply under AS 43.90.170. If the public review is after the commissioners have applied the criteria, the public notice and review could focus on the application(s) the commissioners find to be the most satisfactory under the criteria.

Sec. 43.90.190. This section includes two appealable determinations by the commissioners. Under AS 43.90.190(a)(1), the commissioners' determination that an application would sufficiently maximize the benefits to the people of the state and merits issuance of a license is a final agency action and is therefore subject to appeal.³ Note, however, that the date the decision is final is determined under AS 43.90.200(a). Under AS 43.90.190(b) and (c), a finding by the commissioners that no application satisfies the requirement of maximization of benefits is also a final action for appeal purposes.

Sec. 43.90.200. Subsection (a) makes the commissioners' determination in AS 43.90.190(a) "final agency action[] effective under this chapter on the 30th legislative day after the date of referral to the legislature[.]" The "30th legislative day" language may need to be refined. If the commissioners make the determination with less than 30 days left in the first regular legislative session, say 20 days before, would the determination not be final until 10 days into the next regular session? What if there is an intervening special session with limited subject matter? Thirty days coincides with the length of a special session, which may be contemplated by the drafter of the bill, but the circumstances of a regular session should also be addressed.

Sec. 43.90.200(c): The words "Alaska Rules of Appellate Procedure" are unnecessary; when the right to appeal vests, the court rules establish the procedure to be followed without this language.

Sec. 43.90.210. In subsection (a), you might want to check with the tariff experts in the Department of Law concerning whether the RCA would regulate tariffs to the in-state delivery points even though the interstate part of the pipeline is regulated by FERC. If RCA and FERC both may be involved, subsection (a) should be reworded to allow for the acceptance of a certificate from each regulatory agency. The subsection could simply read as follows:

³ *Bethel Utilities Corp. v. City of Bethel*, 780 P.2d 1018, 1022 (Alaska 1989) ("Unless the legislature provides otherwise, administrative decisions are presumed to be judicially reviewable.")