

Chapter 43.82. ALASKA STRANDED GAS DEVELOPMENT ACT

Article 01. CONTRACTS FOR PAYMENTS IN LIEU OF OTHER TAXES

Sec. 43.82.010. Purpose.

The purpose of this chapter is to

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

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

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

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

The commissioner may, under this chapter, negotiate terms for inclusion in a proposed contract with a qualified sponsor or qualified sponsor group providing for

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

(2) certain adjustments regarding royalty under AS 43.82.220.

Article 02. QUALIFICATION AND APPLICATION PROCEDURES

Sec. 43.82.100. Qualified project.

Based on information available to the commissioner, the commissioner may determine that a proposal for new investment is a qualified project under this chapter if the project

(1) principally involves

(A) the transportation of natural gas by pipeline to one or more markets, together with any associated processing or treatment;

(B) the export of liquefied natural gas from the state to one or more other states or countries; or

(C) any other technology that commercializes the shipment of natural gas within the state or from the state to one or more other states or countries;

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

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

Sec. 43.82.110. Qualified sponsor or qualified sponsor group.

The commissioner may determine that a person or group is a qualified sponsor or qualified sponsor group if the person or a member of the group

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

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

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

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

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

(D) has a net worth equal to at least 10 percent of the estimated cost of constructing a qualified project;

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

Sec. 43.82.120. Applications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 43.82.130. Qualified project plan.

A proposed project plan submitted under AS 43.82.120 may be approved as a qualified project plan under AS 43.82.140 if the proposed project plan

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

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

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

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

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

(b) If the commissioner approves an application under (a) of this section, the commissioner and the commissioner of natural resources shall review the proposed project plan submitted with the application to

determine whether the provisions of AS 43.82.130 have been met. The commissioner may approve the proposed project plan as a qualified project plan only if the commissioner of natural resources concurs in the approval.

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

Sec. 43.82.150. Actions challenging determinations on applications.

(a) Only an applicant under AS 43.82.120 who is aggrieved by a determination of the commissioner of revenue or the commissioner of natural resources under AS 43.82.140 may seek judicial review of the determination.

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

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

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

Sec. 43.82.160. Multiple applications for similar or competing qualified projects.

Nothing in this chapter prohibits different qualified sponsors or different qualified sponsor groups from submitting applications under AS 43.82.120 relating to similar or competing qualified projects or prohibits the commissioner of revenue or the commissioner of natural resources from reviewing and approving applications and proposed project plans under AS 43.82.140 relating to similar or competing qualified projects.

Sec. 43.82.170. Application deadline.

The commissioner of revenue or the commissioner of natural resources may not act on an application for a contract submitted under AS 43.82.120 unless the application is received by the Department of Revenue no later than March 31, 2005.

Sec. 43.82.180. Withdrawal of applications.

Subject to the terms of a reimbursement agreement under AS 43.82.240 or other agreement with the Department of Revenue, the Department of Natural Resources, the commissioner of revenue, or the commissioner of natural resources affecting the withdrawal of an application, a qualified sponsor or qualified sponsor group may withdraw an application submitted under AS 43.82.120 at any time before the date that the commissioner of revenue submits a contract to the governor under AS 43.82.430 without further obligation under this chapter.

Article 03. CONTRACT DEVELOPMENT

Sec. 43.82.200. Contract development.

If the commissioner approves an application and proposed project plan under AS 43.82.140, the commissioner may develop a contract that may include

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

(2) terms developed under AS 43.82.220 relating to

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

(B) royalty value;

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

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

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

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

(7) other terms or conditions that are

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

(B) in the best interests of the state.

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

(a) If the commissioner approves an application and proposed project plan under AS 43.82.140, the commissioner may develop proposed terms for inclusion in a contract under AS 43.82.020 for periodic payment in lieu of one or more of the following taxes that otherwise would be imposed by the state or a municipality on the qualified sponsor or member of a qualified sponsor group as a consequence of participating in an approved qualified project:

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

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

(3) *[Repealed, Sec. 6 ch 34 SLA 1999]*.

(4) Alaska net income tax under AS 43.20;

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

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

(7) municipal special assessments under AS 29.46;

(8) a comparable tax or levy imposed by the state or a municipality after June 18, 1998;

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

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

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

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

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

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

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

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

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

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

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

Sec. 43.82.220. Contract terms relating to royalty.

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

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

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

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

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

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

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

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

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

(a) The commissioner shall include in a contract under AS 43.82.020 a term requiring the qualified sponsor or qualified sponsor group and contractors of the qualified sponsor or qualified sponsor group to comply with all valid federal, state, and municipal laws relating to hiring Alaska residents and contracting with Alaska businesses to work in the state on the approved qualified project and not to discriminate against Alaska residents or Alaska businesses. Within the constraints of law, the commissioner shall also include in a contract under AS 43.82.020 a term that requires the qualified sponsor or qualified sponsor group and contractors of the qualified sponsor or qualified sponsor group to employ Alaska residents and to contract with Alaska businesses to work in the state on the approved qualified project to the extent the residents and businesses are available, competitively priced, and qualified.

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

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

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

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

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

(e) For purposes of this section,

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

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



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

(C) is

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

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

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

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

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

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

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

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

(B) is registered to vote under AS 15 and qualifies for a resident fishing, hunting, or trapping license under AS 16;

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

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

Sec. 43.82.240. Use of an independent contractor.

(a) The commissioner may use independent contractors to assist in the evaluation of an application or in the development of contract terms under AS 43.82.200. The commissioner may condition the development of a contract under AS 43.82.020 on an agreement by the applicant to reimburse the state for the reasonable expenses of independent contractors under this section. A reimbursement of expenses that is required in an agreement authorized by this subsection may not exceed \$1,500,000 for each application.

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

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

Sec. 43.82.250. Term of contract; effective date.

The term of a contract developed under AS 43.82.020 may be for no longer than is necessary to develop the stranded gas that is subject to the contract; however, the term of the contract may not exceed 35 years from the commencement of commercial operations of the approved qualified project.

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

(a) A qualified sponsor or member of a qualified sponsor group may assign an interest in or add or withdraw a party to an application under AS 43.82.120 only if the commissioner has

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

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

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

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

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

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

Sec. 43.82.270. Project plans and work commitments.

A contract under AS 43.82.020 must include the qualified project plan approved under AS 43.82.140 and provisions for updating the plan at reasonable intervals until the commencement of commercial operations of the approved qualified project. The commissioner of revenue, in consultation with the commissioner of natural resources, may, as a term in a contract under AS 43.82.020, include work commitments or other obligations in the contract to be accomplished before the commencement of commercial operations of the approved qualified project.

Article 04. REQUESTS FOR INFORMATION; CONFIDENTIALITY; DISCLOSURE OF INFORMATION

Sec. 43.82.300. Requests for information.

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

Sec. 43.82.310. Disclosure of information; confidentiality.

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

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

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

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

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

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

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

(e) Notwithstanding the limitation in (c) of this section, information that is determined to be confidential under (b) of this section shall be disclosed on request by the commissioner of revenue, the commissioner of natural resources, or the attorney general to a legislator; to the legislative auditor; and, as directed by the chair or vice-chair of the Legislative Budget and Audit Committee, to the director of legislative finance, to the permanent employees of those divisions who are responsible for evaluating a contract under AS 43.82.020, and to agents or contractors of the legislative auditor or the director of legislative finance who are engaged to evaluate a contract under AS 43.82.020. Information that is determined to be confidential under (b) of this section may also be disclosed by the commissioner of

revenue or the commissioner of natural resources to an independent contractor under AS 43.82.240 or to a municipal advisory group established under AS 43.82.510. Before confidential information is disclosed under this subsection, the person receiving the information must sign an appropriate confidentiality agreement.

(f) If the commissioner of revenue chooses to develop a contract under AS 43.82.020, the portions of the records and files of the Department of Revenue, the Department of Natural Resources, the Department of Law, and a municipal advisory group established under AS 43.82.510 that reflect, incorporate, or analyze information that is relevant to the development of the position or strategy of the commissioner of revenue, the commissioner of natural resources, or the attorney general with respect to a particular provision that may be incorporated into the contract are not public records until the commissioner of revenue gives public notice under AS 43.82.410 of the commissioner's preliminary findings and determination under AS 43.82.400. Nothing in this subsection

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

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

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

Article 05. CONTRACT REVIEW, APPROVAL, AND TERMINATION

Sec. 43.82.400. Preliminary findings and determination regarding the contract.

(a) If the commissioner develops a proposed contract under AS 43.82.200 - 43.82.270, the commissioner shall

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

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

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

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

Sec. 43.82.410. Notice and comment regarding the contract.

The commissioner shall

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

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

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

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

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

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

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

Sec. 43.82.420. Coordination of public and legislative review.

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

Sec. 43.82.430. Final findings, determination, and proposed amendments; execution of the contract.

(a) Within 30 days after the close of the public comment period under AS 43.82.410 (4), the commissioner of revenue shall

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

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

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

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

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

Sec. 43.82.435. Legislative authorization.

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

Sec. 43.82.440. Judicial review.

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

Sec. 43.82.445. Administrative termination of a contract.

(a) The commissioner shall include terms in a contract developed under AS 43.82.020 that provide for administrative termination of a party's rights under the procedures and conditions set out in this section if the party has

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

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

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

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

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

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

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

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

Article 06. MUNICIPAL PARTICIPATION

Sec. 43.82.500. Obligation to share payments with municipalities.

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

Sec. 43.82.505. Payments to economically affected municipalities.

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

Sec. 43.82.510. Municipal advisory group.

(a) If the commissioner approves an application and proposed project plan under AS 43.82.140 and decides to develop a contract under AS 43.82.020 and 43.82.200, the commissioner shall notify each revenue-affected municipality and economically affected municipality.

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

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

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

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

(a) The commissioner shall meet with each municipal advisory group periodically to report on the development of the contract provisions that affect the municipalities.

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

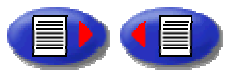
(1) the share of the payments to revenue-affected municipalities should be given priority over payments to economically affected municipalities with due regard to the anticipated size of the tax base that the contract would exempt from municipal taxation by revenue-affected municipalities;

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

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

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

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



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

Article 07. MISCELLANEOUS PROVISIONS

Sec. 43.82.250. Term of contract; effective date.

The term of a contract developed under AS 43.82.020 may be for no longer than is necessary to develop the stranded gas that is subject to the contract; however, the term of the contract may not exceed 35 years from the commencement of commercial operations of the approved qualified project.

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

(a) A qualified sponsor or member of a qualified sponsor group may assign an interest in or add or withdraw a party to an application under AS 43.82.120 only if the commissioner has

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

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

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

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

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

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

Sec. 43.82.270. Project plans and work commitments.

A contract under AS 43.82.020 must include the qualified project plan approved under AS 43.82.140 and provisions for updating the plan at reasonable intervals until the commencement of commercial operations of the approved qualified project. The commissioner of revenue, in consultation with the commissioner of natural resources, may, as a term in a contract under AS 43.82.020, include work commitments or other obligations in the contract to be accomplished before the commencement of commercial operations of the approved qualified project.

Article 04. REQUESTS FOR INFORMATION; CONFIDENTIALITY; DISCLOSURE OF INFORMATION

Sec. 43.82.300. Requests for information.

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

Sec. 43.82.310. Disclosure of information; confidentiality.

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

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

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

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

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

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

(d) Notwithstanding the limitation in (c) of this section, the Department of Revenue and the Department of Natural Resources may provide to one another, to the Department of Law, to the legislature, and to the Office of the Governor any information provided under AS 43.82.300 relevant to the implementation of this chapter or to the enforcement of state or federal laws. Information that is exchanged under this subsection that was determined to be confidential under (b) of this section remains confidential except as provided in (c) of this section. The portions of the records and files of the Department of Revenue, the Department of Natural Resources, the Department of Law, the legislature,

and the Office of the Governor that reflect, incorporate, or analyze information that is determined to be confidential under (b) of this section are not public records except as provided in (c) of this section.

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

(f) If the commissioner of revenue chooses to develop a contract under AS 43.82.020, the portions of the records and files of the Department of Revenue, the Department of Natural Resources, the Department of Law, and a municipal advisory group established under AS 43.82.510 that reflect, incorporate, or analyze information that is relevant to the development of the position or strategy of the commissioner of revenue, the commissioner of natural resources, or the attorney general with respect to a particular provision that may be incorporated into the contract are not public records until the commissioner of revenue gives public notice under AS 43.82.410 of the commissioner's preliminary findings and determination under AS 43.82.400. Nothing in this subsection

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

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

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

Article 05. CONTRACT REVIEW, APPROVAL, AND TERMINATION

Sec. 43.82.400. Preliminary findings and determination regarding the contract.

(a) If the commissioner develops a proposed contract under AS 43.82.200 - 43.82.270, the commissioner shall

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

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

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

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

Sec. 43.82.410. Notice and comment regarding the contract.

The commissioner shall

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

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

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

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

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

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

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

Sec. 43.82.420. Coordination of public and legislative review.

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

Sec. 43.82.430. Final findings, determination, and proposed amendments; execution of the contract.

(a) Within 30 days after the close of the public comment period under AS 43.82.410 (4), the commissioner of revenue shall

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

(2) after consultation with the commissioner of natural resources, if appropriate, and with the pertinent municipal advisory group established under AS 43.82.510, prepare a list of proposed

amendments, if any, to the proposed contract that the commissioner of revenue determines are necessary to respond to public comments;

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

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

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

Sec. 43.82.435. Legislative authorization.

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

Sec. 43.82.440. Judicial review.

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

Sec. 43.82.445. Administrative termination of a contract.

(a) The commissioner shall include terms in a contract developed under AS 43.82.020 that provide for administrative termination of a party's rights under the procedures and conditions set out in this section if the party has

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

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

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

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

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

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

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

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

Article 06. MUNICIPAL PARTICIPATION

Sec. 43.82.500. Obligation to share payments with municipalities.

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

Sec. 43.82.505. Payments to economically affected municipalities.

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

Sec. 43.82.510. Municipal advisory group.

(a) If the commissioner approves an application and proposed project plan under AS 43.82.140 and decides to develop a contract under AS 43.82.020 and 43.82.200, the commissioner shall notify each revenue-affected municipality and economically affected municipality.

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

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

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

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

(a) The commissioner shall meet with each municipal advisory group periodically to report on the development of the contract provisions that affect the municipalities.

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

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



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

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

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

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

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

Article 07. MISCELLANEOUS PROVISIONS

Sec. 43.82.600. Governing law.

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

Sec. 43.82.610. Regulations.

The commissioner of revenue, the commissioner of natural resources, and the commissioner of labor and workforce development may adopt regulations to carry out their respective duties under this chapter.

Sec. 43.82.620. Procedures for collection of amounts due; security.

(a) The commissioner may adopt procedures for the collection of amounts due the state under a contract developed under AS 43.82.020, including the collection of interest and penalties.

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

Sec. 43.82.630. Reports and audits.

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

Sec. 43.82.640. Annual report of the commissioner of labor and workforce development.

On an annual basis, the commissioner of labor and workforce development shall prepare and present to the legislature a comprehensive report on each party to a contract with the state developed under AS 43.82.020, and its contractors, regarding the state residency of the employees working in this state on the

approved qualified project that is subject to the contract. The commissioner of labor and workforce development shall use state data bases, including data from the quarterly reports by a party to the contract developed under AS 43.82.020 and its contractors for unemployment insurance purposes, to determine state residency of employees regarding compliance with AS 43.82.230.

Article 08. GENERAL PROVISIONS

Sec. 43.82.900. Definitions.

In this chapter, unless the context requires otherwise,

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 43.82.990. Short title.

This chapter may be cited as the Alaska Stranded Gas Development Act.