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

M E M O R A N D U M May 12, 2006

SUBJECT: Governor's draft bill modifying Stranded Gas Development Act, sectional summary (Work Order No. 24-LS1936)

TO: Senator Gene Therriault
Attn: David Stancliff, Joe Balash

FROM: Dennis C. Bailey
Legislative Counsel

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

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

I have summarized the proposed changes to the Stranded Gas Development Act, not the entire Act.

Section 1. Amends the chapter's purpose statement by removing the prohibition for alteration of taxes and royalties, instead allowing fiscal terms related to royalties and taxes, including oil and gas production taxes, income taxes and property taxes.

Makes fiscal terms applicable to "a related party," as well as the existing "sponsor" or "sponsor group."

Section 2. Modifies the catch line removing references to payment in lieu of taxes and royalty adjustments.

Allows negotiation of payment in lieu of taxes with "a related party." Removes the condition that the negotiation be as a consequence of participation in a qualified project.

Permits negotiation of oil and gas lease agreements including royalty provisions, unit agreements and other agreements.

Permits negotiation of gas production tax or payment in lieu of taxes by delivery of gas.

Permits negotiation of state ownership in the subject of the contract and state ownership related to collateral agreements under new sec. 43.82.437 (see sec. 11).

Section 3. Allows the commissioner of revenue to develop new terms relating to

(1) modification of oil and gas production taxes, income taxes, and property taxes,

(2) credits for investments in a project,

(3) oil and gas leases, unit agreements, and other agreements under AS 38,

(4) acquisition of state ownership interest in a project,

(5) election by the state to receive delivery of gas as payment for taxes or payment in lieu of taxes,

(6) payment of obligations through credit, offset, or recoupment including refund or reimbursement of excess taxes paid under AS 43.20.210(a). [sic](note cite error),

(7) the administration of the contract, force majeure, and suspension of contract obligations, payment of interest, confidentiality and audits,

(8) the state acquiring capacity for gas received by the state and shipped to market,

(9) subject to the concurrence of the attorney general,

(A) waiver of sovereign immunity,

(B) agreement by the state to indemnify or otherwise hold harmless,

(C) limitations on claims for damages and remedies for losses incurred by the state, and

(D) agreements regarding the jurisdiction of the Regulatory Commission of Alaska under AS 42.04.

Section 4. Adds "related party" in addition to qualified sponsors or groups with whom the commissioner may develop proposed terms for periodic payment in lieu of specified taxes.

For the purpose of listing specific taxes for which the commissioner may negotiate payments in lieu of taxes, specifically includes within state and municipal taxes the following: (1) taxes on oil and gas reserves or resource, (2) taxes not authorized or imposed by the state or a municipality at the time a contract takes effect, and (3) taxes enacted by initiative.

Section 5. Excludes contrary provisions in regulations under AS 38 (Public Lands).

Eliminates the requirement that the commissioner of natural resources develop regulations with the concurrence of the affected parties holding a state lease or unit agreement unless necessary.

Broadens the topic for developing terms by eliminating a "timing and notice" restriction and by allowing terms related to other agreements under AS 38 as well as the existing "oil and gas leases and unit agreements."

Allows the commissioner of natural resources with the concurrence of the commissioner of revenue to develop terms pertaining to the state's rights to receive royalty on gas in kind or in value (1) if the viability of the project depends on long term shipping commitments. (Deletes references to "purchase and sale agreements") (2) if the certainty regarding the royalty gas the state may be taking over time is needed to enter into shipping commitments or marketing agreements. (Deletes reference to "securing the purchase and sale agreement.") Deletes the requirement that the state's commitment to take royalty gas in value or in kind may not exceed the duration of the purchase and sale agreement.

In addition the commissioner of natural resources may develop terms pertaining to the state's right to receive royalties in kind or in value relating to lease or unit expenses for separation, cleaning, dehydration, gathering, salt water disposal and preparation for transportation on or off the lease.

Section 6. Removes the restriction that the commissioner of revenue include references only to royalties.

Section 7. Exempts from AS 38, or regulations under AS 38, an agreement to take royalty in kind that satisfies AS 43.82.220(a)(1)(A) - (C).

Section 8. Removes the restriction on the duration of the contract that it be "no longer than is necessary to develop the stranded gas that is subject to the contract" but leaves in place the period of 35 years from the commencement of commercial operations, excluding suspensions of contract obligations covered by force majeure. However, the term may not exceed 45 years from the effective date of the contract.

Section 9. Allows the addition of new parties to the contract.

Section 10. Provides that the contract must include provisions for implementing the project plan that "may be modified as a result of the development of a contract . . . ."

Section 11. Authorizes the commissioner of revenue with the concurrence of the commissioner of natural resources to negotiate and enter into collateral agreements required to implement the state's ownership interest. The authority lapses 60 days after the effective date of the law authorizing the contract.

A collateral agreement on behalf of a public corporation established by law to enter into agreements to acquire an ownership interest is an obligation of the corporation and shall be executed and implemented by the directors of the public corporation. The authority of the commissioner to negotiate and enter collateral agreements on behalf of the corporation lapses when the public corporation has been established to finance and own the state's interest and the members of the board have been appointed by the governor.

A collateral agreement executed by the commissioner on behalf of the public corporation binds only the public corporation and does not make the state a party to the collateral agreement.

Except as provided by AS 43.82.437, and the confidential provisions of AS 43.82.310, a collateral agreement that has been authorized by the legislature is not subject to any of the provisions of this chapter.

A "collateral agreement" includes an agreement between the state or a state entity and a qualified sponsor or sponsor group or their affiliate to form limited liability companies, limited liability partnerships, or any other recognized form of business association to own or operate any portion of the project.

Section 12. Makes permissive, rather than mandatory, the commissioner's obligation to include terms in the contract that provide for administrative procedures and conditions for termination of a parties rights. Defines the conditions for termination by contract as well as by the terms of AS 43.82.445(a)(1) - (4).

Amends provisions applicable to contract termination by modifying the condition that the party to the contract has failed to comply with the project plan "as modified as a result of the development of the contract" or an updated plan required by the contract.

Section 13. If the contract exempts a sponsor, a member of a sponsor group, or a related party from municipal property tax, the commissioner shall provide a term that provides for payment to a municipality affected by the exemption but not necessarily, as previously, from "a party."

Section 14. Provides that if a contract affects municipalities, the commissioner shall include a term in the contract for periodic impact payments to the state that may be appropriated to the Alaska Natural Gas Pipeline Construction Impact Fund established by AS 43.82.505(c) (see sec. 15) for the benefit of affected municipalities.

Section 15. Establishes the Alaska Natural Gas Pipeline Construction Impact Fund to address the economic and social impacts incurred by a municipality during construction of a project. The requirements of the Alaska Executive Budget Act, AS 37.07, apply to money in the fund.

Section 16. Adds money in the impact fund to the share of payments an affected community may receive.

Section 17. Permits the commissioner to issue exemption certificates according to the terms of the exemptions from state or municipal taxes that are provided in the contract.

Section 18. Defines "related party" as a limited liability company or similar entity that is affiliated with a qualified sponsor or qualified sponsor group that owns or operates a qualified project or project segment, and is an intended beneficiary of the fiscal terms included in a contract.

Section 19. Creates an exception to the statutory arbitration provisions of AS 09.43.300 - 09.43.595, apparently allowing arbitration as provided in a contract term.

Section 20. Repeals the current notice requirements for administrative contract termination, and opportunity to be heard, and the discretion of the commissioner to grant the opportunity to cure a deficiency.

Repeals the prohibition against administrative contract termination after the party has committed full project funding, except as provided in (e) [which is not repealed].

Repeals a party's right to appeal the commissioner's action to administratively terminate the contract to the superior court.

Section 21. Modifies the catch line for AS 43.82.220 to include oil and gas leases and other agreements.

Section 22. Makes sections 1 - 18 of the Act retroactive to January 1, 2004 and sec. 19 retroactive to January 1, 2005.

Section 23. Gives the bill an immediate effective date.

If I may be of further assistance, please advise.

DCB:med
06-386.med