Legislature's Role in the Stranded Gas Act

Stranded Gas Act Procedures and the Legislature
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by
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Legislators, members of the media and others have asked us about the procedures under the Alaska Stranded Gas Development Act and the responsibilities of Legislature under the Act. This document is aimed at providing some answers to those questions. The Act provides the Administration with authority to accept applications from entities interested in either building an Alaska natural gas pipeline, shipping gas through that pipeline, or both building the pipeline and shipping gas. The Administration can then negotiate with applicants on royalty, tax, and other terms, subject to certain limitations contained in the Act. When and if the Administration successfully concludes negotiations with an applicant, it will prepare a preliminary best interest finding in favor of the proposed contract. The Administration will then release the proposed contract; the preliminary best interest finding; and financial, technical, and market data supporting the contract, as well as the workpapers, analyses, and recommendations of any independent contractors used by the Administration. At this stage the Legislature is guaranteed access to much of the information that is now treated as confidential while negotiations are ongoing.

When the proposed contract, findings, and data are first released, the Administration must provide a minimum of 30 days for public and Legislative comment, and must offer to appear before the Legislative Budget and Audit Committee for a discussion of and questions on the proposed contract and the other documentation. The Administration can provide more than 30 days for public and Legislative comment, but it cannot provide less. And when the period for comment closes, the Administration has just 30 days to prepare a final best interest finding if it is to proceed with the proposed contract. The final best interest finding must discuss all comments formally registered in the comment period. The comment period is, thus, the Legislature's first formal opportunity to officially express an opinion on contract terms and on any amendments to the proposed contract that may be considered appropriate. Legislators can comment individually, by committee, as the House or the Senate, or however they choose in this period, and no vote is required.

After the 30(+) day comment period, which is by statute the Legislature's "first bite at the apple," the proposed contract goes back to the Administration for 30 days to prepare its final finding and any proposed amendments to the contract, as was already mentioned. The Legislature then gets its second bite at the apple when the matter comes to the Legislature for a vote. There's no time clock on when the Legislature must take action, and the Legislature has the opportunity for more hearings—by not only Legislative Budget and Audit but other committees as well—before the bodies vote. The Legislature can also take the time needed to review the supporting documentation and to work with whatever consultants and lawyers deemed necessary. However, one can expect there will be some who want the Legislature to act quickly, and, of course, the Legislature would not want to take so long as to delay the pipeline project. It's this difference between the Legislature's legal right to take all the time in the world and the practical reality of having to act relatively quickly that has been the reason for these pre-contract educational hearings—that, and the opportunity created by these hearings and other early work to give the Administration feedback on issues important to Alaskans while the negotiations are still ongoing.

Finally, we have been asked if the Legislative vote on a proposed contract must be an up or down vote. We have been advised by counsel that the Legislature is legally entitled to approve the contract, reject it unless certain changes are made, or reject it outright. Of course, the danger in rejecting a proposed contract unless certain changes are made—even if Legislative changes are small—is that the delicate balance reached through negotiations may be upset and the applicant may choose not to sign on to a revised contract. Again, the Legislature's legal rights and practical options are not necessarily the same, which makes early work to increase the likelihood of a good contract all the more important.