

CS FOR SENATE BILL NO. 255(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 3/2/00

Referred: Finance

Sponsor(s): SENATOR PETE KELLY

REPRESENTATIVE Barnes

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to best interest findings and land use permits, rights-of-way, and
2 easements issued by the Department of Natural Resources; and providing for an
3 effective date."

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

5 * Section 1. The uncodified law of the State of Alaska is amended by adding a new
6 section to read:

7 FINDINGS. The legislature finds that

8 (1) AS 38.05.035(e) provides that the director of the division of lands in the
9 Department of Natural Resources, with the consent of the commissioner, may approve
10 contracts for the sale, lease, or other disposal of available state land upon a written finding
11 that the interests of the state will be best served; paragraph (e)(6), however, specifically
12 exempts certain land uses, including a permit or other authorization revocable by the
13 commissioner, from the best interest finding requirement;

14 (2) AS 38.05.850 specifically authorizes the director of the division of lands

1 in the Department of Natural Resources, without the commissioner's consent, to grant land
2 use permits for specified purposes, including electric transmission and distribution lines;

3 (3) in 1999, the Department of Natural Resources, in accordance with the
4 direction given to it by the legislature in AS 38.05.850, issued a conditional, revocable right-
5 of-way permit to Golden Valley Electric Association for construction of an electric
6 transmission intertie between Healy and Fairbanks;

7 (4) in accordance with AS 38.05.035(e)(6)(C), the Department of Natural
8 Resources did not issue a written best interest finding, since the conditional right-of-way
9 permit granted to Golden Valley Electric Association was a permit and was revocable by its
10 terms;

11 (5) in December 1999, the Alaska Supreme Court held that the conditional
12 right-of-way permit that the Department of Natural Resources had granted to Golden Valley
13 Electric Association was not "functionally revocable" and that the Department of Natural
14 Resources should have issued a best interest finding under AS 38.05.035(e);

15 (6) the Alaska Supreme Court's recent decision jeopardizes the status of
16 permits previously issued by the Department of Natural Resources under AS 38.05.850, as
17 each of those permits may constitute a disposal of state land for which a best interest finding
18 is required;

19 (7) in order to comply in the future with the Alaska Supreme Court's recent
20 ruling and to avoid challenge to its permits, the Department of Natural Resources will likely
21 have to issue a best interest finding for every permit issued under AS 38.05.850;

22 (8) issuing a best interest finding for each permit issued under AS 38.05.850
23 will necessitate substantial additional expenditures for which the Department of Natural
24 Resources is inadequately funded;

25 (9) the consequences of the Department of Natural Resources' having to issue
26 best interest findings for permits issued under AS 38.05.850 without additional funding include

- 27 (A) the creation of uncertainty on the part of prospective permittees;
- 28 (B) the rapid depletion of the Department of Natural Resources' funds;
- 29 (C) substantial delays in the permitting process;
- 30 (D) a negative effect on the development and use of state land

31 resources; and

1 (E) potential impairment of the safety of Alaskans; and
 2 (10) in passing ch. 113, SLA 1981, the legislature's intention in enacting
 3 AS 38.05.035(a)(14)(C), now AS 38.05.035(e)(6)(C), was to create an exception to the best
 4 interest finding requirement that would apply to all permits issued by the Department of
 5 Natural Resources under AS 38.05.850, including the permit issued to Golden Valley Electric
 6 Association.

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

9 INTENT. It is the intent of the legislature to confirm by clarification that all permits
 10 issued by the Department of Natural Resources under AS 38.05.850 are exempt from the best
 11 interest finding requirements of AS 38.05.035(e).

12 * **Sec. 3.** AS 38.05.035(e)(6) is amended to read:

13 (6) before a public hearing, if held, or in any case not less than 21 days
 14 before the sale, lease, or other disposal of available land, property, resources, or
 15 interests in them other than a sale, lease, or other disposal of available land or an
 16 interest in land for oil and gas under (5) of this subsection, the director shall make
 17 available to the public a written finding that, in accordance with (1) of this subsection,
 18 sets out the material facts and applicable statutes and regulations and any other
 19 information required by statute or regulation to be considered upon which the
 20 determination that the sale, lease, or other disposal will best serve the interests of the
 21 state was based; however, a written finding is not required before the approval of

22 (A) a contract for a negotiated sale authorized under
 23 AS 38.05.115;

24 (B) a lease of land for a shore fishery site under AS 38.05.082;

25 (C) a permit or other authorization revocable by the
 26 commissioner;

27 (D) a mineral claim located under AS 38.05.195;

28 (E) a mineral lease issued under AS 38.05.205;

29 (F) an exempt oil and gas lease sale under AS 38.05.180(d) of
 30 acreage subject to a best interest finding issued within the previous 10 years or
 31 a reoffer oil and gas lease sale under AS 38.05.180(w) of acreage subject to a

best interest finding issued within the previous 10 years, unless the commissioner determines that substantial new information has become available that justifies a supplement to the most recent best interest finding for the exempt oil and gas lease sale acreage and for the reoffer oil and gas lease sale acreage; however, for each oil and gas lease sale described in this subparagraph, the director shall call for comments from the public; the director's call for public comments must provide opportunity for public comment for a period of not less than 30 days; if the director determines that a supplement to the most recent best interest finding for the acreage is required under this subparagraph,

(i) the director shall issue the supplement to the best interest finding not later than 90 days before the sale;

(ii) not later than 45 days before the sale, the director shall issue a notice describing the interests to be offered, the location and time of the sale, and the terms and conditions of the sale; and

(iii) the supplement has the status of a final written best interest finding for purposes of (i) and (l) of this section;

(G) a shallow gas lease authorized under AS 38.05.177 in an area for which leasing is authorized under AS 38.05.177;

(H) a surface use lease under AS 38.05.255;

(I) a permit, right-of-way, or easement under AS 38.05.850;

* **Sec. 4.** AS 38.05.850 is amended by adding a new subsection to read:

(c) If the director determines, by evaluation of the nature and duration of the intended use, that an easement or right-of-way issued under this section will not be functionally revocable, the director shall provide public notice before issuing the easement or right-of-way.

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

RETROACTIVITY. Section 3 of this Act is retroactive to, and applies to permits issued under AS 38.05.850 on or after, July 27, 1981.

* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).