



LAWS OF ALASKA

1994

Source
SCS CSHB 199(FIN)

Chapter No.
35

AN ACT

Relating to the exploration and production of oil and gas and related hydrocarbons, to oil and gas exploration licenses, and to oil and gas leases in certain areas of the state; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: May 9, 1994

Actual Effective Date: Section 9 takes effect May 10, 1994; remainder of Act takes effect August 7, 1994

AN ACT

1 Relating to the exploration and production of oil and gas and related hydrocarbons, to oil and
2 gas exploration licenses, and to oil and gas leases in certain areas of the state; and providing
3 for an effective date.

4

5 * Section 1. AS 38.05.020(b) is amended to read:

6

(b) The commissioner may

7

(1) establish reasonable procedures and adopt reasonable regulations
8 necessary to carry out this chapter and, whenever necessary, issue directives or orders
9 to the director to carry out specific functions and duties; regulations adopted by the
10 commissioner shall be adopted under AS 44.62 ([THE] Administrative Procedure Act)
11 [(AS 44.62)]; orders by the commissioner classifying land, issued after January 3,
12 1959, are not required to be adopted under AS 44.62 ([THE] Administrative Procedure
13 Act) [(AS 44.62)];

14

(2) enter into agreements considered necessary to carry out the purposes

Chapter 35

1 of this chapter, including agreements with federal and state agencies;

2 (3) review any order or action of the director;

3 (4) exercise the powers and do the acts necessary to carry out the
4 provisions and objectives of this chapter;

5 (5) notwithstanding the provisions of any other section of this chapter,
6 grant an extension of the time within which payments due on any exploration license,
7 lease, or sale of state land, minerals, or materials may be made, including payment of
8 rental and royalties, on a finding that compliance with the requirements is or was
9 prevented by reason of war, riots, or acts of God;

10 (6) classify tracts for agricultural uses and require the prequalification,
11 including the submission of conservation plans, development plans, or other plans,
12 schedules, or programs, of persons who apply to participate in an agricultural
13 development project under AS 44.33.475;

14 (7) waive, postpone, or otherwise modify the development requirements
15 of a contract for the sale of agricultural land if

16 (A) the land is inaccessible by road; and

17 (B) transportation, marketing, and development costs render the
18 required development uneconomic.

19 * Sec. 2. AS 38.05 is amended by adding new sections to read:

20 ARTICLE 5A. OIL AND GAS EXPLORATION LICENSES; LEASES.

21 Sec. 38.05.131. APPLICABILITY; DETERMINATION; REGULATIONS. (a)

22 Unless specifically provided otherwise in AS 38.05.132 - 38.05.134, the provisions of
23 AS 38.05.005 - 38.05.040, 38.05.140(f), 38.05.180, 38.05.182 - 38.05.184, and
24 38.05.920 - 38.05.990 apply to the issuance of oil and gas exploration licenses and
25 leases under AS 38.05.132 - 38.05.134.

26 (b) The provisions of AS 38.05.131 - 38.05.134 do not apply to land

27 (1) north of the Umiat baseline; and

28 (2) in the vicinity of Cook Inlet that is within the area bounded by

29 (A) the north boundary of Township 17 North, Seward
30 Meridian;

31 (B) the Seward Meridian;

1 (C) the south boundary of Township 7 South, Seward Meridian;

2 and

3 (D) the west boundary of Range 19 West, Seward Meridian.

4 (c) The commissioner shall make preliminary written determinations of the
5 state land that may be subject to the provisions of AS 38.05.132. The determinations
6 shall be given public notice using the methods described in AS 38.05.945(b). After
7 completion of the comment period and evaluation of the comments received, the
8 commissioner shall issue a written determination of the state land that is subject to the
9 provisions of AS 38.05.132.

10 (d) The commissioner may adopt regulations necessary to implement
11 AS 38.05.131 - 38.05.134.

12 (e) The commissioner may not issue exploration licenses to a licensee so that,
13 at any one time, the licensee holds exploration licenses on more than 2,000,000 acres.

14 Sec. 38.05.132. OIL AND GAS EXPLORATION LICENSE. (a) To
15 encourage exploration for oil and gas on state land, the commissioner may issue oil
16 and gas exploration licenses.

17 (b) An oil and gas exploration license issued under this section gives the
18 licensee

19 (1) the exclusive right to explore, for a term not to exceed 10 years, for
20 deposits of oil and gas on unleased state land described in the exploration license
21 unless the exploration license is terminated under (d)(1) of this section or the land is
22 earlier relinquished, removed, or deleted under (d)(2) of this section; and

23 (2) unless the exploration license is terminated under (d)(1) of this
24 section, the option to convert the exploration license for all or part of the state land,
25 except the land that is deleted or removed from the land described in the exploration
26 license under (d)(2) of this section, into an oil and gas lease upon fulfillment of the
27 work commitments contained in the exploration license.

28 (c) An exploration license awarded under this section

29 (1) is not subject to the acreage limitations imposed by AS 38.05.140(c)
30 or 38.05.180(m);

31 (2) may cover, subject to the maximum acreage limitation on

Chapter 35

1 exploration licenses by one licensee under AS 38.05.131(e), an area of not less than
2 10,000 acres and not more than 500,000 acres, that must be reasonably compact and
3 contiguous;

4 (3) must be conditioned upon an obligation to perform a specified work
5 commitment, in total for the term of the license, expressed in dollars of direct
6 exploration expenditures; the specified work commitment

7 (A) may include a provision that adjusts the total amount of
8 work commitment, expressed in dollars of direct exploration expenditures, to
9 account for inflation;

10 (B) must include a requirement that the licensee complete at
11 least 25 percent of the licensee's total specified work commitment by the fourth
12 anniversary of the effective date of the issuance of the oil and gas exploration
13 license;

14 (4) must be conditioned upon the posting of a bond or other security
15 acceptable to the commissioner, in favor of the state and subject to the following
16 requirements:

17 (A) the bond or other security must be renewed annually;

18 (B) the annual bond or other security shall be calculated as the
19 entire work commitment expressed in dollars, less the cumulative direct
20 exploration expenditures of the licensee as of the last day of the most recent
21 project year, divided by the number of years remaining in the term of the
22 exploration license;

23 (5) is subject to an annual review and revocation if the commissioner
24 determines that the licensee has failed to provide or maintain in effect the bond or
25 other security required by (4) of this subsection;

26 (6) must be conditioned upon the licensee's payment to the state of a
27 nonrefundable oil and gas exploration license fee of \$1 for each acre of land or
28 fraction of each acre that is subject to the exploration license; and

29 (7) must be conditioned upon an agreement that exploration
30 expenditures are subject to audit by the commissioner.

31 (d) If, on the fourth anniversary of the effective date of the issuance of the

1 exploration license awarded under this section,

2 (1) the licensee has not completed at least 25 percent of the licensee's
3 total specified work commitment, as measured by the licensee's direct exploration
4 expenditures, the exploration license terminates;

5 (2) the licensee has completed at least 25 percent but has not completed
6 at least 50 percent of the licensee's total specified work commitment, as measured by
7 the licensee's direct exploration expenditure, the commissioner shall remove or delete
8 or shall require the licensee to relinquish a portion of the area within the exploration
9 license; relinquishment, removal, or deletion of an area from the state land described
10 in the exploration license terminates the licensee's rights under AS 38.05.131 -
11 38.05.134 in the area that is relinquished, removed, or deleted; a relinquishment,
12 removal, or deletion of a portion of the area described in the exploration license must
13 be in areas that are reasonably compact and contiguous; the areas relinquished from
14 the state land described in the exploration license must be areas identified by the
15 licensee but, if the licensee fails to identify sufficient area, the commissioner may
16 identify any additional acreage required to be removed or deleted from the area under
17 license to meet the requirements of this subsection; within the area described in the
18 exploration license issued under (a) - (c) of this section,

19 (A) 25 percent must be relinquished, removed, or deleted not
20 later than the fourth anniversary of the effective date of the issuance of the
21 exploration license;

22 (B) an additional 10 percent of the acreage remaining after
23 relinquishment, removal, or deletion of acreage required by (A) of this
24 paragraph and by previous relinquishments, removals, or deletions under this
25 paragraph must be removed or deleted on each of the succeeding anniversaries
26 of the effective date of the issuance of the exploration license;

27 (C) the cumulative total of the acreage relinquished, removed,
28 or deleted under (A) and (B) of this paragraph may not be required to exceed
29 50 percent of the area awarded within the original exploration license area.

30 (e) If, immediately before the beginning of the period for annual renewal of
31 the bond or other security under (c)(4)(A) of this section, the licensee fails to provide

Chapter 35

1 or maintain in effect the bond or other security required by (c) of this section for the
2 period covered by the annual renewal and the commissioner revokes the exploration
3 license, the bond or other security then in effect for the licensee's obligations under
4 the exploration license is forfeited to the state.

5 (f) In this section,

6 (1) "direct exploration expenditure" means cash expenses undertaken
7 in performance of a specified work commitment under the provisions of AS 38.05.131
8 - 38.05.134 and necessarily incurred by the licensee in the permitting, mobilization,
9 conducting, demobilization, and evaluation of geophysical and geological surveys, or
10 the drilling, logging, coring, testing, and evaluation of oil and gas wells; the term

11 (A) includes direct labor costs, including the cost of benefits,
12 for employees directly associated with the work commitment programs, the cost
13 of renting or leasing equipment from parties not affiliated with the licensee, the
14 reasonable costs of maintaining and operating equipment, payments to
15 consultants and independent contractors not affiliated with the licensee, and
16 costs of materials and supplies;

17 (B) does not include noncash expenses such as depreciation and
18 reserves, interest or other costs of borrowed funds, return on investment,
19 overhead, insurance or bond premiums, or any other expense that is
20 unreasonable or that the licensee has not incurred to satisfy the licensee's work
21 commitment;

22 (2) "work commitment" includes the drilling of one or more exploration
23 wells or the gathering of data from activities described in (f)(1) of this section, or both.

24 Sec. 38.05.133. LICENSE PROCEDURES. (a) The procedures in this section
25 apply to the issuance of an oil and gas exploration license under AS 38.05.132.

26 (b) The licensing process is initiated by the commissioner preparing, or a
27 prospective licensee submitting to the commissioner, a proposal that identifies a
28 specific area to be subject to the exploration license, proposes specific minimum work
29 commitments, and states the minimum qualifications for a licensee as established by
30 regulations adopted by the commissioner. A prospective licensee may initiate a
31 proposal only in response to a call for proposals by the commissioner or during a

1 period specified in regulations adopted by the commissioner. The regulations must
2 provide for at least one period for that purpose during each calendar year.

3 (c) If the commissioner initiates the licensing process under (b) of this section,
4 the commissioner shall publish notice of the commissioner's proposal in order to solicit
5 comments and competing proposals.

6 (d) Within 30 days after receipt of a proposal from a prospective licensee
7 under (b) of this section, the commissioner shall either reject it in a written decision
8 or give public notice of the intent to evaluate the acceptability of the proposal. The
9 commissioner shall solicit comments on a proposal for which public notice is given
10 under this subsection, and shall request competing proposals.

11 (e) The commissioner may make a written request to a prospective licensee for
12 additional information on the prospective licensee's proposal. The commissioner shall
13 keep confidential information described in AS 38.05.035(a)(9) that is voluntarily
14 provided if the prospective licensee has made a written request that the information
15 remain confidential.

16 (f) After considering proposals not rejected under (d) of this section and public
17 comment on those proposals, the commissioner shall issue a written finding addressing
18 all matters set out in AS 38.05.035(e) and (g), except for AS 38.05.035(g)(1)(K). If
19 the finding concludes that the state's best interests would be served by issuing an oil
20 and gas exploration license, the finding must (1) describe the limitations, stipulations,
21 conditions, or changes from the initiating proposal or competing proposals that are
22 required to make the issuance of the exploration license conform to the best interests
23 of the state, and (2) if only one proposal was submitted, identify the prospective
24 licensee whom the commissioner finds should be issued the exploration license. The
25 commissioner shall attach to the finding a copy of the exploration license to be issued
26 and the form of lease that will be used for any portion of the exploration license area
27 subsequently converted to an oil and gas lease under AS 38.05.134.

28 (g) If only one prospective licensee submits a proposal and the finding under
29 (f) of this section concludes that an exploration license should be issued to that
30 prospective licensee, the prospective licensee has 30 days after issuance of the finding
31 within which to accept or reject the issuance of the exploration license, as limited or

Chapter 35

1 conditioned by the terms contained in the finding. The exploration license to be issued
2 and the form of lease that will be used must be attached to that finding. The
3 prospective licensee must accept or reject the issuance of the exploration license in
4 writing.

5 (h) If competing proposals are submitted, and the commissioner's finding
6 under (f) of this section concludes that an oil and gas exploration license should be
7 issued, the commissioner shall issue a request for competitive sealed bids, under
8 procedures adopted by the commissioner by regulation, to determine which prospective
9 licensee should be issued the exploration license. The finding provided to the
10 prospective licensees and the public under (f) of this section must contain notice that
11 (1) the commissioner intends to request competitive sealed bids, (2) a prospective
12 licensee who intends to participate in the bidding must notify the commissioner in
13 writing by the date specified in the notice, and (3) a prospective licensee's notice of
14 intent to participate in the bidding constitutes acceptance of issuance of the exploration
15 license, as limited or conditioned by the terms contained in the finding and by the
16 exploration license to be issued and the form of lease to be used that have been
17 attached to that finding, if the prospective licensee is the successful bidder. The
18 successful bidder is the prospective licensee who submits the highest bid in terms of
19 the minimum work commitment dollar amount.

20 Sec. 38.05.134. CONVERSION TO LEASE. If the licensee requests and the
21 commissioner determines that the work commitment obligation set out in an oil and
22 gas exploration license issued under AS 38.05.132 has been met, the commissioner
23 shall convert to one or more oil and gas leases all or part, as the licensee may indicate,
24 of the area described in the exploration license that remains after the relinquishments,
25 removals, or deletions required by AS 38.05.132(d)(2). A lease issued under this
26 section

- 27 (1) is subject to the acreage limitations imposed by AS 38.05.140(c);
28 (2) is subject to AS 38.05.180(j) - (m), (o) - (u), and (x) - (z);
29 (3) must be conditioned upon a royalty in amount or value of not less
30 than 12.5 percent of production;
31 (4) must include an annual rent of \$3 per acre or fraction of an acre

1 initially paid to the state at inception of the lease and payable annually after that until
2 the income to the state from royalty under that lease exceeds the rental income to the
3 state under that lease for that year; and

4 (5) is subject to other conditions and obligations that are specified in
5 the lease.

6 * Sec. 3. AS 38.05.135(a) is amended to read:

7 (a) Except as otherwise provided, valuable mineral deposits in land belonging
8 to the state shall be open to exploration, development, and the extraction of minerals.
9 All land, together with tide, submerged, or shoreland, to which the state holds title to
10 or to which the state may become entitled, may be obtained by permit or lease for the
11 purpose of exploration, development, and the extraction of minerals. Except as
12 specifically limited by AS 38.05.131 - 38.05.181 [AS 38.05.135 - 38.05.181], land may
13 be withheld from lease application on a first-come, first-served basis, and offered only
14 on a competitive bid basis when determined by the commissioner to be in the best
15 interests of the state. [IN UNPROVEN AREAS THE COMMISSIONER MAY
16 OFFER ADDITIONAL INCENTIVES, INCLUDING A REDUCTION OF ROYALTY
17 TO A MINIMUM OF FIVE PERCENT IN THE CASE OF OIL AND GAS, AND
18 OTHER TERMS IN AND GRANTING PERMIT OR LEASE FOR EXPLORATION
19 AND DEVELOPMENT WHENEVER IT APPEARS TO BE IN THE BEST
20 INTERESTS OF THE STATE TO DO SO.]

21 * Sec. 4. AS 38.05.140(f) is amended to read:

22 (f) The submerged and shoreland lying north of 57 degrees, 30 minutes north
23 latitude and east of 159 degrees, 49 minutes west longitude within the Bristol Bay
24 drainage are designated as the Bristol Bay Fisheries Reserve. Within the Bristol Bay
25 Fisheries Reserve no surface entry permit to develop an oil or gas lease or oil and gas
26 exploration license may be issued on state owned or controlled land until the
27 legislature by appropriate resolution specifically finds that the entry will not constitute
28 danger to the fishery.

29 * Sec. 5. AS 38.05.180(d) is amended to read:

30 (d) The commissioner may issue oil and gas leases in an area that has not been
31 included in a leasing program submitted, in accordance with (b) of this section, to the

Chapter 35

1 legislature if the land to be leased

2 (1) [THE LAND TO BE LEASED] was previously subject to a valid
3 state or federal oil and gas lease; [OR]

4 (2) [THE LAND TO BE LEASED] is contiguous to land already under
5 state, federal or private lease and the commissioner makes a written finding, after
6 hearing, that leasing of the land would result in a substantial probability of early
7 evaluation and development of the land to be leased; [OR]

8 (3) [THE LAND TO BE LEASED] is adjacent to land owned or
9 controlled by another party on which a discovery of commercial quantities of oil or
10 gas has been made, and the commissioner finds, after hearing, that there is a
11 reasonable probability that the land to be leased contains oil or gas in communication
12 with the oil or gas discovered on the land of the other party; [OR]

13 (4) [THE LAND TO BE LEASED] is adjacent to land included in the
14 federal five-year Outer Continental Shelf leasing program under 43 U.S.C. 1344, and
15 the commissioner makes a written finding, after hearing, that coordinated or
16 simultaneous leasing with the federal government is in the public interest; or

17 (5) is the subject of an oil and gas exploration license issued under
18 AS 38.05.131 - 38.05.134.

19 * Sec. 6. AS 38.05.180(f) is amended to read:

20 (f) Except as provided by AS 38.05.131 - 38.05.134, the [THE]
21 commissioner may issue oil and gas leases on state land to the highest responsible
22 qualified bidder determined by competitive bidding under regulations adopted by the
23 commissioner. Bidding may be by sealed bid or according to any other bidding
24 procedure the commissioner determines is in the best interests of the state. Whenever,
25 under any of the leasing methods listed in this subsection, a royalty share is reserved
26 to the state, it shall be delivered in pipeline quality and free of all lease or unit
27 expenses, including but not limited to separation, cleaning, dehydration, gathering, salt
28 water disposal, and preparation for transportation off the lease or unit area. Following
29 a pre-sale analysis, the commissioner may choose at least one of the following leasing
30 methods:

31 (1) a cash bonus bid with a fixed royalty share reserved to the state of

Chapter 35

1 not less than 12.5 [12 1/2] percent in amount or value of the production removed or
2 sold from the lease;

3 (2) a cash bonus bid with a fixed royalty share reserved to the state of
4 not less than 12.5 [12 1/2] percent in amount or value of the production removed or
5 sold from the lease and a fixed share of the net profit derived from the lease of not
6 less than 30 percent reserved to the state;

7 (3) a fixed cash bonus with a royalty share reserved to the state as the
8 bid variable but no less than 12.5 [12 1/2] percent in amount or value of the
9 production removed or sold from the lease;

10 (4) a fixed cash bonus with the share of the net profit derived from the
11 lease reserved to the state as the bid variable;

12 (5) a fixed cash bonus with a fixed royalty share reserved to the state
13 of not less than 12.5 [12 1/2] percent in amount or value of the production removed
14 or sold from the lease with the share of the net profit derived from the lease reserved
15 to the state as the bid variable;

16 (6) a cash bonus bid with a fixed royalty share reserved to the state
17 based on a sliding scale according to the volume of production or other factor but in
18 no event less than 12.5 [12 1/2] percent in amount or value of the production removed
19 or sold from the lease;

20 (7) a fixed cash bonus with a royalty share reserved to the state based
21 on a sliding scale according to the volume of production or other factor as the bid
22 variable but not less than 12.5 [12 1/2] percent in amount or value of the production
23 removed or sold from the lease.

24 * Sec. 7. AS 38.05.945(a) is amended to read:

25 (a) This section establishes the requirements for notice given by the department
26 for the following actions:

27 (1) classification or reclassification of state land under AS 38.05.300
28 and the closing of land to mineral leasing or entry under AS 38.05.185;

29 (2) zoning of land under applicable law;

30 (3) a decision under AS 38.05.035(e) or 38.05.132 - 38.05.134
31 regarding the sale, lease, or disposal of an interest in state land or resources;

Chapter 35

1 (4) a competitive disposal of an interest in state land or resources after
2 final decision under AS 38.05.035(e);

3 (5) a public hearing under AS 38.05.856(b);

4 (6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c)
5 concerning sites for aquatic farms and related hatcheries.

6 * **Sec. 8. ADDITIONAL EXCLUDED AREA.** In addition to the area designated in
7 AS 38.05.131(b), added by sec. 2 of this Act, the provisions of AS 38.05.131 - 38.05.134,
8 added by sec. 2 of this Act, do not apply to land within proposed Competitive Oil and Gas
9 Lease Sales 80, 87, and 88, as the area to be offered in each of those proposed competitive
10 oil and gas lease sales was delineated in the Five-Year Oil and Gas Leasing Program prepared
11 by the Department of Natural Resources and dated January 1993. However, the exclusion of
12 the land in any one of those lease sales that is required by this section ceases on the date the
13 land described in the lease sale is first offered for competitive oil and gas leasing under
14 AS 38.05.180, and that land is thereafter subject to the provisions of AS 38.05.131 -
15 38.05.134, added by sec. 2 of this Act.

16 * **Sec. 9. REGULATIONS.** The commissioner of natural resources may proceed to adopt
17 regulations necessary to implement AS 38.05.131 - 38.05.134, added by sec. 2 of this Act.
18 The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
19 effective date of secs. 1 - 8 of this Act.

20 * **Sec. 10.** Section 9 of this Act takes effect immediately under AS 01.10.070(c).