

**HOUSE BILL NO. 394**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES OGAN AND ROKEBERG, James

Introduced: 1/5/96

Referred: House Special Committee on Oil and Gas, Resources, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act authorizing a program of natural gas and coal bed methane development  
2 licensing and leasing; relating to regulation of certain natural gas exploration  
3 facilities and coal bed methane exploration facilities for purposes of preparation  
4 of discharge prevention and contingency plans and compliance with financial  
5 responsibility requirements; amending the duties of the Alaska Oil and Gas  
6 Conservation Commission as they relate to natural gas exploration activities and  
7 coal bed methane exploration activities; and amending the exemption from  
8 obtaining a waste disposal permit for disposal of waste produced from coal bed  
9 methane drilling."

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

11 \* **Section 1.** AS 31.05.030 is amended by adding a new subsection to read:

12 (i) When requested by a person proposing to explore for gas or coal bed

1 methane by drilling an onshore well, the commission may evaluate the likelihood that  
2 the well will penetrate a formation containing oil. If the commission concludes with  
3 reasonable certainty that the well will not penetrate a formation containing oil, the  
4 commission shall so certify.

5 \* **Sec. 2.** AS 38.05.035(a) is amended to read:

6 (a) The director shall

7 (1) have general charge and supervision of the division and may  
8 exercise the powers specifically delegated to the director; may employ and fix the  
9 compensation of assistants and employees necessary for the operations of the division;  
10 and is the certifying officer of the division, with the consent of the commissioner, and  
11 may approve vouchers for disbursements of money appropriated to the division;

12 (2) manage, inspect, and control state land and improvements on it  
13 belonging to the state and under the jurisdiction of the division;

14 (3) execute laws, rules, regulations, and orders adopted by the  
15 commissioner;

16 (4) prescribe application procedures and practices for the sale, lease,  
17 or other disposition of available land, resources, property, or interests [INTEREST]  
18 in them, **including disposal of interests in land under licenses and leases authorized**  
19 **under AS 38.05.180(dd)**;

20 (5) prescribe fees or service charges, with the consent of the  
21 commissioner, for any public service rendered;

22 (6) under the conditions and limitations imposed by law and the  
23 commissioner, issue deeds, leases, or other conveyances disposing of available land,  
24 resources, property, or [ANY] interests in them;

25 (7) have jurisdiction over state land, except that land acquired by the  
26 Alaska World War II Veterans Board and the Agricultural Loan Board or the  
27 departments or agencies succeeding to their respective functions through foreclosure  
28 or default; to this end, the director possesses the powers and, with the approval of the  
29 commissioner, shall perform the duties necessary to protect the state's rights and  
30 interest in state land, including the taking of all necessary action to protect and enforce  
31 the state's contractual or other property rights;

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(8) [REPEALED

(9)] maintain such records as the commissioner considers necessary, administer oaths, and do all things incidental to the authority imposed; the following records and files shall be kept confidential upon request of the person supplying the information:

(A) the name of the person nominating or applying for the sale, lease, or other disposal of land by competitive bidding;

(B) before the announced time of opening, the names of the bidders, and the amounts of the bids;

(C) all geological, geophysical, and engineering data supplied, whether or not concerned with the extraction or development of natural resources;

(D) except as provided in AS 38.05.036, cost data and financial information submitted in support of applications, bonds, leases, and similar items;

(E) applications for rights-of-way or easements;

(F) requests for information or applications by public agencies for land **that** [WHICH] is being considered for use for a public purpose;

(9) [(10)] account for the fees, licenses, taxes, or other money received in the administration of this chapter, including the sale or leasing of land, identify their source, and promptly transmit them to the proper fiscal department after crediting them to the proper fund; receipts from land application filing fees and charges for copies of maps and records shall be deposited immediately in the general fund of the state by the director;

(10) [(11)] select and employ or obtain at reasonable compensation cadastral, appraisal, or other professional personnel the director considers necessary for the proper operation of the division;

(11) [(12)] be the certifying agent of the state to select, accept, and secure by whatever action is necessary in the name of the state, by deed, sale, gift, devise, judgment, operation of law, or other means any land, of whatever nature or interest, available to the state; and be the certifying agent of the state, to select, accept,

1 or secure by whatever action is necessary in the name of the state any land, or title or  
2 interest to land available, granted, or subject to being transferred to the state for any  
3 purpose [;

4 (13) REPEALED

5 (14) REPEALED].

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

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

16 (A) a contract for a negotiated sale authorized under  
17 AS 38.05.115;

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

19 (C) a permit or other authorization revocable by the  
20 commissioner;

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

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

23 (F) a production license issued under AS 38.05.207;

24 (G) an exempt oil and gas sale under AS 38.05.180(d) of  
25 acreage offered in a sale that was held within the previous five years if the sale  
26 was subject to a written best interest finding, unless the commissioner  
27 determines that new information has become available that justifies a revision  
28 of the best interest finding; [OR]

29 (H) a lease sale under AS 38.05.180(w) of acreage offered in  
30 a sale that was held within the previous five years if the sale was subject to a  
31 best interest finding, unless the commissioner determines that new information

1 has become available that justifies a revision of the best interest finding; or  
2 **(I) a gas license or lease or coal bed methane license or lease**  
3 **in an area for which that licensing and leasing is authorized under**  
4 **AS 38.05.180(dd);**

5 \* **Sec. 4.** AS 38.05.180(b) is amended to read:

6 (b) The commissioner shall biennially prepare and, between the first and the  
7 15th day of the first regular session of each legislature, notify the legislature of the  
8 availability of,

9 **(1) a five-year proposed oil and gas leasing program consisting of a**  
10 **schedule of proposed lease sales and specifying as precisely as practicable the location**  
11 **of tracts proposed to be offered for oil and gas leasing during the calendar year in**  
12 **which the proposed program is made available to the legislature and the following four**  
13 **calendar years; and**

14 **(2) a proposed gas licensing and leasing program and coal bed**  
15 **methane licensing and leasing program.**

16 \* **Sec. 5.** AS 38.05.180 is amended by adding a new subsection to read:

17 (dd) To encourage development of the state's natural gas deposits and coal bed  
18 methane for in-state use, the director, with the approval of the commissioner, shall  
19 establish a program of gas licensing and leasing and coal bed methane licensing and  
20 leasing. In addition, the director may issue licenses under this subsection on land that  
21 was previously subject to a valid state or federal gas lease. Under the authority  
22 granted in this subsection:

23 (1) the director shall make preliminary written determinations of the  
24 state land that may be subject to the provisions of this subsection; the determinations  
25 shall be given public notice using the methods described in AS 38.05.945(b); after  
26 completion of the comment period and evaluation of the comments received, the  
27 director shall issue a written determination of the state land that is subject to the  
28 provisions of this subsection;

29 (2) the director may not issue licenses under this subsection to a  
30 licensee so that, at any one time, the licensee holds licenses under this subsection on  
31 more than 23,040 acres;

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(3) a license issued under this subsection gives the licensee

(A) the exclusive right to explore, for a term not to exceed two years, for gas deposits or coal bed methane on unleased state land described in the license; the right to explore is limited to gas deposits and coal bed methane within 3,000 feet of the surface at the drill site; and

(B) unless the license is terminated under (5) of this subsection, the option to convert the license for all or part of the state land, into a gas lease or coal bed methane lease upon fulfillment of the work commitments contained in the license;

(4) a license issued under this subsection

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

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

(5) if the licensee fails to complete the licensee's total specified work commitment, as measured by the licensee's direct exploration expenditures, the license terminates;

(6) the following procedures apply to the issuance of a license under this subsection:

(A) the licensing process is initiated by the director preparing, or a prospective licensee submitting to the director, a proposal that identifies a specific area to be subject to the license, proposes specific minimum work commitments, and states the minimum qualifications for a licensee as established by regulations adopted by the department; a prospective licensee may initiate a proposal only in response to a call for proposals by the director or during a period specified in regulations adopted by the director; the regulations must provide for at least one period for that purpose during each calendar year;

(B) if the director initiates the licensing process under (A) of this paragraph, the director shall publish notice of the proposal in order to

1 solicit comments and competing proposals;

2 (C) within 30 days after receipt of a proposal from a  
3 prospective licensee under (A) of this paragraph, the director shall either reject  
4 it in a written decision or give public notice of the intent to evaluate the  
5 acceptability of the proposal; the director shall solicit comments on a proposal  
6 for which public notice is given under this paragraph, and shall request  
7 competing proposals;

8 (D) the director may make a written request to a prospective  
9 licensee for additional information on the prospective licensee's proposal; the  
10 director shall keep confidential information described in AS 38.05.035(a)(8)  
11 that is voluntarily provided if the prospective licensee has made a written  
12 request that the information remain confidential;

13 (E) after considering proposals not rejected under (C) of this  
14 paragraph and public comment on those proposals, the director shall issue a  
15 written finding addressing all matters set out in AS 38.05.035(e) and (g),  
16 except for AS 38.05.035(g)(1)(B)(xi); if the finding concludes that the state's  
17 best interests would be served by issuing a gas or coal bed methane license, the  
18 finding must (i) describe the limitations, stipulations, conditions, or changes  
19 from the initiating proposal or competing proposals that are required to make  
20 the issuance of the license conform to the best interests of the state, and (ii) if  
21 only one proposal was submitted, identify the prospective licensee whom the  
22 director finds should be issued the license; the director shall attach to the  
23 finding a copy of the license to be issued and the form of lease that will be  
24 used for any portion of the license area subsequently converted to a lease under  
25 this subsection;

26 (F) if only one prospective licensee submits a proposal and the  
27 finding under (E) of this paragraph concludes that a license should be issued  
28 to that prospective licensee, the prospective licensee has 30 days after issuance  
29 of the finding within which to accept or reject the issuance of the license, as  
30 limited or conditioned by the terms contained in the finding; the license to be  
31 issued and the form of lease that will be used shall be attached to that finding;

1 the prospective licensee must accept or reject the issuance of the license in  
2 writing;

3 (G) if competing proposals are submitted, and the finding under  
4 (E) of this paragraph concludes that a license should be issued, the director  
5 shall issue a request for competitive sealed bids, under procedures adopted by  
6 the director by regulation, to determine which prospective licensee should be  
7 issued the license; the finding provided to the prospective licensees and the  
8 public under (E) of this paragraph must contain notice that (i) the director  
9 intends to request competitive sealed bids, (ii) a prospective licensee who  
10 intends to participate in the bidding must notify the director in writing by the  
11 date specified in the notice, and (iii) a prospective licensee's notice of intent  
12 to participate in the bidding constitutes acceptance of issuance of the license,  
13 as limited or conditioned by the terms contained in the finding and by the  
14 license to be issued and the form of lease to be used that have been attached  
15 to that finding, if the prospective licensee is the successful bidder; the  
16 successful bidder is the prospective licensee who submits the highest bid in  
17 terms of the minimum work commitment dollar amount;

18 (7) if the licensee requests and the director determines that the work  
19 commitment obligation related to the license has been met, the director shall convert  
20 to one or more leases all or part, as the licensee may indicate, of the area described  
21 in the license; a lease issued under this subsection

22 (A) is subject to the acreage limitations imposed by  
23 AS 38.05.140(c);

24 (B) is subject to AS 38.05.180(j) - (m), (o) - (u), and (x) - (z);

25 (C) must be conditioned upon a royalty in amount or value of  
26 not less than 12.5 percent of production;

27 (D) must include an annual rent of \$3 per acre or fraction of an  
28 acre initially paid to the state at inception of the lease and payable annually  
29 after that until the income to the state from royalty under that lease exceeds the  
30 rental income to the state under that lease for that year; and

31 (E) is subject to other conditions and obligations that are

1 specified in the lease.

2 \* **Sec. 6.** AS 46.03.100(f) is amended to read:

3 (f) This section does not apply to discharges of solid or liquid waste material  
4 or water discharges from the following activities if the discharge is incidental to the  
5 activity and the activity does not produce a discharge from a point source, as that term  
6 is defined in regulations adopted under this chapter, directly into any surface water of  
7 the state:

8 (1) mineral drilling, trenching, ditching, and similar activities;

9 (2) landscaping;

10 (3) water well drilling or [,] geophysical drilling [, OR COAL BED  
11 METHANE DRILLING]; [OR]

12 (4) drilling, ditching, trenching, and similar activities associated with  
13 facility construction and maintenance or with road or other transportation facility  
14 construction and maintenance; however, the exemption provided by this paragraph does  
15 not relieve a person from obtaining a permit under (a) of this section if

16 (A) the drilling, ditching, trenching, or similar activity will  
17 involve the removal of the groundwater, stormwater, or wastewater runoff that  
18 has accumulated and is present at an excavation site for facility, road, or other  
19 transportation construction or maintenance; and

20 (B) a permit is otherwise required by (a) of this section; or

21 **(5) the discharge or disposal of waste material or water from**  
22 **activities associated with coal bed methane exploration drilling.**

23 \* **Sec. 7.** AS 46.04.030(b) is amended to read:

24 (b) A person may not cause or permit the operation of a pipeline or [AN  
25 EXPLORATION OR] production facility in the state **or, except as provided in**  
26 **AS 46.04.050(c), may not cause or permit the operation of an exploration facility**  
27 **in the state** unless an oil discharge prevention and contingency plan for the pipeline  
28 or facility has been approved by the department and the person is in compliance with  
29 the plan.

30 \* **Sec. 8.** AS 46.04.030 is amended by adding a new subsection to read:

31 (s) If an onshore well certified by the Alaska Oil and Gas Conservation

1 Commission under AS 31.05.030(i) penetrates a formation containing oil, the operator  
2 of the facility

3 (1) shall notify the department and the Alaska Oil and Gas  
4 Conservation Commission; and

5 (2) may not conduct further exploration activity except in compliance  
6 with an oil discharge prevention and contingency plan for the facility

7 (A) approved by the department; or

8 (B) pending the department's decision on plan approval.

9 \* **Sec. 9.** AS 46.04.040(b) is amended to read:

10 (b) A person may not cause or permit the operation of a pipeline or [AN  
11 EXPLORATION OR] production facility in the state **or, except as provided in**  
12 **AS 46.04.050(c) for a well that has not penetrated a formation containing oil, may**  
13 **not cause or permit the operation of an exploration facility in the state** unless the  
14 person has furnished to the department, and the department has approved, proof of  
15 financial ability to respond in damages. Proof of financial responsibility required for

16 (1) a pipeline or an offshore exploration or production facility is  
17 \$50,000,000 per incident;

18 (2) an onshore production facility is

19 (A) \$20,000,000 per incident if the facility produces over  
20 10,000 barrels per day of oil;

21 (B) \$10,000,000 per incident if the facility produces over 5,000  
22 barrels per day but not more than 10,000 barrels per day of oil;

23 (C) \$5,000,000 per incident if the facility produces over 2,500  
24 barrels per day but not more than 5,000 barrels per day of oil;

25 (D) \$1,000,000 per incident if the facility produces 2,500 barrels  
26 per day or less of oil;

27 (3) an onshore exploration facility is \$1,000,000 per incident.

28 \* **Sec. 10.** AS 46.04.040 is amended by adding a new subsection to read:

29 (n) If an onshore well certified by the Alaska Oil and Gas Conservation  
30 Commission under AS 31.05.030(i) penetrates a formation containing oil, the operator  
31 of the facility may not conduct further exploration activity until the requirements of

1 (b) of this section are met.

2 \* **Sec. 11.** AS 46.04.050 is amended by adding a new subsection to read:

3 (c) Except as provided in AS 46.04.030(s) and 46.04.040(n), the provisions of  
4 AS 46.04.030(b) and 46.04.040(b) do not apply to an onshore exploration facility used  
5 solely to explore for natural gas or coal bed methane by means of drilling a well that  
6 has been certified by the Alaska Oil and Gas Conservation Commission under  
7 AS 31.05.030(i).

8 \* **Sec. 12.** REVISOR OF STATUTES TO REVISE REFERENCES. Due to the deletion  
9 of repealed paragraphs in AS 38.05.035(a) by sec. 2 of this Act, the revisor of statutes shall  
10 amend cross-references to the affected paragraphs in AS 38.05.035(a) that appear in the  
11 following statutes: AS 38.05.133(e), 38.05.180(j)(6)(B), 38.05.275(c), and AS 41.09.010(d).