

SENATE BILL NO. 243

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced: 1/26/96

Referred: RES, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing a requirement of an annual offer of land for oil and gas
2 leases if the land was the subject of a best interest finding and if revision of
3 that best interest finding for that land is not justified; deleting from the Alaska
4 Land Act a limitation on the reoffer of land for oil and gas leases when the
5 land was previously offered; and amending laws relating to oil and gas leasing
6 to authorize a program of areawide leasing for land not subject to exploration
7 licensing and to modify provisions relating to disposals based on best interest
8 findings."

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

10 * **Section 1.** AS 38.05.035(a) is amended to read:

11 (a) The director shall

12 (1) have general charge and supervision of the division and may
13 exercise the powers specifically delegated to the director; may employ and fix the

1 compensation of assistants and employees necessary for the operations of the division;
2 and is the certifying officer of the division, with the consent of the commissioner, and
3 may approve vouchers for disbursements of money appropriated to the division;

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

6 (3) execute laws, rules, regulations, and orders adopted by the
7 commissioner;

8 (4) prescribe application procedures and practices for the sale, lease,
9 or other disposition of available land, resources, property, or **interests** [INTEREST]
10 in them, **including disposal of interests in land under areawide oil and gas leasing**
11 **authorized under AS 38.05.180(dd) for an area in which areawide leasing has been**
12 **authorized**;

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

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

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

25 (8) [REPEALED]

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

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

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

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

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

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

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

12 (9) [(10)] account for the fees, licenses, taxes, or other money received
13 in the administration of this chapter, including the sale or leasing of land, identify their
14 source, and promptly transmit them to the proper fiscal department after crediting them
15 to the proper fund; receipts from land application filing fees and charges for copies of
16 maps and records shall be deposited immediately in the general fund of the state by
17 the director;

18 (10) [(11)] select and employ or obtain at reasonable compensation
19 cadastral, appraisal, or other professional personnel the director considers necessary for
20 the proper operation of the division;

21 (11) [(12)] be the certifying agent of the state to select, accept, and
22 secure by whatever action is necessary in the name of the state, by deed, sale, gift,
23 devise, judgment, operation of law, or other means any land, of whatever nature or
24 interest, available to the state; and be the certifying agent of the state, to select, accept,
25 or secure by whatever action is necessary in the name of the state any land, or title or
26 interest to land available, granted, or subject to being transferred to the state for any
27 purpose [;

28 (13) REPEALED

29 (14) REPEALED].

30 * **Sec. 2.** AS 38.05.035(e) is amended to read:

31 (e) Upon a written finding that the interests of the state will be best served,

1 the director may, with the consent of the commissioner, approve contracts for the sale,
2 lease, or other disposal of available land, resources, property, or interests in them. **In**
3 [, AND, IN] addition to the conditions and limitations imposed by law, **the director**
4 may impose additional conditions or limitations in the contracts as the director
5 determines, with the consent of the commissioner, will best serve the interests of the
6 state. The preparation and issuance of the written finding by the director is subject to
7 the following:

8 (1) with the consent of the commissioner and subject to the director's
9 discretion, **either** for a specific proposed disposal of available land, resources, or
10 property, or of an interest in them, **or for a disposal under AS 38.05.180(dd) of land,**
11 **resources, or property, or an interest in them,** the director, in the written finding,

12 (A) shall establish the scope of the administrative review on
13 which the director's determination is based, and the scope of the written finding
14 supporting that determination; the scope of the review and finding may address
15 only reasonably foreseeable, significant effects of the uses proposed to be
16 authorized by the disposal;

17 (B) may limit the scope of an administrative review and finding
18 for a proposed disposal to

19 (i) applicable statutes and regulations;

20 (ii) the facts pertaining to the land, resources, or
21 property, or interest in them, that the director finds are material to the
22 determination and that are known to the director or knowledge of which
23 is made available to the director during the administrative review; and

24 (iii) issues that, based on the statutes and regulations
25 referred to in (i) of this subparagraph, on the facts as described in (ii)
26 of this subparagraph, and on the nature of the uses sought to be
27 authorized, the director finds are material to the determination of
28 whether the proposed disposal will best serve the interests of the state;

29 [AND]

30 (C) may, if the project for which the proposed disposal is
31 sought is a multiphased development, limit the scope of an administrative

1 review and finding for the specific proposed disposal to the applicable statutes
2 and regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that
3 pertain solely to a discrete phase of the project when

4 (i) the only uses to be authorized by the specific
5 proposed disposal are part of that discrete phase;

6 (ii) the department's approval is required before the next
7 phase of the project may proceed; and

8 (iii) the department describes its reasons for a decision
9 to phase and conditions its approval to ensure that any additional uses
10 or activities proposed for that or any later phase of the project will
11 serve the best interests of the state; and

12 **(D) may, if the proposed disposal of interests in land occurs**
13 **under an areawide oil and gas lease authorized under AS 38.05.180(dd) for**
14 **an area in which areawide leasing has been authorized, include within the**
15 **scope of the administrative review and finding the entirety of the area in**
16 **which areawide leasing has been authorized;**

17 (2) the director shall discuss in the written finding prepared and issued
18 under this subsection the reasons that each of the following was not material to the
19 director's determination that the interests of the state will be best served:

20 (A) facts pertaining to the land, resources, or property, or an
21 interest in them other than those that the director finds material under (1)(B)(ii)
22 of this subsection; and

23 (B) issues based on the statutes and regulations referred to in
24 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
25 subsection;

26 (3) a written finding for an oil and gas lease sale under AS 38.05.180
27 is subject to (g) of this section;

28 (4) a contract for the sale, lease, or other disposal of available land or
29 an interest in land is not legally binding on the state until the commissioner approves
30 the contract but, if the appraised value is not greater than \$50,000 in the case of the
31 sale of land or an interest in land, or \$5,000 in the case of the annual rental of land

1 or interest in land, the director may execute the contract without the approval of the
2 commissioner;

3 (5) public notice requirements relating to the sale, lease, or other
4 disposal of available land or an interest in land for oil and gas proposed to be
5 scheduled in the five-year oil and gas leasing program under AS 38.05.180(b) **or in**
6 **an areawide oil and gas leasing program under AS 38.05.180(dd)**, are as follows:

7 (A) before a public hearing, if held, or in any case not less than
8 180 days before the sale, lease, or other disposal of available land or an interest
9 in land, the director shall make available to the public a preliminary written
10 finding that states the scope of the review established under (1)(A) of this
11 subsection and includes the applicable statutes and regulations, the material
12 facts and issues in accordance with (1)(B) of this subsection, and information
13 required by (g) of this section, upon which the determination that the sale,
14 lease, or other disposal will serve the best interests of the state will be based;
15 the director shall provide opportunity for public comment on the preliminary
16 written finding for a period of not less than 60 days;

17 (B) after the public comment period for the preliminary written
18 finding and not less than 90 days before the sale, lease, or other disposal of
19 available land or an interest in land for oil and gas, the director shall make
20 available to the public a final written finding that states the scope of the review
21 established under (1)(A) of this subsection and includes the applicable statutes
22 and regulations, the material facts and issues in accordance with (1) of this
23 subsection, and information required by (g) of this section, upon which the
24 determination that the sale, lease, or other disposal will serve the best interests
25 of the state is based;

26 (6) before a public hearing, if held, or in any case not less than 21 days
27 before the sale, lease, or other disposal of available land, property, resources, or
28 interests in them other than a sale, lease, or other disposal of available land or an
29 interest in land for oil and gas under (5) of this subsection, the director shall make
30 available to the public a written finding that, in accordance with (1) of this subsection,
31 sets out the material facts and applicable statutes and regulations and any other

1 information required by statute or regulation to be considered upon which the
2 determination that the sale, lease, or other disposal will best serve the interests of the
3 state was based; however, a written finding is not required before the approval of

4 (A) a contract for a negotiated sale authorized under
5 AS 38.05.115;

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

7 (C) a permit or other authorization revocable by the
8 commissioner;

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

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

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

12 (G) an exempt oil and gas sale under AS 38.05.180(d) of
13 acreage **previously** offered in a sale [THAT WAS HELD WITHIN THE
14 PREVIOUS FIVE YEARS] if the sale was subject to a written best interest
15 finding, unless the commissioner determines that new information has become
16 available that justifies a revision of the best interest finding; [OR]

17 (H) a lease sale under AS 38.05.180(w) of acreage **previously**
18 offered in a sale [THAT WAS HELD WITHIN THE PREVIOUS FIVE
19 YEARS] if the sale was subject to a best interest finding, unless the
20 commissioner determines that new information has become available that
21 justifies a revision of the best interest finding; **or**

22 **(I) an oil or gas lease sale in an area that is part of an**
23 **areawide lease under AS 38.05.180(dd) within an area in which areawide**
24 **leasing has been authorized if the lease sale was subject to a best interest**
25 **finding for the area or if the area that is to be made part of the areawide**
26 **lease includes two or more areas for which best interest findings have been**
27 **prepared; however, if the commissioner determines that new information**
28 **has become available that justifies a revision of the best interest finding,**
29 **the commissioner shall prepare a new best interest finding for the area**
30 **taking into consideration the new information;**

31 (7) the director shall include in

1 (A) a preliminary written finding, if required, a summary of
2 agency and public comments, if any, obtained as a result of contacts with other
3 agencies concerning a proposed disposal or as a result of informal efforts
4 undertaken by the department to solicit public response to a proposed disposal,
5 and the department's preliminary responses to those comments; and

6 (B) the final written finding a summary of agency and public
7 comments received and the department's responses to those comments.

8 * **Sec. 3.** AS 38.05.180(b) is amended to read:

9 (b) The commissioner shall biennially prepare and, between the first and the
10 15th day of the first regular session of each legislature, notify the legislature of the
11 availability of

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

17 (2) a proposed areawide oil and gas leasing program.

18 * **Sec. 4.** AS 38.05.180(d) is amended to read:

19 (d) The commissioner

20 (1) shall annually offer to issue oil and gas leases of the acreage
21 previously offered in a sale if the previous sale was subject to a written best
22 interest finding unless the commissioner determines that new information has
23 become available that justifies a revision of the best interest finding for the area
24 proposed to be leased;

25 (2) may issue oil and gas leases in an area that has not been included
26 in a leasing program submitted, in accordance with (b) of this section, to the legislature
27 if the land to be leased

28 (A) [(1)] was previously subject to a valid state or federal oil
29 and gas lease;

30 (B) [(2)] is contiguous to land already under state, federal or
31 private lease and the commissioner makes a written finding, after hearing, that

1 leasing of the land would result in a substantial probability of early evaluation
2 and development of the land to be leased;

3 (C) [(3)] is adjacent to land owned or controlled by another
4 party on which a discovery of commercial quantities of oil or gas has been
5 made, and the commissioner finds, after hearing, that there is a reasonable
6 probability that the land to be leased contains oil or gas in communication with
7 the oil or gas discovered on the land of the other party;

8 (D) [(4)] is adjacent to land included in the federal five-year
9 Outer Continental Shelf leasing program under 43 U.S.C. 1344, and the
10 commissioner makes a written finding, after hearing, that coordinated or
11 simultaneous leasing with the federal government is in the public interest; or

12 (E) [(5)] is the subject of an oil and gas exploration license
13 issued under AS 38.05.131 - 38.05.134.

14 * **Sec. 5.** AS 38.05.180(w) is amended to read:

15 (w) Notwithstanding any other provisions of this section, land **that** [WHICH]
16 has been offered for lease [WITHIN THE PREVIOUS FIVE YEARS] and **that**
17 [WHICH] received no bids at competitive sale or for which **a** [NO] bid was **not**
18 accepted may be, at the discretion of the commissioner, immediately offered for lease,
19 under regulations adopted by the commissioner, upon terms appearing most
20 advantageous to the state; however, noncompetitive leasing is prohibited. The
21 commissioner shall establish a royalty determined to be in the public interest but not
22 less than 12 1/2 percent. A lease must provide for payment to the state or rental but
23 need not adhere to the rental schedule in (n) of this section nor to the 5,760-acres-per-
24 lease limitation in (m) of this section. The lease term may not exceed 10 years, except
25 as provided in (o) of this section.

26 * **Sec. 6.** AS 38.05.180 is amended by adding a new subsection to read:

27 (dd) For land described in AS 38.05.131(b) to which the provisions of the oil
28 and gas exploration licensing program do not apply, the director, with the approval of
29 the commissioner, shall establish a program of areawide oil and gas leasing. The
30 program shall operate within each area in which oil and gas exploration licensing is
31 not authorized. Under the authority granted in this subsection,

1 (1) when the commissioner identifies tracts for inclusion in the
2 proposed lease sale, the commissioner shall include at a minimum all of the tracts
3 reasonably believed by the commissioner to cover the entirety of an oil or gas reservoir
4 sought to be developed;

5 (2) the issuance and continuance in effect of a lease, or of any
6 assignment or other transfer of a lease, under this subsection must be conditioned upon
7 compliance with regulations adopted to implement this subsection.

8 * **Sec. 7.** REVISOR OF STATUTES TO REVISE REFERENCES. Due to the deletion
9 of repealed paragraphs in AS 38.05.035(a) by sec. 1 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 statues: AS 38.05.133(e), 38.05.180(j)(6)(B), 38.05.275(c), and AS 41.09.010(d).