

HOUSE BILL NO. 4

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KELLY, Mulder, Vezey, Dyson, Phillips, Ryan, Barnes

Introduced: 1/13/97

Referred: Resources

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to permits issued by the Department of Fish and Game for
2 activities in anadromous fish streams, to forest land use plans prepared by the
3 Department of Natural Resources, to rights-of-way, easements, and permits issued
4 by the Department of Natural Resources, and to disposal of state land and
5 interests in state land."

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

7 * **Section 1.** AS 16.05.050 is amended by adding a new paragraph to read:

8 (20) to review a proposed plan or an application for a right-of-way,
9 easement, or permit described under AS 16.05.870(e); identify activities to be
10 authorized under the plan, right-of-way, easement, or permit that may result in
11 construction of a hydraulic project or the use, diversion, pollution, or change of the
12 natural flow or bed of a body of water identified under AS 16.05.870(a) or use of
13 wheeled, tracked, or excavating equipment or log-dragging equipment in the bed of a

1 body of water identified under AS 16.05.870(a); and provide recommendations of
2 constructive and economically feasible methods and practices that will properly protect
3 economically important populations of fish and game that use those waters.

4 * **Sec. 2.** AS 16.05.870(d) is amended to read:

5 (d) The commissioner shall approve the proposed construction, work, or use
6 in writing unless the commissioner finds the plans and specifications insufficient for
7 the proper protection of **an economically important population of fish or** [AND]
8 game. Upon a finding that the plans and specifications are insufficient for the proper
9 protection of **an economically important population of fish or** [AND] game, the
10 commissioner shall notify the person or governmental agency that submitted the plans
11 and specifications of **constructive and economically feasible methods and practices**
12 **that will properly protect the population of fish or game** [THAT FINDING] by first
13 class mail. The person or governmental agency may, within 90 days of receiving the
14 notice, initiate a hearing under AS 44.62.370. The hearing is subject to AS 44.62.330
15 - 44.62.630.

16 * **Sec. 3.** AS 16.05.870 is amended by adding a new subsection to read:

17 (e) This section does not apply to activities authorized by

18 (1) a forest land use plan under AS 38.05.112;

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

20 (3) a miscellaneous state land use permit under AS 38.05.850(c).

21 * **Sec. 4.** AS 38.05.035(e) is amended to read:

22 (e) Upon a written finding that the interests of the state will be best served,
23 the director may, with the consent of the commissioner, approve contracts for the sale,
24 lease, or other disposal of available land, resources, property, or interests in them. In
25 addition to the conditions and limitations imposed by law, the director may impose
26 additional conditions or limitations in the contracts as the director determines, with the
27 consent of the commissioner, will best serve the interests of the state. The preparation
28 and issuance of the written finding by the director **are** [IS] subject to the following:

29 (1) with the consent of the commissioner and subject to the director's
30 discretion, for a specific proposed disposal of available land, resources, or property,
31 or of an interest in them, the director, in the written finding,

1 (A) shall establish the scope of the administrative review on
2 which the director's determination is based, and the scope of the written
3 finding supporting that determination; the scope of the review and finding may
4 address only reasonably foreseeable, significant effects of the uses proposed to
5 be authorized by the disposal;

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

8 (i) applicable statutes and regulations;

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

13 (iii) issues that, based on the statutes and regulations
14 referred to in (i) of this subparagraph, on the facts as described in (ii)
15 of this subparagraph, and on the nature of the uses sought to be
16 authorized, the director finds are material to the determination of
17 whether the proposed disposal will best serve the interests of the state;
18 and

19 (C) may, if the project for which the proposed disposal is
20 sought is a multiphased development, limit the scope of an administrative
21 review and finding for the proposed disposal to the applicable statutes and
22 regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that
23 pertain solely to a discrete phase of the project when

24 (i) the only uses to be authorized by the proposed
25 disposal are part of that discrete phase;

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

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

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

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

7 (B) issues based on the statutes and regulations referred to in
8 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
9 subsection;

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

12 (4) a contract for the sale, lease, or other disposal of available land or
13 an interest in land is not legally binding on the state until the commissioner approves
14 the contract, but, if the appraised value is not greater than \$50,000 in the case of the
15 sale of land or an interest in land, or \$5,000 in the case of the annual rental of land
16 or interest in land, the director may execute the contract without the approval of the
17 commissioner;

18 (5) public notice requirements relating to the sale, lease, or other
19 disposal of available land or an interest in land for oil and gas proposed to be
20 scheduled in the five-year oil and gas leasing program under AS 38.05.180(b), except
21 for a sale under (6)(G) of this subsection, are as follows:

22 (A) before a public hearing, if held, or in any case not less than
23 180 days before the sale, lease, or other disposal of available land or an interest
24 in land, the director shall make available to the public a preliminary written
25 finding that states the scope of the review established under (1)(A) of this
26 subsection and includes the applicable statutes and regulations, the material
27 facts and issues in accordance with (1)(B) of this subsection, and information
28 required by (g) of this section, upon which the determination that the sale,
29 lease, or other disposal will serve the best interests of the state will be based;
30 the director shall provide opportunity for public comment on the preliminary
31 written finding for a period of not less than 60 days;

1 (B) after the public comment period for the preliminary written
 2 finding and not less than 90 days before the sale, lease, or other disposal of
 3 available land or an interest in land for oil and gas, the director shall make
 4 available to the public a final written finding that states the scope of the review
 5 established under (1)(A) of this subsection and includes the applicable statutes
 6 and regulations, the material facts and issues in accordance with (1)(B) [(1)]
 7 of this subsection, and information required by (g) of this section, upon which
 8 the determination that the sale, lease, or other disposal will serve the best
 9 interests of the state is based;

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

19 (A) a contract for a negotiated sale authorized under
 20 AS 38.05.115;

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

22 (C) a permit or other authorization revocable by the
 23 commissioner;

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

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

26 (F) a production license issued under AS 38.05.207; [OR]

27 (G) an exempt oil and gas lease sale under AS 38.05.180(d) of
 28 acreage subject to a best interest finding issued within the previous 10 years or
 29 a reoffer oil and gas lease sale under AS 38.05.180(w) of acreage subject to a
 30 best interest finding issued within the previous 10 years, unless the
 31 commissioner determines that substantial new information has become available

1 that justifies a supplement to the most recent best interest finding for the
 2 exempt oil and gas lease sale acreage and for the reoffer oil and gas lease sale
 3 acreage; however, for each oil and gas lease sale described in this
 4 subparagraph, the director shall call for comments from the public; the
 5 director's call for public comments must provide opportunity for public
 6 comment for a period of not less than 30 days; if the director determines that
 7 a supplement to the most recent best interest finding for the acreage is required
 8 under this subparagraph,

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

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

14 (iii) the supplement has the status of a final written best
 15 interest finding for purposes of AS 38.05.035(i) and (l);

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

18 **(I) a disposal of timber for which a forest land use plan has**
 19 **been adopted under AS 38.05.112; notwithstanding this subparagraph, a**
 20 **written finding is required before approval of a salvage sale authorized**
 21 **under AS 38.05.117 or a negotiated sale authorized under AS 38.05.123;**
 22 **or**

23 **(J) a disposal of land or an interest in land authorized under**
 24 **AS 38.05.850(a) or (c);**

25 (7) the director shall include in

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

31 (B) the final written finding a summary of agency and public

1 comments received and the department's responses to those comments.

2 * **Sec. 5.** AS 38.05.112(a) is amended to read:

3 (a) The department may not authorize the harvest of timber, except for
4 harvests of 10 acres or less or timber salvaged from land cleared for a nonforest use,
5 until a site-specific forest land use plan has been adopted. **However, a** [A] forest land
6 use plan is **not** required **if** [WHETHER OR NOT] a regional or area land use plan
7 under AS 38.04.065(a) or a forest management plan under AS 41.17.230 has been
8 adopted.

9 * **Sec. 6.** AS 38.05.112(b) is amended to read:

10 (b) In adopting a forest land use plan, the commissioner shall consider the best
11 available data, including information **and recommendations** provided by other
12 agencies describing

13 (1) the immediate and long-term effects of individual and collective
14 forest activities on the timber base and on other resources and uses; **and**

15 (2) **constructive and economically feasible methods or practices to**
16 **protect economically important populations of fish and game that use bodies of**
17 **water identified under AS 16.05.870(a) that are located within the area for which**
18 **the plan is adopted.**

19 * **Sec. 7.** AS 38.05.123(d) is amended to read:

20 (d) Before a sale may be negotiated under this section,

21 (1) the area of the sale must be designated for forestry purposes by a
22 valid existing area plan adopted under AS 38.04; [AND]

23 (2) **a forest land use plan under AS 38.05.112 must be adopted; and**

24 (3) **the requirements of AS 38.05.113** [AS 38.05.112 AND 38.05.113]
25 must be met.

26 * **Sec. 8.** AS 38.05.850(a) is amended to read:

27 (a) **After consultation with other state agencies that have an interest in**
28 **activities for which the permit is requested, the** [THE] director, without the prior
29 approval of the commissioner, may issue permits, rights-of-way, or easements on state
30 land for roads, trails, ditches, field gathering lines or transmission and distribution
31 pipelines not subject to AS 38.35, telephone or electric transmission and distribution

1 lines, log storage, oil well drilling sites and production facilities for the purposes of
 2 recovering minerals from adjacent land under valid lease, and other similar uses or
 3 improvements, or for the limited personal use of timber or materials. The
 4 commissioner, upon recommendation of the director, shall establish a reasonable rate
 5 or fee schedule to be charged for these uses, subject to the exception for nonprofit
 6 cooperative associations specified in (b) of this section. In the granting, suspension,
 7 or revocation of a permit or easement of land, the director shall give preference to that
 8 use of the land that [WHICH] will be of greatest economic benefit to the state and the
 9 development of state [ITS] resources. However, first preference shall be granted to the
 10 upland owner for the use of a tract of tideland, or tideland and contiguous submerged
 11 land, that [WHICH] is seaward of the upland property of the upland owner and that
 12 [WHICH] is needed by the upland owner for any of the purposes for which the use
 13 may be granted.

14 * **Sec. 9.** AS 38.05.850 is amended by adding a new subsection to read:

15 (c) After consultation with other state agencies that have an interest in the
 16 activities for which the permit is requested, the director may issue a miscellaneous
 17 state land use permit for the term and under conditions as the director considers
 18 appropriate. A person may not conduct the following activities on state land unless
 19 the person has received a miscellaneous state land use permit:

20 (1) activity requiring

21 (A) the use of explosives and explosive devices, except
 22 firearms;

23 (B) the use of equipment specified by the commissioner by
 24 regulation;

25 (C) the use of hydraulic prospecting or mining equipment
 26 methods;

27 (D) drilling to a depth in excess of 300 feet, including
 28 exploratory drilling or stratigraphic test wells on state land not under oil or gas
 29 lease;

30 (E) geophysical exploration for minerals subject to lease or an
 31 oil and gas exploration license under AS 38.05.131 - 38.05.181;

1 (2) activity that the commissioner determines may result in unnecessary
2 harm to land having special scenic, historic, archaeological, scientific, biological,
3 recreational, or other special resource values; and

4 (3) activity on land under mineral permit, lease, oil and gas exploration
5 license, or claim by a person other than the holder of the permit, lease, oil and gas
6 exploration license, or claim, or the holder's authorized representative if the parties
7 cannot agree on concurrent use of the land.

8 * **Sec. 10.** AS 46.35.200(4)(V) is amended to read:

9 (V) miscellaneous state land use permit -- AS 38.05.850
10 [AS 38.05.035, 11 AAC 96.010];