

CS FOR HOUSE BILL NO. 46(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 1/31/97

Referred: Rules

Sponsor(s): REPRESENTATIVES KELLY AND THERRIAULT, James

SENATOR Leman

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to mining; and providing for an effective date."**

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

3 * **Section 1.** AS 38.05.035(e)(5) is amended to read:

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

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

1 the director shall provide opportunity for public comment on the preliminary
2 written finding for a period of not less than 60 days;

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

12 * **Sec. 2.** 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) [A PRODUCTION LICENSE ISSUED UNDER
30 AS 38.05.207; OR

31 (G)] an exempt oil and gas lease sale under AS 38.05.180(d) of

1 acreage subject to a best interest finding issued within the previous 10 years or
 2 a reoffer oil and gas lease sale under AS 38.05.180(w) of acreage subject to a
 3 best interest finding issued within the previous 10 years, unless the
 4 commissioner determines that substantial new information has become available
 5 that justifies a supplement to the most recent best interest finding for the
 6 exempt oil and gas lease sale acreage and for the reoffer oil and gas lease sale
 7 acreage; however, for each oil and gas lease sale described in this
 8 subparagraph, the director shall call for comments from the public; the
 9 director's call for public comments must provide opportunity for public
 10 comment for a period of not less than 30 days; if the director determines that
 11 a supplement to the most recent best interest finding for the acreage is required
 12 under this subparagraph,

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

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

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

20 (G) [(H)] a shallow gas lease authorized under AS 38.05.177
 21 in an area for which leasing is authorized under AS 38.05.177;

22 (H) a surface use lease under AS 38.05.255;

23 * **Sec. 3.** AS 38.05.180(d) is amended to read:

24 (d) The commissioner

25 (1) may annually offer oil and gas leases of the acreage described in
 26 AS 38.05.035(e)(6)(F) [AS 38.05.035(e)(6)(G)];

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

30 (A) was previously subject to a valid state or federal oil and gas
 31 lease;

1 (B) is contiguous to land already under state, federal, or private
 2 lease and the commissioner makes a written finding, after hearing, that leasing
 3 of the land would result in a substantial probability of early evaluation and
 4 development of the land to be leased;

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

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

14 (E) is the subject of an oil and gas exploration license issued
 15 under AS 38.05.131 - 38.05.134.

16 * **Sec. 4.** AS 38.05.185(a) is amended to read:

17 (a) The acquisition and continuance of rights in and to deposits on state land
 18 of minerals, which on January 3, 1959, were subject to location under the mining laws
 19 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in
 20 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to
 21 mineral deposits owned by any other person or government. The director, with the
 22 approval of the commissioner, shall determine that land from which mineral deposits
 23 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that
 24 land that shall be closed to **location under AS 38.05.185 - 38.05.275** [MINING].
 25 State land may not be closed to [MINING OR MINERAL] location **under**
 26 **AS 38.05.185 - 38.05.275** except as provided in AS 38.05.300 and unless the
 27 commissioner makes a finding that mining would be incompatible with significant
 28 surface uses on the state land. State land may not be restricted to mining under lease
 29 unless the commissioner determines that potential use conflicts on the state land
 30 require that mining be allowed only under written leases issued under AS 38.05.205
 31 or the commissioner has determined that the land was mineral in character at the time

1 of state selection. The determinations required under this subsection shall be made in
 2 compliance with land classification orders and land use plans developed under
 3 AS 38.05.300.

4 * **Sec. 5.** AS 38.05.190(a) is amended to read:

5 (a) The right to acquire exploration and mining rights under AS 38.05.185 -
 6 38.05.275 may be acquired or held only by

7 (1) citizens of the United States at least 18 years of age;

8 (2) legal guardians or trustees of citizens of the United States under 18
 9 years of age on behalf of the citizens;

10 (3) persons at least 18 years of age who have declared their intention
 11 to become citizens of the United States;

12 (4) [ALIENS AT LEAST 18 YEARS OF AGE IF THE LAWS OF
 13 THEIR COUNTRY GRANT LIKE PRIVILEGES TO CITIZENS OF THE UNITED
 14 STATES;

15 (5)] corporations organized under the laws of the United States or of
 16 any state or territory of the United States and qualified to do business in this state [,
 17 EXCEPT THAT IF MORE THAN 50 PERCENT OF THE STOCK OF A
 18 CORPORATION IS OWNED OR CONTROLLED BY ALIENS WHO ARE NOT
 19 QUALIFIED, THE CORPORATION IS NOT QUALIFIED TO ACQUIRE OR HOLD
 20 THE RIGHTS];

21 (5) [(6)] associations of persons described in (1) - (4) [(1) - (5)] of this
 22 subsection.

23 * **Sec. 6.** AS 38.05.211(d) is repealed and reenacted to read:

24 (d) The rental amount established under this section shall be revised by the
 25 commissioner as provided in this section based on changes in the Consumer Price
 26 Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average)
 27 compiled by the Bureau of Labor Statistics, United States Department of Labor, as
 28 revised, rebased, or replaced by that bureau. The reference base index is the index for
 29 January - June 1989, as revised or rebased by that bureau. The rental amount shall be
 30 increased or decreased, as appropriate, by an amount equal to the change in the index
 31 described in this subsection rounded to the nearest whole \$5 unit. The commissioner

1 shall calculate the change in the rental amount each 10 years and, if the rental amount
 2 must be revised, shall adopt a regulation establishing the revised rental amount. A
 3 revised rental amount applies to a rental payment if the regulation establishing the
 4 revised rental amount took effect at least 90 days before the date the rental payment
 5 is due.

6 * **Sec. 7.** AS 38.05.255 is amended to read:

7 **Sec. 38.05.255. Surface use of land or water.** Surface uses of land or water
 8 included within a mining property [PROPERTIES] by the owners, lessees, or
 9 operators [OF THOSE PROPERTIES] shall be limited to those necessary for the
 10 prospecting for, extraction of, or basic processing of minerals [MINERAL
 11 DEPOSITS] and shall be subject to reasonable concurrent uses. Leases [PERMITS]
 12 for millsites, [AND] tailings disposal, and other mine related facilities may be issued
 13 [GRANTED] by the director. The leases [PERMITS] shall be conditioned upon
 14 payment of a reasonable annual rent [CHARGE] for the lease [USE] and restricted
 15 to uses approved by the director [CONTINUANCE OF THE LIMITED USE].
 16 Timber from land open to mining without lease, except timberland, may be used by
 17 a mining claimant or prospecting site locator for the mining or development of the
 18 location or adjacent claims under common ownership. On other land, timber may be
 19 acquired as provided in this chapter. Use of water shall be made in accordance with
 20 AS 46.15.

21 * **Sec. 8.** AS 38.05.255 is amended by adding a new subsection to read:

22 (b) A lease issued under this section is exempt from the provisions of
 23 AS 38.05.075 - 38.05.080.

24 * **Sec. 9.** AS 38.05.265 is amended to read:

25 **Sec. 38.05.265. Abandonment.** Failure to properly record a certificate of
 26 location or a statement of annual labor, [FILE WITH THE DIRECTOR WITHIN THE
 27 TIME PRESCRIBED A LEASE APPLICATION,] pay any required annual rental, pay
 28 any required production royalty, or keep location boundaries clearly marked as
 29 required by AS 38.05.185 - 38.05.200, 38.05.207 - 38.05.245, 38.05.252 - 38.05.275,
 30 [AS 38.05.185 - 38.05.275] and by regulations adopted under these sections constitutes
 31 abandonment of all rights acquired under the mining claim, leasehold location,

1 [LEASE,] or site involved, and the claim, location, [LEASE,] or site is subject to
 2 relocation by others. A locator or claimant of an abandoned location or a successor
 3 in interest may not relocate the location until one year after abandonment. A statement
 4 of annual labor that does not accurately set out the essential facts is void and of no
 5 effect. If an annual rental or a royalty payment is deficient but is otherwise timely
 6 paid, abandonment does not result if full payment is made within

7 (1) the period prescribed by a deficiency notice from the commissioner;

8 or

9 (2) 30 days after a final judgment establishing the amount due if the
 10 deficiency amount due was contested.

11 * **Sec. 10.** AS 38.05.945(a) is amended to read:

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

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

16 (2) zoning of land under applicable law;

17 (3) issuance of a

18 (A) preliminary written finding under AS 38.05.035(e)(5)(A)
 19 regarding the sale, lease, or disposal of an interest in state land or resources for
 20 oil and gas subject to AS 38.05.180(b);

21 (B) final written finding under AS 38.05.035(e)(5)(B) regarding
 22 the sale, lease, or disposal of an interest in state land or resources for oil and
 23 gas subject to AS 38.05.180(b);

24 (C) written finding for the sale, lease, or disposal of an interest
 25 in state land or resources under AS 38.05.035(e)(6), except an oil or gas lease
 26 sale described in AS 38.05.035(e)(6)(F) [AS 38.05.035(e)(6)(G)] for which the
 27 director must provide opportunity for public comment under the provisions of
 28 that subparagraph;

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

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

1 (6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c)
2 concerning sites for aquatic farms and related hatcheries;

3 (7) a decision under AS 38.05.132 - 38.05.134 regarding the sale, lease,
4 or disposal of an interest in state land or resources.

5 * **Sec. 11.** AS 38.05.207 and 38.05.945(g) are repealed.

6 * **Sec. 12.** TRANSITIONAL PROVISIONS: REGULATIONS. Notwithstanding sec. 13
7 of this Act, the Department of Natural Resources may proceed to adopt regulations necessary
8 to implement the changes made by this Act. The regulations take effect under AS 44.62
9 (Administrative Procedure Act), but not before July 1, 1997.

10 * **Sec. 13.** Except for sec. 12 of this Act, this Act takes effect July 1, 1997.

11 * **Sec. 14.** Section 12 of this Act takes effect immediately under AS 01.10.070(c).