

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 86(JUD)(efd fld S)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 5/19/03

Offered: 5/17/03

Sponsor(s): REPRESENTATIVES FATE, Wolf, Foster, Rokeberg, Holm, Kott, Lynn, Chenault, Dahlstrom, Wilson, Heinze, McGuire

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to state permitted projects."**

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

3 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 PURPOSE AND FINDINGS. (a) The purpose of secs. 3 and 4 of this Act is to
6 legislatively authorize and approve all oil and gas projects located within the Cook Inlet Basin
7 that have, as of the effective date of this Act, a final authorization, permit, or other form of
8 approval from the Department of Environmental Conservation, the Department of Fish and
9 Game, the Department of Natural Resources, or the division of governmental coordination,
10 formerly part of the office of management and budget. AS 46.40.096(i), added by sec. 3 of
11 this Act and sec. 4 of this Act supersede and replace any other form of approval previously
12 required by law. A project authorized and approved by AS 46.40.096(i), added by sec. 3 of
13 this Act and sec. 4 of this Act shall remain subject to regulation by any agency having
14 jurisdiction over the project, consistent with the terms and requirements of the authorization,
15 permit, or other approval issued by the agency.

1 (b) The legislature finds that

2 (1) it is in the best interests of the state to legislatively approve and authorize
3 the oil and gas projects covered by secs. 3 and 4 of this Act;

4 (2) secs. 3 and 4 of this Act coincide with an executive branch reorganization
5 directly affecting the Department of Environmental Conservation, the Department of Fish and
6 Game, the Department of Natural Resources, and the division of governmental coordination,
7 formerly part of the office of management and budget; secs. 3 and 4 of this Act are intended
8 to help facilitate the reorganization and the transition to a new administrative structure by
9 removing from these agencies the burden of possible or on-going litigation over past
10 administrative decisions;

11 (3) secs. 3 and 4 of this Act avoid costly litigation over projects overseen by
12 these agencies that uniquely benefit all Alaskans, especially the larger population centers and
13 communities encompassed by the Cook Inlet Basin; among other benefits, those projects
14 provide jobs, generate local tax revenue, and fuel local economies by their tertiary economic
15 effects; the legislature finds that it is in the public interest to promote those projects, without
16 litigation;

17 (4) the public interest is protected by secs. 3 and 4 of this Act; all oil and gas
18 projects authorized and approved by this Act remain subject to the regulation and oversight of
19 all state agencies with jurisdiction over those projects; the appropriate state agencies shall
20 regulate each project consistent with the terms and requirements of any permit or approval
21 previously granted for the project; those permits and approvals are granted only after
22 extensive administrative review, including public notice and comment with respect to the
23 project; compliance with those requirements, coupled with the continued oversight by the
24 appropriate state agencies, will ensure the protection of human health and safety and the
25 environment.

26 * **Sec. 2.** AS 09.68 is amended by adding a new section to read:

27 **Sec. 09.68.050. Civil liability for malicious claim against state permitted**
28 **project.** (a) A person who initiates or maintains a malicious claim for injunctive relief
29 against a state permitted project is, in addition to any other penalty or sanction
30 provided by law, liable in a civil action to the permittee or owner of the project for all
31 of the following:

1 (1) actual damages suffered by the permittee or owner of the project as
2 a result of the malicious claim, including

3 (A) wages and salaries paid to employees or contractors idled
4 or put to nonproductive labor as a result of prosecution of the malicious claim;
5 and

6 (B) increased material costs caused by prosecution of the
7 malicious claim; and

8 (2) incidental or consequential damages arising under contracts
9 associated with the project that were caused by prosecution of the malicious claim.

10 (b) The liability of a person for damages under this section is in addition to
11 liability for an award of reasonable attorney fees and costs that may be made to a
12 prevailing party under the Alaska Rules of Civil Procedure.

13 (c) For purposes of this section, a person "initiates or maintains a malicious
14 claim for injunctive relief against a state permitted project" if

15 (1) the person initiates or maintains a baseless legal or administrative
16 claim, including an original claim, a counterclaim, or a cross-claim, against a project
17 or activity in the state requiring one or more permits, authorizations, or approvals from
18 a state agency;

19 (2) the claim is rejected by a court or administrative tribunal of
20 competent jurisdiction or otherwise terminated adverse to the person;

21 (3) the claim is initiated or maintained in bad faith for an end other
22 than the end it was designed to accomplish;

23 (4) the person acts with malice in initiating or maintaining the claim;
24 and

25 (5) the permittee or owner of the project is damaged by the initiation or
26 maintenance of the claim.

27 * **Sec. 3.** AS 46.40.096 is amended by adding a new subsection to read:

28 (i) Notwithstanding any other provision of law, and except with respect to an
29 appeal filed by the applicant or an affected coastal resource district, or a claim based
30 on the United States Constitution or the Constitution of the State of Alaska, a
31 consistency determination made under this section is

1 (1) not subject to review, stay, or injunction by any court; and

2 (2) effective immediately.

3 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 AUTHORIZATION AND APPROVAL OF PROJECTS IN THE COOK INLET
6 BASIN. Notwithstanding any other provision of law, any oil and gas project located within
7 the Cook Inlet Basin that, as of the effective date of this Act, is the subject of a final
8 authorization, permit, or approval of the Department of Environmental Conservation, the
9 Department of Fish and Game, the Department of Natural Resources, and the division of
10 governmental coordination, formerly part of the office of management and budget, is hereby
11 authorized and approved by the legislature. AS 46.40.096(i), added by sec. 3 of this Act, and
12 this section, the authorization and approval provided by sec. 3 of this Act and this section, and
13 the final agency action previously required by law are not subject to judicial review or, if
14 pending, continued judicial review, unless it is a claim based on the United States
15 Constitution or the Constitution of the State of Alaska. A project under this section shall
16 continue to be subject to the jurisdiction of the appropriate state agencies, as otherwise
17 provided by law, and shall be regulated under the terms and requirements of any permit or
18 approval previously granted for that project, which are incorporated by reference in the
19 authorization provided by this section.