

**HOUSE BILL NO. 354**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVE KOHRING**

**Introduced: 1/2/04**  
**Referred: Prefiled**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to shallow natural gas leasing, setting out a further limitation on access**  
2 **by the state and its lessees, successors, or assigns to land that is subject to the Alaska**  
3 **Statehood Act reservation of mineral and closely related interests when access is sought**  
4 **as to shallow natural gas, and requiring that the disposal of the water produced by**  
5 **dewatering of coal seams in order to recover methane comply with requirements**  
6 **intended to protect a surface owner's sources of potable water and water for**  
7 **agricultural purposes, and authorizing the owner's recovery of treble damages for**  
8 **certain violations of those requirements."**

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

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

12 SHORT TITLE. This Act may be cited as the Shallow Natural Gas: Surface Owners'

1 Protection Act.

2 \* **Sec. 2.** AS 31.05.090 is amended to read:

3 **Sec. 31.05.090. Permits and fees to drill wells.** A person desiring to drill a  
 4 well in search of oil or gas shall notify the commission of the person's intent on a form  
 5 prescribed by the commission and shall pay a fee of \$100 for a permit for each well  
 6 sought to be drilled. Upon receipt of notification and fee, the commission shall  
 7 promptly issue a permit to drill, unless the drilling of the well is contrary to law or a  
 8 regulation or order of the commission, [OR UNLESS] the person is in violation of a  
 9 commission regulation, order, or stipulation pertaining to drilling, plugging, or  
 10 abandonment of a well, **or, for a shallow natural gas well, the person does not**  
 11 **present a copy of the written agreement with the owner entered into under**  
 12 **AS 38.05.177(p)(1) under which the person is authorized to enter onto the land to**  
 13 **conduct activities.** The drilling of a well is prohibited until a permit to drill is  
 14 obtained in accordance with this chapter.

15 \* **Sec. 3.** AS 31.05.125 is amended to read:

16 **Sec. 31.05.125. Regulation of shallow natural gas; relationship of chapter**  
 17 **to other laws.** If the Department of Natural Resources clearly demonstrates an  
 18 overriding state interest, the commissioner of natural resources may approve a waiver  
 19 of local planning authority approval and requirements relating to **shallow natural gas**  
 20 **operation** compliance with local ordinances and regulations. The commissioner shall  
 21 issue specific findings giving reasons for granting a waiver under this section. **A**  
 22 **waiver authorized by this section may not apply to local ordinances and**  
 23 **regulations that**

24 **(1) specify siting criteria and location and setback requirements if**  
 25 **the criteria and requirements are reasonably necessary to protect public health**  
 26 **and safety; or**

27 **(2) regulate the outdoor level of noise due to the operation or use**  
 28 **of machinery associated with the shallow natural gas operation.**

29 \* **Sec. 4.** AS 38.05.177(h) is amended to read:

30 (h) A lease issued under this section is subject to the following terms and  
 31 conditions and may be terminated by the director in the event of a breach of a term or

1 condition:

2 (1) the lessee may surrender the lease or relinquish part of the lease at  
3 any time;

4 (2) the lease may not be transferred or assigned until a well capable of  
5 production of gas in paying quantities has been drilled on the lease; however, this  
6 paragraph does not prohibit the lessee from entering into a farm out agreement or  
7 similar arrangement with a third party under which the third party assists in  
8 exploration and development of production from the lease if the agreement or  
9 arrangement does not require a payment of consideration by the third party to the  
10 lessee, except that the lessee may retain an overriding royalty interest in the lease or  
11 may retain a net profit or other production payment;

12 **(3) unless provision is otherwise made for the lease by the Alaska**  
13 **Oil and Gas Conservation Commission under AS 31.05.030(e) that would govern**  
14 **the lessee's disposal of water produced from a coal seam as salt water or**  
15 **nonpotable water in a manner that does not add to or contaminate surface or**  
16 **subsurface water supplies, the lease must contain a term or condition that**  
17 **governs the lessee's disposal of the produced water in a manner that does not add**  
18 **to or contaminate surface or subsurface water supplies that are a source of the**  
19 **owner's drinking water for human consumption or that are used by the owner**  
20 **for agricultural purposes.**

21 \* **Sec. 5.** AS 38.05.177(n) is amended to read:

22 (n) If the department clearly demonstrates an overriding state interest, the  
23 commissioner may approve a waiver of local planning authority approval and  
24 requirements relating to **shallow natural gas operation** compliance with local  
25 ordinances and regulations. The commissioner shall issue specific findings giving  
26 reasons for granting a waiver under this subsection. **A waiver authorized by this**  
27 **section may not apply to local ordinances and regulations that**

28 **(1) specify siting criteria and location and setback requirements if**  
29 **the criteria and requirements are reasonably necessary to protect public health**  
30 **and safety; or**

31 **(2) regulate the outdoor level of noise due to the operation or use**

1           **of machinery associated with the shallow natural gas operation.**

2           \* **Sec. 6.** AS 38.05.177 is amended by adding new subsections to read:

3                   (p) Under the reservation set out in AS 38.05.125 as it applies to shallow  
4           natural gas as described in this section, the provisions of AS 38.05.130 apply to the  
5           exercise of rights by the state and its lessees, successors, or assigns. However, in  
6           addition to limitations and prohibitions set out in AS 38.05.130,

7                           (1) the state and its lessees, successors, or assigns may not enter onto  
8           the land of the owner without reaching a prior written agreement with the owner under  
9           which the state and its lessees, successors, or assigns may enter upon the land in the  
10          exercise of the reserved right; only one written agreement authorizing entry onto the  
11          land may be required under this paragraph to authorize activity by the state, by its  
12          lessees, successors, or assigns, or by their agents, attorneys, and servants as allowed  
13          under AS 38.05.130; and

14                          (2) the provision of AS 38.05.130 that authorizes the commissioner of  
15          natural resources to determine the amount of a surety bond to secure payment of  
16          damages to the owner does not apply to an entry onto land for a purpose described in  
17          this section.

18                       (q) In addition to limitations and prohibitions set out in AS 38.05.130, in a  
19          legal proceeding to recover damages as authorized under that section, the owner may  
20          recover for damages that the owner sustains for the violation by the state or by its  
21          lessees, successors, or assigns of a requirement that relates to the disposal of water  
22          produced from a coal seam issued by the Alaska Oil and Gas Conservation  
23          Commission under AS 31.05.030(e) or of a term or condition of a lease required by  
24          (h)(3) of this section. If the judgment in the action is for the owner and the trier of fact  
25          finds that the defendant's conduct constituted a knowing or intentional violation, the  
26          plaintiff shall be awarded three times the amount of damages sustained by the person.

27          \* **Sec. 7.** AS 38.05.035(e)(6)(G) is repealed.