

HOUSE BILL NO. 370

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

BY REPRESENTATIVE GARA

Introduced: 1/12/04

Referred: House Special Committee on Oil and Gas, Resources

A BILL

FOR AN ACT ENTITLED

1 **"An Act protecting fish-bearing surface water and public access to and enjoyment of**
2 **recreational water, fish habitat water, and water related to hunting activities, if the**
3 **water may be affected by shallow natural gas exploration and development, and**
4 **requiring that the disposal of the water produced by dewatering of coal seams in order**
5 **to recover methane comply with requirements intended to protect surface water;**
6 **requiring that shallow natural gas exploration and development activities comply with**
7 **municipal land use regulations, and repealing provisions under which the commissioner**
8 **of natural resources may waive the application of local planning requirements with**
9 **respect to shallow natural gas development, and making a conforming change; and**
10 **providing for an effective date."**

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

12 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section

1 to read:

2 LEGISLATIVE INTENT CONCERNING SECTION 4. It is the intent of the
3 legislature that land use regulations adopted by a municipality under AS 29.40.040 to govern
4 the use and occupancy of land, especially regulations that protect neighborhoods from
5 commercial activities that interfere with qualities that residents desire of their neighborhoods,
6 shall apply to shallow natural gas exploration and development activities.

7 * **Sec. 2.** AS 38.05.177(h) is amended to read:

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

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

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

21 **(3) unless provision is otherwise made for the lease by the Alaska**
22 **Oil and Gas Conservation Commission under AS 31.05.030(e) that would govern**
23 **the lessee's disposal of water produced from a coal seam as salt water or**
24 **nonpotable water in a manner that does not add to or contaminate surface or**
25 **subsurface water supplies, the lease must contain a term or condition that**
26 **governs the lessee's disposal of the produced water in a manner that does not add**
27 **to or contaminate surface water supplies;**

28 **(4) the lease must contain a term or condition that protects the**
29 **water quality, water quantity, and habitat of fish-bearing surface water; the term**
30 **or condition may not take effect until approved by the commissioner of fish and**
31 **game.**

1 * **Sec. 3.** AS 38.05.177(k) is amended to read:

2 (k) The commissioner may

3 (1) adopt only the regulations that are reasonable and that are
 4 necessary to implement, interpret, or make specific the provisions of this section or to
 5 establish procedures to govern application of the provisions of this section;
 6 **notwithstanding the limitation of this paragraph, the commissioner shall adopt**
 7 **regulations under AS 38.05.127(b) and this subsection to ensure that shallow**
 8 **natural gas exploration and development activities do not materially interfere**
 9 **with the public's right to access and enjoy recreational waters, waters that**
 10 **contain appreciable quantities of resident or anadromous fish, and areas**
 11 **important to sport or subsistence hunting activities;** and

12 (2) in addition to any requirement for a bond under AS 38.05.130,
 13 establish by regulation a form and amount for statewide, areawide, unit-wide, or per-
 14 lease bonds sufficient to secure damages that may be caused by the activities of a
 15 lessee, or the lessee's successors or assigns, related to a shallow natural gas lease
 16 entered into under this section; if the commissioner acts under this paragraph, the
 17 commissioner

18 (A) shall require a person applying for a lease under this
 19 section to post the bond as a condition for the director's executing the lease;

20 (B) may not require a bond posted under this paragraph from a
 21 person applying for a lease if the person has already posted a bond covering
 22 the person's statewide oil and gas leasing activities in an amount of at least
 23 \$500,000.

24 * **Sec. 4.** AS 38.05.177(n) is repealed and reenacted to read:

25 (n) Land use regulations of a municipality adopted under AS 29.40.040
 26 establishing allowable uses and limitations on shallow natural gas exploration and
 27 development activities, including limitations that protect neighborhoods, protect the
 28 safety of residents, and limit audible noise, shall be given effect to the fullest extent
 29 allowed under the Constitution of the State of Alaska.

30 * **Sec. 5.** The uncodified law of the State of Alaska enacted in sec. 1, ch. 45, SLA 2003, is
 31 amended to read:

1 LEGISLATIVE FINDINGS. The legislature finds that

2 (1) the development of shallow natural gas resources is in the best
3 interests of the State of Alaska;

4 (2) shallow natural gas is abundant and widespread in Alaska and
5 bears the promise of providing Alaskans, particularly Alaskans living in rural areas,
6 with an inexpensive and clean source of energy if those resources can be economically
7 developed;

8 (3) the development of shallow natural gas poses significantly fewer
9 risks and creates substantially less impact to the environment than traditional deep oil
10 and gas projects, which have served as the model for oil and gas industry and
11 environmental regulations to date in Alaska;

12 (4) the regulatory requirements developed and applied to traditional
13 deep oil and gas projects in Alaska are ill-suited and unduly onerous when applied to
14 shallow natural gas projects, threatening the economic viability of otherwise desirable
15 exploration and development projects;

16 (5) there is an immediate state and national need for the development
17 of clean and economical unconventional energy sources, such as shallow natural gas
18 resources;

19 (6) reform of existing laws and regulations is needed to remove
20 unnecessary regulatory burdens on the private sector to foster and encourage the
21 development in Alaska of these necessary resources;

22 (7) the legislature is acting in the interest of promoting the active
23 development of such resources, while ensuring that suitable measures are taken to
24 protect human health and safety and the natural environment,

25 (A) to remove impediments to the responsible development of
26 shallow natural gas; **and**

27 (B) to provide the proper state agencies with clear authority and
28 discretion to adopt regulatory practices appropriate to shallow natural gas
29 exploration and development projects, in recognition of the lower risks posed
30 by such projects to human health and safety and the natural environment [;
31 AND

1 (C) TO RESERVE ALL RIGHTS AND POWERS NOT
2 PREEMPTED BY FEDERAL LAW AND REGULATION IN ORDER TO
3 ASSERT STATE PRIMACY OVER THE REGULATION OF SHALLOW
4 NATURAL GAS].

5 * **Sec. 6.** AS 31.05.125 is repealed.

6 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).