

HOUSE BILL NO. 395

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

BY REPRESENTATIVES HARRIS, Gatto, Stoltze, Seaton, Kohring

Introduced: 1/23/04

Referred: House Special Committee on Oil and Gas, Resources, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to shallow natural gas leasing and the regulation of shallow natural gas**
2 **operations."**

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

4 *** Section 1.** AS 31.05.030(e) is amended to read:

5 (e) The commission may regulate

6 (1) for conservation purposes

7 (A) the drilling, producing, and plugging of wells;

8 (B) the shooting and chemical treatment of wells;

9 (C) the spacing of wells;

10 (D) the disposal of salt water, nonpotable water, and oil field
11 wastes;

12 (E) the contamination or waste of underground water;

13 (F) the quantity and rate of the production of oil and gas from a
14 well or property; this authority shall also apply to a well or property in a

1 voluntary cooperative or unit plan of development or operation entered into in
2 accordance with AS 38.05.180(p);

3 (2) the disposal of drilling mud, cuttings, and nonhazardous drilling
4 operation wastes in the annular space of an oil or gas well or in the annular space of a
5 water well associated with oil or gas exploration and production; in this paragraph, a
6 "nonhazardous drilling operation waste" means a waste, other than a hazardous waste
7 identified by the Environmental Protection Agency in 40 C.F.R., Part 261, its
8 regulation identifying and listing hazardous wastes, associated with the act of drilling
9 an oil or gas well for exploratory or production purposes; **and**

10 **(3) the hydraulic fracturing of shallow natural gas wells to assure**
11 **protection of drinking water quality by requiring reinjection of the water**
12 **produced from coal seam dewatering to depths below known subsurface water**
13 **supplies that are a source of the owner's drinking water for human consumption**
14 **or that are used by the owner for agricultural purposes.**

15 * **Sec. 2.** AS 31.05 is amended by adding a new section to read:

16 **Sec. 31.05.098. Public forum process concerning shallow natural gas.** (a)

17 For the purpose of resolving public health, safety, welfare, or environmental
18 complaints about potential or actual shallow natural gas exploration and development
19 operations, the commission shall, by regulation, develop and implement a public
20 forum process by which to achieve informal resolution of the complaints. The
21 commission may provide that, if resolution of the complaints is not achieved through
22 the informal process established by regulation, a party may petition the commission to
23 take action on the complaint under AS 31.05.060 - 31.05.085.

24 (b) The commission's regulations adopted under this section shall provide for
25 scheduling a public forum at a location reasonably proximate to the land that is the
26 subject of or that is affected by the complaint and reasonable public notice and
27 opportunity to be heard. If the public forum is not personally convened and conducted
28 by a majority of the members of the commission, the person conducting the forum
29 shall prepare and submit to the commission a report of the forum proceedings. The
30 report prepared under this subsection is a public record. The commission shall review
31 the report and may require modification of a rule or of a plan of operation or

1 development of a shallow natural gas lease.

2 * **Sec. 3.** AS 31.05.170(14) is amended to read:

3 (14) "shallow natural gas" means coal bed methane, natural gas drilled
4 for under a lease authorized by AS 38.05.177, or natural gas drilled for in a well the
5 true vertical depth of which is **3,000** [4,000] feet or less;

6 * **Sec. 4.** AS 38.05.177(c) is amended to read:

7 (c) The director shall give notice under AS 38.05.945 of receipt of the lease
8 application and call for comments from the public. The director's call for public
9 comments must provide opportunity for public comment for a period of not less than
10 60 days. **In addition to the requirements of AS 38.05.945(b), the director shall**
11 **provide notice in at least two newspapers of general circulation in the vicinity of**
12 **the proposed action at least three times and at intervals of not less than five days**
13 **between publications and shall provide notification to each municipality and to**
14 **each community council in the vicinity of the proposed action.** If, after review of
15 information received during the public comment period **and consideration of public**
16 **comments received**, the director determines that the discovery of a local source of
17 natural gas would benefit the residents of an area, the director **may** [SHALL] execute
18 a lease for the area described in (b) of this section. The director shall execute the lease
19 after completion of a title search, the close of the public comment period, and, if
20 review is required under AS 46.40, after the final consistency determination is made
21 under AS 46.40. **The director may not execute a lease under this subsection unless**
22 **the director first provides notice of intent to award the lease in at least two**
23 **newspapers of general circulation in the vicinity of the proposed action at least**
24 **three times and at intervals of not less than five days between publications and**
25 **shall provide notification to each municipality and to each community council in**
26 **the vicinity of the proposed action.** A lease entered into under this subsection gives
27 the lessee the exclusive right to explore for, develop, and produce, for a term of three
28 years, natural gas on the state land described in the lease; the right to explore for,
29 develop, and produce is limited to gas from a field if a part of the field is within 3,000
30 feet of the surface.

31 * **Sec. 5.** AS 38.05.177(f) is amended to read:

1 (f) A shallow gas lease must provide for

2 (1) payment to the state of annual rent in the amount of \$1 an [PER]
3 acre; the [. THE] rent is due and payable on the date determined in the lease; if [. IF]
4 the lease payment is not received by the due date, the director shall mail the lessee one
5 written notice, certified return receipt requested; if [. IF] the lessee fails to pay the
6 rent within 30 days after [OF] receipt of the notice, the director shall terminate the
7 lease;

8 (2) the lessee's payment to the owner of fees as follows, payable for
9 so long as the lessee or the lessee's agent produces shallow natural gas on
10 property of the owner:

11 (A) \$300 a month for each wellhead that the lessee or the
12 lessee's agent locates on the owner's property; and

13 (B) \$600 a month for a compressor station that the lessee
14 places in operation on the owner's property;

15 (3) appropriate setbacks governing the placement by the lessee or
16 the lessee's agent of compressor stations on the lease, to ensure that the owner
17 will not forego the peaceful enjoyment of the property owned; setbacks developed
18 under this paragraph must be determined with reference to the population
19 density of the parcel or parcels subject to the lease, the size of the owner's
20 parcels, and the general character of the land subject to the lease; the terms of
21 the lease must require the lessee or lessee's agent to negotiate to meet the
22 requirement of this paragraph, but the owner may not unreasonably withhold
23 agreement;

24 (4) reasonable and appropriate measures to mitigate the noise of
25 compressors, engines, and other equipment operated by the lessee or the lessee's
26 agent of compressor stations on the lease to ensure that the owner will not forego
27 the peaceful enjoyment of the property owned; noise mitigation measures
28 developed under this paragraph must be determined with reference to the
29 population density of the parcel or parcels subject to the lease, the size of the
30 owner's parcels, and the general character of the land subject to the lease; the
31 terms of the lease shall require the lessee or lessee's agent to negotiate to meet the

1 requirement of this paragraph, but the owner may not unreasonably withhold
 2 agreement;

3 (5) action to require the lessee or the lessee's agent to restore,
 4 reclaim, or abate the adverse effects of the exploration and development
 5 operations using natural revegetation or reseeded using endemic plant species;
 6 the lease may require the lessee or the lessee's agent to consult with the director
 7 of the division of agriculture.

8 * **Sec. 6.** AS 38.05.177(j) is amended to read:

9 (j) A lease does not give the lessee the right to produce oil. A lease gives the
 10 lessee the right to produce gas only to the extent that it is from a field if a part of the
 11 field is within 3,000 feet of the surface. A lessee may not recover gas at a depth
 12 greater than 3,000 feet unless the lessee first obtains a lease under AS 38.05.180.

13 If a well drilling for natural gas under a lease authorized by this section penetrates a
 14 field, no portion of which is within 3,000 feet of the surface, or penetrates a formation
 15 capable of producing oil, the owner or operator

16 (1) shall notify the department and the Alaska Oil and Gas
 17 Conservation Commission; and

18 (2) may not conduct further operations in the drilled well until the
 19 facility complies with all applicable laws and regulations relating to oil and gas
 20 exploration and production; however, this paragraph does not prevent the owner or
 21 operator from conducting activities that may be required by the Alaska Oil and Gas
 22 Conservation Commission to plug, plug-back, or abandon a well.

23 * **Sec. 7.** AS 38.05.177(k) is amended to read:

24 (k) The commissioner [MAY]

25 (1) may adopt only the regulations that are reasonable and that are
 26 necessary to implement, interpret, or make specific the provisions of this section or to
 27 establish procedures to govern application of the provisions of this section; [AND]

28 (2) may, in addition to any requirement for a bond under
 29 AS 38.05.130, establish by regulation a form and amount for statewide, areawide,
 30 unit-wide, or per-lease bonds sufficient to secure damages that may be caused by the
 31 activities of a lessee, or the lessee's successors or assigns, related to a shallow natural

1 gas lease entered into under this section; if the commissioner acts under this
2 paragraph, the commissioner

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

5 (B) may not require a bond posted under this paragraph from a
6 person applying for a lease if the person has already posted a bond covering
7 the person's statewide oil and gas leasing activities in an amount of at least
8 \$500,000; and

9 (3) shall, if a bond is sought under AS 38.05.130, before the
10 amount of the surety bond to be posted is determined by the director, require as
11 a condition for issuing the bond that the director, after notice and an opportunity
12 to be heard, determine that, to exercise rights under the reservation as set out in
13 AS 38.05.125 and the lease, the lessee has demonstrated that access and entry
14 upon the land of the owner is reasonably necessary or convenient to render
15 beneficial and efficient the complete enjoyment of the property and the reserved
16 rights; the lessee has the burden of demonstrating compliance with the
17 requirement of this paragraph.

18 * Sec. 8. AS 38.05.177 is amended by adding new subsections to read:

19 (p) Under AS 38.05.130 as applicable to shallow natural gas exploration and
20 development that is authorized under this section,

21 (1) if

22 (A) the owner and the lessee enter into an agreement by which
23 the state, or its lessees, successors, or assigns, will make provision to pay the
24 owner of the land full payment for all damages, the parties shall incorporate in
25 the agreement the provisions described in (f) of this section that are negotiated;

26 (B) the owner and the lessee do not enter into an agreement by
27 which the state, or its lessees, successors, or assigns, will make provision to
28 pay the owner of the land full payment for all damages, and the lessee proceeds
29 to request the director to set the amount of a surety bond, the owner may, in
30 conjunction with notice and the opportunity to be heard, provide the director
31 with the owner's comments about the appropriate location of wells, roads, and

1 other improvements that may be made by the lessee or the lessee's agent to
2 secure the lessee's rights under the lease;

3 (2) as part of the damages that may be recovered

4 (A) under the agreement entered into by the owner and the
5 lessee by which the state, or its lessees, successors, or assigns, will make
6 provision to pay the owner of the land full payment for all damages, the parties
7 shall provide for damage to the owner's surface and subsurface water sources
8 that may occur as a result of deterioration of water quality, well depletion,
9 hydraulic fracturing, or hazards from seismic activity;

10 (B) under the surety bond to secure to the owner the full
11 payment of damages, in addition to the amount of the bond to be determined
12 by the director, a surety bond to secure payment for damage to the owner's
13 surface and subsurface water sources that may occur as a result of deterioration
14 of water quality, well depletion, hydraulic fracturing, or hazards from seismic
15 activity; the bond described in this subparagraph must be in an amount
16 sufficient to assure the recovery of damages for the entirety of the owner's
17 property, as determined by the director, and may not be less than \$25,000.

18 (q) In (f), (k)(3), and (p) of this section, "owner" means the property owner
19 whose property is subject to the reservation described in AS 38.05.125(a).

20 * **Sec. 9.** AS 46.04.900(25) is amended to read:

21 (25) "shallow natural gas" means coal bed methane, natural gas drilled
22 for under a lease authorized by AS 38.05.177, or natural gas drilled for in a well the
23 true vertical depth of which is 3,000 [4,000] feet or less;

24 * **Sec. 10.** The uncodified law of the State of Alaska added by sec. 1, ch. 45, SLA 2003, is
25 amended to read:

26 LEGISLATIVE FINDINGS. The legislature finds that

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

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

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

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

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

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

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

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

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

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

26 * **Sec. 11.** AS 31.05.125 and AS 38.05.177(n) are repealed.