

CS FOR HOUSE BILL NO. 395(O&G)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Offered: 3/12/04

Referred: Resources, Judiciary, Finance

Sponsor(s): REPRESENTATIVES HARRIS, Gatto, Stoltze, Seaton, Kohring

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the recovery of shallow natural gas and the regulation of shallow
2 natural gas operations; and providing for an effective date."

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

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

5 (j) For exploration and development operations involving shallow natural
6 gas, the commission

7 (1) may not issue a permit to drill under this chapter if the
8 operations of the person to whom the permit is to be issued would involve
9 producing gas from an aquifer that serves as a source of drinking water for
10 human consumption or that is used for agricultural purposes;

11 (2) shall

12 (A) regulate the hydraulic fracturing of shallow natural gas
13 wells to assure protection of drinking water quality;

14 (B) if reinjection of produced water is required by the state,

1 require reinjection of the water to depths below known sources of
 2 drinking water for human consumption or that is used for agricultural
 3 purposes;

4 (C) regulate the disposal of wastes produced from the
 5 operations; and

6 (D) for the purposes of AS 46.04.030(b), [THE
 7 COMMISSION SHALL] determine whether a well drilled for shallow natural
 8 gas may penetrate a formation capable of flowing oil and, if so, whether the
 9 volume of oil encountered will be of such quantities that an oil discharge
 10 prevention and contingency plan will be required.

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

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

13 For the purpose of resolving public health, safety, welfare, or environmental
 14 complaints about potential or actual shallow natural gas exploration and development
 15 operations, the commission shall, by regulation, develop and implement a public
 16 forum process by which to achieve informal resolution of the complaints within 60
 17 days of the filing of the complaints. The commission may provide that, if resolution
 18 of the complaints is not achieved through the informal process established by
 19 regulation, a party may petition the commission to take action on the complaint under
 20 AS 31.05.060 - 31.05.085.

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

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

31 (14) "shallow natural gas" means coal bed methane, natural gas drilled

1 for under a lease authorized by AS 38.05.177, or natural gas drilled for in a well the
 2 true vertical depth of which is 3,000 [4,000] feet or less **unless the commissioner of**
 3 **natural resources has exercised discretion to allow recovery of gas as authorized**
 4 **by AS 38.05.177(j), in which case "shallow natural gas" also means gas subject to**
 5 **the exercise of that discretion;**

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

7 (a) The provisions of this section

8 (1) apply to gas, whether methane associated with and derived from
 9 coal deposits or otherwise, from a field if a part of the field is within 3,000 feet of the
 10 surface **unless the commissioner exercises discretion to allow recovery of gas as**
 11 **authorized by (j) of this section, in which case the gas to which the provisions of**
 12 **this section apply includes gas subject to the exercise of that discretion;** and

13 (2) do not apply to authorize lease of

14 (A) land

15 (i) that is subject to an oil and gas exploration license or
 16 lease issued under AS 38.05.131 - 38.05.134; or

17 (ii) that is leased under AS 38.05.180;

18 (B) the land (i) that is proposed to be subject to an oil and gas
 19 exploration license or lease issued under AS 38.05.131 - 38.05.134; or (ii) that
 20 is described in and part of a proposed oil and gas leasing program prepared
 21 under AS 38.05.180(b); however, the commissioner may waive the limitations
 22 of this subparagraph;

23 (C) the land that is held under a coal lease entered into under
 24 AS 38.05.150, unless the applicant for a shallow natural gas lease is also the
 25 lessee under AS 38.05.150 of that land; or

26 (D) the valid existing selections of the Alaska Mental Health
 27 Trust Authority made for the purpose of reconstituting the mental health trust
 28 established under the Alaska Mental Health Enabling Act, P.L. 84-830, 70
 29 Stat. 709 (1956), that become subject to management under AS 38.05.801, or
 30 of land that has been designated by law for or is subject to designation for
 31 conveyance to the Alaska Mental Health Trust Authority; however, after

1 consultation with the Alaska Mental Health Trust Authority, the commissioner
2 may waive the limitations of this subparagraph.

3 * **Sec. 5.** AS 38.05.177(c) is amended to read:

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

29 * **Sec. 6.** AS 38.05.177(f) is amended to read:

30 (f) A shallow gas lease must provide for

31 **(1)** payment to the state of annual rent in the amount of \$1 **an** [PER]

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

6 (2) appropriate setbacks governing the placement by the lessee or
 7 the lessee's agent of compressor stations on the lease, to ensure that the owner
 8 will not forego the peaceful enjoyment of the property owned; setbacks developed
 9 under this paragraph must be determined with reference to the population
 10 density of the parcel or parcels subject to the lease, the size of the owner's
 11 parcels, and the general character of the land subject to the lease; the terms of
 12 the lease must require the lessee or lessee's agent to negotiate to meet the
 13 requirement of this paragraph, but the owner may not unreasonably withhold
 14 agreement;

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

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

30 * Sec. 7. AS 38.05.177(j) is amended to read:

31 (j) A lease does not give the lessee the right to produce oil. A lease gives the

1 lessee the right to produce gas only to the extent that it is from a field if a part of the
 2 field is within 3,000 feet of the surface. **Except when the commissioner exercises**
 3 **discretion to allow recovery of gas at a depth of not more than 4,000 feet, a lessee**
 4 **may not recover gas at a depth greater than 3,000 feet unless the lessee first**
 5 **obtains a lease under AS 38.05.180.** If a well drilling for natural gas under a lease
 6 authorized by this section **operates at a depth that is greater than permitted by this**
 7 **subsection, or** penetrates a field, no portion of which is within 3,000 feet of the
 8 surface, or penetrates a formation capable of producing oil, the owner or operator

9 (1) shall notify the department and the Alaska Oil and Gas
 10 Conservation Commission; and

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

16 * **Sec. 8.** AS 38.05.177(k) is amended to read:

17 (k) The commissioner [MAY]

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

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

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

29 (B) may not require a bond posted under this paragraph from a
 30 person applying for a lease if the person has already posted a bond covering
 31 the person's statewide oil and gas leasing activities in an amount of at least

1 \$500,000;

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

11 **(4) shall require the lessee to provide written advance notice to the**
 12 **owner of initial entry onto the property of the owner at least 30 days before**
 13 **initial entry.**

14 * **Sec. 9.** AS 38.05.177 is amended by adding new subsections to read:

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

17 (1) the owner and the lessee enter into an agreement by which the
 18 state, or its lessees, successors, or assigns, will make provision to pay the owner of the
 19 land for all damages, the parties shall incorporate in the agreement the provisions
 20 described in (f) of this section that are negotiated;

21 (2) the owner and the lessee do not enter into an agreement by which
 22 the state, or its lessees, successors, or assigns, will make provision to pay the owner of
 23 the land for all damages, and the lessee proceeds to request the director to set the
 24 amount of a surety bond, the owner may, in conjunction with notice and the
 25 opportunity to be heard, provide the director with the owner's comments about the
 26 appropriate location of wells, roads, and other improvements that may be made by the
 27 lessee or the lessee's agent to secure the lessee's rights under the lease.

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

30 * **Sec. 10.** AS 46.03.100(f) is amended to read:

31 (f) This section does not apply to discharges of solid or liquid waste material

1 or water discharges from the following activities if the discharge is incidental to the
 2 activity and the activity does not produce a discharge from a point source, as that term
 3 is defined in regulations adopted under this chapter, directly into any surface water of
 4 the state:

5 (1) mineral drilling, trenching, ditching, and similar activities;

6 (2) landscaping;

7 (3) water well drilling, geophysical drilling, or coal bed methane
 8 drilling or other natural gas drilling to recover gas from a field if a part of the field is
 9 within 3,000 feet of the surface **unless the commissioner of natural resources has**
 10 **exercised discretion to allow recovery of gas as authorized by AS 38.05.177(j), in**
 11 **which case it includes the gas subject to the exercise of that discretion;** or

12 (4) drilling, ditching, trenching, and similar activities associated with
 13 facility construction and maintenance or with road or other transportation facility
 14 construction and maintenance; however, the exemption provided by this paragraph
 15 does not relieve a person from obtaining a permit under this section if

16 (A) the drilling, ditching, trenching, or similar activity will
 17 involve the removal of the groundwater, stormwater, or wastewater runoff that
 18 has accumulated and is present at an excavation site for facility, road, or other
 19 transportation construction or maintenance; and

20 (B) a permit is otherwise required by this section.

21 * **Sec. 11.** AS 46.04.030(b) is amended to read:

22 (b) A person may not cause or permit the operation of a pipeline or an
 23 exploration or production facility in the state unless an oil discharge prevention and
 24 contingency plan for the pipeline or facility has been approved by the department and
 25 the person is in compliance with the plan. This subsection does not apply to an
 26 exploration or production facility used solely to explore for or to develop or produce
 27 shallow natural gas resources, except that this exemption does not apply if the Alaska
 28 Oil and Gas Conservation Commission determines under **AS 31.05.030(j)(2)(D)**
 29 [AS 31.05.030(j)] that

30 (1) a well drilled for shallow natural gas may penetrate a formation
 31 capable of flowing oil; and

1 (2) the volume of oil encountered will be of such quantities that a
2 contingency plan will be required.

3 * **Sec. 12.** AS 46.04.040(b) is amended to read:

4 (b) A person may not cause or permit the operation of a pipeline or an
5 exploration or production facility in the state unless the person has furnished to the
6 department, and the department has approved, proof of financial ability to respond in
7 damages. Proof of financial responsibility required for

8 (1) a pipeline or an offshore exploration or production facility is
9 \$50,000,000 per incident;

10 (2) an onshore production facility is

11 (A) \$20,000,000 per incident if the facility produces over
12 10,000 barrels per day of oil;

13 (B) \$10,000,000 per incident if the facility produces over 5,000
14 barrels per day but not more than 10,000 barrels per day of oil;

15 (C) \$5,000,000 per incident if the facility produces over 2,500
16 barrels per day but not more than 5,000 barrels per day of oil;

17 (D) \$1,000,000 per incident if the facility produces 2,500
18 barrels per day or less of oil;

19 (3) an onshore exploration facility is

20 (A) \$25,000 per incident for a facility used solely to explore for
21 shallow natural gas by means of drilling a well to explore for gas, whether
22 methane associated with and derived from coal deposits or otherwise, from a
23 field if a part of the field is within 3,000 feet of the surface **unless the**
24 **commissioner of natural resources has exercised discretion to allow**
25 **recovery of gas as authorized by AS 38.05.177(j), in which case it includes**
26 **the gas subject to the exercise of that discretion;** and

27 (B) except as provided by (A) of this paragraph, \$1,000,000 per
28 incident.

29 * **Sec. 13.** AS 46.04.900(25) is amended to read:

30 (25) "shallow natural gas" means coal bed methane, natural gas drilled
31 for under a lease authorized by AS 38.05.177, or natural gas drilled for in a well the

1 true vertical depth of which is 3,000 [4,000] feet or less **unless the commissioner of**
2 **natural resources has exercised discretion to allow recovery of gas under**
3 **AS 38.05.177(j), in which case "shallow natural gas" also means gas subject to**
4 **the exercise of that discretion;**

5 * **Sec. 14.** This Act takes effect July 1, 2004.