

CS FOR HOUSE BILL NO. 395(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 4/19/04

Referred: 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, to the regulation of shallow
2 natural gas or coal bed methane operations, and to oil and gas leasing operations
3 involving activities not governed under the Alaska Land Act; contingently redesignating
4 shallow natural gas as nonconventional gas, and relating to the regulation of that gas
5 under that contingency; and providing for an effective date."

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

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

8 (j) For exploration and development operations involving shallow natural
9 gas, the commission

10 (1) may not

11 (A) issue a permit to drill under this chapter if the well
12 would be used to produce gas from an aquifer that serves as a source of
13 water for human consumption or agricultural purposes unless the

commission finds that the well will not adversely affect the aquifer as a source of water for human consumption or agricultural purposes; or

(B) allow injection of produced water except at depths below known sources of water for human consumption or agricultural purposes;

(2) shall

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

(B) regulate the disposal of wastes produced from the operations unless the disposal is otherwise subject to regulation by the Department of Environmental Conservation or the Environmental Protection Agency; and

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

* Sec. 2. AS 31.05.030(j) is repealed and reenacted to read:

(j) For exploration and development operations involving nonconventional gas, the commission

(1) may not

(A) issue a permit to drill under this chapter if the well would be used to produce gas from an aquifer that serves as a source of water for human consumption or agricultural purposes unless the commission finds that the well will not adversely affect the aquifer as a source of water for human consumption or agricultural purposes; or

(B) allow injection of produced water except at depths below known sources of water for human consumption or agricultural purposes;

(2) shall

(A) regulate hydraulic fracturing in nonconventional gas wells to assure protection of drinking water quality;

1 (B) regulate the disposal of wastes produced from the
 2 operations unless the disposal is otherwise subject to regulation by the
 3 Department of Environmental Conservation or the Environmental Protection
 4 Agency; and

5 (C) for the purposes of AS 46.04.030(b), determine whether a
 6 well drilled for nonconventional gas may penetrate a formation capable of
 7 flowing oil and, if so, whether the volume of oil encountered will be of such
 8 quantities that an oil discharge prevention and contingency plan will be
 9 required.

10 * **Sec. 3.** AS 31.05 is amended by adding a new section to read:

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

12 For the purpose of resolving public health, safety, welfare, or environmental
 13 complaints about potential or actual shallow natural gas exploration and development
 14 operations, the commission shall, by regulation, develop and implement a public
 15 forum process by which to achieve informal resolution of the complaints within 60
 16 days of the filing of the complaints. The commission may provide that, if resolution
 17 of the complaints is not achieved through the informal process established by
 18 regulation, a party may petition the commission to take action on the complaint under
 19 AS 31.05.060 - 31.05.085 as to a matter that falls within the commission's powers and
 20 duties under AS 31.05.030. For any other matter, the commission shall refer the
 21 complaint to other federal, state, or local agencies, as appropriate.

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

31 * **Sec. 4.** AS 31.05.098(a) is repealed and reenacted to read:

1 (a) For the purpose of resolving public health, safety, welfare, or
 2 environmental complaints about potential or actual nonconventional gas exploration
 3 and development operations, the commission shall, by regulation, develop and
 4 implement a public forum process by which to achieve informal resolution of the
 5 complaints within 60 days of the filing of the complaints. The commission may
 6 provide that, if resolution of the complaints is not achieved through the informal
 7 process established by regulation, a party may petition the commission to take action
 8 on the complaint under AS 31.05.060 - 31.05.085 as to a matter that falls within the
 9 commission's powers and duties under AS 31.05.030. For any other matter, the
 10 commission shall refer the complaint to other federal, state, or local agencies, as
 11 appropriate.

12 * **Sec. 5.** AS 31.05.170(14) is amended to read:

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

16 * **Sec. 6.** AS 31.05.170 is amended by adding a new paragraph to read:

17 (16) "nonconventional gas" has the meaning given in AS 38.05.965.

18 * **Sec. 7.** AS 34 is amended by adding a new chapter to read:

19 **Chapter 90. Mineral Interests.**

20 **Sec. 34.90.010. Notice of operations.** (a) Except for activities governed by
 21 AS 38.05, the developer shall give the surface owner written notice of the oil and gas
 22 operations contemplated at least 20 days before commencement of operations. The
 23 requirement of written notice may be waived by the parties.

24 (b) Unless notice has been waived by the parties, the developer shall give
 25 notice to the record surface owner at the owner's address as shown by the records of
 26 the state recorder at the time notice is given. The notice must sufficiently disclose the
 27 plan of work and operations to enable the surface owner to evaluate the effect of oil
 28 and gas operations on the surface owner's use of the property.

29 (c) If a developer fails to give notice as provided in this section, the surface
 30 owner may seek any appropriate relief in the court of proper jurisdiction and may
 31 receive actual damages.

1 **Sec. 34.90.020. Damages and posting of bond.** A developer may not
 2 exercise a right of entry until the developer makes provision to pay the surface owner
 3 full payment for all damages sustained by the surface owner by reason of entering
 4 upon the land. If the surface owner, for any cause, refuses or neglects to settle the
 5 damages, the developer may enter upon the land after posting a surety bond
 6 determined by the Department of Natural Resources using a procedure similar to the
 7 procedure used to administer AS 38.05.130, including notice and an opportunity to be
 8 heard. The bond must be sufficient as to form, amount, and security to secure to the
 9 surface owner payment for damages. The surface owner may institute legal
 10 proceedings in a court where the land is located as may be necessary to determine the
 11 damages that the surface owner may suffer.

12 **Sec. 34.90.095. Definitions.** In this chapter,

13 (1) "developer" means the person who acquires the mineral estate or
 14 lease for the purpose of extracting or using the minerals;

15 (2) "mineral estate" means an estate in or ownership of all or part of
 16 the minerals underlying a specific tract of land;

17 (3) "minerals" includes oil and gas;

18 (4) "oil and gas operations" means an activity for which a permit is
 19 required by AS 31.05.090 that requires entry upon the surface estate;

20 (5) "surface estate" means an estate in or ownership of the surface of a
 21 particular tract of land;

22 (6) "surface owner" means any person who holds record title to the
 23 surface of the land as an owner.

24 * **Sec. 8.** AS 38.05.177(c) is amended to read:

25 (c) The director shall give notice under AS 38.05.945 of receipt of the lease
 26 application, [AND] call for comments from the public, **and execute a lease as**
 27 **follows:**

28 **(1) the** [. THE] director's call for public comments must provide
 29 opportunity for public comment for a period of not less than 60 days;

30 **(2) if** [. IF], after review of information received during the public
 31 comment period **and consideration of public comments received**, the director

1 determines that the discovery of a local source of natural gas would benefit the
 2 residents of an area, the director **may** [SHALL] execute a lease for the area described
 3 in (b) of this section; **the** [. THE] director **may** [SHALL] execute the lease **only** after
 4 completion of a title search, the close of the public comment period, and, if review is
 5 required under AS 46.40, after the final consistency determination is made under
 6 AS 46.40;

7 **(3) a** [. A] lease entered into under this subsection gives the lessee the
 8 exclusive right to explore for, develop, and produce, for a term of three years, natural
 9 gas on the state land described in the lease; the right to explore for, develop, and
 10 produce is limited to gas from a field if a part of the field is within 3,000 feet of the
 11 surface.

12 * **Sec. 9.** AS 38.05.177(f) is amended to read:

13 (f) A shallow gas lease must provide for

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

20 **(2) a water well testing requirement for each lease that contains**
 21 **one or more wells that serve as a source of potable water; the testing requirement**
 22 **of this paragraph applies to each water well that is located within a square that**
 23 **bounds a circle with a radius of one-quarter mile around the drill site and the**
 24 **sides of which are parallel or perpendicular to the four cardinal directions and**
 25 **are tangent to the circle; under this paragraph, the lessee shall, before**
 26 **commencement of production testing and production activities on the lease,**

27 **(A) test each well for dissolved contents, including methane,**
 28 **and water flow; and**

29 **(B) provide a copy of the test results to the land owner, who**
 30 **shall maintain the test record;**

31 **(3) appropriate setbacks governing the placement by the lessee or**

1 the lessee's agent of compressor stations on the lease; setbacks developed under
 2 this paragraph must be determined with reference to the population density of
 3 the parcel or parcels subject to the lease, the size of the owner's parcels, and the
 4 general character of the land subject to the lease; the terms of the lease must
 5 require the lessee or lessee's agent to negotiate to meet the requirement of this
 6 paragraph, but the owner may not unreasonably withhold agreement;

7 (4) reasonable and appropriate measures to mitigate the noise of
 8 compressors, engines, and other equipment operated by the lessee or the lessee's
 9 agent of compressor stations on the lease; noise mitigation measures developed
 10 under this paragraph must be determined with reference to the population
 11 density of the parcel or parcels subject to the lease, the size of the owner's
 12 parcels, and the general character of the land subject to the lease; the terms of
 13 the lease shall require the lessee or lessee's agent to negotiate to meet the
 14 requirement of this paragraph, but the owner may not unreasonably withhold
 15 agreement;

16 (5) action at the time of the termination or abandonment of the
 17 lease to require the lessee or the lessee's agent to restore, reclaim, or abate the
 18 adverse effects of the exploration and development operations using natural
 19 revegetation or reseeded using endemic plant species; the lease may require the
 20 lessee or the lessee's agent to consult with the director of the division of
 21 agriculture.

22 * **Sec. 10.** AS 38.05.177(k) is amended to read:

23 (k) The commissioner [MAY]

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

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

1 paragraph, the commissioner

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

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

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

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

20 * **Sec. 11.** AS 38.05.177 is amended by adding new subsections to read:

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

23 (1) the owner and the lessee enter into an agreement by which the
24 lessee makes provision to pay the owner of the land for all damages, the parties shall
25 incorporate in the agreement the provisions described in (f) of this section that are
26 negotiated;

27 (2) the owner and the lessee do not enter into an agreement by which
28 the lessee makes provision to pay the owner of the land for all damages, and the lessee
29 proceeds 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 with the
31 owner's comments about the appropriate location of wells, roads, and other

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

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

5 * **Sec. 12.** AS 38.05.180(ff) is repealed and reenacted to read:

6 (ff) The provisions of this section that authorize oil and gas leases also apply
7 to authorize the commissioner to issue leases under this section for the production of
8 gas only, subject to the following:

9 (1) in authorizing and managing leases under this subsection, the terms
10 "oil and gas" or "oil or gas" as they are used in this chapter shall be read and applied
11 as referring to gas only;

12 (2) when a lease is authorized as a gas only lease, the lease does not
13 give the lessee the right to produce oil; if a well drilling for gas under a gas only lease
14 authorized by this subsection penetrates a formation capable of producing oil, the
15 owner or operator

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

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

24 (3) if, under AS 38.05.130, as applicable to a nonconventional gas
25 lease

26 (A) the owner and the lessee enter into an agreement by which
27 the lessee makes provision to pay the owner of the land for all damages, the
28 parties shall incorporate in the agreement the provisions described in (4)(A) -
29 (D) of this subsection that are negotiated; or

30 (B) the owner and the lessee do not enter into an agreement by
31 which the state, or its lessees, successors, or assigns, will make provision to

1 pay the owner of the land for all damages, and the lessee proceeds to request
2 the director to set the amount of a surety bond, the owner may, in conjunction
3 with notice and the opportunity to be heard, provide the director with the
4 owner's comments about the appropriate location of wells, roads, and other
5 improvements that may be made by the lessee or the lessee's agent to secure
6 the lessee's rights under the lease.

7 (4) for a nonconventional gas lease,

8 (A) the lease must provide for a water well testing requirement
9 for each lease that contains one or more wells that serve as a source of potable
10 water; the testing requirement of this subparagraph applies to each water well
11 that is located within a square that bounds a circle with a radius of one-quarter
12 mile around the drill site and the sides of which are parallel or perpendicular to
13 the four cardinal directions and are tangent to the circle; under this
14 subparagraph, the lessee shall, before commencement of production testing and
15 production activities on the lease,

16 (i) test each well for dissolved contents, including
17 methane, and water flow; and

18 (ii) provide a copy of the test results to the owner, who
19 shall maintain the test record;

20 (B) the lease must provide for appropriate setbacks governing
21 the placement by the lessee or the lessee's agent of compressor stations on the
22 lease; setbacks developed under this subparagraph must be determined with
23 reference to the population density of the parcel or parcels subject to the lease,
24 the size of the owner's parcels, and the general character of the land subject to
25 the lease; the terms of the lease must require the lessee or lessee's agent to
26 negotiate to meet the requirement of this subparagraph, but the owner may not
27 unreasonably withhold agreement;

28 (C) the lease must provide for reasonable and appropriate
29 measures to mitigate the noise of compressors, engines, and other equipment
30 operated by the lessee or the lessee's agent for compressor statements on the
31 lease; noise mitigation measures developed under this subparagraph must be

1 determined with reference to the population density of the parcel or parcels
 2 subject to the lease, the size of the owner's parcels, and the general character of
 3 the land subject to the lease; the terms of the lease shall require the lessee or
 4 lessee's agent to negotiate to meet the requirement of this subparagraph, but the
 5 owner may not unreasonably withhold agreement;

6 (D) the lease must provide for action at the time of the
 7 termination or abandonment of the lease to require the lessee or the lessee's
 8 agent to restore, reclaim, or abate the adverse effects of the exploration and
 9 development operations using natural revegetation or reseeding using endemic
 10 plant species; the lease may require the lessee or the lessee's agent to consult
 11 with the director of the division of agriculture;

12 (E) if a bond is sought under AS 38.05.130,

13 (i) before the amount of the surety bond to be posted is
 14 determined by the director, require, as a condition for issuing the lease,
 15 that the director, after notice and an opportunity to be heard, determine
 16 that, to exercise rights under the reservation as set out in AS 38.05.125
 17 and the lease, the lessee has no other reasonable means of entry than
 18 access and entry upon the land of the owner; the lessee has the burden
 19 of demonstrating compliance with the requirement of this sub-
 20 subparagraph; and

21 (ii) in addition to the coverage for actual damages
 22 required by AS 38.05.130, provide for payment of reasonable
 23 compensation to the owner for any loss by the owner of the owner's use
 24 and enjoyment of the property; and

25 (F) the director shall require the lessee to provide written
 26 advance notice to the owner of initial entry onto the property of the owner at
 27 least 30 days before initial entry.

28 * **Sec. 13.** AS 38.05.945(a) is amended to read:

29 (a) This section establishes the requirements for notice given by the
 30 department for the following actions:

31 (1) classification or reclassification of state land under AS 38.05.300

1 and the closing of land to mineral leasing or entry under AS 38.05.185;

2 (2) zoning of land under applicable law;

3 (3) issuance of a

4 (A) preliminary written finding under AS 38.05.035(e)(5)(A)
5 regarding the sale, lease, or disposal of an interest in state land or resources for
6 oil and gas subject to AS 38.05.180(b);

7 (B) [REPEALED

8 (C)] written finding for the sale, lease, or disposal of an interest
9 in state land or resources under AS 38.05.035(e)(6), except an oil or gas lease
10 sale described in AS 38.05.035(e)(6)(F) for which the director must provide
11 opportunity for public comment under the provisions of that subparagraph;

12 (4) a competitive disposal of an interest in state land or resources after
13 final decision under AS 38.05.035(e);

14 (5) a preliminary finding under AS 38.05.035(e) concerning sites for
15 aquatic farms and related hatcheries;

16 (6) a decision under AS 38.05.132 - 38.05.134 regarding the sale,
17 lease, or disposal of an interest in state land or resources;

18 **(7) a notice of receipt of a lease application and call for comments**
19 **under AS 38.05.177(c).**

20 * **Sec. 14.** AS 38.05.945(b) is amended to read:

21 (b) When notice is required to be given under this section,

22 (1) the notice must contain sufficient information in commonly
23 understood terms to inform the public of the nature of the action and the opportunity
24 of the public to comment on it;

25 (2) if the notice is of a preliminary written finding described in
26 (a)(3)(A) of this section **or a call for comments under (a)(7) of this section**, the
27 department shall give notice at the beginning of the public comment period for the
28 preliminary written finding **or call for comments, as appropriate**, notifying the
29 public of the right to submit comments; the department shall give notice by

30 (A) publication of a legal notice in newspapers of statewide
31 circulation and in newspapers of general circulation in the vicinity of the

1 proposed action at least once a week for two consecutive weeks;

2 (B) publication of a notice in display advertising form in the
3 newspapers described in (A) of this paragraph at least once a week for two
4 consecutive weeks;

5 (C) public service announcements on the electronic media
6 serving the area to be affected by the proposed action; and

7 (D) one or more of the following methods:

8 (i) posting in a conspicuous location in the vicinity of
9 the action;

10 (ii) notification of parties known or likely to be affected
11 by the action; or

12 (iii) another method calculated to reach affected parties;

13 (3) if the notice is of an action described in (a) of this section, other
14 than notice of an action under (a)(3)(A) or (a)(7) of this section, the department shall
15 give notice at least 30 days before the action by publication in newspapers of
16 statewide circulation and in newspapers of general circulation in the vicinity of the
17 proposed action and one or more of the following methods:

18 (A) publication through public service announcements on the
19 electronic media serving the area affected by the action;

20 (B) posting in a conspicuous location in the vicinity of the
21 action;

22 (C) notification of parties known or likely to be affected by the
23 action; or

24 (D) another method calculated to reach affected persons.

25 * **Sec. 15.** AS 38.05.945(b) is repealed and reenacted to read:

26 (b) When notice is required to be given under this section,

27 (1) the notice must contain sufficient information in commonly
28 understood terms to inform the public of the nature of the action and the opportunity
29 of the public to comment on it;

30 (2) if the notice is of a preliminary written finding described in
31 (a)(3)(A) of this section, the department shall give notice at the beginning of the public

1 comment period for the preliminary written finding, notifying the public of the right to
2 submit comments; the department shall give notice by

3 (A) publication of a legal notice in newspapers of statewide
4 circulation and in newspapers of general circulation in the vicinity of the
5 proposed action at least once a week for two consecutive weeks;

6 (B) publication of a notice in display advertising form in the
7 newspapers described in (A) of this paragraph at least once a week for two
8 consecutive weeks;

9 (C) public service announcements on the electronic media
10 serving the area to be affected by the proposed action; and

11 (D) one or more of the following methods:

12 (i) posting in a conspicuous location in the vicinity of
13 the action;

14 (ii) notification of parties known or likely to be affected
15 by the action; or

16 (iii) another method calculated to reach affected parties;

17 (3) if the notice is of an action described in (a) of this section, other
18 than notice of an action under (a)(3)(A) of this section, the department shall give
19 notice at least 30 days before the action by publication in newspapers of statewide
20 circulation and in newspapers of general circulation in the vicinity of the proposed
21 action and one or more of the following methods:

22 (A) publication through public service announcements on the
23 electronic media serving the area affected by the action;

24 (B) posting in a conspicuous location in the vicinity of the
25 action;

26 (C) notification of parties known or likely to be affected by the
27 action; or

28 (D) another method calculated to reach affected persons.

29 * **Sec. 16.** AS 46.03.100(f) is amended to read:

30 (f) This section does not apply to discharges of solid or liquid waste material
31 or water discharges from the following activities if the discharge is incidental to the

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

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

5 (2) landscaping;

6 (3) water well drilling **and** [,] geophysical drilling [, OR COAL BED
 7 METHANE DRILLING OR OTHER NATURAL GAS DRILLING TO RECOVER
 8 GAS FROM A FIELD IF A PART OF THE FIELD IS WITHIN 3,000 FEET OF THE
 9 SURFACE]; or

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

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

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

19 * **Sec. 17.** AS 46.04.030(b) is amended to read:

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

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

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

1 * **Sec. 18.** AS 46.04.900(25) is amended to read:

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

5 * **Sec. 19.** AS 46.04.900 is amended by adding a new paragraph to read:

6 (31) "nonconventional gas" has the meaning given in AS 38.05.965.

7 * **Sec. 20.** The uncodified law of the State of Alaska added by sec. 1, ch. 45, SLA 2003, is
8 amended to read:

9 LEGISLATIVE FINDINGS. The legislature finds that

10 (1) [THE DEVELOPMENT OF SHALLOW NATURAL GAS
11 RESOURCES IS IN THE BEST INTERESTS OF THE STATE OF ALASKA;

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

16 (2) [(3)] the development of shallow natural gas poses significantly
17 fewer risks and creates substantially less impact to the environment than traditional
18 deep oil and gas projects, which have served as the model for oil and gas industry and
19 environmental regulations to date in Alaska;

20 (3) [(4)] the regulatory requirements developed and applied to
21 traditional deep oil and gas projects in Alaska are ill-suited and unduly onerous when
22 applied to shallow natural gas projects, threatening the economic viability of otherwise
23 desirable exploration and development projects;

24 (4) [(5)] there is an immediate state and national need for the
25 development of clean and economical unconventional energy sources, such as shallow
26 natural gas resources;

27 (5) [(6)] reform of existing laws and regulations is needed to remove
28 unnecessary regulatory burdens on the private sector to foster and encourage the
29 development in Alaska of these necessary resources;

30 (6) [(7)] the legislature is acting in the interest of promoting the active
31 development of such resources, while ensuring that suitable measures are taken to

1 protect human health and safety and the natural environment,

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

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

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

13 * **Sec. 21.** AS 31.05.125 and AS 38.05.177(n) are repealed.

14 * **Sec. 22.** AS 31.05.170(14), 38.05.945(a)(7); and AS 46.04.900(25) are repealed.

15 * **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 CONTINGENT EFFECT OF SECTIONS. Sections 2, 4, 6, 12, 15, 17, 19, and 22 of
18 this Act take effect only if a version of House Bill 531, "An Act relating to natural gas
19 exploration and development and to nonconventional gas, and amending the section under
20 which shallow natural gas leases may be issued" is passed by the Twenty-Third Alaska State
21 Legislature and becomes law.

22 * **Sec. 24.** If, under sec. 23 of this Act, secs. 2, 4, 6, 12, 15, 17, 19, and 22 of this Act take
23 effect, they take effect on the later of

24 (1) the day following the effective date of the Act described in sec. 23 of this
25 Act; or

26 (2) the day after the effective date of the sections of this Act not described in
27 this section.

28 * **Sec. 25.** Except as provided in sec. 24 of this Act, this Act takes effect July 1, 2004.