

**CS FOR HOUSE BILL NO. 395(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/28/04

Referred: Rules

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 AS 31.05.030(j) is repealed and reenacted to read: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(h) is amended to read:

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

26 (1) the lessee may surrender the lease or relinquish part of the lease at  
 27 any time; however, a lease or part of a lease that was issued under this section  
 28 before the effective date of this bill section and that is surrendered or  
 29 relinquished under this paragraph may not again be leased under this section  
 30 unless the lease complies with the provisions of this section as it reads on the  
 31 effective date of this bill section;

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

9 \* **Sec. 11.** AS 38.05.177(k) is amended to read:

10 (k) The commissioner [MAY]

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

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

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

22 (B) may not require a bond posted under this paragraph from a  
 23 person applying for a lease if the person has already posted a bond covering  
 24 the person's statewide oil and gas leasing activities in an amount of at least  
 25 \$500,000;

26 **(3) shall, if a bond is sought under AS 38.05.130, before the**  
 27 **amount of the surety bond to be posted is determined by the director, require as**  
 28 **a condition for issuing the bond that the director, after notice and an opportunity**  
 29 **to be heard, determine that, to exercise rights under the reservation as set out in**  
 30 **AS 38.05.125 and the lease, the lessee has demonstrated that access and entry**  
 31 **upon the land of the owner is reasonably necessary or convenient to render**

1 beneficial and efficient the complete enjoyment of the property and the reserved  
 2 rights; the lessee has the burden of demonstrating compliance with the  
 3 requirement of this paragraph; and

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

7 \* **Sec. 12.** AS 38.05.177 is amended by adding new subsections to read:

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

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

14 (2) the owner and the lessee do not enter into an agreement by which  
 15 the lessee makes provision to pay the owner of the land for all damages, and the lessee  
 16 proceeds to request the director to set the amount of a surety bond, the owner may, in  
 17 conjunction with notice and the opportunity to be heard, provide the director with the  
 18 owner's comments about the appropriate location of wells, roads, and other  
 19 improvements that may be made by the lessee or the lessee's agent to secure the  
 20 lessee's rights under the lease.

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

23 \* **Sec. 13.** AS 38.05.180(ff) is repealed and reenacted to read:

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

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

30 (2) when a lease is authorized as a gas only lease, the lease does not  
 31 give the lessee the right to produce oil; if a well drilling for gas under a gas only lease

1 authorized by this subsection penetrates a formation capable of producing oil, the  
2 owner or operator

3 (A) shall notify the department and the Alaska Oil and Gas  
4 Conservation Commission; and

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

11 (3) if, under AS 38.05.130, as applicable to a nonconventional gas  
12 lease

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

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

25 (4) for a nonconventional gas lease,

26 (A) the lease must provide for a water well testing requirement  
27 for each lease that contains one or more wells that serve as a source of potable  
28 water; the testing requirement of this subparagraph applies to each water well  
29 that is located within a square that bounds a circle with a radius of one-quarter  
30 mile around the drill site and the sides of which are parallel or perpendicular to  
31 the four cardinal directions and are tangent to the circle; under this

1           subparagraph, the lessee shall, before commencement of production testing and  
2           production activities on the lease,

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

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

7                           (B) the lease must provide for appropriate setbacks governing  
8           the placement by the lessee or the lessee's agent of compressor stations on the  
9           lease; setbacks developed under this subparagraph must be determined with  
10          reference to the population density of the parcel or parcels subject to the lease,  
11          the size of the owner's parcels, and the general character of the land subject to  
12          the lease; the terms of the lease must require the lessee or lessee's agent to  
13          negotiate to meet the requirement of this subparagraph, but the owner may not  
14          unreasonably withhold agreement;

15                          (C) the lease must provide for reasonable and appropriate  
16          measures to mitigate the noise of compressors, engines, and other equipment  
17          operated by the lessee or the lessee's agent for compressor statements on the  
18          lease; noise mitigation measures developed under this subparagraph must be  
19          determined with reference to the population density of the parcel or parcels  
20          subject to the lease, the size of the owner's parcels, and the general character of  
21          the land subject to the lease; the terms of the lease shall require the lessee or  
22          lessee's agent to negotiate to meet the requirement of this subparagraph, but the  
23          owner may not unreasonably withhold agreement;

24                          (D) the lease must provide for action at the time of the  
25          termination or abandonment of the lease to require the lessee or the lessee's  
26          agent to restore, reclaim, or abate the adverse effects of the exploration and  
27          development operations using natural revegetation or reseeded using endemic  
28          plant species; the lease may require the lessee or the lessee's agent to consult  
29          with the director of the division of agriculture;

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

31                                   (i) before the amount of the surety bond to be posted is

1 determined by the director, require, as a condition for issuing the lease,  
 2 that the director, after notice and an opportunity to be heard, determine  
 3 that, to exercise rights under the reservation as set out in AS 38.05.125  
 4 and the lease, the lessee has no other reasonable means of entry than  
 5 access and entry upon the land of the owner; the lessee has the burden  
 6 of demonstrating compliance with the requirement of this sub-  
 7 subparagraph; and

8 (ii) in addition to the coverage for actual damages  
 9 required by AS 38.05.130, provide for payment of reasonable  
 10 compensation to the owner for any loss by the owner of the owner's use  
 11 and enjoyment of the property; and

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

15 \* **Sec. 14.** AS 38.05.945(a) is amended to read:

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

18 (1) classification or reclassification of state land under AS 38.05.300  
 19 and the closing of land to mineral leasing or entry under AS 38.05.185;

20 (2) zoning of land under applicable law;

21 (3) issuance of a

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

25 (B) [REPEALED]

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

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

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

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

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

7 \* **Sec. 15.** AS 38.05.945(b) is amended to read:

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

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

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

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

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

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

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

26 (i) posting in a conspicuous location in the vicinity of  
27 the action;

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

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

31 (3) if the notice is of an action described in (a) of this section, other

1 than notice of an action under (a)(3)(A) or (a)(7) of this section, the department shall  
 2 give notice at least 30 days before the action by publication in newspapers of  
 3 statewide circulation and in newspapers of general circulation in the vicinity of the  
 4 proposed action and one or more of the following methods:

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

7 (B) posting in a conspicuous location in the vicinity of the  
 8 action;

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

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

12 \* **Sec. 16.** AS 38.05.945(b) is repealed and reenacted to read:

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

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

17 (2) if the notice is of a preliminary written finding described in  
 18 (a)(3)(A) of this section, the department shall give notice at the beginning of the public  
 19 comment period for the preliminary written finding, notifying the public of the right to  
 20 submit comments; the department shall give notice by

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

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

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

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

30 (i) posting in a conspicuous location in the vicinity of  
 31 the action;

- 1 (ii) notification of parties known or likely to be affected  
 2 by the action; or  
 3 (iii) another method calculated to reach affected parties;  
 4 (3) if the notice is of an action described in (a) of this section, other  
 5 than notice of an action under (a)(3)(A) of this section, the department shall give  
 6 notice at least 30 days before the action by publication in newspapers of statewide  
 7 circulation and in newspapers of general circulation in the vicinity of the proposed  
 8 action and one or more of the following methods:  
 9 (A) publication through public service announcements on the  
 10 electronic media serving the area affected by the action;  
 11 (B) posting in a conspicuous location in the vicinity of the  
 12 action;  
 13 (C) notification of parties known or likely to be affected by the  
 14 action; or  
 15 (D) another method calculated to reach affected persons.

16 \* **Sec. 17.** AS 46.03.100(f) is amended to read:

17 (f) This section does not apply to discharges of solid or liquid waste material  
 18 or water discharges from the following activities if the discharge is incidental to the  
 19 activity and the activity does not produce a discharge from a point source, as that term  
 20 is defined in regulations adopted under this chapter, directly into any surface water of  
 21 the state:

- 22 (1) mineral drilling, trenching, ditching, and similar activities;  
 23 (2) landscaping;  
 24 (3) water well drilling **and** [,] geophysical drilling [, OR COAL BED  
 25 METHANE DRILLING OR OTHER NATURAL GAS DRILLING TO RECOVER  
 26 GAS FROM A FIELD IF A PART OF THE FIELD IS WITHIN 3,000 FEET OF THE  
 27 SURFACE]; or  
 28 (4) drilling, ditching, trenching, and similar activities associated with  
 29 facility construction and maintenance or with road or other transportation facility  
 30 construction and maintenance; however, the exemption provided by this paragraph  
 31 does not relieve a person from obtaining a permit under this section if

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

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

6 \* **Sec. 18.** AS 46.04.030(b) is amended to read:

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

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

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

19 \* **Sec. 19.** AS 46.04.900(25) is amended to read:

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

23 \* **Sec. 20.** AS 46.04.900 is amended by adding a new paragraph to read:

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

25 \* **Sec. 21.** The uncodified law of the State of Alaska added by sec. 1, ch. 45, SLA 2003, is  
 26 amended to read:

27 LEGISLATIVE FINDINGS. The legislature finds that

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

30 (2)] shallow natural gas is abundant and widespread in Alaska and bears the  
 31 promise of providing Alaskans, particularly Alaskans living in rural areas, with an

1 inexpensive and clean source of energy if those resources can be economically developed;

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

6 (3) [(4)] the regulatory requirements developed and applied to traditional deep  
7 oil and gas projects in Alaska are ill-suited and unduly onerous when applied to shallow  
8 natural gas projects, threatening the economic viability of otherwise desirable exploration and  
9 development projects;

10 (4) [(5)] there is an immediate state and national need for the development of  
11 clean and economical unconventional energy sources, such as shallow natural gas resources;

12 (5) [(6)] reform of existing laws and regulations is needed to remove  
13 unnecessary regulatory burdens on the private sector to foster and encourage the development  
14 in Alaska of these necessary resources;

15 (6) [(7)] the legislature is acting in the interest of promoting the active  
16 development of such resources, while ensuring that suitable measures are taken to protect  
17 human health and safety and the natural environment,

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

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

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

27 \* **Sec. 22.** AS 31.05.125 and AS 38.05.177(n) are repealed.

28 \* **Sec. 23.** AS 31.05.170(14), 38.05.945(a)(7); and AS 46.04.900(25) are repealed.

29 \* **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to  
30 read:

31 **APPLICABILITY.** The provisions of AS 38.05.177(c), as amended by sec. 8 of this

1 Act, 38.05.177(f), as amended by sec. 9 of this Act, 38.05.177(h), as amended by sec. 10 of  
 2 this Act, 38.05.177(k), as amended by sec. 11 of this Act, and 38.05.177(p) and (q), added by  
 3 sec. 12 of this Act, apply to leases issued under AS 38.05.177 and in effect on the effective  
 4 date of secs. 8 - 12 of this Act.

5 \* **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to  
 6 read:

7 CERTAIN LEASES ISSUED UNDER FORMER AS 38.05.177 AND  
 8 SURRENDERED OR RELINQUISHED MAY NOT BE AGAIN BE LEASED. A lease or  
 9 part of a lease that was issued under former AS 38.05.177 before the effective date of this  
 10 section and that is surrendered or relinquished under former AS 38.05.177(h)(1) may not  
 11 again be leased unless the lease complies with the provisions of AS 38.05.180(ff), as repealed  
 12 and reenacted by sec. 13 of this Act.

13 \* **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to  
 14 read:

15 CONTINGENT EFFECT OF SECTIONS. Sections 2, 4, 6, 13, 16, 18, 20, 23, and 25  
 16 of this Act take effect only if a version of House Bill 531, "An Act relating to natural gas  
 17 exploration and development and to nonconventional gas, and amending the section under  
 18 which shallow natural gas leases may be issued" is passed by the Twenty-Third Alaska State  
 19 Legislature and becomes law.

20 \* **Sec. 27.** If, under sec. 26 of this Act, secs. 2, 4, 6, 13, 16, 18, 20, 23, and 25 of this Act  
 21 take effect, they take effect on the later of

22 (1) the day following the effective date of the Act described in sec. 26 of this  
 23 Act; or

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

26 \* **Sec. 28.** Except as provided in sec. 27 of this Act, this Act takes effect July 1, 2004.