

CS FOR HOUSE BILL NO. 395(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 4/30/04

Offered: 4/28/04

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

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 29.40.040 is amended by adding a new subsection to read:

8 (c) Land use regulations of a municipality adopted under this section
9 establishing allowable uses and limitations on nonconventional gas exploration and
10 development activities, including limitations that protect neighborhoods, protect the
11 safety of residents, and limit audible noise, shall be given effect to the fullest extent
12 allowed under the Constitution of the State of Alaska.

13 *** Sec. 2.** AS 31.05.030(j) is amended to read:

1 (j) For exploration and development operations involving shallow natural
 2 gas, the commission

3 (1) may not

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

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

12 (2) shall

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

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

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

24 * **Sec. 3.** AS 31.05.030(j) is repealed and reenacted to read:

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

27 (1) may not

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

1 consumption or agricultural purposes; or

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

4 (2) shall

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

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

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

16 * **Sec. 4.** AS 31.05 is amended by adding a new section to read:

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

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

28 (b) The commission's regulations adopted under this section shall provide for
29 scheduling a public forum at a location reasonably proximate to the land that is the
30 subject of or that is affected by the complaint and reasonable public notice and
31 opportunity to be heard. If the public forum is not personally convened and conducted

1 by a majority of the members of the commission, the person conducting the forum
 2 shall prepare and submit to the commission a report of the forum proceedings. The
 3 report prepared under this subsection is a public record. The commission may modify
 4 a rule or condition in a plan of development or operation for a field or pool to address
 5 an issue identified by the commission or the report.

6 * **Sec. 5.** AS 31.05.098(a) is repealed and reenacted to read:

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

18 * **Sec. 6.** AS 31.05.170(14) is amended to read:

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

22 * **Sec. 7.** AS 31.05.170 is amended by adding a new paragraph to read:

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

24 * **Sec. 8.** AS 34 is amended by adding a new chapter to read:

25 **Chapter 90. Mineral Interests.**

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

30 (b) Unless notice has been waived by the parties, the developer shall give
 31 notice to the record surface owner at the owner's address as shown by the records of

1 the state recorder at the time notice is given. The notice must sufficiently disclose the
 2 plan of work and operations to enable the surface owner to evaluate the effect of oil
 3 and gas operations on the surface owner's use of the property.

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

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

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

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

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

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

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

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

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

30 * **Sec. 9.** AS 38.05.177(c) is amended to read:

31 (c) The director shall give notice under AS 38.05.945 of receipt of the lease

1 application, [AND] call for comments from the public, **and execute a lease as**
 2 **follows:**

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

5 **(2) if** [. IF], after review of information received during the public
 6 comment period **and consideration of public comments received**, the director
 7 determines that the discovery of a local source of natural gas would benefit the
 8 residents of an area, the director **may** [SHALL] execute a lease for the area described
 9 in (b) of this section; **the** [. THE] director **may** [SHALL] execute the lease **only** after
 10 completion of a title search, the close of the public comment period, and, if review is
 11 required under AS 46.40, after the final consistency determination is made under
 12 AS 46.40;

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

18 * **Sec. 10.** AS 38.05.177(f) is amended to read:

19 (f) A shallow gas lease must provide for

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

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

1 commencement of production testing and production activities on the lease,

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

4 (B) provide a copy of the test results to the land owner, who
5 shall maintain the test record;

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

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

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

28 * Sec. 11. AS 38.05.177(h) is amended to read:

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

1 (1) the lessee may surrender the lease or relinquish part of the lease at
 2 any time; **however, a lease or part of a lease that was issued under this section**
 3 **before the effective date of this bill section and that is surrendered or**
 4 **relinquished under this paragraph may not again be leased under this section**
 5 **unless the lease complies with the provisions of this section as it reads on the**
 6 **effective date of this bill section;**

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

15 **(3) unless provision is otherwise made in the lease by the Alaska**
 16 **Oil and Gas Conservation Commission under AS 31.05.030(j) that would govern**
 17 **the lessee's disposal of water produced from a coal seam as salt water or**
 18 **nonpotable water in a manner that does not add to or contaminate surface or**
 19 **subsurface water supplies, the lease must contain a term or condition that**
 20 **governs the lessee's disposal of the produced water in a manner that does not add**
 21 **to or contaminate surface water supplies; and**

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

26 * Sec. 12. AS 38.05.177(k) is amended to read:

27 (k) The commissioner [MAY]

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

31 (2) **may,** in addition to any requirement for a bond under

1 AS 38.05.130, establish by regulation a form and amount for statewide, areawide,
 2 unit-wide, or per-lease bonds sufficient to secure damages that may be caused by the
 3 activities of a lessee, or the lessee's successors or assigns, related to a shallow natural
 4 gas lease entered into under this section; if the commissioner acts under this
 5 paragraph, the commissioner

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

8 (B) may not require a bond posted under this paragraph from a
 9 person applying for a lease if the person has already posted a bond covering
 10 the person's statewide oil and gas leasing activities in an amount of at least
 11 \$500,000;

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

21 **(4) shall require the lessee to provide written advance notice to the**
 22 **owner of initial entry onto the property of the owner at least 30 days before**
 23 **initial entry;**

24 **(5) for management and oversight of nonconventional gas, shall**
 25 **adopt regulations under AS 38.05.127(b) and this paragraph to ensure that**
 26 **exploration and development activities under a gas only lease for**
 27 **nonconventional gas do not materially interfere with the public's right to access**
 28 **and enjoy recreational waters, waters that contain appreciable quantities of**
 29 **resident or anadromous fish, and areas important to sport or subsistence hunting**
 30 **activities.**

31 * Sec. 13. AS 38.05.177 is amended by adding new subsections to read:

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

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

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

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

16 * **Sec. 14.** AS 38.05.180(ff) is repealed and reenacted to read:

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

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

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

27 (A) shall notify the department and the Alaska Oil and Gas
28 Conservation Commission; and

29 (B) may not conduct further operations in the drilled well until
30 the facility complies with all applicable laws and regulations relating to oil and
31 gas exploration and production; however, this subparagraph does not prevent

1 the owner or operator from conducting activities that may be required by the
 2 Alaska Oil and Gas Conservation Commission to plug, plug-back, or abandon
 3 a well;

4 (3) if, under AS 38.05.130, as applicable to a nonconventional gas
 5 lease

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

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

18 (4) for a nonconventional gas lease,

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

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

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

31 (B) the lease must provide for appropriate setbacks governing

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

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

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

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

24 (i) before the amount of the surety bond to be posted is
25 determined by the director, require, as a condition for issuing the lease,
26 that the director, after notice and an opportunity to be heard, determine
27 that, to exercise rights under the reservation as set out in AS 38.05.125
28 and the lease, the lessee has no other reasonable means of entry than
29 access and entry upon the land of the owner; the lessee has the burden
30 of demonstrating compliance with the requirement of this sub-
31 subparagraph; and

1 (ii) in addition to the coverage for actual damages
 2 required by AS 38.05.130, provide for payment of reasonable
 3 compensation to the owner for any loss by the owner of the owner's use
 4 and enjoyment of the property; and

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

8 (5) for management and oversight of nonconventional gas,

9 (A) the commissioner shall adopt regulations under
 10 AS 38.05.127(b) and this subparagraph to ensure that exploration and
 11 development activities under a gas only lease for nonconventional gas do not
 12 materially interfere with the public's right to access and enjoy recreational
 13 waters, waters that contain appreciable quantities of resident or anadromous
 14 fish, and areas important to sport or subsistence hunting activities;

15 (B) unless provision is otherwise made in the lease by the
 16 Alaska Oil and Gas Conservation Commission under AS 31.05.030(j) that
 17 would govern the lessee's disposal of water produced from a coal seam as salt
 18 water or nonpotable water in a manner that does not add to or contaminate
 19 surface or subsurface water supplies, the lease must contain a term or condition
 20 that governs the lessee's disposal of the produced water in a manner that does
 21 not add to or contaminate surface water supplies; and

22 (C) the lease must contain a term or condition that protects the
 23 water quality, water quantity, and habitat of fish-bearing surface water; the
 24 term or condition may not take effect until approved by the commissioner of
 25 fish and game.

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

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

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

31 (2) zoning of land under applicable law;

1 (3) issuance of a

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

5 (B) [REPEALED

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

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

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

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

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

18 * **Sec. 16.** AS 38.05.945(b) is amended to read:

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

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

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

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

31 (B) publication of a notice in display advertising form in the

1 newspapers described in (A) of this paragraph at least once a week for two
2 consecutive weeks;

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

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

6 (i) posting in a conspicuous location in the vicinity of
7 the action;

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

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

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

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

18 (B) posting in a conspicuous location in the vicinity of the
19 action;

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

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

23 * **Sec. 17.** AS 38.05.945(b) is repealed and reenacted to read:

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

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

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

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

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

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

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

10 (i) posting in a conspicuous location in the vicinity of
11 the action;

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

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

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

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

22 (B) posting in a conspicuous location in the vicinity of the
23 action;

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

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

27 * **Sec. 18.** AS 46.03.100(f) is amended to read:

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

1 the state:

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

3 (2) landscaping;

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

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

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

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

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

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

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

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

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

31 (25) "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;

3 * **Sec. 21.** AS 46.04.900 is amended by adding a new paragraph to read:

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

5 * **Sec. 22.** The uncodified law of the State of Alaska added by sec. 1, ch. 45, SLA 2003, is
6 amended to read:

7 LEGISLATIVE FINDINGS. The legislature finds that

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

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

13 (2) [(3)] the development of shallow natural gas poses significantly fewer
14 risks and creates substantially less impact to the environment than traditional deep oil and gas
15 projects, which have served as the model for oil and gas industry and environmental
16 regulations to date in Alaska;

17 (3) [(4)] the regulatory requirements developed and applied to traditional deep
18 oil and gas projects in Alaska are ill-suited and unduly onerous when applied to shallow
19 natural gas projects, threatening the economic viability of otherwise desirable exploration and
20 development projects;

21 (4) [(5)] there is an immediate state and national need for the development of
22 clean and economical unconventional energy sources, such as shallow natural gas resources;

23 (5) [(6)] reform of existing laws and regulations is needed to remove
24 unnecessary regulatory burdens on the private sector to foster and encourage the development
25 in Alaska of these necessary resources;

26 (6) [(7)] the legislature is acting in the interest of promoting the active
27 development of such resources, while ensuring that suitable measures are taken to protect
28 human health and safety and the natural environment,

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

31 (B) to provide the proper state agencies with clear authority and

1 discretion to adopt regulatory practices appropriate to shallow natural gas exploration
 2 and development projects, in recognition of the lower risks posed by such projects to
 3 human health and safety and the natural environment [; AND

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

7 * **Sec. 23.** AS 31.05.125 and AS 38.05.177(n) are repealed.

8 * **Sec. 24.** AS 31.05.170(14), 38.05.945(a)(7); and AS 46.04.900(25) are repealed.

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

11 APPLICABILITY. The provisions of AS 38.05.177(c), as amended by sec. 9 of this
 12 Act, 38.05.177(f), as amended by sec. 10 of this Act, 38.05.177(h), as amended by sec. 11 of
 13 this Act, 38.05.177(k), as amended by sec. 12 of this Act, and 38.05.177(p) and (q), added by
 14 sec. 13 of this Act, apply to leases issued under AS 38.05.177 and in effect on the effective
 15 date of secs. 9 - 13 of this Act.

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

18 CERTAIN LEASES ISSUED UNDER FORMER AS 38.05.177 AND
 19 SURRENDERED OR RELINQUISHED MAY NOT BE AGAIN BE LEASED. A lease or
 20 part of a lease that was issued under former AS 38.05.177 before the effective date of this
 21 section and that is surrendered or relinquished under former AS 38.05.177(h)(1) may not
 22 again be leased unless the lease complies with the provisions of AS 38.05.180(ff), as repealed
 23 and reenacted by sec. 14 of this Act.

24 * **Sec. 27.** The uncodified law of the State of Alaska is amended by adding a new section to
 25 read:

26 CONTINGENT EFFECT OF SECTIONS. Sections 3, 5, 7, 14, 17, 19, 21, 24, and 26
 27 of this Act take effect only if a version of House Bill 531, "An Act relating to natural gas
 28 exploration and development and to nonconventional gas, and amending the section under
 29 which shallow natural gas leases may be issued" is passed by the Twenty-Third Alaska State
 30 Legislature and becomes law.

31 * **Sec. 28.** If, under sec. 27 of this Act, secs. 3, 5, 7, 14, 17, 19, 21, 24, and 26 of this Act

1 take effect, they take effect on the later of

2 (1) the day following the effective date of the Act described in sec. 27 of this

3 Act; or

4 (2) the day after the effective date of the sections of this Act not described in

5 this section.

6 * **Sec. 29.** Except as provided in sec. 28 of this Act, this Act takes effect July 1, 2004.