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1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 219

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act providing for permits and fees for the con-
7 struction of shore-based support facilities for off-
8 shore oil and gas exploration, development and produc-
9 tion; and providing for an effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 41 is amended by adding a new chapter to read:

12 CHAPTER 45. SHORE FACILITIES FOR OFFSHORE

13 RESOURCE EXTRACTION.

14 Sec. 41.45.010. LEGISLATIVE FINDINGS AND DECLARATION OF PURPOSE.

15 (a) The legislature finds that activities associated with the explora-
16 tion, development and recovery of natural resources from the territorial
17 waters adjacent to the state and waters of the outer continental shelf
18 require the construction of support facilities in onshore areas of the
19 state contiguous to the projects; that the siting, planning, construc-
20 tion and operation of new or expanded onshore facilities and activities
21 associated with the supply of offshore projects involve demands for
22 public facilities and services which, initially, are beyond the capacity
23 of local governments to provide; that early knowledge of the location
24 and magnitude of anticipated shore-based support facilities will better
25 allow municipalities and the state to plan the provision of public
26 facilities and services before and during the period of construction and
27 operation of the support facilities; that the planning and provision of
28 public facilities and services in advance of construction of shore-based
29 support facilities generates a temporary demand for additional revenues

1 to defray costs associated with extraordinary municipal expenditures;
2 and that there is a need to provide a mechanism by which the state and
3 local governments may receive information about projected onshore support
4 activity as a basis for sound public planning decisions and to obtain
5 financial support in order to partially defray the costs of planning and
6 initiating provision of necessary public facilities and services.

7 (b) It is the purpose of this chapter to provide a mechanism by
8 which to ensure that the location, construction and operation of support
9 facilities for projects in all waters adjacent to the state will pro-
10 duce minimal adverse effects upon the people of the state and affected
11 local governments by providing for the exchange of information between
12 parties involved with offshore activity, and that the increase in demand
13 for public services occurring as a result of shore-based facility
14 development will be met by a contribution of revenue from the holders of
15 offshore leases responsible for the increase in demand.

16 Sec. 41.45.020. SHORE FACILITIES CONSTRUCTION PERMIT. (a) No
17 person engaged in exploration, development or production of oil or gas
18 under terms of a lease from the United States, the state, or any party
19 in the offshore waters adjacent to the state may construct, lease or in
20 any other manner provide for shore facilities associated with explora-
21 tion, development or production after the effective date of this Act
22 without first applying for and securing from the department a shore
23 facilities construction permit and paying the fee provided in sec. 30 of
24 this chapter.

25 (b) An applicant for a permit under this section shall file an
26 application with the department in a form which the department, by regu-
27 lation, has prescribed. The application shall contain the following
28 information:

29 (1) a description of the location and of the facility to be

1 built at the location;

2 (2) an estimate of the value of the facility upon its com-
3 pletion;

4 (3) a summary of any studies or reports which have been made
5 examining the economic impact of the construction and operation of the
6 facility on the municipality and the area within 10 miles of the munici-
7 pality, including, but not limited to, the applicant's estimate of the
8 number of persons to be employed in the construction and operation of
9 the facility during each year of the five-year period commencing with
10 the submission of the application;

11 (4) a statement explaining the need for the facility;

12 (5) a description of any reasonable alternate locations for
13 the proposed facility, a statement of the comparative merits and detri-
14 ments of each location identified, and a statement of why the primary
15 proposed location is best suited for the facility;

16 (6) any additional information which the department, by regu-
17 lation, may require in order to fairly evaluate

18 (A) conformance of the proposed facility to applicable
19 state and local laws and regulations;

20 (B) the effects of the economic activity of the pro-
21 posed facility on the municipality or the area within 10 miles of
22 the municipality;

23 (C) the effects of the proposed facility on the public
24 health, welfare, and safety;

25 (D) the capacity of the state and of any municipality
26 to provide necessary public facilities and services;

27 (7) any additional information which the applicant considers
28 relevant; and

29 (8) a resolution of approval of the governing body of a

1 municipality in which the proposed facility is to be located or of any
2 municipality within 10 miles of the proposed facility.

3 (c) An application filed with the department shall be available
4 for public inspection.

5 (d) An application shall be accompanied by proof of service of a
6 copy of the application on the mayor of each municipality in which the
7 facility is to be located, and any municipality within 10 miles of the
8 proposed facility, both as primarily proposed and alternatively located.

9 Sec. 41.45.030. PERMIT FEE. (a) At the time of filing an appli-
10 cation for a permit under sec. 20 of this chapter, the applicant shall
11 pay a permit fee to the Department of Revenue.

12 (b) The fee payable under (a) of this section is based upon the
13 one of the following two schedules which produces the greater revenue:

14 (1) valuation of the proposed facility upon completion, with
15 payment of two per cent of the estimated value up to \$5,000,000; plus
16 one per cent of the estimated value over \$5,000,000 and up to
17 \$20,000,000; plus one-half of one per cent of the estimated value over
18 \$20,000,000;

19 (2) the estimate of the maximum anticipated population in-
20 crease within a municipality or within 10 miles of a municipality attri-
21 butable to employment in construction or operation of the facility over
22 the five-year period following submission of the application, multiplied
23 by the per capita cost of state and local government in the year in
24 which application is made for the permit.

25 (c) The applicant shall provide the department with the data which
26 was used to calculate the permit fee.

27 Sec. 41.45.040. APPEAL OF FEE. (a) A municipality which is en-
28 titled to receive a portion of a shore facilities construction permit
29 fee paid by an applicant under this chapter may appeal the determination

1 of the amount of the fee. The governing body of the municipality shall,
2 within 30 days of receipt of written notice that an application has been
3 submitted and a fee paid, file an appeal with the department setting out
4 the reasons why it believes the fee paid has not been correctly computed.

5 (b) If a municipality appeals the determination of the fee paid
6 under (a) of this section, the commissioner of the department shall,
7 within 45 days after giving written notice to all parties, conduct a
8 hearing on the matter. If, after the hearing, the commissioner deter-
9 mines that the fee payable by the applicant has been incorrectly com-
10 puted, he shall provide the applicant a written statement describing the
11 error in computation and indicating the amount of the fee due. The
12 applicant shall pay the additional amount of the fee within 30 days of
13 receipt of the decision of the commissioner.

14 (c) The department may not withhold a permit during the period of
15 any appeal initiated under (b) of this section.

16 Sec. 41.45.050. AMENDMENT OF PERMIT. (a) A permit issued by the
17 department under sec. 30 of this chapter may be amended. An application
18 for an amended permit shall be submitted in the manner provided for new
19 applications in sec. 20 of this chapter. If an amendment to an approved
20 permit would result in a substantial change of an original permit, the
21 amendment shall be treated as a new application and a supplemental permit
22 fee shall be paid.

23 (b) If it appears to the commissioner or to officials of a muni-
24 cipality entitled to receive a portion of a shore facilities construction
25 permit fee under this chapter that there will occur substantial change
26 in the use of the facility from the activity described in the original
27 application or an amended application for a permit, the commissioner may
28 call for a public hearing on the question. The commissioner shall,
29 within 45 days after giving written notice to all parties, conduct a

1 hearing on the matter. If, after the hearing, the commissioner deter-
2 mines that there has been substantial change in the use of the facility
3 from the activity described in the original or amended application for
4 a permit, he shall require the applicant to submit an application for an
5 amended permit.

6 (c) An amended permit submitted by an applicant under an order of
7 the commissioner entered under (b) of this section shall be accompanied
8 by payment of the increment in the fee due, together with a penalty
9 payment of 10 per cent of the total amount of permit fees due for the
10 facility.

11 (d) For purposes of this section, a change in the use of a facil-
12 ity for which a permit has been issued is "substantial" if

13 (1) the applicant or the commissioner determines that the
14 value of any changes or improvements in the facility would increase the
15 estimated value of the facility determined under sec. 30(a)(1) of this
16 chapter by more than 10 per cent; or

17 (2) the applicant or the commissioner determines that the
18 actual population increase will exceed the estimate determined under
19 sec. 30(a)(2) of this chapter by more than 10 per cent.

20 Sec. 41.45.060. ISSUANCE OF PERMIT. The department shall issue
21 a permit within 30 days of receipt of a complete application. The
22 department may refuse to issue a permit under this chapter only if it
23 finds that

24 (1) a fee due and payable by the applicant on an original
25 application or an amended application has not been promptly paid; or

26 (2) the application does not contain, or is not supported by
27 written concurrence of the governing body of a municipality required by
28 sec. 20(b)(8) of this chapter.

29 Sec. 41.45.070. REVOCATION OR SUSPENSION OF PERMIT. The depart-

1 ment may revoke or suspend a permit issued under the provisions of this
2 chapter if, after notice and hearing to all parties, the commissioner
3 determines that

4 (1) the facility does not conform, in location, construction
5 or operation, to applicable municipal ordinance or regulation; or

6 (2) an additional fee is due and payable under sec. 40(b) of
7 this chapter or an additional fee and penalty are due and payable under
8 sec. 50(b) of this chapter, and the holder of the permit has failed to
9 pay the additional fee, together with penalty due if any, within the
10 time prescribed by law.

11 Sec. 41.45.080. DISPOSITION OF FEES AND PENALTIES. (a) The com-
12 missioner of the Department of Revenue shall deposit in the general fund
13 the money collected under this chapter.

14 (b) There is established in the general fund the shore facilities
15 assistance account. Ninety-five per cent of the fees and penalties
16 received under this chapter, or as much of the amount as the legislature
17 may annually appropriate, shall be placed in the account for the uses
18 and purposes described in (c) and (d) of this section.

19 (c) The Department of Community and Regional Affairs shall admin-
20 ister the account established in (b) of this section. The department
21 shall pay not less than 50 per cent of the amount of the fees and
22 penalties paid by an applicant for a permit under this chapter for a
23 facility located within a municipality or within 10 miles of a munici-
24 pality from the account to a municipality or combination of municipali-
25 ties. If two or more municipalities are entitled to receive an amount
26 under this subsection, the municipalities may, among themselves, propose
27 to the department the proportional amount to be paid to each, and the
28 department shall make payment based upon the proposed allocation. The
29 department shall transfer amounts withheld from a municipality for

1 transfer to state agencies providing public facilities or services
2 within the municipality. An allocation between one or more munici-
3 palities and the state agencies under this subsection shall be based
4 upon the relative responsibility of the municipality and the state for
5 the provision of public facilities and services affected by onshore
6 support services and activities and the fiscal needs of each.

7 (d) Fees and penalties paid by an applicant for a permit under
8 this chapter for a facility located in a community or within 10 miles of
9 a community of the unorganized borough are available for the benefit of
10 the community. The department may

11 (1) transfer amounts to another state agency for use by the
12 agency to benefit the community; or

13 (2) retain an amount for its use for the benefit of the
14 community.

15 (e) Payments due a municipality under this section shall be trans-
16 mitted by the department

17 (1) within 30 days of receipt of payment of the fee by the
18 Department of Revenue, if payment is due to only one municipality;

19 (2) within 30 days of receipt of the allocation agreed to by
20 the municipalities, if payment is due to more than one municipality.

21 Sec. 41.45.090. MONITORING OF FACILITIES. The department shall
22 review and monitor the operation of all facilities for which a permit
23 has been issued under this chapter for compliance with the provisions of
24 this chapter and the provisions of the permit application.

25 Sec. 41.45.100. ADMINISTRATION. (a) Annually, the department
26 shall compute and report, for use by applicants and permittees under
27 this chapter

28 (1) standard multiplier factors relating the number of per-
29 sons engaged in direct employment in a shore facility to the number of

1 persons indirectly employed and the number of dependents of all persons
2 employed; and

3 (2) the per capita cost of state and local government ser-
4 vice.

5 (b) The department shall, by regulation, require holders of per-
6 mits issued under this chapter to furnish:

7 (1) information indicating the number of persons employed in
8 a facility for which a permit is issued under this chapter;

9 (2) the estimate of the value of facilities for which a per-
10 mit is issued under this chapter.

11 Sec. 41.45.110. LONG-RANGE DEVELOPMENT PLAN. (a) Any person con-
12 templating the construction of a facility subject to issuance of a
13 permit under this chapter in the state in the ensuing three years shall
14 furnish annually to the department for its review a long-range plan for
15 the construction and operation of facilities. The plan shall be sub-
16 mitted not later than September 1 of each year, and shall include the
17 following information:

18 (1) the general location, size and type of all facilities to
19 be owned and operated or leased whose construction is projected to
20 commence during the ensuing three-year period;

21 (2) projections of the demand for public facilities and ser-
22 vices required by the facility and explanation of the basis for those
23 projections, and a description of the manner and extent to which the
24 proposed facilities will meet project demand.

25 (b) A plan furnished under this section shall be made available to
26 the governing body of any municipality or community affected by the
27 activity described or summarized in the plan.

28 Sec. 41.45.120. FAILURE TO SUBMIT LONG-RANGE PLAN. If an appli-
29 cant for a permit under secs. 10 - 100 of this chapter has failed to

1 provide the department with annual copies of a long-range plan as re-
2 quired by sec. 110 of this chapter, the permit fee due and payable by
3 the applicant for permit shall be twice the amount authorized in sec.
4 30(b) of this chapter.

5 Sec. 41.45.130. JUDICIAL REVIEW. An applicant for a permit or a
6 municipality or community aggrieved by a decision of the commissioner
7 under this chapter may appeal the decision in the superior court.

8 Sec. 41.45.140. PENALTIES FOR VIOLATION OF PROVISIONS OF THIS
9 CHAPTER. (a) A person who wilfully violates a provision of secs. 10 -
10 100 of this chapter or any regulation adopted by the department under
11 this chapter is guilty of a misdemeanor and, upon conviction, is pun-
12 ishable by a fine of not more than \$10,000 for each violation. Each day
13 of a continuing violation constitutes a separate offense.

14 (b) At the request of the commissioner, the attorney general shall
15 enforce this chapter and institute legal actions to accomplish its en-
16 forcement.

17 Sec. 41.45.150. DEFINITIONS. In this chapter, unless the context
18 otherwise requires,

19 (1) "commissioner" means the commissioner of the Department
20 of Community and Regional Affairs;

21 (2) "community" means a village located in the unorganized
22 borough in which is located a school operated by an educational service
23 area or the Bureau of Indian Affairs and any other village containing 25
24 or more permanent residents;

25 (3) "department" means the Department of Community and
26 Regional Affairs;

27 (4) "municipality" means a home rule or general law borough
28 or city of any class, a unified municipality established in accordance
29 with the provisions of AS 29.68.240 - 29.68.440, or a municipality

1 established by consolidation or merger;

2 (5) "shore facility" means a facility which is an integral
3 part of, or directly associated with, the exploration for, or extrac-
4 tion, production or transportation of, oil or gas from the waters
5 adjacent to the state, and which is owned by, or committed by contract
6 or other agreement to, persons exploring for or producing or trans-
7 porting oil or gas from adjacent coastal waters; the term includes, but
8 is not limited to,

9 (A) a wharf, dock or other port structure or facility
10 used for the final transshipment of cargo destined for mobile or
11 fixed offshore oil or gas drilling vessels or structures;

12 (B) warehouses, storage yards, tank farms, tanker ter-
13 minals and pipelines associated with the facilities described in
14 (A) of this paragraph for the storage of cargo destined for off-
15 shore drilling operations or for the storage of petroleum products
16 from offshore drilling operations;

17 (C) offices, maintenance facilities, maintenance and
18 construction camps and related facilities primarily required for
19 administration or servicing of offshore drilling operations which
20 are located in physical proximity to the facilities described in
21 (A) and (B) of this paragraph.

22 * Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-
23 070(c).