

HOUSE BILL NO. 474

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Introduced: 2/14/94

Referred: House Special Committee on Oil and Gas, Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act modifying administrative procedures and decisions by state agencies that
2 relate to uses and dispositions of state land, property, and resources, and to the
3 interests within them, and that relate to land, property, and resources, and to
4 the interests within them, that are subject to the coastal management program;
5 and providing for an effective date."

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

7 * Section 1. AS 38.05.035(e) is amended to read:

8 (e) Upon a written finding that the interests of the state will be best served,
9 the director may, with the consent of the commissioner, approve contracts for the sale,
10 lease, or other disposal of available land, resources, property, or interests in them, and,
11 in addition to the conditions and limitations imposed by law, may impose additional
12 conditions or limitations in the contracts as the director determines, with the consent
13 of the commissioner, will best serve the interests of the state. A written finding of

1 the director is subject to the following:

2 (1) with the consent of the commissioner and subject to the
3 director's discretion, for a specific proposed disposal of available land, resources,
4 or property, or of an interest in them, the director

5 (A) shall establish the scope of the administrative review on
6 which the director's determination is based, and the scope of the written
7 finding supporting that determination; the scope of the review and finding
8 may address only reasonably foreseeable, nonspeculative, direct effects of
9 the uses proposed to be authorized by the disposal;

10 (B) may limit the scope of an administrative review and
11 finding for a proposed disposal

12 (i) to the applicable law and the facts pertaining to
13 the land, resources, or property, or interest in them, that the
14 director finds are material to the determination and that are known
15 to the director or knowledge of which is made available to the
16 director during the administrative review; and

17 (ii) to issues that, based on the law and facts as
18 described in (i) of this subparagraph and on the nature of the uses
19 sought to be authorized, the director finds are relevant to the
20 determination of whether the proposed disposal will best serve the
21 interests of the state; and

22 (C) may, if the project for which the proposed disposal is
23 sought is a multiphased development, limit the scope of an administrative
24 review and finding for the proposed disposal to the applicable law, facts,
25 and issues identified in (B)(i) and (ii) of this paragraph that pertain solely
26 to a discrete phase of the project when the only uses to be authorized by
27 the proposed disposal are part of that discrete phase, the department's
28 approval is required before the next phase of the disposal may proceed,
29 and the department conditions its approval to ensure that any additional
30 uses or activities proposed for that or any later phase of the disposal will
31 serve the best interests of the state;

1 **(2)** a [A] written finding for an oil and gas lease sale under
2 AS 38.05.180 is subject to (g) of this section;

3 **(3)** a [. A] contract for the sale, lease, or other disposal of available
4 land or an interest in land is not legally binding on the state until the commissioner
5 approves the contract but if the appraised value is not greater than \$50,000 in the case
6 of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of
7 land or interest in land, the director may execute the contract without the approval of
8 the commissioner;

9 **(4)** before [. BEFORE] a public hearing, if held, or in any case no less
10 than 21 days before the sale, lease, or other disposal of available land, property,
11 resources, or interests in them, the director shall make available to the public a written
12 finding that, in accordance with (1) of this subsection, sets out the material facts and
13 applicable law upon which the determination that the sale, lease, or other disposal will
14 best serve the interests of the state was based; however, a [. A] written finding is not
15 required before the approval of

16 **(A)** [(1)] a contract for a negotiated sale authorized under
17 AS 38.05.115;

18 **(B)** [(2)] a lease of land for a shore fishery site under
19 AS 38.05.082;

20 **(C)** [(3)] a permit or other authorization revocable by the
21 commissioner;

22 **(D)** [(4)] a mineral claim located under AS 38.05.195;

23 **(E)** [(5)] a mineral lease issued under AS 38.05.205;

24 **(F)** [(6)] a production license issued under AS 38.05.207;

25 **(G)** [(7)] an exempt oil and gas sale under AS 38.05.180(d) of
26 acreage offered in a sale that was held within the previous five years if the sale
27 was subject to a written best interest finding, unless the commissioner
28 determines that new information has become available that justifies a revision
29 of the best interest finding; or

30 **(H)** [(8)] a lease sale under AS 38.05.180(w) of acreage offered
31 in a sale that was held within the previous five years if the sale was subject to

1 a best interest finding, unless the commissioner determines that new
2 information has become available that justifies a revision of the best interest
3 finding.

4 • Sec. 2. AS 38.05.035(g) is amended to read:

5 (g) When the director prepares a written finding required under (e) of this
6 section for an oil and gas lease sale scheduled under AS 38.05.180, the director shall
7 consider and discuss in the finding

8 (1) facts that are known to the director at the time of preparation of the
9 finding and that are material to the following matters or to the issues that are within
10 the scope of the administrative review that was established by the director under
11 (e)(1) of this section and that were raised during the period allowed for receipt of
12 public comment;

13 (A) property descriptions and locations;

14 (B) the petroleum potential of the sale area, in general terms;

15 (C) fish and wildlife species and their habitats within [IN] the
16 lease sale area;

17 (D) the current and nonspeculative projected uses in the area,
18 including uses and value of fish and wildlife;

19 (E) the governmental powers to regulate oil and gas exploration,
20 development, production, and transportation;

21 (F) the reasonably foreseeable cumulative effects of oil and gas
22 exploration, development, production, and transportation on the sale area,
23 including effects on subsistence uses, fish and wildlife habitat and populations
24 and their uses, and historic and cultural resources;

25 (G) lease stipulations and mitigation measures, including any
26 measures to prevent and mitigate releases of oil and hazardous substances, to
27 be included in the leases, and a discussion of the protections offered by these
28 measures;

29 (H) the method or methods most likely to be used to transport
30 oil or gas from the lease sale area, and the advantages, disadvantages, and
31 relative risks of each;

1 (I) the reasonably foreseeable, nonspeculative fiscal effects of
2 the lease sale and the subsequent activity on the state and affected
3 municipalities and communities, including the explicit and implicit subsidies
4 associated with the lease sale, if any;

5 (J) the reasonably foreseeable, nonspeculative effects of oil and
6 gas exploration, development, production, and transportation on municipalities
7 and communities within or adjacent to the lease sale area; and

8 (K) the bidding method or methods adopted by the
9 commissioner under AS 38.05.180;

10 (2) a summary of agency and public comments received and the
11 department's responses to those comments; and

12 (3) the basis for the director's determination that, on balance, leasing
13 the area would be in the state's best interest.

14 * Sec. 3. AS 46.40 is amended by adding a new section to read:

15 Sec. 46.40.094. CONSISTENCY DETERMINATIONS. (a) When a
16 consistency determination is required for a project, the party responsible for the
17 consistency determination shall conduct the consistency review of the project and make
18 a consistency determination based only on

19 (1) applicable law;

20 (2) the facts pertaining to the project that are

21 (A) known to the party responsible or made a part of the record
22 during the project's consistency review; and

23 (B) material to the project's consistency determination; and

24 (3) the reasonably foreseeable, nonspeculative, direct effects of the
25 project.

26 (b) If a consistency determination is required for a project that is a discrete
27 phase of a multiphased development project, in addition to the requirements of (a) of
28 this section, the party responsible for the consistency determination may, in its
29 discretion,

30 (1) limit the consistency determination for the proposed project to that
31 discrete phase if each later phase of the project requires the party responsible to review

1 and make a consistency determination before that later phase of the project may
2 proceed; and

3 (2) condition the consistency determination for that phase of the project
4 on a requirement that an additional use or activity proposed for that or any later phase
5 of the project be consistent with the Alaska coastal management program.

6 (c) In this section,

7 (1) "party responsible for the consistency determination" or "party
8 responsible" means

9 (A) the office of management and budget, for a consistency
10 determination required to be made under AS 44.19.145(a)(11); and

11 (B) the commissioner of the resource agency that coordinates
12 a consistency review for a proposed project when required by this chapter for
13 which a permit, lease, or authorization is required to be approved or issued
14 only by that resource agency;

15 (2) "resource agency" has the meaning given in AS 44.19.152.

16 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).