

CS FOR HOUSE BILL NO. 474(O&G)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Offered: 3/2/94

Referred: Resources, Judiciary

Sponsor(s): HOUSE RESOURCES COMMITTEE

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 uses and activities involving land,
4 property, and resources, and to the interests within them, that are subject to the
5 coastal management program when the use or activity is to be authorized or
6 developed in phases; and providing for an effective date."

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

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

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

1 of the commissioner, will best serve the interests of the state. A written finding of
2 the director is subject to the following:

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

project will serve the best interests of the state;

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

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

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

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

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

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

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

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

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

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

(H) [(8)] a lease sale under AS 38.05.180(w) of acreage offered

1 in a sale that was held within the previous five years if the sale was subject to
2 a best interest finding, unless the commissioner determines that new
3 information has become available that justifies a revision of the best interest
4 finding.

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

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

9 (1) facts that are known to the director at the time of preparation of the
10 finding and that are

11 (A) material to [THE FOLLOWING MATTERS OR TO] issues
12 that were raised during the period allowed for receipt of public comment,
13 whether or not material to a matter set out in (B) of this paragraph, and
14 within the scope of the administrative review established by the director
15 under (e)(1) of this section: or

16 (B) material to the following matters:

17 (i) [; (A)] property descriptions and locations;

18 (ii) [(B)] the petroleum potential of the sale area, in
19 general terms;

20 (iii) [(C)] fish and wildlife species and their habitats
21 within [IN] the lease sale area;

22 (iv) [(D)] the current and projected uses in the area,
23 including uses and value of fish and wildlife;

24 (v) [(E)] the governmental powers to regulate oil and
25 gas exploration, development, production, and transportation;

26 (vi) [(F)] the reasonably foreseeable cumulative effects
27 of oil and gas exploration, development, production, and transportation
28 on the sale area, including effects on subsistence uses, fish and wildlife
29 habitat and populations and their uses, and historic and cultural
30 resources;

31 (vii) [(G)] lease stipulations and mitigation measures,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

including any measures to prevent and mitigate releases of oil and hazardous substances, to be included in the leases, and a discussion of the protections offered by these measures;

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

(ix) [(I)] the reasonably foreseeable fiscal effects of the lease sale and the subsequent activity on the state and affected municipalities and communities, including the explicit and implicit subsidies associated with the lease sale, if any;

(x) [(J)] the reasonably foreseeable effects of oil and gas exploration, development, production, and transportation on municipalities and communities within or adjacent to the lease sale area; and

(xi) [(K)] the bidding method or methods adopted by the commissioner under AS 38.05.180;

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

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

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

Sec. 46.40.094. CONSISTENCY DETERMINATIONS FOR USES AND ACTIVITIES. (a) When a use or activity is authorized or developed in discrete phases, and each phase will require decisions relating to a permit, lease, or authorization for that particular phase, the agency responsible for the consistency determination for the particular phase

(1) may, in its discretion, limit the consistency review to that particular phase if, but only if,

(A) the agency or another state agency must carry out a subsequent consistency review and make a consistency determination before a later phase may proceed; and

1 (B) the agency responsible conditions its consistency
2 determination for that phase on a requirement that a use or activity authorized
3 in a subsequent phase be consistent with the Alaska coastal management
4 program; and

5 (2) shall, when the consistency review is limited under (1) of this
6 subsection, conduct the consistency review for the particular phase and make the
7 consistency determination based on

8 (A) applicable statutes and regulations;

9 (B) the facts pertaining to a use or activity proposed for that
10 phase that are

11 (i) known to the state agency responsible or made a part
12 of the record during the consistency review; and

13 (ii) material to the consistency determination; and

14 (C) the reasonably foreseeable, significant, direct effects of the
15 use or activity proposed for that phase.

16 (b) In this section,

17 (1) "agency responsible for the consistency determination" means

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

20 (B) the commissioner of the resource agency that coordinates
21 a consistency review for a proposed use or activity, or for a proposed phase of
22 a use or activity, when required by this chapter for which a permit, lease, or
23 authorization is required to be approved or issued only by that resource agency;

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

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