

CS FOR SENATE BILL NO. 150(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 4/29/93

Offered: 4/28/93

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the exploration and production of oil and gas and related
2 hydrocarbons, to oil and gas exploration licenses and to oil and gas leases in
3 certain areas of the state, and to the proof of financial responsibility required
4 for the operation of facilities for the production of crude oil and associated
5 hydrocarbons and facilities for exploration for oil and gas and related
6 hydrocarbons; and extending the period in which a sale on the five-year oil and
7 gas lease sale schedule may be delayed; and providing for an effective date."

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

9 * Section 1. AS 38 is amended by adding new sections to read:

10 **ARTICLE 5A. OIL AND GAS EXPLORATION LICENSES; LEASES.**

11 **Sec. 38.05.131. APPLICABILITY; DETERMINATION; REGULATIONS. (a)**

12 **Unless specifically provided otherwise in AS 38.05.132 - 38.05.134, the provisions of**

13 **AS 38.05.005 - 38.05.040, 38.05.180, 38.05.182 - 38.05.184, and 38.05.920 -**

1 38.05.990 apply to the issuance of oil and gas exploration licenses and leases under
2 AS 38.05.132 - 38.05.134.

3 (b) The provisions of AS 38.05.131 - 38.05.134 do not apply to land

4 (1) north of the Umiat baseline; and

5 (2) in the vicinity of Cook Inlet that is within the area bounded by

6 (A) the north boundary of Township 17 North, Seward
7 Meridian;

8 (B) the Seward Meridian;

9 (C) the south boundary of Township 7 South, Seward Meridian;

10 and

11 (D) the west boundary of Range 19 West, Seward Meridian.

12 (c) The commissioner shall make preliminary written determinations of the
13 state land that may be subject to the provisions of AS 38.05.132. The determinations
14 shall be given public notice using the methods described in AS 38.05.945(b). After
15 completion of the comment period and evaluation of the comments received, the
16 commissioner shall issue a written determination of the state land that is subject to the
17 provisions of AS 38.05.132.

18 (d) The commissioner may adopt regulations necessary to implement
19 AS 38.05.131 - 38.05.134.

20 Sec. 38.05.132. OIL AND GAS EXPLORATION LICENSE. (a) To
21 encourage exploration for oil and gas on state land, the commissioner may issue oil
22 and gas exploration licenses

23 (1) for unleased state land for which insufficient or undocumented
24 geological and geophysical information exists concerning the oil and gas potential of
25 that land; or

26 (2) for state land that was subject to a competitive lease sale under
27 AS 38.05.180 but for which an oil and gas lease has not been issued.

28 (b) An oil and gas exploration license issued under this section gives the
29 licensee

30 (1) the exclusive right to explore, for a term not to exceed 10 years, for
31 deposits of oil and gas on unleased state land described in the exploration license

1 unless the land is earlier relinquished, removed, or deleted under (d) of this section;
2 and

3 (2) the option to convert the exploration license for all or part of the
4 state land, except the land that is deleted or removed from the land described in the
5 exploration license under (d) of this section, into an oil and gas lease upon fulfillment
6 of the work commitments contained in the exploration license.

7 (c) An exploration license awarded under this section

8 (1) is not subject to the acreage limitations imposed by AS 38.05.140(c)
9 or 38.05.180(m);

10 (2) may cover an area of not more than 500,000 acres, that must be
11 reasonably compact and contiguous;

12 (3) must be conditioned upon an obligation to perform a specified work
13 commitment, in total and for each year of the term of the license, expressed in dollars
14 of direct exploration expenditures; for purposes of this paragraph,

15 (A) "direct exploration expenditure" means cash expenses
16 undertaken in performance of a specified work commitment under the
17 provisions of AS 38.05.131 - 38.05.134 and necessarily incurred by the licensee
18 in the permitting, mobilization, conducting, demobilization, and evaluation of
19 geophysical and geological surveys, including seismic, magnetic, and gravity
20 surveys or the drilling, logging, coring, testing, and evaluation of oil and gas
21 wells; the term

22 (i) includes direct labor costs, including the cost of
23 benefits, for employees directly associated with the work commitment
24 programs, the cost of renting or leasing equipment from parties not
25 affiliated with the licensee, the reasonable costs of maintaining and
26 operating equipment, payments to consultants and independent
27 contractors not affiliated with the licensee, and costs of materials and
28 supplies;

29 (ii) does not include noncash expenses such as
30 depreciation and reserves, interest or other costs of borrowed funds,
31 return on investment, overhead, insurance or bond premiums, or any

1 other expense that is unreasonable or that the licensee has not incurred
2 to satisfy the licensee's work commitment;

3 (B) "work commitment" includes the drilling of one or more
4 exploration wells or the gathering of geophysical data, or both;

5 (4) must be conditioned upon an obligation to perform an annual work
6 commitment;

7 (5) is subject to an annual review and revocation if the commissioner
8 determines that the licensee has failed to

9 (A) perform the previous year's annual work commitment; or

10 (B) provide or maintain in effect the bond or other security
11 required by (6) of this subsection;

12 (6) must be conditioned upon the posting of a bond or other security
13 acceptable to the commissioner in favor of the state and subject to the following
14 requirements:

15 (A) the bond or other security must be renewed annually;

16 (B) the bond or other security must be in the amount of 10
17 percent of the licensee's annual work commitment;

18 (7) must be conditioned upon payment to the commissioner of a
19 nonrefundable oil and gas exploration license fee of not more than \$1 for each acre of
20 land that is subject to the exploration license; and

21 (8) must be conditioned upon an agreement that exploration
22 expenditures are subject to audit by the commissioner.

23 (d) The area within an exploration license awarded under this section may be
24 relinquished, removed, or deleted from the license. Relinquishment, removal, or
25 deletion of an area from the state land described in the exploration license terminates
26 the licensee's rights under AS 38.05.131 - 38.05.134 in the area that is relinquished,
27 removed, or deleted. A relinquishment, removal, or deletion of a portion of the area
28 described in the exploration license must be in areas that are reasonably compact and
29 contiguous. The areas relinquished from the state land described in the exploration
30 license shall be areas identified by the licensee but, if the licensee fails to identify
31 sufficient area, the commissioner may identify any additional acreage required to be

1 removed or deleted from the area under license to meet the requirements of this
2 subsection. Within the area described in the exploration license issued under (a) - (c)
3 of this section,

4 (1) 25 percent must be relinquished, removed, or deleted not later than
5 the fourth anniversary of the effective date of the issuance of the exploration license;

6 (2) an additional 10 percent must be removed or deleted on each of the
7 succeeding anniversaries of the effective date of the issuance of the exploration license.

8 (e) If, immediately before the beginning of the period for annual renewal of
9 the bond or other security under (c)(5)(A) of this section, the licensee fails to provide
10 or maintain in effect the bond or other security required by (c) of this section for the
11 period covered by the annual renewal and the commissioner revokes the exploration
12 license, the bond or other security then in effect for the licensee's obligations under
13 the exploration license is forfeited to the state.

14 Sec. 38.05.133. LICENSE PROCEDURES. (a) The procedures in this section
15 apply to the issuance of an oil and gas exploration license under AS 38.05.132.

16 (b) The licensing process is initiated by the commissioner preparing, or a
17 prospective licensee submitting to the commissioner, a proposal that identifies a
18 specific area to be subject to the exploration license, proposes specific minimum work
19 commitments, and states the minimum qualifications for a licensee as established by
20 regulations adopted by the commissioner. A prospective licensee may initiate a
21 proposal only in response to a call for proposals by the commissioner or during a
22 period specified in regulations adopted by the commissioner. The regulations must
23 provide for at least one period for that purpose during each calendar year.

24 (c) If the commissioner initiates the licensing process under (b) of this section,
25 the commissioner shall publish notice of the commissioner's proposal in order to solicit
26 comments and competing proposals.

27 (d) Within 30 days after receipt of a proposal from a prospective licensee
28 under (b) of this section, the commissioner shall either reject it in a written decision
29 or give public notice of the intent to evaluate the acceptability of the proposal. The
30 commissioner shall solicit comments on a proposal for which public notice is given
31 under this subsection, and shall request competing proposals.

1 (e) The commissioner may make a written request to a prospective licensee for
2 additional information on the prospective licensee's proposal. The commissioner shall
3 keep confidential information described in AS 38.05.035(a)(9) that is voluntarily
4 provided.

5 (f) After considering proposals not rejected under (d) of this section and public
6 comment on those proposals, the commissioner shall issue a written finding addressing
7 all matters set out in AS 38.05.035(e) and (g), except for AS 38.05.035(g)(1)(K). If
8 the finding concludes that the state's best interests would be served by issuing an oil
9 and gas exploration license, the finding must (1) describe the limitations, stipulations,
10 conditions, or changes from the initiating proposal or competing proposals that are
11 required to make the issuance of the exploration license conform to the best interests
12 of the state, and (2) if only one proposal was submitted, identify the prospective
13 licensee whom the commissioner finds should be issued the exploration license. The
14 commissioner shall attach to the finding a copy of the exploration license to be issued
15 and the form of lease that will be used for any portion of the exploration license area
16 subsequently converted to an oil and gas lease under AS 38.05.134. The commissioner
17 shall promptly provide a copy of the finding and required attachments to all
18 prospective licensees whose proposals were considered before the commissioner's
19 issuance of the finding.

20 (g) If only one prospective licensee submits a proposal and the finding under
21 (f) of this section concludes that an exploration license should be issued to that
22 prospective licensee, the prospective licensee has 30 days after issuance of the finding
23 within which to accept or reject the issuance of the exploration license, as limited or
24 conditioned by the terms contained in the finding. The exploration license to be issued
25 and the form of lease that will be used must be attached to that finding. The
26 prospective licensee must accept or reject the issuance of the exploration license in
27 writing.

28 (h) If competing proposals are submitted, and the commissioner's finding
29 under (f) of this section concludes that an oil and gas exploration license should be
30 issued, the commissioner shall issue a request for competitive sealed bids, under
31 procedures adopted by the commissioner by regulation, to determine which prospective

1 licensee should be issued the exploration license. The finding provided to the
2 prospective licensees under (f) of this section must contain notice that (1) the
3 commissioner intends to request competitive sealed bids, (2) a prospective licensee
4 who intends to participate in the bidding must notify the commissioner in writing by
5 the date specified in the notice, and (3) a prospective licensee's notice of intent to
6 participate in the bidding constitutes acceptance of issuance of the exploration license,
7 as limited or conditioned by the terms contained in the finding and by the exploration
8 license to be issued and the form of lease to be used that have been attached to that
9 finding, if the prospective licensee is the successful bidder. The successful bidder is
10 the prospective licensee who submits the highest bid in terms of the minimum work
11 commitment dollar amount.

12 Sec. 38.05.134. CONVERSION TO LEASE. If the licensee requests and the
13 commissioner determines that the work commitment obligation set out in an oil and
14 gas exploration license issued under AS 38.05.132 has been met, the commissioner
15 shall convert to one or more oil and gas leases all or part, as the licensee may indicate,
16 of the area described in the exploration license that remains after the relinquishments,
17 removals, or deletions required by AS 38.05.132(d). A lease issued under this section

18 (1) is subject to the acreage limitations imposed by AS 38.05.140(c);

19 (2) is subject to AS 38.05.180(j) - (m), (o) - (u), and (x) - (z);

20 (3) must be conditioned upon a royalty in amount or value of not less
21 than 12.5 percent of production;

22 (4) must include an annual rent of \$3 per acre or fraction of an acre
23 initially paid to the state at inception of the lease and payable annually after that until
24 the income to the state from royalty under that lease exceeds the rental income to the
25 state under that lease for that year; and

26 (5) is subject to other conditions and obligations that are specified in
27 the lease.

28 * Sec. 2. AS 38.05.135(a) is amended to read:

29 (a) Except as otherwise provided, valuable mineral deposits in land belonging
30 to the state shall be open to exploration, development, and the extraction of minerals.

31 All land, together with tide, submerged, or shoreland, to which the state holds title to

1 or to which the state may become entitled, may be obtained by permit or lease for the
2 purpose of exploration, development, and the extraction of minerals. Except as
3 specifically limited by AS 38.05.131 - 38.05.181 [AS 38.05.135 - 38.05.181], land may
4 be withheld from lease application on a first-come, first-served basis, and offered only
5 on a competitive bid basis when determined by the commissioner to be in the best
6 interests of the state. In unproven areas the commissioner may offer additional
7 incentives, including a reduction of royalty to a minimum of five percent in the case
8 of oil and gas, and other terms in and granting permit or lease for exploration and
9 development whenever it appears to be in the best interests of the state to do so.

10 * Sec. 3. AS 38.05.180(c) is amended to read:

11 (c) Except as provided in (d) and (w) of this section, an oil and gas lease sale
12 may not be held unless it was included in the proposed leasing programs submitted to
13 the legislature during the two calendar years preceding the year in which the sale is
14 held. [A LEASE SALE SHALL BE HELD DURING THE CALENDAR QUARTER
15 FOR WHICH IT IS SCHEDULED IN THE PROPOSED OIL AND GAS LEASING
16 PROGRAM BUT MAY BE DELAYED BY THE COMMISSIONER FOR NOT
17 MORE THAN 90 DAYS AFTER THE LAST DAY OF THE CALENDAR
18 QUARTER FOR WHICH IT WAS SCHEDULED IF THE COMMISSIONER
19 DETERMINES THAT A DELAY IS IN THE BEST INTEREST OF THE STATE.
20 A LEASE SALE WHICH IS NOT HELD DURING THE CALENDAR QUARTER
21 FOR WHICH IT WAS SCHEDULED IN THE OIL AND GAS LEASING
22 PROGRAM, OR IN THE FOLLOWING 90-DAY PERIOD AUTHORIZED BY THIS
23 SUBSECTION, MAY BE HELD ONLY IF RESCHEDULED AS PROVIDED IN (b)
24 OF THIS SECTION.] A lease sale may not be held before the date it is scheduled in
25 the proposed oil and gas leasing program.

26 * Sec. 4. AS 38.05.180(d) is amended to read:

27 (d) The commissioner may issue oil and gas leases in an area that has not been
28 included in a leasing program submitted, in accordance with (b) of this section, to the
29 legislature if the land to be leased

30 (1) [THE LAND TO BE LEASED] was previously subject to a valid
31 state or federal oil and gas lease; [OR]

1 (2) [THE LAND TO BE LEASED] is contiguous to land already under
2 state, federal or private lease and the commissioner makes a written finding, after
3 hearing, that leasing of the land would result in a substantial probability of early
4 evaluation and development of the land to be leased; [OR]

5 (3) [THE LAND TO BE LEASED] is adjacent to land owned or
6 controlled by another party on which a discovery of commercial quantities of oil or
7 gas has been made, and the commissioner finds, after hearing, that there is a
8 reasonable probability that the land to be leased contains oil or gas in communication
9 with the oil or gas discovered on the land of the other party; [OR]

10 (4) [THE LAND TO BE LEASED] is adjacent to land included in the
11 federal five-year Outer Continental Shelf leasing program under 43 U.S.C. 1344, and
12 the commissioner makes a written finding, after hearing, that coordinated or
13 simultaneous leasing with the federal government is in the public interest; or

14 (5) is the subject of an oil and gas exploration license issued under
15 AS 38.05.131 - 38.05.134.

16 * Sec. 5. AS 38.05.180(f) is amended to read:

17 (f) Except as provided by AS 38.05.131 - 38.05.134, the [THE]
18 commissioner may issue oil and gas leases on state land to the highest responsible
19 qualified bidder determined by competitive bidding under regulations adopted by the
20 commissioner. Bidding may be by sealed bid or according to any other bidding
21 procedure the commissioner determines is in the best interests of the state. Whenever,
22 under any of the leasing methods listed in this subsection, a royalty share is reserved
23 to the state, it shall be delivered in pipeline quality and free of all lease or unit
24 expenses, including but not limited to separation, cleaning, dehydration, gathering, salt
25 water disposal, and preparation for transportation off the lease or unit area. Following
26 a pre-sale analysis, the commissioner may choose at least one of the following leasing
27 methods:

28 (1) a cash bonus bid with a fixed royalty share reserved to the state of
29 not less than 12.5 [12 1/2] percent in amount or value of the production removed or
30 sold from the lease;

31 (2) a cash bonus bid with a fixed royalty share reserved to the state of

1 not less than 12.5 [12 1/2] percent in amount or value of the production removed or
2 sold from the lease and a fixed share of the net profit derived from the lease of not
3 less than 30 percent reserved to the state;

4 (3) a fixed cash bonus with a royalty share reserved to the state as the
5 bid variable but no less than 12.5 [12 1/2] percent in amount or value of the
6 production removed or sold from the lease;

7 (4) a fixed cash bonus with the share of the net profit derived from the
8 lease reserved to the state as the bid variable;

9 (5) a fixed cash bonus with a fixed royalty share reserved to the state
10 of not less than 12.5 [12 1/2] percent in amount or value of the production removed
11 or sold from the lease with the share of the net profit derived from the lease reserved
12 to the state as the bid variable;

13 (6) a cash bonus bid with a fixed royalty share reserved to the state
14 based on a sliding scale according to the volume of production or other factor but in
15 no event less than 12.5 [12 1/2] percent in amount or value of the production removed
16 or sold from the lease;

17 (7) a fixed cash bonus with a royalty share reserved to the state based
18 on a sliding scale according to the volume of production or other factor as the bid
19 variable but not less than 12.5 [12 1/2] percent in amount or value of the production
20 removed or sold from the lease.

21 * Sec. 6. AS 38.05.945(a) is amended to read:

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

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

26 (2) zoning of land under applicable law;

27 (3) a decision under AS 38.05.035(e) or 38.05.132 - 38.05.134
28 regarding the sale, lease, or disposal of an interest in state land or resources;

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

31 (5) a public hearing under AS 38.05.856(b);

1 (6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c)
2 concerning sites for aquatic farms and related hatcheries.

3 * Sec. 7. AS 46.04.040(b) is amended to read:

4 (b) A person may not cause or permit the operation of a pipeline or an
5 exploration or production facility in the state unless the person has furnished to the
6 department, and the department has approved, proof of financial ability to respond in
7 damages. Proof of financial responsibility required

8 (1) for a pipeline or an offshore exploration or production facility is
9 \$50,000,000 per incident; for purposes of this paragraph, an "offshore exploration
10 or production facility" means an exploration or production facility that is located

11 (A) between the line of mean high water and seaward

12 (i) to a distance of three geographical miles; or

13 (ii) to a distance of more than three geographical
14 miles if the greater distance is validly claimed by or within the
15 enforcement jurisdiction of the state; or

16 (B) in or on nontidal waters of the state that are navigable
17 under the laws of the United States up to ordinary high water mark, as
18 modified by accretion, erosion, or reliction;

19 (2) [. PROOF OF FINANCIAL RESPONSIBILITY REQUIRED] for
20 a [AN ONSHORE] production facility other than an offshore production facility
21 described in (1) of this subsection is

22 (A) \$1,000,000 per incident for a person who produces an
23 average of not more than 75,000 barrels of crude oil per month from the
24 oil field;

25 (B) \$5,000,000 per incident for a person who produces an
26 average of more than 75,000 barrels of crude oil but not more than
27 150,000 barrels of crude oil per month from the oil field;

28 (C) \$10,000,000 per incident for a person who produces an
29 average of more than 150,000 barrels of crude oil but not more than
30 300,000 barrels of crude oil per month from an oil field; and

31 (D) \$20,000,000 per incident for a person who produces an

1 average of more than 300,000 barrels of crude oil per month from an oil
2 field: and

3 (3) [. PROOF OF FINANCIAL RESPONSIBILITY REQUIRED] for
4 an [ONSHORE] exploration facility other than an offshore exploration facility
5 described in (1) of this subsection is \$5,000,000 per incident.

6 * Sec. 8. AS 46.04.040 is amended by adding a new subsection to read:

7 (n) For purposes of determining proof of financial responsibility under (b)(2)
8 of this section,

9 (1) the person submitting proof of financial ability to respond in
10 damages shall report the monthly production for each field during the previous 12
11 months;

12 (2) the department shall base its consideration and decision of the
13 submission on

14 (A) the production facility's average monthly production during
15 the 12 months preceding the date of the submission; or

16 (B) the anticipated monthly production as determined by the
17 production facility's maximum engineered design capacity, if the submission
18 relates to a production facility for which the information required by (A) of this
19 paragraph is not available.

20 * Sec. 9. ADDITIONAL EXCLUDED AREA. In addition to the area designated in
21 AS 38.05.131(b), added by sec. 1 of this Act, the provisions of AS 38.05.131 - 38.05.134,
22 added by sec. 1 of this Act, do not apply to land within proposed Competitive Oil and Gas
23 Lease Sales 57, 77, 80, 87, and 88, as the area to be offered in each of those proposed
24 competitive oil and gas lease sales was delineated in the Five-Year Oil and Gas Leasing
25 Program prepared by the Department of Natural Resources and dated January 1993. However,
26 the exclusion of the land in any one of those lease sales that is required by this section ceases
27 on the date the land described in the lease sale is first offered for competitive oil and gas
28 leasing under AS 38.05.180, and that land is thereafter subject to the provisions of
29 AS 38.05.131 - 38.05.134, added by sec. 1 of this Act.

30 * Sec. 10. REGULATIONS. The commissioner of natural resources may proceed to adopt
31 regulations necessary to implement AS 38.05.131 - 38.05.134, added by sec. 1 of this Act.

- 1 The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
- 2 effective date of secs. 1 - 9 of this Act.
- 3 * Sec. 11. Section 10 of this Act takes effect immediately under AS 01.10.070(c).