

HPB

143

Original sponsor: House Special Committee on Oil and Gas

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 143 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to oil and gas activities along a
7 highway right-of-way; and providing for an effective
8 date."

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

10 * Section 1. AS 19.40.200 is amended by adding new subsections to read:

11 (b) The prohibition on disposal of state land under (a) of this
12 section does not apply to a

13 (1) disposal necessary for an oil and gas lease under
14 AS 38.05.180;

15 (2) a state lease or materials sale necessary for explora-
16 tion, development, production, or transportation of oil and gas or
17 reconstruction or maintenance of the highway.

18 (c) Before the sale of materials under (b)(2) of this section to
19 a private entity or person or to a state agency the state shall give
20 due consideration to the availability of materials from private
21 sources in the area where the materials are needed.

22 * Sec. 2. AS 19.40.210 is amended to read:

23 Sec. 19.40.210. PROHIBITION OF OFF-ROAD VEHICLES. Off-road
24 vehicles are prohibited on land within five miles of the right-of-way
25 of the highway. However, this prohibition does not apply to off-road
26 vehicles necessary for oil and gas exploration, development, produc-
27 tion, or transportation or to a person who holds a mining claim in the
28 vicinity of the highway and who must use land within five miles of the
29 right-of-way of the highway to explore, develop, or produce oil or gas.

1 * Sec. 3. This Act is retroactive to October 5, 1980.

2 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
3 10.070(c).
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BACKGROUND ON SB 115
DEPARTMENT OF NATURAL RESOURCES
February 8, 1985
Senate Resources Committee

DISPOSALS UNDER AS 38 NECESSARY FOR OIL AND GAS DEVELOPMENT:

- Oil and gas leases under AS 38.05.180 convey exploratory drilling rights and production rights for any oil and gas discovered.
- Material (sand and gravel) sales are made to private entities under AS 38.05.110-120 for roads, drill pads, offshore artificial drilling islands, causeways, and other facilities. "Sales" are also made to the Department of Transportation and Public Facilities for highway reconstruction and maintenance under AS 38.05.810 (public and charitable use).
- Oil and gas pipeline right-of-way leases under AS 38.35 are the required authorization to construct an oil or gas pipeline on or across state land.
- Leases under AS 38.05.070 are held by private service companies and contractors in the Prudhoe Bay Industrial Tract Subdivision. These companies and contractors sell, rent, and repair equipment and provide services to oil and gas lessees. Alyeska Pipeline Service Co. also holds leases (for example, construction camp site).

ACTIVITIES IMMEDIATELY AFFECTED BY THE PROPOSED LEGISLATION

- Oil and Gas Lease Sale 47 (Kuparuk Uplands) is tentatively scheduled for May 21, 1985, and contains approximately 611,840 acres. Of that total, about 230,000 acres (52 of the 113 tracts) are within five miles of the highway and would have to be deleted from the sale without the proposed clarification of existing statute. Final notice of Sale 47 is scheduled to be given March 22, 1985.
- Seismic exploration using off-road vehicles is currently prohibited within the 10-mile corridor.
- Several existing material sales to the Department of Transportation and Public Facilities, and current pending applications for continued materials requirements of Alyeska will be in jeopardy.

BILL SHEFFIELD, GOVERNOR

REPLY TO:

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 12, 1985

The Honorable Arliss Sturgulewski, Chairman
Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: CSSB 115 (Res)

Dear Senator Sturgulewski:

Kay Brown, director of the division of oil and gas, has asked us to respond to your inquiry whether there would be any negative legal implications from the retroactive application of the proposed amendments to AS 19.40.200 - 19.40.210 contained in the referenced bill. 1/ We believe that there would not.

Although retrospective laws are generally not favored, curative legislation is encouraged. Here, the legislation is in part being proposed to validate certain existing AS 38.05 disposals and off-road vehicle activities which might otherwise be void for failure to conform with the existing proscriptions of

1/ You will recall that the inquiry was made at your meeting of February 8, at which time Ms. Brown proposed that the provisions of CSSB 115 (Res) be made retroactive. We had earlier advised Ms. Brown that any question regarding the validity of existing uses of state land along the Dalton Highway could be resolved in the context of an attorney general's opinion. However, on February 4, it was brought to our attention that at least one existing oil and gas lease would be void unless made valid by retroactive application of the proposed amendments contained in the bill.

AS 19.40.200 - 19.40.210. These disposals and activities were authorized by state officials under the mistaken belief that the provisions of AS 19.40.200 - 19.40.210 were limited in scope to certain circumstances of primary concern to the legislature when the original Act was passed, namely, the prohibition of cabin site and other land surface disposals under AS 38.05 and of hunting with ORVs along the Haul Road corridor. The plain language of the statute, however, exceeds this narrow application, even though a broad interpretation reportedly was not the legislature's original intent.

Nevertheless, even curative legislation must comply with certain legal requirements. Among these is the requirement of AS 01.10.090 for an express statement of retroactivity. The legislative drafting manual suggests that language providing for retroactive application of a bill be set out in a separate section immediately preceding the effective date section, and that the retroactive section and the sections of the bill that are to be retroactive have immediate effective dates. Thus, CSSB 115 (Res) should contain an additional section to read:

* Sec. 3. Sections 1 - 2 of this Act are retroactive to October 5, 1980. 2/

From a constitutional standpoint, a curative Act may not impair the obligation of contracts, take property without due process of law, or interfere with purely judicial matters. We are not aware of any potential problems arising in these three areas of concern if the presently proposed amendments to AS 19.40.200 - 19.40.210 are made retroactive to the effective date of the original Act. To the contrary, retroactive application will avoid the possibility of finding invalid existing uses of state land previously authorized by state officials.

In sum, we are of the opinion that CSSB 115 (Res), which grants new rights rather than takes away existing rights,

2/ The present Section 3, providing for an immediate effective date, would be renumbered Section 4.

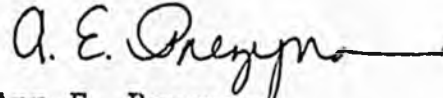
The Honorable Arliss Sturgulewski, Chairman
Senate Resources Committee

February 12, 1985
Page 3

will present no negative legal implications if its provisions are applied retroactively. To the contrary, because of the uncertain validity of some existing uses of state land, we strongly encourage inclusion in the bill of a retrospective clause such as the one we have suggested.

Very truly yours,

NORMAN GORSUCH
ATTORNEY GENERAL



By: Ann E. Prezyna
Assistant Attorney General

AEP/ma

cc: Kay Brown, Director
Division of Oil and Gas
Department of Natural Resources

Arthur H. Peterson
Assistant Attorney General
Department of Law - Juneau

Offered: 2/11/85
Referred: Transportation

Original sponsor: Resources Committee

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 115 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to land use and disposal near a
7 highway right-of-way; and providing for an effective
8 date."

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

10 * Section 1. AS 19.40.200 is amended by adding new subsections to read:

11 (b) The prohibition on disposal of state land under (a) of this
12 section does not apply to a

13 (1) disposal necessary for an oil and gas lease under
14 AS 38.05.180;

15 (2) a state lease or materials sale necessary for explora-
16 tion, development, production, or transportation of oil and gas or
17 reconstruction or maintenance of the highway.

18 (c) Before the sale of materials under (b)(2) of this section to
19 a private entity or person or to a state agency the state shall give
20 due consideration to the availability of materials from private
21 sources in the area where the materials are needed.

22 * Sec. 2. AS 19.40.210 is amended to read:

23 Sec. 19.40.210. PROHIBITION OF OFF-ROAD VEHICLES. Off-road
24 vehicles are prohibited on land within five miles of the right-of-way
25 of the highway. However, this prohibition does not apply to off-road
26 vehicles necessary for oil and gas exploration, development, produc-
27 tion, or transportation or to a person who holds a mining claim in the
28 vicinity of the highway and who must use land within five miles of the
29 right-of-way of the highway to gain access to the [HIS] mining claim.

- 1 * Sec. 3. This Act is retroactive to October 5, 1980.
- 2 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
- 3 10.070(c).

Introduced: 1/31/85
Referred: Resources and
Transportation

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2

SENATE BILL NO. 115

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to oil and gas exploration along

7

highway rights-of-way."

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

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* Section 1. AS 19.40.200 is amended to read:

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Sec. 19.40.200. PROHIBITION ON DISPOSAL OF LAND WITHIN FIVE

11

MILES OF THE HIGHWAY. The state may not dispose of state land under

12

AS 38 which is within five miles of the right-of-way of the highway.

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This section does not apply to an oil and gas lease under

14

AS 38.05.180; other state land disposals necessary for oil and gas

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exploration, development, production, or transportation; or other

16

state land disposals necessary for highway maintenance and

17

construction.

18

* Sec. 2. AS 19.40.210 is amended to read:

19

Sec. 19.40.210. PROHIBITION OF OFF-ROAD VEHICLES. Off-road

20

vehicles are prohibited on land within five miles of the right-of-way

21

of the highway. However, this prohibition does not apply to off-road

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vehicles supporting oil and gas exploration, development, production

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or transportation, or to a person who holds a mining claim in the

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vicinity of the highway and who must use land within five miles of the

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right-of-way of the highway to gain access to the [HIS] mining claim.

by Sund

DEPARTMENT OF NATURAL RESOURCES
PROPOSED AMENDMENT TO HB 143

1. Delete Section 1 and insert: *except for purposes of reconstruction or maintenance of the highway*

*Section 1. AS 19.40.200 is amended to read:

Section 19.40.200. PROHIBITION ON DISPOSAL WITHIN FIVE MILES OF THE HIGHWAY. The state may not dispose of state land under AS 38 which is within five miles of the right-of-way of the highway. This section does not apply to an oil and gas lease under AS 38.05.180, or to a disposal necessary for exploration, development, production, or transportation of oil and gas ~~or for reconstruction and maintenance of existing highways~~ *north of 68° North latitude.*

2. Add a new section to read:

*Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

3. Change title to read: "An Act relating to oil and gas activities along highway rights-of-way; and providing for an effective date."

Original sponsor: House Special Committee
on Oil and Gas

1 IN THE HOUSE

BY THE HOUSE SPECIAL
COMMITTEE ON OIL AND GAS

2 CS FOR HOUSE BILL NO. 143 (Oil and Gas)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to oil and gas activities along
7 highway rights-of-way."

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

9 * Section 1. AS 19.40.200 is amended to read:

10 Sec. 19.40.200. PROHIBITION ON DISPOSAL OF LAND WITHIN FIVE
11 MILES OF THE HIGHWAY. The state may not dispose of state land under
12 AS 38 which is within five miles of the right-of-way of the highway.
13 This section does not apply to an oil and gas lease under
14 AS 38.05.180.

15 * Sec. 2. AS 19.40.210 is amended to read:

16 Sec. 19.40.210. PROHIBITION OF OFF-ROAD VEHICLES. Off-road
17 vehicles are prohibited on land within five miles of the right-of-way
18 of the highway. However, this prohibition does not apply to off-road
19 vehicles necessary for oil and gas exploration conducted under an oil
20 and gas lease issued under AS 38.05.180 or to a person who holds a
21 mining claim in the vicinity of the highway and who must use land
22 within five miles of the right-of-way of the highway to gain access to
23 the [HIS] mining claim.
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STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

January 31, 1985

The Honorable Mike Davis, Chairman
House Special Committee on Oil and Gas
Pouch V
Juneau, AK 99811

Dear Representative Davis:

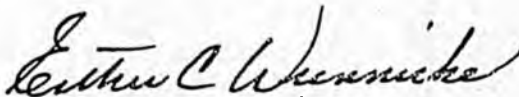
The Department of Natural Resources is requesting amendment of AS 19.40.200 and AS 19.40.210 to allow oil and gas exploration and development within five miles of the right-of-way of the Dalton Highway (North Slope Haul Road).

The statute presently prohibits the disposal of state land under AS 38 and use of off-road vehicles within five miles of the highway. "State land" under AS 38 includes oil and gas leases for exploration and production rights.

Although the department does not believe it was the intent of the 1980 Legislature to prohibit oil and gas activities along the highway, the statute as presently written may be interpreted to have that effect. Oil and Gas Lease Sale 47 (Kuparuk Uplands) is tentatively scheduled for May 21, 1985 and contains approximately 611,840 acres. Of that total, some 230,000 acres (52 of the 113 tracts) are within the five-mile corridor and will have to be deleted from the sale without clarification of the statutes cited above. Final notice of Sale 47 is scheduled to be given March 22, 1985.

I appreciate the willingness of your Committee to introduce HB 143, which would rectify the apparent oversight. Thank you in advance for your consideration and timely action on the bills.

Sincerely,



Esther C. Wunnicke
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 143
 Title: Exploration and Development
in Highway Rights-of-Way
 Sponsor: _____
 Requestor: Rep. Davis
 Date of Request: 1/31/85

FISCAL DETAIL

Agency Affected: Natural Resources
 Program Category Affected: NRMEC
 BRU, Program or Subprogram(s) Affected:
Minerals and Energy Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar
 Division: Commissioner's Office

Phone: 465-2400
 Date: January 31, 1985

Approved by Commissioner: Robert D. Smith
 Agency: Natural Resources

Date: January 31, 1985

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST:

Bill/Resolution No.: SB 115
 Title: Exploration and Development
in Highway Rights-of-Way
 Sponsor: _____
 Requestor: Sen. Sturgulewski
 Date of Request: 7/31/85

FISCAL DETAIL

Agency Affected: Natural Resources
 Program Category Affected: NRMEC
 BRU, Program or Subprogram(s) Affected: Minerals and Energy Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar
 Division: Commissioner's Office

Phone: 465-2400
 Date: January 31, 1985

Approved by Commissioner: Wm D Amodeo
 Agency: Natural Resources

Date: January 31, 1985

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

DEPARTMENT OF NATURAL RESOURCES

PROPOSED AMENDMENT TO HB 143

1. Delete Section 1 and insert:

*Section 1. AS 19.40.200 is amended to read:

Section 19.40.200. PROHIBITION ON DISPOSAL WITHIN FIVE MILES OF THE HIGHWAY. The state may not dispose of state land under AS 38 which is within five miles of the right-of-way of the highway. This section does not apply to an oil and gas lease under AS 38.05.180, or to a disposal necessary for exploration, development, production, or transportation of oil and gas or for reconstruction and maintenance of existing highways.

2. Add a new section to read:

*Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

3. Change title to read: "An Act relating to oil and gas activities along highway rights-of-way; and providing for an effective date."

BACKGROUND ON HB 143
DEPARTMENT OF NATURAL RESOURCES
February 6, 1985
House Oil and Gas and Resources Committees

DISPOSALS UNDER AS 38 NECESSARY FOR OIL AND GAS DEVELOPMENT:

- Oil and gas leases under AS 38.05.180 convey exploratory drilling rights and production rights for any oil and gas discovered.
- Material (sand and gravel) sales under AS 38.05.110-.120 are needed for roads, drill pads, offshore artificial drilling islands, causeways, and other facilities. "Sales" are also made to the Department of Transportation and Public Facilities for highway reconstruction and maintenance.
- Oil and gas pipeline right-of-way leases under AS 38.35 are the required authorization to construct an oil or gas pipeline on or across state land.
- Leases under AS 38.05.070 are held by private service companies and contractors in the Prudhoe Bay Industrial Tract Subdivision. These companies and contractors sell, rent, and repair equipment and provide services to oil and gas lessees. Alyeska Pipeline Service Co. also holds leases (for example, construction camp site).

ACTIVITIES IMMEDIATELY AFFECTED BY THE PROPOSED LEGISLATION:

- Oil and Gas Lease Sale 47 (Kuparuk Uplands) is tentatively scheduled for May 21, 1985, and contains approximately 611,840 acres. Of that total, about 230,00 acres (52 of the 113 tracts) are within five miles of the highway and would have to be deleted from the sale without the proposed clarification of existing statute. Final notice of Sale 47 is scheduled to be given March 22, 1985.
- Seismic exploration using off-road vehicles is currently prohibited within the 10-mile corridor.

Guest Editorial

Stevens Village Opposes State Selections Around Yukon Crossing

By Village Council
Stevens Village

Fairbanks, Alaska — Stevens Village wishes to express its extreme concern and fear over the State of Alaska selecting lands within the haul road corridor around the Yukon Crossing near Stevens Village and to alert the general public to this happening in order to rally more public support to prevent this from happening.

These are lands that the people of Stevens Village have traditionally used, occupied, and governed. The lands are subsistence lands and as such are needed to remain in that use to maintain the subsistence economy and the traditional lifestyle of the people of Stevens Village.

The people of Stevens Village are struggling to survive and to protect their culture and traditional lifestyle. In order to do this, they have to have a say in what goes on in their traditional lands that they use. They oppose the State selecting these lands because of the State's insensitivity in dealing with Stevens Village in the past.

For example, during pipeline days, the State rushed to build the Hickel Highway through Stevens Village's lands without the village's permission and without the construction permit being granted yet for the pipeline from the Federal government.

If the State selects these lands and then encourages settlement and/or development there, it will have a devastating effect on the people of Stevens Village. Why

start a new settlement only to wipe out another one?

The haul road is for transportation purposes and for reasons of safety and efficiency it needs to remain free of settlement and/or development. This will save the State money in the long run.

We are asking the people of Alaska to support us in this by contacting the State Department of Natural Resources and our representatives in the State Legislature.

By keeping these lands in a natural state it will help to insure the survival of the Stevens Village people and their culture, for without that Alaska can never be a great land.

Letters to the Editor

Dear Editor:

As 1991 looms on the horizon, with the as-yet indistinct but potentially disruptive impacts on all Alaskans, it is reasonable to note a trend among many Native Alaskans that flies in the face of long-held stereotypes held by many non-natives. This trend makes the task of preparing for the upcoming battle over corporate and land ownership between the Native corporations and potential outside owners that much more hopeful.

A good number of Native

ed people choose not to drink, there may be social, economic and political consequences which we had not anticipated.

An example of this trend can be seen in the recently enacted policies of the Alaska Federation of Natives and the Association of Village Council Presidents (AVCP), both of which have in recent years adopted policies of no drinking during their annual meetings. AVCP even contacts local villages when any of their representatives