

S B

1 1 5

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 ^{North of 68 degrees north} or ^{latitude}
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.

AMENDMENT TO CSSB 115 (Res)

line 16,page 1: After "oil and gas" insert:"north of 68 degrees north latitude,"

JUSTIFICATION:

This amendment would limit the changes in the law to the region containing lease sale 47 which is the lease sale that prompted the Department of Natural Resources to request this statutory change.

Reconstruction or maintenance would be allowed along the whole of the highway under this provision, and thereby allow for sales of gravel.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUGH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

MEMORANDUM

February 7, 1985

TO: All Members
Senate Resources Committee

FROM: Staff, Senate Resources Committee

RE: Proposed CS for SB 115 (Resources) "An Act relating to oil and gas exploration along highway rights-of-ways"

In 1980 the legislature passed AS 19.40.200 and .210. These sections prohibit the disposal of state land within five miles of the Dalton Highway and also prohibit the use of off-road vehicles in this same area.

Oil and gas lease sale 47 (Kuparuk Uplands) is currently scheduled to be given final notice March 22, 1985 and to take place May 21, 1985. This sale contains approximately 611,840 acres. Approximately 230,000 acres or 52 of the 113 tracts that will make up this sale are within this five mile border of the highway. If the existing statutes are not modified, these tracts could not be included in the lease sale.

The Senate Resources Committee at the request of the Department of Natural Resources, Division of Oil and Gas, introduced SB 115 to remedy this problem. A proposed committee substitute for that bill is included in this packet. The purpose of the committee substitute is the same as the original bill, it avoids, however, the words "land disposal" and confusion which had occurred over the meaning of those words.

The CS also adds an effective date clause and a sentence which deals with the state purchase and sale of materials (gravel).

The wording of the proposed committee substitute has been developed by working with representatives of the Division of Oil and Gas, the House Special Committee on Oil and Gas, Senator Ferguson's office, the Alaska Environmental Lobby and representatives of several oil companies.

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.

Supplemental Information on SB 115

The following two issues were raised after packets had been distributed to committee members yesterday after noon.

1) Oil and Gas Lease Sale 31 (Prudhoe Bay Uplands) was held September 16, 1980. AS 19.40.200 has an effective date of October 5, 1980. All except one of the lease award notices were sent to successful bidders on September 23, 1980. One award notice was issued October 7, 1980.

In order to remove any possible legal cloud regarding the leases, the Department of Natural resources, upon the advice of the Attorney General's Office, recommends that SB 115 be made retroactive to October 5, 1980.

If the committee does wish to include the retroactive effective date in the committee substitute, appropriate draft language is attached to this memo.

2) A representative of the Yukon Pacific Pipeline Company telephoned committee staff with a concern about whether communications equipment associated with the project could be installed within the right-of-way under the language of SB 115. The Department of Law has given a verbal opinion that the language of the proposed committee substitute would allow communications equipment related to oil and gas activities. It was suggested by the representative of Yukon-Pacific that the committee might wish to include a broader exemption for communication activities in the pipeline corridor within the committee substitute. If the committee wishes to do this, appropriate language is attached to this memo.

HBU 17447	28237	28255 28256	HBU 47448	HBP 47469	SOHIO 28278	ARCO HBP 28279	28276	(COND) 28298	HBU 28297	HBU 34624	HBU 34627	HBU 34628	HBU 34629	HBU 34625	MANATHON, AMERADA 1-31-90 ADL-312827	6-30 Y-0 1-31-9	
HBP 28239	HBP 28238	HBP 28259	MOBIL, PHILLIPS, CHEVRON HBP 28257	HBP 28279	HBP 28278	HBP 28277	HBP 28299	HBP 28300	HBP 28301	HBP 34628	HBP 34629	HBP 34630	HBP 34631	HBP 28320	HBP 34635	HBP 34634	HBP 3463
CHEVRON MOBIL PHILLIPS HBP 28241	HBP 28240	MOBIL, PHILLIPS, CHEVRON HBU 47450	MOBIL, PHILLIPS HBP 28261	HBP 28260	HBP 28282	HBP 28281	HBP 28280	HBP 28304	HBP 28303	HBP 34632	HBP 34631	HBP 28320	HBP 28338	SOHIO	HBP 28343	HBP 28345	HBP 28346
HBP 28244	HBP 28245	CHEVRON HBP 28262	MOBIL, PHILLIPS HBP 28263	MOBIL, PHILLIPS CHEVRON HBU 47451	HBP 28283	HBP 28284	HBP 28285	HBP 28305	HBP 28306	HBP 28307	HBP 28321	HBP 28322	HBP 28323	HBP 28339	HBP 28340	HBP 28341	HBP 28342
ARCO HBP 28247	(COND) 28246	MOBIL, PHILLIPS, CHEVRON HBU 47453	MOBIL, PHILLIPS, CHEVRON HBU 47452	EXXON, ARCO HBP 28264	MOBIL, PHILLIPS HBP 28288	HBP 28287	HBP 28286	HBP 28310	HBP 28309	HBP 28308	HBP 28326	HBP 28327	HBP 28324	HBP 28343	HBP 28344	HBP 28345	HBP 28346
ARCO HBP 28250	ARCO HBP 28249	MOBIL, PHILLIPS HBP 28266	CHEV, MOBIL, PHILLIPS HBU 47454	EXXON, ARCO HBP 28265	PHILL, MOBIL HBP 28289	MOBIL, PHILLIPS, CHEV HBU 47471	AMERADA, GETTY HBU 47472	ARCO, EXXON HBP 28313	HBP 28312	HBP 28311	HBP 28329	HBP 28328	HBP 28328	HBP 28345	HBP 28344	HBP 28345	HBP 28346
PHILLIPS HBP 10-31-90 18604	HBP 28251	HBP 28267	MOBIL, PHILLIPS HBP 28269	MOBIL, PHILLIPS HBP 318608	MOBIL, PHILLIPS HBP 318609	MOBIL, PHILLIPS HBP 28290	ARCO, EXXON HBU 47476	SHELL, et al HBU 47475	MOBIL, PHILLIPS HBP 28314	HBP 28315	HBP 28330	HBP 28331	HBP 28372	HBP 28346	HBP 28347	HBP 28348	HBP 28349
ARCO HBP 10-31-90 8806	HBP 10-31-90 318607	HBP 28271	HBP 28270	CHEVRON HBP 28269	BP&E, SOHIO HBP 318610	BP&E, SOHIO HBP 318611	BURGLIN et al 10-31-90 318612	BURGLIN et al 10-31-90 318613	ARCO, EXXON HBU 28318	MOBIL, PHILLIPS, CHEV HBP 28335	MOBIL, PHILLIPS, CHEV, 28334	MOBIL, PHILLIPS, CHEV, 28334	SOHIO HBP 28333	SOHIO HBP 28349	SOHIO HBP 28349	SOHIO HBP 28349	CHEVRON 10-31-90 318617
ARCO HBP 318629	ARCO HBP 318636	ARCO HBP 28273	ARCO HBP 28272	BP&E, SOHIO HBP 28292	BP&E, SOHIO HBP 318642	CHEVRON HBP 28291	PHILLIPS HBP 318645	PHILLIPS HBP 318646	MOBIL, PHILLIPS HBP 28317	HBP 318651	HBP 318652	HBP 318653	HBP 318654	HBP 318655	HBP 318656	HBP 318657	HBP 318658
BURGLIN et al 10-31-90 8831	ARCO HBP 318638	ARCO HBP 28274	ARCO HBP 28293	BP&E, SOHIO HBP 28294	BP&E, SOHIO HBP 318643	BP&E, SOHIO HBP 318647	PHILLIPS HBP 318648	PHILLIPS HBP 28318	MOBIL, PHILLIPS HBP 28318	HBP 318654	HBP 318655	HBP 318656	HBP 318657	HBP 318658	HBP 318659	HBP 318660	HBP 318661
ARCO HBP 10-31-90 8634	ARCO HBP 318635	ARCO HBP 318639	ARCO HBP 318641	ARCO HBP 318644	HBP 28296	HBP 28295	MOBIL, PHILLIPS HBP 28319	BP&E, SOHIO HBP 318649	PHILLIPS HBP 318650	PHILLIPS HBP 318656	HBP 318656	HBP 318656	HBP 318656	HBP 318656	HBP 318656	HBP 318656	HBP 318656

HEMI SPRINGS UNIT

Proposed Sale 47

R12E

R14E

R16E

Sum. - 300' / ° Lt

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).
u West Dock / Dezhnev / KIC (Kuparuk Industrial Sectn) - ,510

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.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORU
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

M E M O R A N D U M

February 8, 1985

TO: All Members
Senate Resources Committee

FROM: Staff, Senate Resources *MSH*

RE: SB 115 "An Act relating to oil and gas exploration along highway rights-of-way."

Supplemental Information on SB 115

The following two issues were raised after packets had been distributed to committee members yesterday afternoon.

1) Oil and Gas Lease Sale 31 (Prudhoe Bay Uplands) was held September 16, 1980. AS 19.40.200 has an effective date of October 5, 1980. All except one of the lease award notices were sent to successful bidders on September 23, 1980. One award notice was issued October 7, 1980.

In order to remove any possible legal cloud regarding the leases, the Department of Natural Resources, upon the advice of the Attorney General's Office, recommends that SB 115 be made retroactive to October 5, 1980.

If the committee does wish to include the retroactive effective date in the committee substitute, appropriate draft language is attached to this memo.

2) A representative of the Yukon Pacific Pipeline Company telephoned committee staff with a concern about whether communications equipment associated with the project could be installed within the right-of-way under the language of SB 115. The Department of Law has given a verbal opinion that the language of the proposed committee substitute would allow communications equipment related to oil and gas activities. The Department of Law advised that to make certain there was no question on this issue, a letter of intent should be adopted specifying that communication facilities related to oil and gas projects are among the allowed uses. Such a letter of intent is attached.

It was suggested by the representative of Yukon-Pacific that the committee might wish to include a broader exemption for communication activities in the pipeline corridor within the committee substitute. If the committee wishes to do this, appropriate language is available and the letter of intent would not be needed. This type of broadening, however, may jeopardize the support of some of the parties with whom the committee substitute has been developed.

SENATE AMENDMENT

By _____

To: CS _____ SENATE BILL No. 115 (Resources) _____

To: _____ HOUSE BILL No. _____

PAGE: 2 LINE: 2

Sec. 4. This Act is retroactive to October 5, 1980.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



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JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

February 8, 1985

COMMITTEE ON RESOURCES
LETTER OF INTENT
FOR
SB 115

It is the intent of the Senate Resources Committee that leases necessary for communication equipment or facilities related to oil or gas activity is included as allowable under Section 1(b)(2) of CS SB 115 (Resources).

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Falks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

MEMORANDUM

TO: Committee Members

FROM: Committee Staff *BL*

DATE: 2-15-85

RE: SB 115 Rights of Way for Oil and Gas Exploration

Enclosed is the backup for Senate Bill 115 from the first committee of referral, Resources. Their analysis of the bill and the back up is thorough. The committee staff does not see anything substantial that we can add to the bill analysis at this time.

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).

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

February 8, 1985

COMMITTEE ON RESOURCES
LETTER OF INTENT
FOR
SB 115

It is the intent of the Senate Resources Committee that leases necessary for communication equipment or facilities related to oil or gas activity is included as allowable under Section 1(b)(2) of CS SB 115 (Resources).

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 115
 Title: Exploration and Development
1. Highway Rights-of-Way
 Sponsor: _____
 Requestor: Sen. Sturgulewski
 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						
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: James D. Smyly
 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)

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 12, 1985

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

FEB 14 1985

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.

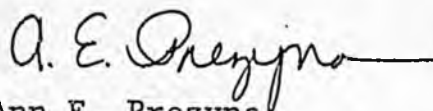
The Honorable Arliss Sturgulewski, Chairman
Senate Resources Committee

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

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

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

January 31, 1985

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

Dear Senator Sturgulewski:


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 SB 115, which would rectify the apparent oversight. Thank you in advance for your consideration and timely action on the bill.

Sincerely,


Esther C. Wunnicke
Commissioner

...the... granted... participation in the construction and maintenance of local service roads under AS 19.30.111 — 19.30.241. (§ 2 ch 84 SLA 1971)

Chapter 35. Relocation Assistance.

Section
10 — 109. [Repealed]

Sec. 19.35.010 — 19.35.100.

Repealed by § 2 ch 41 SLA 1971.

Editor's notes. — The repealed chapter derived from § 1, ch. 60. SLA 1969; §§ 50, 51, ch. 69. SLA 1970. Section 3, ch. 41, SLA 1971, provides: "This Act is retroactive to January 2, 1971."

Chapter 40. James Dalton Highway.

Section
10. Declaration of policy
15. Highway named
20. Contractual authority
30. Undertakings of contractor
40. Exemption
50. Highway width
60. Conditions to be met
65. Regulations and penalties
70. Conflict with other laws

Section
80. Definitions
100. Use of the highway by industrial or commercial traffic
110. Public use of a portion of the highway
120. Closure of the highway to traffic
200. Prohibition on disposal of land within five miles of the highway
210. Prohibition of off-road vehicles

Sec. 19.40.010. Declaration of policy. (a) The legislature finds and declares that there is an immediate need for a public highway from the Yukon River to the Arctic Ocean and that this public highway should be constructed by the State of Alaska at this time because

(1) it will assist in the fulfillment of the Constitution of the State of Alaska, art. VIII, § 1, in which it is provided that it is the policy of the state to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest;

(2) it will provide the first year-round, overland route from north of the Yukon River to the Arctic Ocean, and will consequently result in the completion of a highway from the Pacific Ocean to the Arctic Ocean;

(3) it is in conformity with the policy of the Federal-Aid Highway Act of 1956, 23 U.S.C. 101(b), in which it is declared to be in the national interest to accelerate the construction of certain highways which are of primary importance to the national defense;

(4) it will benefit local and interstate commerce because the area north of the Yukon River is rich in natural resources but is inaccessible at the present time because of the lack of roads and this inaccessibility prohibits the successful use of the natural resources of this area;

(5) it is consonant with the Constitution of the State of Alaska, art. VIII, § 2, in which it is provided that the legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the state, including land and waters, for the maximum benefit of its people, because the highway will benefit not only local and interstate commerce but will also augment the revenues of the state and result in conservation of natural resources, for example, by facilitating a system of forest fire suppression.

(b) It is the sense of the legislature that the construction of the highway will not impair the natural wilderness adjacent to the highway and will not unreasonably interfere with subsistence hunting, fishing, trapping and gathering.

(c) It is the intent of the legislature that the state shall be reimbursed for the cost plus interest of constructing the public highway from the Yukon River to the Arctic Ocean.

(d) It is the intent of the legislature that employment of Alaska residents be encouraged and that the provisions of AS 36.10.010 — 36.10.110 be complied with. (§ 1 ch 231 SLA 1970)

Editor's notes. — AS 36.10.110, referred to in subsection (d), was repealed by § 17, ch. 142, SLA 1972.

Sec. 19.40.015. Highway named. The highway is named the James Dalton Highway. (§ 2 ch 10 SLA 1981)

Editor's notes. — Section 1, ch. 10, SLA 1981 provides: "FINDINGS AND INTENT. The legislature finds that James Dalton's exploration of the North Slope and his report on petroleum possibilities there contributed greatly to the subsequent development of the area, including the construction of the North Slope haul road. Therefore the legislature finds it appropriate that James Dalton be remembered by naming the North Slope haul road after him."

Sec. 19.40.020. Contractual authority. (a) Subject to (b) of this section, the department may contract for the construction of a secondary highway from the Yukon River to the Arctic Ocean. The department may request bids and award contracts for the construction of the highway, or it may elect to directly negotiate contracts for the construction of the highway if it appears to be in the best interests of the state. The provisions of AS 36.10 govern in employment practices on all work authorized by this chapter.

(b) The authority granted under (a) of this section may not be exercised until the state enters into a contract with the participants in the Trans Alaska Pipeline System or other organization formed for the purpose of transporting oil by pipeline from the North Slope (that area of Alaska lying north of 68° latitude). The contract shall provide for reimbursement to the state by the participants, jointly and severally, in the Trans Alaska Pipeline System or other organization formed for

see 3rd page for affected statutes

transporting oil by pipeline, of the full amount of the of construction plus interest on the state's expenditures of seven and one-half per cent per year. Complete together with interest must be made within five years of the contract. The state may, with the agreement of the contractor, to construct an oil pipeline from the North Slope. In provisions of this subsection requiring reimbursement

contract with the participants shall include such additional provisions as appear to be in the best interests of the state. Payments made under such a contract shall be deposited in an account which will be used for disbursements to the contractor during construction of the highway. Disbursements to the contractor shall be made on order of the commissioner of transportation and public facilities on presentation of a proper voucher or the receipt of a voucher by an employee of the department authorized to certify as to such payment. (§ 1 ch 231 SLA 1970; amended by Executive Order No. 39, § 11 (1977))

Amendments. The 1977 amendment substituted a reference to the commissioner of highways in the third sentence of subsection (c). Facilities for a reference to the Department of Transportation and Public

30. Undertakings of contractors. The department, in contracts or individual sureties required by AS 36.25.010, may require undertakings which include the same essential provisions or individual sureties required by AS 36.25.010 and refer the contractor to the department. (§ 1 ch 231 SLA 1970)

40. Exemption. The Alaska Net Income Tax Act and the Business License Act do not apply to any money received by a contractor from the state under a highway construction contract authorized under this chapter if the money is to be paid to a contractor for work performed under the construction contract. The liability of the subcontractors is subject to the Alaska Net Income Tax Act, the Alaska Business License Act and any other laws relating to taxes. (§ 1 ch 231 SLA 1970)

50. Highway width. In accordance with AS 19.10.015, a highway is designated as 200 feet. (§ 1 ch 231 SLA 1970)

60. Conditions to be met. Construction authorized under AS 19.40.020 — 19.40.050 may not be undertaken until all of the following conditions are met:

(1) approval by the commissioners of the Department of Natural Resources, the Department of Fish and Game that adequate precautions have been taken to protect and preserve the total ecology of the area;

(2) certification by the commissioner of the Department of Transportation and Public Facilities that the road design and construction methods will cause minimal landscape defacement or environmental degradation by erosion or waste disposal;

(3) certification by the commissioner of the Department of Health and Social Services that adequate and reasonable precautions have been taken for the prevention of pollution during construction and subsequent public use;

(4) all certifications, as well as the rules, regulations, contract provisions, specifications, inspection procedures and programs necessary to implement and accomplish AS 19.40.020 — 19.40.050 shall be filed with the governor's office and published;

(5) the governor has approved all certifications and supporting material submitted to him under (4) of this section as being in the best public interest, and has certified that the contract required by AS 19.40.020 has been executed. (§ 1 ch 231 SLA 1970; am § 6 ch 104 SLA 1971; am Executive Order No. 39, § 11 (1977))

Effect of amendments. — The 1977 amendment substituted a reference to the Department of Transportation and Public Facilities for a reference to the Department of Highways in paragraph (2).

Sec. 19.40.065. Regulations and penalties. All departments and agencies of the state are given the specific authority to adopt under the Administrative Procedure Act (AS 44.62) emergency, temporary and permanent regulations necessary to accomplish the purposes of AS 19.40.020 — 19.40.050. The violation of any regulation adopted under AS 19.40.020 — 19.40.050 is a misdemeanor and upon conviction the person is punishable by a fine of not more than \$10,000 for each offense. (§ 1 ch 231 SLA 1970)

Sec. 19.40.070. Conflict with other laws. In the event of a conflict between this chapter and any other law of this state, the provisions of this chapter govern and supersede any such other law. (§ 1 ch 231 SLA 1970)

Sec. 19.40.080. Definitions. In this chapter

(1) "department" means the Department of Transportation and Public Facilities;

(2) "highway" means the secondary highway from the Yukon River to the Arctic Ocean. (§ 1 ch 231 SLA 1970; am Executive Order No. 39, § 11 (1977))

Effect of amendments. — The 1977 amendment substituted a reference to the Department of Transportation and Public Facilities for a reference to the Department of Highways in paragraph (1).

Use of the highway by industrial or commercial department shall maintain the highway and keep it open for public or commercial traffic throughout the year. "Public use of a portion of the highway" means that portion of the highway necessary and related to resource exploration and development and support of those activities, if the individual engaged in such activity has all necessary permits; or that portion of the highway necessary and related to access by local residents to their property.

Persons engaged in commerce which are common carriers are regulated by the Alaska Transportation Commission. 10. (§ 3 ch 177 SLA 1980)

Public use of a portion of the highway. The department shall maintain the section of the highway between the Dietrich Camp and shall keep that section of the highway open for public use by the public between June 1 and September 1. 10. 177 SLA 1980; AS 19.40.120)

This section was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Closure of the highway to traffic. The provisions of this section apply to the closure of the highway by the department. 10. 1980; AS 19.40.110)

This section was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Prohibition on disposal of land within five miles. The state may not dispose of state land under any contract within five miles of the right-of-way of the highway. 10. 1980)

For reports. For 1781. For attorney general's opinion advising the governor that the house and senate did not pass the same bill, see Op. Atty. Gen. July 1, 1980.

Prohibition of off-road vehicles. Off-road vehicles on land within five miles of the right-of-way of the highway; this prohibition does not apply to a person who is driving a vehicle in the vicinity of the highway and who must use the right-of-way of the highway to gain access to the land. (§ 5 ch 177 SLA 1980; AS 19.40.200(b))

This section was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Chapter 45. Miscellaneous Provisions.

Section

01. Definitions

02. Penalties

15. Highway construction near airports

Sec. 19.45.001. Definitions. In AS 19.05 — 19.40

(1) "commissioner" means the commissioner of transportation and public facilities;

(2) "construction" or any derivation means construction, reconstruction, alteration, improvement or major repair;

(3) "controlled-access highway" means a highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have either no right or easement or only a controlled right or easement of access, light, air, or view;

(4) "cost of change, relocation, or removal" means the entire cost incurred by the utility properly attributed to the change, relocation, or removal of a facility, less any costs for improvements or upgrading over and above the cost of a functionally equal facility; if a facility is to be relocated and replaced with new equipment, there shall also be subtracted from the entire cost any salvage value derived from the old facility;

(5) "department" means the Department of Transportation and Public Facilities;

(6) "excess lands" means land acquired by the state in excess of land required for a highway, when the remaining portion of a parcel of land so acquired is left in such shape or condition as to be of little or no value to its owner, or to give rise to claims or litigation concerning severance or other damage;

(7) "federal-aid primary, federal-aid secondary, and interstate system" include any highway which is a part of the federal-aid systems as provided in the Federal-Aid Highway Act of 1956, and any laws amending or supplementing it;

(8) "highway" includes a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;

(9) "maintenance" means the preservation of each type of highway, roadside structure and facility as nearly as possible in its original condition as constructed, or as subsequently improved, and the operation of highway facilities and services to provide satisfactory and safe highways;

(10) "municipality" means an incorporated city or political subdivision which has jurisdiction over highways in its incorporated area;

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§ 19.45.002

ALASKA STATUTES

§ 19.45.002

(11) Repealed by § 6 ch 233 SLA 1968.

(12) "utility" includes railroads and all publicly, privately, or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, telecommunications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including publicly owned fire and police signal systems and street lighting systems;

(13) "encroachment" means and includes a tower, pole, pole line, pipe, pipeline, driveway, private road, fence, billboard, stand or building, or a structure or object of any kind which is or has been placed in, on, under or over a portion of a highway or road. (§ 1 ch 57 SLA 1961; § 3 art I title I ch 152 SLA 1957; am § 3 ch 124 SLA 1959; am § 1 ch 122 SLA 1960; § 1 art V title II ch 152 SLA 1957; § 3 (14) art I title I ch 152 SLA 1957; added by § 2 ch 122 SLA 1960; § 2 ch 59 SLA 1949; am § 1 ch 86 SLA 1953; am §§ 4, 5 ch 49 SLA 1963; am § 6 ch 233 SLA 1968; am § 29 ch 32 SLA 1971; am § 1 ch 64 SLA 1971; am §§ 1, 2 ch 106 SLA 1977; am Executive Order No. 39, § 11 (1977); AS 19.05.130)

Revisor's notes. — This section derives from AS 19.05.130 and was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Effect of amendments. — The first 1977 amendment substituted the language beginning "facility, less any costs for improvements" and ending "subtracted from the entire cost" for "utility after deducting any increase in the value of the new facility and" in paragraph (4) and rewrote paragraph (12).

The second 1977 amendment substituted references to the commissioner of transportation and public facilities and to the Department of Transportation and Public Facilities for references to the commissioner of highways and to the Department of Highways in paragraphs (1) and (5), respectively.

Legislative history reports. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

NOTES TO DECISIONS

Applied in *State v. L'Anson*, Sup. Ct. Op. No. 1102 (File No. 2032), 529 P.2d 188 (1974).

Sec. 19.45.002. Penalties. A person who violates any provision of chs. 5-25 of this title is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$500, or by imprisonment in jail for a period not to exceed one year, or by both. (§ 7 art VII title II ch 152 SLA 1957; AS 19.05.140)

Revisor's notes. — This section derives from AS 19.05.140 and was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Cross references. — As to sentences for misdemeanors, see AS 12.55.135.

Collateral references. — 25 Am. Jur., Highways and Streets, § 73.