

**HB**

**359**

HB359

TONY KNOWLES  
GOVERNOR  
GOVERNOR OF THE STATE OF ALASKA

Public Bill  
Title: Alaska  
1997, 205, 206  
Law 1997, 405, 412  
1997, 205, 206

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 8, 2000

The Honorable Brian Porter  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Speaker Porter:

The Department of Natural Resources appeal process is overly complex, confusing, and even frustrating to the public and department staff. Seemingly similar decisions have different appeal tracks with different requirements and timelines. Appellants are sometimes required to make multiple appeals on the same issue. This bill I transmit today simplifies and makes consistent the department's appeal process to better serve the public.

The bill eliminates the redundant process for non-disposal decisions in which a person now must appeal to the director, then the commissioner, then, through reconsideration, to the commissioner again. Instead, appellants would be allowed only one opportunity to make their case to the commissioner. The next step is to go to court. This process was implemented in 1994 disposal legislation and should be extended to all department decisions.

The bill corrects another confusing result of the 1994 law, which set different appeal deadlines based on whether the case was a disposal or non-disposal decision, or a reconsideration request (as opposed to an appeal). The public cannot figure out in which category an action belongs and, therefore, by which deadline to abide. This bill eliminates the confusion by setting a 20-day deadline on all appeals and reconsideration requests. Decisions rendered under the Alaska Right-of-Way Leasing Act and the Alaska Stranded Gas Development Act are specifically exempt from this new provision.


Finally, the bill makes it clear that department decisions may be challenged in court, despite the fact most department decisions are exempt from portions of the Administrative Procedure Act.

HB 359

The Honorable Brian Porter  
February 8, 2000  
Page 2

This bill will correct many aspects of the Department of Natural Resources appeal process that are confusing and cumbersome for the public. I urge your support.

Sincerely,

  
Tony Knowles  
Governor

# FISCAL NOTE

Bill Version: HB 359

BI (H) Publish Date: 2/9/00

## STATE OF ALASKA 2000 LEGISLATIVE SESSION

Revision Date/Time: \_\_\_\_\_ Dept Affected: Natural Resources  
 Title: Notice Requirements for Oil and Gas Final BRU: Minerals, Land & Water Development  
 Findings: Administrative Appeals Component: Director's Office  
 Sponsor: Rules Committee  
 Requestor: Governor Component No: 2440

Expenditures/Revenues (Thousands of Dollars)  
 Note: Amounts do not include inflation unless otherwise noted below.

	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
<b>OPERATING EXPENDITURES</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES (fund code)</b>	0.0	0.0	0.0	0.0	0.0	0.0

**FUND SOURCE** (Thousands of Dollars)

	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: \$ N/A

**POSITIONS**

	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

This bill can be implemented without cost. Secs. 1-3 apply to appeals of decisions by all divisions in DNR, including the Division of Mining, Land and Water. They allow an aggrieved person to ask for the commissioner's review, but only one time (either by appealing to the commissioner, or by requesting the commissioner's reconsideration). Previously some aggrieved parties have appealed to the commissioner, received an adverse decision from the commissioner, then immediately asked him to reconsider that decision. In the meantime, the decision was put on hold. Eliminating the duplicative review might not save appreciable staff time, as the reconsideration decision was usually very similar to the appeal decision, but will shave 30 days off the permit process in controversial cases.

Prepared by: Robert M. Loeffler Phone: 269-8600  
 Division: Mining, Land and Water Date: 31-Jan-00  
 Approved by Commissioner: John Shively Date: 1-31-2000  
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
 For further distribution information call the Governor's Legislative Office

Department of Natural Resources  
HB 359 Notice and Administrative Appeals

HB 359 is "An Act relating to notice requirements for certain final findings concerning the disposal of an interest in state land or resources for oil and gas; relating to administrative appeals and petitions for reconsideration of decisions of the Department of Natural Resources; and providing for an effective date."

HB 359 will create a uniform procedure for appeals of decisions made by the Department of Natural Resources. These changes will simplify the appeal process for applicants, departmental employees, and the public, reducing the risk of errors. The uniform appeal process will also confirm that people have the right to challenge DNR's appeal decision in court.

The bill's uniform appeal process is modeled on legislation already in place for DNR "disposal" decisions. (These are the written findings DNR must issue for public comment before it can make a final decision to sell state land or interests in land, such as oil and gas leases or timber contracts.) It provides for disputes over DNR decisions to be taken straight to the DNR commissioner. However, it allows only one administrative review by the commissioner: a person who disagrees with DNR's action will file either an appeal or a reconsideration request, but not both. The filing period for a reconsideration request will be 20 days, the same period allowed to request reconsideration of a disposal decision under AS 38.05.035, instead of the 15-day deadline generally applicable under AS 44.62.540. A person who is still aggrieved by the commissioner's final decision on the appeal or reconsideration request can then challenge it in Superior Court.

Under existing law for DNR actions other than disposal decisions, there can be as many as three layers of administrative review: first an appeal to a division director, then an appeal to the commissioner, and finally a reconsideration request, which must be filed within 15 days instead of 20. HB 359 will replace this duplicative, complex process with one that has been successfully used for major DNR disposal actions since 1994.

HB 359 will also correct a flaw in DNR's public notice law, AS 38.05.945, by removing a special requirement for final decisions on oil and gas lease sales. The change will leave intact two other public notice provisions relating to oil and gas lease sales:

- When DNR issues a proposed oil and gas lease sale decision, AS 38.05.945 directs DNR to give public notice at the beginning of the comment period, notifying the public of its right to comment. This requirement will not change.
- After the final lease sale decision has been made (including the resolution of any administrative appeals), AS 38.05.945 directs DNR to give notice of the lease sale itself, so that prospective bidders may prepare for the sale. This requirement will not change.

However, between these two stages, AS 38.05.945 literally requires DNR to give notice of the issuance of the final decision "at least 30 days before the action." Advance notice that DNR plans to issue a final decision a month later does not serve any apparent purpose. More importantly, if the comment period is still underway when this "notice of final decision" appears in the newspaper, the public may be confused into thinking that the decision has already been made, and that there is no point in commenting or testifying on the proposed lease sale. HB 359 will correct this problem by removing the separate requirement for

notice of the final decision. (Under other applicable law, AS 38.05.035(e)(5), DNR must make the final disposal decision available to the public at least 90 days before the lease sale. As part of this duty, DNR gives notice to everyone who timely commented or testified on the proposal. Only those who timely commented or testified have the right to appeal the final decision under AS 38.05.035(i).)

HB359

TONY KNOWLES  
GOVERNOR  
GOVERNOR OF THE STATE OF ALASKA

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

Post Box 1100  
Juneau, Alaska 99801  
Phone (907) 465-4300  
Fax (907) 465-4302  
www.governor.alaska.gov

February 8, 2000

The Honorable Brian Porter  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Speaker Porter:

The Department of Natural Resources appeal process is overly complex, confusing, and even frustrating to the public and department staff. Seemingly similar decisions have different appeal tracks with different requirements and timelines. Appellants are sometimes required to make multiple appeals on the same issue. This bill I transmit today simplifies and makes consistent the department's appeal process to better serve the public.

The bill eliminates the redundant process for non-disposal decisions in which a person now must appeal to the director, then the commissioner, then, through reconsideration, to the commissioner again. Instead, appellants would be allowed only one opportunity to make their case to the commissioner. The next step is to go to court. This process was implemented in 1994 disposal legislation and should be extended to all department decisions.

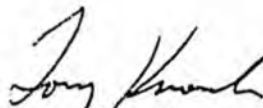
The bill corrects another confusing result of the 1994 law, which set different appeal deadlines based on whether the case was a disposal or non-disposal decision, or a reconsideration request (as opposed to an appeal). The public cannot figure out in which category an action belongs and, therefore, by which deadline to abide. This bill eliminates the confusion by setting a 20-day deadline on all appeals and reconsideration requests. Decisions rendered under the Alaska Right-of-Way Leasing Act and the Alaska Stranded Gas Development Act are specifically exempt from this new provision.

Finally, the bill makes it clear that department decisions may be challenged in court, despite the fact most department decisions are exempt from portions of the Administrative Procedure Act.

The Honorable Brian Porter  
February 8, 2000  
Page 2

This bill will correct many aspects of the Department of Natural Resources appeal process that are confusing and cumbersome for the public. I urge your support.

Sincerely,



Tony Knowles  
Governor