

SB

255

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/8/00

FURTHER: Finance

Date of 5-Day Notice: 2/10/00
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/01/00

Resources Committee considered

SENATE BILL NO. 255

"An Act regarding best interest findings and land use permits issued by the Department of Natural Resources; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 255 (RES)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
CHAIR: <i>[Signature]</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
DNR	2/17	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Thank you for the opportunity to express my opinion regarding SB255.

You know and understand the processes you have to follow each day to create bills, change constitutions, and establish process with the end result in a sense, providing a best interest finding for the State of Alaska. We are here today because the process allows for public notice and input. As individual land owners and residents, we create special interest groups to watch dog our concerns at the government level because it is impossible to do so as individuals. These special interest groups then retain lobbyist to assist them due to the location of our government and the bulk of issues you cover. Bottom line we are here today to provide you with feedback at the residents/individual level because of a process that was created to allow us to do so. Senator Kelly's SB255 is asking you to do away with the public process called BIF, as safe guard put in place for irrevocable land use permits. Driven by a decision passed down by the Supreme Court, this process was found to be necessary in the case of the Rex/South Intertie. The Supreme Court viewed it as an irrevocable project. I strongly agree: Prior to statehood access lines were brush cut throughout Alaska. They are still there today due to our type of foliage. A very permanent scar. The rex/south permit will prove to be the same if it's land use permit is revoked in the future. Will the state provide grant money to disassemble the line? Will it require GVEA to recreate the natural foliage which will have to be removed? Is this part of a revocable permit agreement? I believe it is not and that D&R has incorrectly labeled this permit. A project of this magnitude will permanently impact the Fairbanks community. Thus, a BIF is necessary in this case. Since February 12th over approximately 319 inches of public concerns, comments, and objection to D&R's route selection were printed in the local paper. Only 57 & 1/2 were printed response for the proposed route (32 inches were from Mike Kelley). It is obvious from the massive community response that the Supreme court was correct in allowing for the BIF in this situation. Obviously, a strong community outcry against the D&R route selection is apparent and needs to be taken into consideration.

I believe that without the process to allow public input on important decisions, especially those which are irrevocable, we will be placing impacting decisions on the few. Our constitution states in article 8 section 10 that "There will be no disposal of State land or interest there in or lease without prior public notice" By removing the ability to ask for a BIF you will be omitting a step currently in place that allows us, the public, to make sure our voice is being counted. The best example of this is the Rx/South case. Here a community voice of opposition was not taken seriously during the process and a BIF is necessary to guarantee public interest.

City, Borough and State planning and development departments all rely on and use the public input process to achieve the best interest for each project that comes before them. Without our constitutional right to public notice the future development of the State of Alaska will be left to those elected officials and to the City, Borough and State employees.

Margaret A. Hanson
456-7056

1-LS1245H
Kurtz
2/29/00

CS FOR SENATE BILL NO. 255()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATOR PETE KELLY

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to best interest findings and land use permits, rights-of-way, and**
2 **easements issued by the Department of Natural Resources; and providing for an**
3 **effective date."**

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

5 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new
6 section to read:

7 **FINDINGS.** The legislature finds that

8 (1) AS 38.05.035(e) provides that the director of the division of lands in the
9 Department of Natural Resources, with the consent of the commissioner, may approve
10 contracts for the sale, lease, or other disposal of available state land upon a written finding
11 that the interests of the state will be best served; paragraph (e)(6), however, specifically
12 exempts certain land uses, including a permit or other authorization revocable by the
13 commissioner, from the best interest finding requirement;

14 (2) AS 38.05.850 specifically authorizes the director of the division of lands

1 in the Department of Natural Resources, without the commissioner's consent, to grant land
2 use permits for specified purposes, including electric transmission and distribution lines;

3 (3) in 1999, the Department of Natural Resources, in accordance with the
4 direction given to it by the legislature in AS 38.05.850, issued a conditional, revocable right-
5 of-way permit to Golden Valley Electric Association for construction of an electric
6 transmission intertie between Healy and Fairbanks;

7 (4) in accordance with AS 38.05.035(e)(6)(C), the Department of Natural
8 Resources did not issue a written best interest finding, since the conditional right-of-way
9 permit granted to Golden Valley Electric Association was a permit and was revocable by its
10 terms;

11 (5) in December 1999, the Alaska Supreme Court held that the conditional
12 right-of-way permit that the Department of Natural Resources had granted to Golden Valley
13 Electric Association was not "functionally revocable" and that the Department of Natural
14 Resources should have issued a best interest finding under AS 38.05.035(e);

15 (6) the Alaska Supreme Court's recent decision jeopardizes the status of
16 permits previously issued by the Department of Natural Resources under AS 38.05.850, as
17 each of those permits may constitute a disposal of state land for which a best interest finding
18 is required;

19 (7) in order to comply in the future with the Alaska Supreme Court's recent
20 ruling and to avoid challenge to its permits, the Department of Natural Resources will likely
21 have to issue a best interest finding for every permit issued under AS 38.05.850;

22 (8) issuing a best interest finding for each permit issued under AS 38.05.850
23 will necessitate substantial additional expenditures for which the Department of Natural
24 Resources is inadequately funded;

25 (9) the consequences of the Department of Natural Resources' having to issue
26 best interest findings for permits issued under AS 38.05.850 without additional funding include

27 (A) the creation of uncertainty on the part of prospective permittees;

28 (B) the rapid depletion of the Department of Natural Resources' funds;

29 (C) substantial delays in the permitting process;

30 (D) a negative effect on the development and use of state land

31 resources; and

1 (E) potential impairment of the safety of Alaskans; and
2 (10) in passing ch. 113, SLA 1981, the legislature's intention in enacting
3 AS 38.05.035(a)(14)(C), now AS 38.05.035(e)(6)(C), was to create an exception to the best
4 interest finding requirement that would apply to all permits issued by the Department of
5 Natural Resources under AS 38.05.850, including the permit issued to Golden Valley Electric
6 Association.

7 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 INTENT. It is the intent of the legislature to confirm by clarification that all permits
10 issued by the Department of Natural Resources under AS 38.05.850 are exempt from the best
11 interest finding requirements of AS 38.05.035(e).

12 * Sec. 3. AS 38.05.035(e)(6) is amended to read:

13 (6) before a public hearing, if held, or in any case not less than 21 days
14 before the sale, lease, or other disposal of available land, property, resources, or
15 interests in them other than a sale, lease, or other disposal of available land or an
16 interest in land for oil and gas under (5) of this subsection, the director shall make
17 available to the public a written finding that, in accordance with (1) of this subsection,
18 sets out the material facts and applicable statutes and regulations and any other
19 information required by statute or regulation to be considered upon which the
20 determination that the sale, lease, or other disposal will best serve the interests of the
21 state was based; however, a written finding is not required before the approval of

22 (A) a contract for a negotiated sale authorized under
23 AS 38.05.115;

24 (B) a lease of land for a shore fishery site under AS 38.05.082;

25 (C) a permit or other authorization revocable by the
26 commissioner;

27 (D) a mineral claim located under AS 38.05.195;

28 (E) a mineral lease issued under AS 38.05.205;

29 (F) an exempt oil and gas lease sale under AS 38.05.180(d) of
30 acreage subject to a best interest finding issued within the previous 10 years or
31 a reoffer oil and gas lease sale under AS 38.05.180(w) of acreage subject to a

1 best interest finding issued within the previous 10 years, unless the
 2 commissioner determines that substantial new information has become available
 3 that justifies a supplement to the most recent best interest finding for the
 4 exempt oil and gas lease sale acreage and for the reoffer oil and gas lease sale
 5 acreage; however, for each oil and gas lease sale described in this
 6 subparagraph, the director shall call for comments from the public; the
 7 director's call for public comments must provide opportunity for public
 8 comment for a period of not less than 30 days; if the director determines that
 9 a supplement to the most recent best interest finding for the acreage is required
 10 under this subparagraph,

11 (i) the director shall issue the supplement to the best
 12 interest finding not later than 90 days before the sale;

13 (ii) not later than 45 days before the sale, the director
 14 shall issue a notice describing the interests to be offered, the location
 15 and time of the sale, and the terms and conditions of the sale; and

16 (iii) the supplement has the status of a final written best
 17 interest finding for purposes of (i) and (l) of this section;

18 (G) a shallow gas lease authorized under AS 38.05.177 in an
 19 area for which leasing is authorized under AS 38.05.177;

20 (H) a surface use lease under AS 38.05.255;

21 (I) a permit, right-of-way, or easement under AS 38.05.850;

22 * Sec. 4. AS 38.05.850 is amended by adding a new subsection to read:

23 (c) If the director determines, by evaluation of the nature and duration of the
 24 intended use, that an easement or right-of-way issued under this section will not be
 25 functionally revocable, the director shall provide public notice before issuing the
 26 easement or right-of-way.

27 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section
 28 to read:

29 **RETROACTIVITY.** Section 3 of this Act is retroactive to, and applies to permits
 30 issued under AS 38.05.850 on or after, July 27, 1981.

31 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

SENATOR
PETER KELLY

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(907) 456-8161



Senate

White in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

Senate District P

Sponsor Statement

Senate Bill 255

“An Act regarding best interest findings and land use permits issued by the Department of Natural Resources”

Senate Bill 255 is intended to clarify the fact that permits issued by the Department of Natural Resources (DNR) pursuant to AS 38.05.850 are exempt from the best interest finding requirement imposed by AS 38.05.035 (e) which applies to disposals of State land.

AS 38.05.850 authorizes the director of the Division of Lands, without the DNR Commissioner’s consent and without the necessity of a best interest finding, to issue permits, rights-of-way, and easements on State land for such purposes as roads, field gathering lines, or transmission and distribution pipelines, telephone or electric transmission and distribution lines, log storage, oil well drilling sites and production facilities. All permits issued by DNR are issued pursuant to AS 38.05.850

Recently the Alaska Supreme Court ruled that a conditional right-of-way permit issued by DNR for construction of an electric transmission line required a best interest finding. The Court’s decision jeopardizes the status of permits previously issued by DNR under AS 38.05.850 as each of those permits may, under the Court’s logic, constitute a disposal of State land for which a best interest finding was required. The court’s decision has potentially dramatic implications for the oil, gas, mining, timber, utility and transportation industries. In order for DNR to comply with the Court’s ruling and to survive legal challenges to the permits which it issues, DNR will likely have to issue best interest findings for almost every permit issued under AS 38.95.850.

Sponsor Statement SB 255
Page two.

The consequences of such an approach would (1) strain DNR's budget, (2) substantially delay the permitting process and, (3) negatively impact development and use of State land resources.

SB 255 confirms by clarification and amendment that permits, right-of-way and easements issued under AS 38.05.850 are exempt from the best interest finding requirement of AS 38.05.035(e). SB 255 allows DNR to continue managing State lands cost effectively. There are no negative monetary implications to this Bill.

The request that SB 255 be applied retroactively to all DNR permits issued since July 27, 1981 coincides with the effective date of the permit exception in AS 38.05.035 (e)(6)(C). Retroactive application will eliminate challenges to DNR permits that were issued without a best interest finding and that may still be subject to challenge.

SENATE BILL NO. 255

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY SENATOR PETE KELLY

Introduced: 2/8/00

Referred: Resources, Finance

A BILL

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2 Department of Natural Resources; and providing for an effective date."

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22 RETROACTIVITY. Section 3 of this Act is retroactive to, and applies to permits
23 issued under AS 38.05.850 on or after, July 27, 1981.

24 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. SB 255

Revision Date/Time: _____ Dept Affected: Natural Resources
 Title: PUBLIC LAND PERMITS/HEALY-FAIRBANKS BRU: Minerals, Land & Water Development
 INTERTIE _____ Component: Claims, Permits and Leases
 Sponsor: Sen. Pete KELLY
 Requestor: SRES Component No 2460

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

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: \$ _____ n/a

POSITIONS

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)

There is no anticipated fiscal impact associated with implementation of this legislation.

Prepared by: Robert M. Loertler Phone: 907-269-8600
 Division: Mining, Land and Water Date: 17-Feb-00
 Approved by Commissioner: John Shively Date: 2-17-00
 Agency: Natural Resources

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MEMORANDUM

February 17, 2000

SUBJECT: Sectional Summary of SB 255. (Work Order No. 21-LS1245\D)

TO: Senator Pete Kelly
Attn: Victor Gunn

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Findings.

Section 2. Intent.

Section 3. Specifies that the permit exception to the written "best interest" finding requirement of AS 38.05.035(e) applies to permits issued by the director of the department of natural resources under AS 38.05.850.

Section 4. Makes section 3 retroactive to the date the Act establishing the permit exception took effect.

Section 5. Effective date.

KLK:glc
99-067.glc