

HB

395

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 395(RES)
(H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): 4/19/2004 Dept. Affected: Natural Resources
Title: Shallow Natural Gas RDU: Resource Development
Component: Oil and Gas Development
Sponsor: Harris, Gatto, Stoltze, Seaton
Requester: House Resources Component No.: 439

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 |

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

HE 395 would make a number of changes to the state's shallow natural gas leasing program including additional public notice requirements; setback guidelines, noise mitigation, and reclamation requirements; and a provision for bonding

Under Sections 13 and 14 of the bill, additional public notification beyond that already carried out by DNR would be required. Specifically, this would require DNR to publish notice in a paper of statewide circulation and a paper in the affected area one additional time beyond what is currently done when giving notice of a shallow natural gas application and calling for public comments. In addition, the bill would require DNR to publish two display ads in at least one paper of statewide circulation and one local paper in the area of the proposed action.

Prepared by: Mark D. Myers Phone: 269-8800
Division: Oil and Gas Date/Time: 4/19/04
Approved by: Thomas Irwin, Commissioner Date: 4/19/04
Agency: Natural Resources

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 395(RES)

ANALYSIS CONTINUATION

The Anchorage Daily News has general circulation in all areas of the state. The cost for a legal notice is \$404 per day (weekday).

Publication cost in a local paper is estimated at \$225 (Frontiersman was used as an estimate) per day.

Display ad in the Anchorage Daily News = $\$614.70 \times 2 = 1,229.40$

Display ad in a local paper = $\$242.00 \times 2 = 484.00$

Combined total all additional notice: \$ 2,342.40

Last year, DNR processed three groups of applications in calendar year 2003 (DNR tries to group applications to cut down on noticing costs). $3 \times \$2,342.40 = \$7,027.20$

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
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Mail Stop 3101

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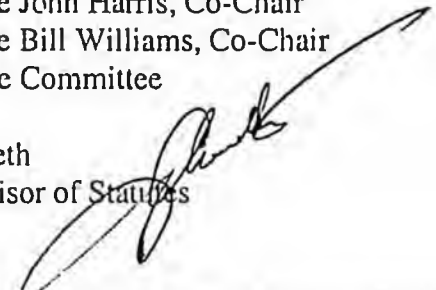
MEMORANDUM

April 27, 2004

SUBJECT: Committee Substitute for House Bill 395(FIN)
(Work Order No. 23-LS1314K)

TO: Representative John Harris, Co-Chair
Representative Bill Williams, Co-Chair
House Finance Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes



The Committee Substitute for House Bill 395(Finance) incorporates two amendments into the Resources-adopted draft.

In the companion bill, CSHB 531(Fin), the committee adopted an amendment that deleted the "damages for the owner's use and enjoyment of the property" provision. That same omission of the language ought to be considered for CSHB 395(Finance) where the language appears at page 12, beginning at line 5. However, that deletion is a substantive change concerning a matter as to which the committee was divided, and I don't think I have the authority to make the deletion on my own initiative as a technical or conforming correction.

JBC:lmb
04-129.lmb

Enclosure

4/27/04

W/D

23-LS1314M.1
Chenoweth
4/27/04

AMENDMENT 1 by Rep Harris

OFFERED IN THE HOUSE

TO: CSHB 395(RES)

1 Page 3, line 10, through page 4, line 11:

2 Delete all material.

3

4 Renumber the following bill sections accordingly.

5

6 Page 17, line 17:

7 Delete "6, 12, 15, 17, 19, and 22"

8 Insert "10, 13, 15, 17, and 20"

9

10 Page 17, line 22:

11 Delete "sec. 23 of this Act, secs. 2, 4, 6, 12, 15, 17, 19 and 22"

12 Insert "sec. 21 of this Act, secs. 2, 4, 10, 13, 15, 17, and 20"

13

14 Page 17, line 24:

15 Delete "sec. 23"

16 Insert "sec. 21"

17

18 Page 17, line 28:

19 Delete "sec. 24"

20 Insert "sec. 22"

4/27/04 ~~ADOPTED~~

no/obj^{23-LS1314M.2}
Chenoweth
4/27/04

AMENDMENT

2 by Rep Harris

OFFERED IN THE HOUSE

TO: CSHB 395(RES)

1 Page 17, following line 14:

2 Insert a new bill section to read:

3 **"* Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 APPLICABILITY. The provisions of AS 38.05.177(c), as amended by sec. 8 of this
6 Act, 38.05.177(f), as amended by sec. 9 of this Act, 38.05.177(k), as amended by sec. 10 of
7 this Act and 38.05.177(p) and (q), added by sec. 11 of this Act, apply to leases issued under
8 AS 38.05.177 and in effect on the effective date of secs. 8 - 11 of this Act."

9

10 Renumber the following bill sections accordingly.

11

12 Page 17, line 22:

13 Delete "sec. 23"

14 Insert "sec. 24"

15

16 Page 17, line 24:

17 Delete "sec. 23"

18 Insert "sec. 24"

19

20 Page 17, line 28:

21 Delete "sec. 24"

22 Insert "sec. 25"

Adopted
no/obj

23-LS1314/M.3
Chenoweth
4/27/04

4/27/04.
AMENDMENT 3

OFFERED IN THE HOUSE
TO: CSHB 395(RES)

BY REPRESENTATIVE HARRIS

1 Page 7, following line 21:

2 Insert a new bill section to read:

3 **** Sec. 10.** AS 38.05.177(h) is amended to read:

4 (h) A lease issued under this section is subject to the following terms and
5 conditions and may be terminated by the director in the event of a breach of a term or
6 condition:

7 (1) the lessee may surrender the lease or relinquish part of the lease at
8 any time; however, a lease or part of a lease that was issued under this section
9 before the effective date of this bill section and that is surrendered or
10 relinquished under this paragraph may not again be leased under this section
11 unless the lease complies with the provisions of this section as it reads on the
12 effective date of this bill section;

13 (2) the lease may not be transferred or assigned until a well capable of
14 production of gas in paying quantities has been drilled on the lease; however, this
15 paragraph does not prohibit the lessee from entering into a farm out agreement or
16 similar arrangement with a third party under which the third party assists in
17 exploration and development of production from the lease if the agreement or
18 arrangement does not require a payment of consideration by the third party to the
19 lessee, except that the lessee may retain an overriding royalty interest in the lease or
20 may retain a net profit or other production payment."

21
22 Renumber the following bill sections accordingly.

23

1 Page 17, following line 14:

2 Insert a new bill section to read:

3 , "* Sec. 24. The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 CERTAIN LEASES ISSUED UNDER FORMER AS 38.05.177 AND
6 SURRENDERED OR RELINQUISHED MAY NOT BE AGAIN BE LEASED. A lease or
7 part of a lease that was issued under former AS 38.05.177 before the effective date of this
8 section and that is surrendered or relinquished under former AS 38.05.177(h)(1) may not
9 again be leased unless the lease complies with the provisions of AS 38.05.180(ff), as repealed
10 and reenacted by sec. 13 of this Act."

11

12 Renumber the following bill sections accordingly.

13

14 Page 17, line 17:

15 Delete "12, 15, 17, 19, and 22"

16 Insert "13, 16, 18, 20, 23, and 24"

17

18 Page 17, following line 22:

19 Delete "sec. 23"

20 Insert "sec. 25"

21 Delete "12, 15, 17, 19, and 22"

22 Insert "13, 16, 18, 20, 23, and 24"

23

24 Page 17, line 24:

25 Delete "sec. 23"

26 Insert "sec. 25"

27

28 Page 17, line 28:

29 Delete "sec. 24"

30 Insert "sec. 26"

AMENDMENT

H 4/27/04

OFFERED IN THE HOUSE
FINANCE COMMITTEE
TO: CSHB 395(RES)

BY REPRESENTATIVE CROFT

WAD

1 Page 9, Line 24-Page 10, Line 6;

2 Delete all material and insert:

3 "(3) for a nonconventional gas lease, rights under the reservation as set out
4 in AS 38.05.125 may not be exercised under the lease unless

5 (A) the owner and the state and its lessees, successors, or
6 assigns reach a prior written agreement under which the state and its
7 lessees, successors, or assigns may enter upon the land in the exercise of
8 the reserved right; only one written agreement authorizing entry onto the
9 land may be required under this subparagraph to authorize activity by the
10 state and its lessees, successors, or assigns, or by their agents, attorneys,
11 and servants as allowed under this subsection; an agreement entered into
12 under this subparagraph is

13 (i) for the duration of the period of production or recovery
14 operations unless the parties agree to a different duration; and

15 (ii) a covenant running with the land;

16 (B) the director, after notice and an opportunity to be heard,
17 determines that, to exercise rights under the reservation and the lease, the
18 lessee has no other reasonable means of entry than access and entry upon
19 the land of the owner; the lessee has the burden of demonstrating
20 compliance with this subparagraph; and

21 (C) the state, its lessees, successors, or assigns make provisions to
22 pay the owner of the land full payment for all damages sustained by the
23 owner by reason of entering upon the land for the purpose of exercising
24 rights under the lease, by posting a surety bond determined by the owner
25 and by the state, its lessees, successors, or assigns to be sufficient as to
26 form, amount and security to secure to the owner payment for all damages,
27 subject to the following:

1
2
3
4
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7
8

(i) if a provision of this subparagraph conflicts with a requirement of AS 38.05.130, the provision of this subparagraph prevails; and

(ii) in addition to the coverage for actual damages required by AS 38.05.130 or this subparagraph, as appropriate, the parties shall make provision for payment of reasonable compensation to the owner for any loss by the owner of the owner's use and enjoyment of the property."



ALASKA STATE LEGISLATURE
REPRESENTATIVE JOHN HARRIS
STATE CAPITOL 505 JUNEAU, ALASKA 99801-1182 (907)465-4859

COMMITTEE SUBSTITUTE FOR HOUSE BILL 395 (RES)
SPONSOR STATEMENT

HB 395 was designed to resolve concerns many Alaskans have with coal bed methane development in the areas of property rights, water quality assurance, and local involvement of residents.

Many concerns have been raised recently by residents of the Mat-Su Borough and Homer area through a series of public forums. All sponsors worked diligently, listening to public input from numerous community hearings and comments received during the committee process.

This CS continues to require that:

- 1) Public comment and other routes of access be considered prior to executing a lease.
- 2) The integrity of the affected water supply is protected.
- 3) Public notice be given prior to the award of a lease via newspapers and direct mail.
- 4) The owner's surface property be restored in the event of damage.
- 5) Noise from field operation is mitigated.
- 6) Shallow natural gas exploration is defined/capped at 3,000 ft.

The changes for this CS:

Sec. 2: Terminology change: Shallow natural gas is redesignated as "nonconventional gas."

Sec. 7: Adds a new chapter on nonconventional gas operations for land not governed by 38.05

Sec. 9: Stipulates the manner (distance) in which water wells are tested for purity, as suggested by AOGCC as best engineering practice.

Sec. 16: Mandates that water discharge from Coal Bed Methane Drilling be regulated by DEC. (by repealing the current exemption)

Sec. 23 & 24: These are the contingency repealers. They enumerate the sections [2, 4, 6, 12, 15, 17, 19, & 22] that will take effect if, and only if, HB 531 passes.



Alaska State Legislature

REPRESENTATIVE JOHN HARRIS

District 12 - Eielson AFB, Valdez, Delta Junction, Palmer, Glennallen, Salcha, Paxson, Sutton, Chickaloon

Sectional for CS for House Bill 395(RES) Version "M"

On Dealing with shallow natural gas activity oversight by the Alaska Oil and Gas Conservation Commission

Sections 1&2: This amendment alters the authority of the AOGCC such that paragraph (1) prohibits the commission from issuing a permit if operations would involve producing gas from an aquifer that serves as a source of drinking water or for agricultural purposes" and a conditional prohibition against the reinjection of produced water. Paragraph (2) expands the authority of the commission to regulate hydraulic fracturing associated with exploration for, and the disposal of, wastes produced by those operations.

Section 3 & 4: This section adds a new provision directing the AOGCC to initiate a public forum process to resolve informally matters of public health, safety, welfare, and environmental complaints.

Section 5: Standardizes 'shallow natural gas' to mean natural gas drilled at a depth of no greater than 3,000. adds provisions for interaction between a developer and a surface owner (as defined in the new chapter) only for activities not governed by the Alaska Land Act (38.05)

Section 7 Adds a new chapter dealing with nonconventional gas operations for land not governed by 38.05. (there are very few possible types of land i.e. homesteads, territory)

Sections 8 deals with changes to authorizing shallow natural gas leasing under 38.05.177. Section 5 amends requirements of notice by acknowledging that the director should actually consider public comment that may be received before executing a lease. The substitution of "may" for "shall" alters the scope of the director's authority to where discretion can be exercised.

Section 9 adds a series of additional requirements to be inserted in a shallow natural gas lease, to include: water well testing. Appropriate setbacks for compressor stations. Noise mitigation measures. And surface restoration requirements if the surface is disturbed by exploration or development.

In instances in which an owner and a lessee cannot reach agreement for the latter's entry on to property to explore for and develop shallow natural gas and the lessee seeks to post a bond to permit entry, the first amendment adds a further requirement that the lessee demonstrate the necessity to access the property.

Co-Chair, Joint Armed Services Committee
Co-Chair, House Finance Committee
Member, Energy Council

Session: State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-4859 Fax: (907) 465-3799
Interim: P.O. Box 305, Valdez, Alaska 99686 • Phone (907) 835-2836 Fax: (907) 835-3732

Section 10 requires the lessee to demonstrate necessity of access before a surety bond is determined, and requires written advance notice at least 30 days before initial entry.

Section 11 provides the opportunity for the owner to submit further comments of appropriate action to the director (of Oil & Gas) in the event the lessee and owner cannot come to an agreement.

Sections 13 & 14 provides notice requirement at the receipt of a lease application.

Section 16 Repeals the exemption of regulation of water discharge from Coal Bed Methane Drilling; under the proposed language, DEC will regulate water byproduct from shallow natural gas operations.

Sections 20/21/22 Repeals portions of legislative findings (enacted by HB 69 last year) that override local control of shallow natural gas resources.

Sections 23 & 24 List contingent effects of many sections {2, 4, 6, 12, 15, 17, 19, & 22} such that they only take effect if HB 531 is enacted.

HB 531 scraps the shallow natural gas program; therefore, provisions for future public notice and the like, become moot should 531 pass.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 395(RES)
 (H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): 4/19/2004 Dept. Affected: Natural Resources
 Title: Shallow Natural Gas RDU: Resource Development
 Component: Oil and Gas Development
 Sponsor: Harris, Gatto, Stoltze, Seaton
 Requester: House Resources Component No. 439

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

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|-------------------------------|------------|------------|------------|------------|------------|------------|
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| TOTAL OPERATING | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 |
| CAPITAL EXPENDITURES | | | | | | |
| CHANGE IN REVENUES () | | | | | | |

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
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| TOTAL | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 |

Estimate of any current year (FY2004) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

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

HB 395 would make a number of changes to the state's shallow natural gas leasing program including additional public notice requirements; setback guidelines, noise mitigation, and reclamation requirements; and a provision for bonding

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Prepared by: Mark D. Myers Phone 269-8800
 Division: Oil and Gas Date/Time 4/19/04
 Approved by: Thomas Irwin, Commissioner Date 4/19/04
 Agency: Natural Resources

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STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 395(RES)

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

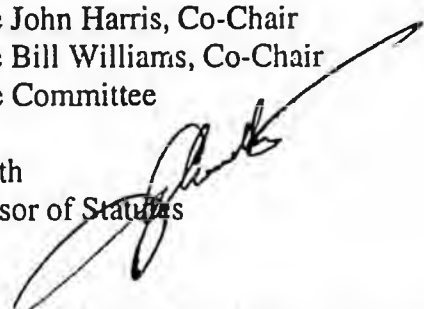
MEMORANDUM

April 27, 2004

SUBJECT: Committee Substitute for House Bill 395(FIN)
(Work Order No. 23-LS1314\K)

TO: Representative John Harris, Co-Chair
Representative Bill Williams, Co-Chair
House Finance Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes



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JBC:lmb
04-129.lmb

Enclosure

THE
FOLLOWING
DOCUMENT(S)
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Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907)272-1481 Fax: (907)279-8114
Email: brady@aoga.org
Judith Brady, Executive Director

April 22, 2004

Via Facsimile: (907)465-3793

The Honorable Bill Williams
Alaska State House of Representatives
State Capitol, Room 515
Juneau, AK 99801-1182

AOGA Concerns on Shallow Gas Legislation
(CSHB 531 and CSHB 395)

Dear Representative Williams:

The Alaska Oil & Gas Association (AOGA) shares your interest in Alaska's shallow gas leasing/coalbed methane program and your concern for its future. We have been following the proposed legislation pertaining to the shallow gas program and the public meetings undertaken by the Department of Natural Resources (DNR). We note that the Department has just released the public draft review of the Coalbed Methane Development Standards.

AOGA supports repealing the present, separate shallow gas leasing/coalbed methane program and incorporating it into Alaska's competitive oil and gas system with its required Best Interest Finding as proposed in CSHB 531. Simply stated, we believe many of the issues raised in this proposed legislation could, and should, be addressed by a Best Interest Finding. AOGA also recommends that CSHB 531 and CSHB 395 be revised to incorporate the same surface protection rights, including payment of damages and bonding requirements for nonconventional gas and coalbed methane, as the state demands for its conventional oil and gas leasing program. Alaska's current bonding requirements are based on legal precedent, are legally defensible, protect the state's dominant subsurface interest in the oil and gas that belongs to all Alaskans while assuring the surface owner of the right to negotiate a fair agreement for surface damages, should there be any. Finally, we have made recommendations on other provisions of CSHB 531 and CSHB 395.

AOGA is a private, nonprofit trade association whose 19 member companies represent the majority of oil and gas operations in the state. Our interest, as an association, is the same as the State of Alaska's: oil and gas leasing programs that have clear standards that are legally defensible and environmentally and technically sound, and that respect the rights of the public, the lessees and individual property owners.

April 22, 2004

Page 2

We appreciate the willingness of policy makers to understand the complex legal and political challenges inherent in Alaska's "split estate" heritage. While Alaska's ownership of the subsurface mineral estate on state-selected oil and gas lands is the basis for the state's wealth and its Permanent Fund, this same ownership sometimes causes concerns with private surface owners and managers. Both CSHB 531 and CSHB 395 address unconventional gas leasing in those instances where the state owns the subsurface and a private individual owns the surface.

The historical record of split estate transactions, both in other states and in Alaska, shows that most transactions between companies and individual landowners involve mutual respect, accommodation and agreement. For those transactions for which no agreement can be reached, there is a history of court decisions, including those in Alaska, which lay the foundation for resolving any such disputes today.

In 1996 the shallow gas leasing/coalbed methane program was viewed as a positive opportunity for the people of the state. In a bi-partisan vote the Legislature established the shallow gas leasing program with a vote of 57 yeas and 3 nays. Governor Knowles signed it into law.

The support for the program was based on its potential to bring new sources of clean, efficient energy to the state as well as providing jobs and taxes for local economies, and that in light of the tightening gas market in the Cook Inlet area, this new source could provide much needed gas reserves. It was believed the state had regulations in place to assure it could be done in an environmentally safe manner while protecting the rights of surface owners.

AOGA believes that shallow gas leasing and coalbed methane development is still a positive opportunity. The state does have regulations in place to assure environmentally safe development of coalbed methane and the state has the legal means of protecting both the surface and subsurface owners.

However, it has become clear that there is a lack of understanding of Alaska's split estate heritage as well as a variety of homeowner concerns that must be addressed if the future of the program is to be assured.

Most, if not all, of the present concerns being expressed by homeowners would have been aired, discussed and addressed had the program included a Best Interest Finding in the beginning.

AOGA agrees with concerned legislators and the administration that it will be in the best interest of all parties for the state to have the same leasing, public notice requirements, environmental protections, Best Interest Finding requirements, and bonding and surface use protections for nonconventional gas as it does for conventional oil and gas.

Alaska's conventional oil and gas leasing program is comprehensive, timely and legally defensible. It meets the public criteria for fair notice, local involvement, environmental protection, bonding and damage requirements. A Best Interest Finding:

- provides extensive public notice;
- provides for public hearings;

April 22, 2004

Page 3

- provides written responses to all concerns raised;
- provides the opportunity for experts from all agencies, the Departments of Environmental Conservation, Fish & Game and Natural Resources, as well as local governments, private organizations and individuals to provide input;
- provides a method for responding to special circumstances with special mitigation measures; and
- provides a legally defensible, comprehensive finding on which all parties can rely.

Recommendations for CSHB 531

1. AOGA supports repealing the present, separate shallow gas leasing/coalbed methane program and incorporating it into Alaska's competitive oil and gas system with its required Best Interest Finding as proposed in CSHB 531.

We believe that such an action will restore the faith of the public in these programs.

2. We support that provision of CSHB 531 that clearly identifies the role of the Alaska Oil & Gas Conservation Commission (AOGCC) in protecting water rights for nonconventional gas. (AS 31.05.030(j)).

This is the same role the Commission plays in conventional oil and gas leasing and therefore meets our recommendation that nonconventional oil and gas must be subject to the same environmental criteria as conventional oil and gas.

3. AOGA recommends that CSHB 531 be revised to incorporate the same surface protection rights, including payment of damages and bonding requirements for nonconventional gas and coalbed methane, as the state demands for its conventional oil and gas leasing program.

Alaska has strict surface damage requirements to protect the rights of surface owners.

Since Statehood there have been many cases of split estate negotiations in the Matanuska and the Kenai Boroughs. Only two cases have gone to DNR for resolution.

A straightforward approach would be to include a provision making it clear that existing state law governing damages and bonds also applies to gas only leases. Recommended language for CSHB 531(RES), Version V, is suggested below, along with language that clarifies the process. This language replaces the language included in Section 41, AS 38.05.180(ff)(3)(A) and (B):

(3) the provisions of AS 38.05.130 apply to gas only leases and shall be implemented as follows:

(A) **Damages and posting of bond.** A developer may not exercise a right of entry until the developer makes provision to pay the surface owner full payment for all damages sustained by the surface owner by reason of entering upon the land. If the surface owner, for any cause, refuses or

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neglects to settle the damages, the developer may enter upon the land after posting a surety bond determined by the Department of Natural Resources using a procedure similar to the procedure used to administer AS 38.05.130, including notice and an opportunity to be heard. The bond must be sufficient as to form, amount, and security to secure the surface owner payment for damages. The surface owner may institute legal proceedings in a court where the land is located as may be necessary to determine the damages that the surface owner may suffer.

(B) Before the amount of the surety bond to be posted is determined by the director, the director, after notice and an opportunity to be heard, shall review the lessee's proposed Plan of Operations to determine if use of the surface is reasonably necessary to remove the minerals.

(C) If the lessee holds a statewide bond, the amount determined by the director may be imposed against such bond and no separate additional bond will be required.

4. AOGA is strongly advising that there be no added requirement, special to shallow gas leasing or coalbed methane, concerning bonding/damages. Both CSHB 531 and CSHB 395 propose that, if the land owner and the lessee do not come to an agreement on use of the land, the director, in determining the amount of surety bond, shall make a finding that the lessee "has no other reasonable means of entry than access and entry on the land of the owner". Further, that in addition to the coverage of actual damages a surface owner be paid "reasonable compensation ... for any loss by the owner of the owner's use and enjoyment of the property." (Proposed language in CSHB 531 AS 38.05.180 (f)(3); CSHB 395 AS 38.05.177(k)(3)).

As to the requirement that there be a finding that the lessee has no other reasonable means of entry, the legislature's attorney, Jack Chenoweth, pointed out his concern in a March 30 memo that, insofar as the new bonding provisions in CSHB 531 and CSHB 395 limit access to the subsurface estate, they would therefore "call into question compliance with the statutory reservation" of the state's subsurface reservation of mineral rights.

The new bonding and damages proposals in CSHB 531 and in CSHB 395 raise serious legal and practical issues for all of Alaska's oil and gas leasing programs by making the dominant mineral estate into the subservient estate. Case law on surface estate is very clear that the mineral estate is the dominant estate, carrying with it the right to make such use of the surface as is reasonably necessary to remove the minerals.

Alaska's current bonding requirements are based on legal precedent, are legally defensible, protect the state's dominant subsurface interest in the oil and gas that belongs to all Alaskans while assuring the surface owner of the right to negotiate a fair agreement for surface damages, should there be any.

Alaska is not unique in having different owners of the surface and subsurface or mineral estate. Alaska is unique in that the state's mineral estate was deemed so important to the state's future that the Alaska Statehood Act imposed restrictions on the state's ability to alienate its mineral estate.

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Under 6(i) of the Statehood Act, the state must reserve to itself the mineral rights of all lands granted to it and must continue to do so even when the state sells, grants, deeds or patents these lands to third parties. If the state does not do so, the state lands "shall be forfeited to the United States...".

This restriction has implications for what rights the state can and cannot grant to surface owners when the state owns the subsurface. Quite simply, the state cannot transfer to a private surface owner a right that is inherent in the mineral state,

The combination of long-standing legal precedent in the resolutions of rights between surface and subsurface owners along with the restrictions in 6(i) of the Statehood Act means that care must be taken in responding to the challenge of protecting rights.

With the changes proposed above, nonconventional gas (shallow gas and coalbed methane) would be subject to the same process, notice, environmental and surface protection requirements as the conventional oil and gas leasing program in Alaska.

Recommendations on CSHB 395

1. AOGA supports the direction to the AOGCC on the protection of water in the proposed amendment of AS 31.05.030(j). AOGCC's role should be the same for conventional and unconventional oil and gas leasing.
2. We question the purpose and workability of the proposed AOGCC public forum process for shallow gas proposed in the section on AS 31.05.098. If the shallow gas program is incorporated into a Best Interest Finding, which we believe is the most comprehensive answer to concerns being expressed, this section will not be necessary.

If, this section is retained in lieu of a Best Interest Finding, the following should be considered:

- Tighten up the language to reflect that only matters within AOGCC's jurisdiction will be addressed in the hearings. (See especially lines 28-30 on page 3.)
 - Determine who can complain and in what time period. As written, anyone, anywhere, at any time can file a complaint and expect a public process 60 days later. Due process to the lessee is lost.
 - This section also seems to be making the AOGCC the gatekeeper for all complaints to the Department of Environmental Conservation, the Department of Public Safety, the Department of Natural Resources. Is the intent to add a new layer of hearings on these departments based on complaints?
3. It is noted that in the proposed amendment for private, non-state lands, the state's "damages and posting of bond" is almost identical to that provided for conventional oil and gas leasing (Chapter 90 Mineral Interests; Sec. 34.90.020) and yet for nonconventional leasing, additional requirements are proposed. (AS 38.05.177 (k)(3). (See also Section 12.)

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The first issue is whether the legislature wants to impose these requirements on private lands.

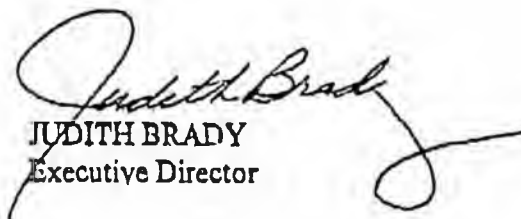
The second issue has to do with imposing additional bonding and damage requirements for nonconventional leases. We have expressed our concern with this approach in our comments on CSHB 531 (See comments 3 and 4.) AOGA believes that conventional and nonconventional oil and gas leasing programs should be bound by the same historic case law pertaining to damages and surface use. We believe these laws provide the protection that Alaskans expect. We recommend that the same language we've proposed in Section 41 of HB 531 be substituted in this legislation for the same reasons.

We emphasize that the proposed additional requirements for damages have serious implications both for the legal precedents that have governed split estate matters for years and for the implications to Alaska's conventional oil and gas leasing program. They are the single largest impediment in both CSHB 395 and CSHB 531.

4. Additional water testing, this time a requirement that each private water well within a quarter mile circle be tested by the lessee, is included in a new subsection, AS 38.05.177(f). It may be desirable to baseline test, but the size of area required to be tested is going to present some problems, aside from the obvious cost. It is our understanding that many Alaskans do not register their wells nor are all wells that are not registered logged. Further, some owners may not want them tested. There should be consideration given as to how a lessee could comply with this requirement.
5. The sections pertaining to appropriate setbacks and reasonable and appropriate noise mitigation would be more appropriately addressed in a Best Interest Finding, as would the lease abandonment requirement. All of these issues are commonly addressed in Best Interest Findings.

This concludes AOGA's comments. We hope they are helpful. We would be glad to work with you to ensure that the unconventional gas leasing program offers the same level of protection and assurance to the lessees, the public and the State as does Alaska's conventional oil and gas program.

Sincerely,


JUDITH BRADY
Executive Director