

HB

531

SENATE COMMITTEE REPORT

DATE: 5/1/04

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 5-4-04

Resources Committee considered CS FOR HOUSE BILL NO. 531(FIN) am

HB 531 CONVENTIONAL & NONCONVENTIONAL GAS LEASES

"An Act relating to natural gas exploration and development and to nonconventional gas, and amending the section under which shallow natural gas leases may be issued; and providing for an effective date."

and recommends:

- be replaced with S CS HB 531 (RES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

| | |
|-------------------------------------|--------------------------|
| Senate Bill: | |
| <input type="checkbox"/> | Same Title |
| <input type="checkbox"/> | New Title |
| House Bill: | |
| <input checked="" type="checkbox"/> | Same Title |
| <input type="checkbox"/> | Technical Title Change |
| <input type="checkbox"/> | New Title w/ SCR # _____ |

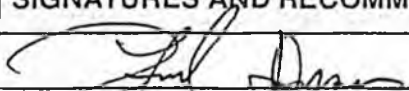
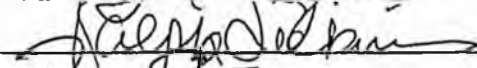
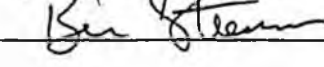
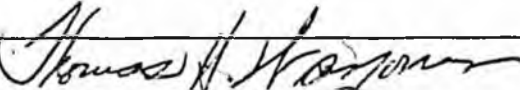
NEW FISCAL NOTE(S):

| Department | Date | Fiscal | Indet. | Zero | FN# |
|------------|------|--------|--------|------|-----|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

PREVIOUS FISCAL NOTE(S):

| Department | Date | Fiscal | Indet. | Zero | FN# |
|------------|---------|--------|--------|------|-----|
| DNR | 4/29/04 | ✓ | | | 2 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | DO PASS | DO NOT PASS | NO REC | AMEND |
|--|---------|-------------|--------|-------|
|  | ✓ | | | |
|  | ✓ | | | |
|  | ✓ | | | |
| | | | | |
| CHAIR:  | ✓ | | | |

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 531 (FIN)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title Shallow Natural Gas RDU Oil & Gas Conservation Commission
Component Oil & Gas Conservation Commission
Sponsor House Resources Committee
Requester Sen. Resources Component No. 2010

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 | 20.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 20.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |

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

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

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---------------------------|-------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 Gr./Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| 1162 AOGCC Receipts | 20.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |
| TOTAL | 20.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| Full-time | 0 | 0 | 0 | 0 | 0 | 0 |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)
\$20.0 for hydrology training and contractual costs.

Prepared by: John Norman, Chair Phone _____
Division: Alaska Oil & Gas Conservation Commission Date/Time 5/5/04 7:44 AM
Approved by: Ray Matiashowski, Commissioner Date 5/5/2004
Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 531(O&G)
(H) Publish Date: 4/5/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title: Conventional & Non-conventional Gas Leasing RDU: Resource Development
Component: Oil and Gas Development
Sponsor: House Resources
Requester: House Oil and Gas 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 | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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

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|---|--|--|--|--|--|--|
| CHANGE IN REVENUES (1004 GF) + | **Indeterminate Positive Amount** | | | | | |
|---|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2004) cost: 0.0

Mark 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)

This bill would eliminate the current over-the-counter shallow natural gas program. HB 531 would create a new gas only option under the competitive leasing and exploration licensing programs.

****Indeterminate positive fiscal note:** Moving from an over-the-counter program to a competitive program will result in increased revenue to the state. The commissioner will be able to set minimum rentals and bonus bid amounts based on technical analysis of the potential resources and economics of the lease or license area. While a best interest finding process will cost more up front, that cost will be more than offset by the gains in going to a competitive process. Also, having a best interest finding process at the leasing stage will facilitate a more efficient progression to exploration and development and provide the state with royalties and other revenues from development sooner.

Prepared by: Mark D. Myers Phone 269-8800
Division: Oil and Gas Date/Time 3/11/04
Approved by: Thomas Irwin, Commissioner Date 3/12/04
Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 531(FIN)
(H) Publish Date: 4/30/04

Revision Date/Time (Note if correction): 4/29/2004 Dept. Affected: Natural Resources
Title Conventional & Non-conventional Gas RDU Resource Development
Leasing Component Oil and Gas Development
Sponsor House Resources
Requester House Rules 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 | 80.0 | | | | | |
| Travel | 4.0 | | | | | |
| Contractual | 165.5 | | | | | |
| Supplies | 3.1 | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 252.6 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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

| | | | | | | |
|-------------------------------|---------------------------------|--|--|--|--|--|
| CHANGE IN REVENUES () | **Indeterminate Amount** | | | | | |
|-------------------------------|---------------------------------|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--|--------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 252.6 | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type-Do not abbreviate) | | | | | | |
| TOTAL | 252.6 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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 | 1 | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill would eliminate the current over-the-counter shallow natural gas program. HB 531 would create a new gas only option under the competitive leasing and exploration licensing programs.

****Indeterminate positive revenue:** Moving from an over-the-counter program to a competitive program will result in increased revenue to the state. The commissioner will be able to set minimum rentals and bonus bid amounts based on technical analysis of the potential resources and economics of the lease or license area. While a best interest finding process will cost more up front, that cost will be more than offset by the gains in going to a competitive process. Also, having a best interest finding process at the leasing and licensing stage will facilitate a more efficient progression to exploration and development and provide the state with royalties and other revenues from development sooner.

Prepared by: Mark D. Myers Phone 269-8800
Division: Oil and Gas Date/Time 4/29/04
Approved by: Thomas Irwin, Commissioner Date 4/29/04
Agency: Natural Resources

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 531(FIN)

ANALYSIS CONTINUATION

Section 60 would allow all pending shallow natural gas applicants a one-time opportunity to convert to a noncompetitive exploration license application upon payment of an application fee of \$1 per acre and with a 3-year work commitment equal to \$3 per acre. This section would also require DNR to conduct a best interest finding process prior to issuing the license.

In order to convert pending shallow natural gas applications to exploration licenses, DNR would need to simultaneously work on at least three additional best interest findings. In order to do so, it will be necessary to add one additional temporary best interest finding writer and contract out major portions of at least three findings. DNR anticipates after completing these findings that additional funding will not be needed.

DNR anticipates that there would be three separate best interest findings to cover conversion of the shallow natural gas applications to exploration licenses.

Expenditures:

Natural Resources Sp. III (\$80,000 Personal Services, \$4,300 Contractual, \$3,000 Supplies).

Travel for public hearings: \$4,000.

Outside Contracts for portions of three best interest findings: \$150,000

Expenses Associated with public notice and printing best interest findings:

Printing findings: \$1,400

Postage \$1,600

Envelopes: \$69

Public Notice (legal ads and display ads): \$8,231

(The Anchorage Daily News has general circulation in all areas of the state. The cost for a legal notice in the Anchorage Daily News is \$404 per day (weekday). $9 \times \$404 = \$3,636$. Publication cost in a local paper is estimated at \$225. $9 \times \$225 = \$2,025$. Display ad in the Anchorage Daily News = $\$614.70 \times 3 = \$1,844.10$. Display ad in a local paper = $\$242.00 \times 3 = \726)

AMENDMENT

#1

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

1 Page 6, line 25:

2 Delete "finds"

3 Insert "determines"

4

5 Page 7, line 4, following "or the":

6 Insert "United States"

7

8 Page 7, line 5:

9 Delete "and"

10

11 Page 7, line 11, following "required":

12 Insert "; and

13

14

15

16

17

(D) as a condition of approval of a permit to drill a well for production or production testing of coal bed methane, require the operator to design and implement a water well testing program to provide baseline data on water quality and quantity; the commission shall make the results of the water well testing program available to the public"

AMENDMENT

#2

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

1 Page 19, line 10:

2 Delete "(A)"

3

4 Page 19, line 23:

5 Delete "and"

6

7 Page 19, lines 24 - 29:

8 Delete all material.

9

10 Page 23, line 7:

11 Delete "AS 38.05.180(n)(2)"

12 Insert "AS 38.05.180(n)(2)(A)"

13

14 Page 26, lines 26 through 30:

15 Delete all material.

16

17 Page 38, line 28, following "gas,":

18 Insert "(A)"

19

20 Page 38, line 30, following "lease":

21 Insert "; and

22 (B) if the nonconventional gas produced will not be in
23 direct competition with gas on which a royalty at a rate of at least 12.5

1 percent is payable, then the royalty share payable to the state on all
2 production of gas from the pool attributable to that lease shall be 6.25
3 percent based upon production delivered in pipeline quality and free of all
4 lease expenses, including separation, cleaning, dehydration, gathering, salt
5 water disposal, and preparation for transportation off the lease"

AMENDMENT

#3

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

1 Page 20, line 13, following "AS 38.05.180(ff)(4)":

2 Insert "or 38.05.180(gg)"

3

4 Page 20, line 26, following "AS 38.05.180(ff)":

5 Insert ", 38.05.180(gg),"

6

7 Page 39, line 18:

8 Delete "a new subsection"

9 Insert "new subsections"

10

11 Page 40, following line 17:

12 Insert new subsections to read:

13 "(gg) Before approving operations for the development of coal bed methane
14 under AS 38.05.134, 38.05.177, or this section, the director shall ensure that the
15 approval is conditioned upon

16 (1) reasonable and appropriate setbacks governing the placement by
17 the operator of compressor stations; setbacks approved under this paragraph must be
18 determined with reference to the population density and general character of the
19 parcels surrounding the proposed compressor station site; and

20 (2) reasonable and appropriate measures to mitigate the noise of
21 compressors, engines, and other noise generating equipment operated by the operator
22 on the lease or license; measures approved under this paragraph must be determined
23 with reference to the population density and general character of the parcels
24 surrounding the proposed compressor, engine, or other noise generating equipment."

1 (3) the provisions of AS 38.05.130 apply to the extraction of coal bed
2 methane, except that the provisions of that section shall be implemented as follows:

3 (A) for an activity or operation for which the department, by
4 regulation, requires submission and approval of a plan of operations before
5 activities or operations may be undertaken, the director shall, as a condition for
6 issuing the bond, after notice and an opportunity to be heard, review the plan
7 of operations to determine if use of the surface is reasonably necessary to
8 extract coal bed methane; and

9 (B) the director may not require a bond posted under this
10 paragraph from a lessee or agent of a lessee if the lessee or agent has already
11 posted a bond covering the lessee's statewide oil and gas leasing activities.

amendment #

Page 41, lines 27 and 28

Delete "shales containing gas" and insert "gas
contained in shales".

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

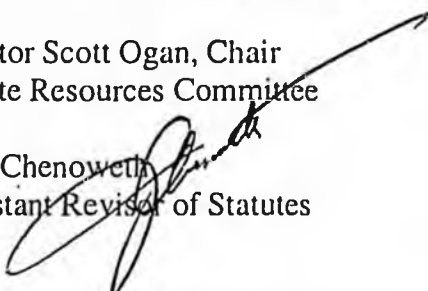
MEMORANDUM

May 4, 2004

SUBJECT: Amendment X.A.5 to CSHB 531(FIN) am
(Work Order No. 23-LS1818\X.A.5)

TO: Senator Scott Ogan, Chair
Senate Resources Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes



In preparing the amendment, I've added the modification set out that refers to page 23, at line 7.

I disagree that the placement proposed by this amendment is an improvement over the handling of the material in the bill. The change adds a royalty modification amendment into a subsection, AS 38.05.180(n), that now deals entirely with rent. If change of placement is desired, the better handling of the material would be to retain and rewrite AS 38.05.177(g) to accomplish this change. That subsection currently deals with the royalty payable under a shallow natural gas lease. Alternatively, I could add a new paragraph to AS 38.05.180(ff).

JBC:med
04-502.med

Enclosure

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

1 Page 19, line 10:

2 Delete "(A)"

3

4 Page 19, line 23:

5 Delete "and"

6

7 Page 19, lines 24 - 29:

8 Delete all material.

9

10 Page 23, line 7:

11 Delete "AS 38.05.180(n)(2)"

12 Insert "AS 38.05.180(n)(2)(A)"

13

14 Page 26, lines 26 through 30:

15 Delete all material.

16

17 Page 38, line 28, following "gas,":

18 Insert "(A)"

19

20 Page 38, line 30, following "lease":

21 Insert "; and

22

23

(B) if the nonconventional gas produced will not be in
direct competition with gas on which a royalty at a rate of at least 12.5

1
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3
4
5

percent is payable, then the royalty share payable to the state on all
production of gas from the pool attributable to that lease shall be 6.25
percent based upon production delivered in pipeline quality and free of all
lease expenses, including separation, cleaning, dehydration, gathering, salt
water disposal, and preparation for transportation off the lease"

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

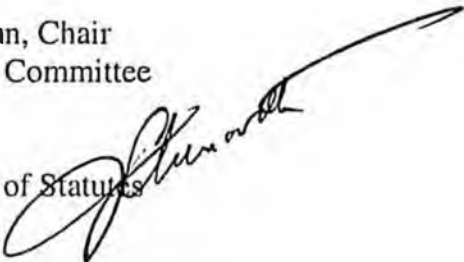
MEMORANDUM

May 4, 2004

SUBJECT: Amendments X.2 - X.4 to CSHB 531(FIN) am -- notes to accompany the draft amendments (Work Order Nos. 23-LS1818\X.2 - X.4)

TO: Senator Scott Ogan, Chair
Senate Resources Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes



The amendments are transmitted with these comments --

All three retain references to "coalbed methane" rather than substituting "nonconventional gas." I understand that the reference is intentional so that these requirements will operate to recover that resource only.

Amendment X.2: No comments.

Amendment X.3:

I opted not to use up another section in an already crowded article solely for dealing with "coalbed methane." The material proposed is added as a further paragraph to AS 38.05.180(ff), added as a new paragraph (5).

Amendment X.4:

The source of the language of the amendment was the same North Dakota statute that gave rise to AS 34.90, added in CSHB 395(FIN) am. Since the material is being incorporated into AS 38.05, I've substituted terms that already operate in that chapter -- "owner" for "surface owner" and "lessee or agent of the lessee" for "developer," for example.

I also don't understand the necessity of the material in subparagraph (A), for it largely repeats the language of AS 38.05.130. But if (A) is retained, I question reference in the text of the subparagraph to "procedure similar to the procedure used to administer AS 38.05.130" since the lead-in provision already says that AS 38.05.130 is to apply.

Senator Scott Ogan
May 4, 2004
Page 2

In subparagraph (B), the department assumes applicability of a plan of operations, but a plan of operations is a creature of regulation, so I have made the adjustment.

Subparagraph (C) is modeled on AS 38.05.177(k)(2)(B).

JBC:med
04-501.med

Enclosure

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

1 Page 6, line 25:

2 Delete "finds"

3 Insert "determines"

4

5 Page 7, line 4, following "or the":

6 Insert "United States"

7

8 Page 7, line 5:

9 Delete "and"

10

11 Page 7, line 11, following "required":

12 Insert ": and

13

14

15

16

17

(D) as a condition of approval of a permit to drill a well for
production or production testing of coal bed methane, require the
operator to design and implement a water well testing program to provide
baseline data on water quality and quantity; the commission shall make
the results of the water well testing program available to the public"

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

1 Page 40, line 17, following "and":

2 Insert ";

3 (5) before approving operations ~~on a noneconventional gas lease~~ for the
4 ~~exploration and~~ development of coal bed methane under AS 38.05.134, 38.05.177, or
5 this section, ~~or under an exploration license for the exploration and development of~~
6 ~~coal bed methane issued under AS 38.05.131 - 38.05.133~~, the director shall ensure that
7 the approval is conditioned upon

8 (A) reasonable and appropriate setbacks governing the
9 placement by the operator of compressor stations; setbacks approved under this
10 subparagraph must be determined with reference to the population density and
11 general character of the parcels surrounding the proposed compressor station
12 site; and

13 (B) reasonable and appropriate measures to mitigate the noise
14 of compressors, engines, and other noise generating equipment operated by
15 the operator on the lease or license; measures approved under this
16 subparagraph must be determined with reference to the population density and
17 general character of the parcels surrounding the proposed compressor, engine,
18 or other noise generating equipment"

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

1 Page 40, lines 6 - 12:

2 Delete all material and insert:

3 "(3) the provisions of AS 38.05.130 apply to the provisions of this
4 section for the extraction of coal bed methane, except that the provisions of that
5 section shall be implemented as follows:

6 (A) a lessee or agent of the lessee may not exercise a right of
7 entry until the lessee or agent makes provision to pay the owner full payment
8 for all damages sustained by the owner by reason of entering upon the land; if
9 the owner, for any cause, refuses or neglects to settle the damages, the lessee or
10 agent of the lessee may enter upon the land after posting a surety bond
11 determined by the department using a procedure similar to the procedure used
12 to administer AS 38.05.130, including notice and an opportunity to be heard;
13 the bond must be sufficient as to form, amount, and security to secure to the
14 owner payment for damages; the owner may institute legal proceedings in a
15 court where the land is located as may be necessary to determine the damages
16 that the owner may suffer;

17 A (B) for an activity or operation for which the department, by
18 regulation, requires submission and approval of a plan of operations before
19 activities or operations may be undertaken, the director shall, as a condition for
20 issuing the bond, after notice and an opportunity to be heard, review the plan
21 of operations to determine if use of the surface is reasonably necessary to
22 extract coal bed methane; and

23 B (C) the director may not require a bond posted under this

1

paragraph from a lessee or agent of a lessee if the lessee or agent has already

2

posted a bond covering the lessee's statewide oil and gas leasing activities;"

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

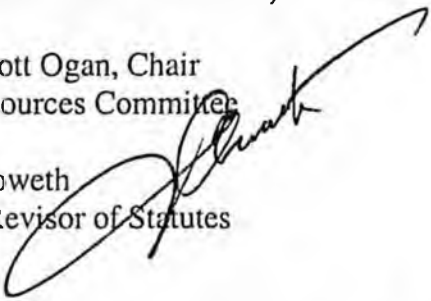
MEMORANDUM

May 2, 2004

SUBJECT: Draft SCS CSHB 531() -- notes to accompany the bill draft
(Work Order No. 23-LS1818\B)

TO: Senator Scott Ogan, Chair
Senate Resources Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes



The draft transmitted with this memo responds to your instruction to merge CSHB 395(FIN) am into CSHB 531(FIN) am. The resulting draft, identified as SCS CSHB 531(), deletes the language providing for the AOGCC public forum provisions (bill sections 3 and 4 in CSHB 395(FIN) am). The "mineral property leasing" provisions of AS 34.90, bill section 7 of CSHB 395(FIN) am have also been omitted; inclusion of that material -- it appears only in CSHB 395(FIN) am and not in CSHB 531(FIN) am -- would require a title change to CSHB 531(FIN) am in the second house, and you indicated you wanted to avoid that outcome if possible.¹

The combination of the two bills means that there is significant substantive material covering leasing of nonconventional gas under the "gas only" leasing authority proposed in the bill. Rather than show this material as additional subsections in an already too long AS 38.05.180, I am proposing to "reuse" or "recycle" AS 38.05.177. In this draft, I am proposing to repeal and reenact the section, limiting its contents to supplemental material applicable to "gas only" leasing under AS 38.05.180 for just nonconventional gas. This necessitates a movement or relocation of material, albeit without substantive change.

One issue that deserves attention as the draft is developed is the conflict between CSHB 395(FIN) am and CSHB 531(FIN) am as to which sets of law--former unamended AS 38.05.177 or AS 38.05.177 as repealed and reenacted in this Act--should apply to existing leases. This is noted in the discussion of handling of House amendments in this version that appears later in the memo.

¹ If you leave the mineral interest leasing provisions, AS 34.90, as the only provisions in CSHB 395(FIN) am, captioned SCS CSHB 395(), we would have to revise the title of *that* bill to eliminate what would be the extraneous references in the title to shallow natural gas. That would necessitate a concurrent resolution waiving appropriate rules to allow a narrowing of the bill title in order to delete material.

*

I'm sure that many House legislators are going to be looking at the draft with an eye to seeing how certain specific contents that were added to the House Resources-passed version either as House Finance-sponsored amendments or as floor amendments added in second reading have been handled in this version. What follows outlines my treatment of those materials in this bill draft --

AMENDMENT M.2 TO CSHB 395(RES), by Representative Harris, offered in House Finance: This is an "Applicability" provision. I have revised the references in this provision and it now appears as bill section 58 with appropriate permanent law cross-references substituted.

AMENDMENT M.3 TO CSHB 395(RES), by Representative Harris, offered in House Finance: This is the no "re-lease" provision covering currently issued shallow natural gas leases, and appears in AS 38.05.177(e)(1), added by bill section 27 [page 24, lines 21 - 25].

FLOOR AMENDMENT #1 TO CSHB 395(FIN), APRIL 30 HOUSE JOURNAL AT pp 3690 - 3693, by Representatives Harris and Gara: These changes are additional safeguards drawn from House Bill 370. Comparable provisions may be found in the accompanying draft at bill section 4 (adding subsection (c) to AS 29.40.040) and in bill section 27 (adding subsection (d)(1) - (3)) [page 24, lines 1 - 17].

AMENDMENT V.2 TO CSHB 531(RES), offered in House Finance: This is the "conversion to exploration licensing" option and appears as bill section 59.

AMENDMENT V.3 TO CSHB 531(RES), offered in House Finance: The amendment deleted the second part of a modified bond requirement covering compensation to the owner for loss of "use and enjoyment of the property." The omission is retained. See AS 38.05.177(c)(5), added by bill section 27 [page 22, lines 23 - 29].

FLOOR AMENDMENT #2 TO CSHB 531(FIN), APRIL 30 HOUSE JOURNAL AT PAGE 3699, by Representatives Kerttula and Croft: When it was reported to the floor, CSHB 531(FIN) contained a provision directing the Department of Natural Resources to handle existing leases and lease applications under the former (i.e. the current, unamended) provisions of AS 38.05.177. This floor amendment eliminated the part of the language directing the manner of handling of "lease *applications* under AS 38.05.177 that were received by the [department] before January 1, 2004," leaving the remainder of the language of that version of the bill in place.

This left each House-passed bill having its own "Applicability" provision. The provision in CSHB 395(FIN) am looked forward and directed that amended lease provisions should apply to former leases, while the similar provision in CSHB 531(FIN) am directed that former, unamended AS 38.05.177, with a limited number of revisions, would apply to

existing leases. I have made a choice and, for purposes of moving this draft through the process, have opted to go with the approach approved in CSHB 395(FIN) am -- as you will see in bill section 58. If that is not the correct choice, then section 58 should be redrafted to declare that former, unamended provisions of AS 38.05.177 should apply, with limited revisions:

ADMINISTRATION OF CERTAIN FORMER SHALLOW NATURAL GAS LEASES. The provisions of AS 38.05.177, as those provisions read on the day before the effective date of their repeal and reenactment by sec. 27 of this Act apply to shallow natural gas leases issued under AS 38.05.177 and in effect on December 31, 2003, except that a lease

(1) or part of a lease that was issued under former AS 38.05.177 before the effective date of this section and that is surrendered or relinquished under former AS 38.05.177(h)(1) may not again be leased unless the lease complies with the provisions of AS 38.05.177, as repealed and reenacted by sec. 27 of this Act; and

(2) issued before January 1, 2004, under former AS 38.05.177(c) may be extended at the discretion of the director; a lease may be extended under this paragraph upon application by the lessee; the director may once extend the lease for a period of not more than three years; in exercising discretion to extend a lease under this paragraph, the director may not extend the lease unless the director considers

(A) the extent of the exploration activity already conducted on the lease and on adjacent areas;

(B) the probability that further exploration activity will occur on the lease and will lead to gas development and production; and

(C) whether extension of the lease's primary term will accelerate the eventual production of gas from the lease.

On this point, you may want to ask the Department of Natural Resources for guidance.

FLOOR AMENDMENT #3 TO CSHB 531(FIN), APRIL 30 HOUSE JOURNAL AT pp 3699 - 3700, by Representatives Rokeberg and Joule: This series of changes addresses the relationship of shallow natural gas underlying coal leases. The amendments added on the House floor appear in this draft as the last sentence of bill section 16 [page 15, lines 20 - 23]; in bill sections 24 [page 20, line 19] and 26 [page 21, line 1]; in AS 38.05.177(c)(7), added by bill section 27 [page 23, lines 2 - 5]; and in bill section 37, added as the second amendment to AS 38.05.180(m) [page 39, lines 16 - 22] (rather than being placed at the end of that subsection).

JBC:med
04-494.med

Enclosure

23-LS1818\B
Chenoweth
5/2/04

SENATE CS FOR CS FOR HOUSE BILL NO. 531()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to natural gas exploration and development and to nonconventional
2 gas, and amending the section under which shallow natural gas leases may be issued;
3 and providing for an effective date."

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

5 * Section 1. AS 14.40.365(a) is amended to read:

6 (a) The University of Alaska may select and is entitled to receive the
7 conveyance of not less than 250,000 and not more than 260,000 acres of land
8 conveyed to the state under sec. 6(b) of the Alaska Statehood Act (P.L. 85-508, 72
9 Stat. 339). The Board of Regents of the University of Alaska shall periodically submit
10 a list of selections to the commissioner of natural resources and, if the list of selections
11 contains land within the boundaries of a municipality, the Board of Regents of the
12 University of Alaska shall submit the list to the municipality. The Board of Regents
13 and the commissioner of natural resources shall periodically and jointly submit to the
14 legislature, within 30 days of the beginning of a regular legislative session, a list of the

1 selections of land proposed to be conveyed by the state to the University of Alaska
2 under this section. If the list submitted to the legislature contains land within the
3 boundaries of a municipality, the Board of Regents and the commissioner of natural
4 resources shall provide a copy of the list to the municipality. Each list must contain
5 not more than 25 percent of the total acres of land to which the university is entitled
6 after subtracting previous conveyances under this section, but not less than 25,000
7 acres or the remaining entitlement under this section, whichever is less. A list of
8 selections submitted shall be considered approved for conveyance to the University of
9 Alaska unless the legislature acts to disapprove the list during the legislative session
10 during which the list was submitted. If the amount of land to be conveyed exceeds the
11 balance due the university under this section, the university shall set out the land to be
12 conveyed in priority order. Land may not be selected if, on the date of its selection by
13 the university, it

14 (1) is identified in AS 16.20, AS 41.15.300 - 41.15.330, or AS 41.21 or
15 has been reserved by law from the public domain;

16 (2) is located within a municipality unless the land is vacant,
17 unappropriated, unreserved land; if land included on the list of selections is selected
18 by the municipality with remaining selection rights under AS 29.65 within 120 days of
19 receiving the Board of Regents' list of selections under this subsection, the university
20 may not select the land unless a binding agreement between the university and the
21 municipality is negotiated to allow the selection; if the municipal selection is
22 disapproved, in whole or in part, the university may select the land, or any available
23 portion of the land, and that selection will relate back to the date of the Board of
24 Regents' list of selections under this subsection and shall have priority over all other
25 selections or claims made subsequent to that notice; in this paragraph, "vacant,
26 unappropriated, unreserved land" has the meaning given in AS 29.65.130;

27 (3) is land

28 (A) included in a five-year proposed [OIL AND GAS] leasing
29 program under AS 38.05.180(b); or

30 (B) leased under, or for which a lease application is pending
31 under, AS 38.05.180(d) or 38.05.150;

- 1 (4) is subject to
2 (A) an oil, gas, or coal lease, or coal prospecting permit;
3 (B) a mining claim, offshore prospecting permit, a prospecting
4 site, an upland mining lease, or a mining leasehold location;
5 (5) is necessary to carry out the purpose of an interagency land
6 management agreement; or
7 (6) is subject to conveyance under a land exchange or land settlement
8 agreement.

9 * Sec. 2. AS 14.40.365(e) is amended to read:

10 (e) The list of selections of land submitted to the legislature may not include a
11 land selection made by the University of Alaska under this section if the commissioner
12 of natural resources determines in writing that the proposed selection

13 (1) includes land that the commissioner, in consultation with the
14 commissioner of fish and game, determines has demonstrated value to the public as a
15 habitat area that is especially critical to the perpetuation of fish or wildlife;

16 (2) includes land for which, at the time of its selection under this
17 section, a municipality has made a selection under AS 29.65 unless the land selection
18 is, at a later date, rejected by the commissioner of natural resources or relinquished by
19 the municipality;

20 (3) includes land that the commissioner reasonably believes may be
21 selected by a newly formed municipality under AS 29.65.030, but the commissioner
22 may not withhold selection under this paragraph for more than three years after the
23 municipality's incorporation;

24 (4) includes land within the boundaries of a municipality, the
25 municipality has a remaining entitlement under AS 29.65, and the municipality selects
26 the land under AS 29.65 within 120 days after receipt by the municipality of the Board
27 of Regents' list of selections under (a) of this section;

28 (5) includes land that, at the time of its selection under this section,

29 (A) is subject to an [OIL AND GAS] exploration license
30 issued under AS 38.05.131 - 38.05.134; or

31 (B) the commissioner reasonably believes will be made part of

1 an [OIL AND GAS] exploration license issued under AS 38.05.131 -
 2 38.05.134; the commissioner may not refuse to convey title to land to the
 3 University of Alaska under this subparagraph for more than two years after its
 4 first selection by the University of Alaska; or

5 (6) includes land the commissioner of natural resources reasonably
 6 believes would not be in the best interests of the state to convey outside of state
 7 ownership.

8 * Sec. 3. AS 19.40.200(b) is amended to read:

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

11 (1) to a licensed public utility or a licensed common carrier under
 12 AS 38.05.810(e);

13 (2) for the reauthorization of leases that were in effect on January 1,
 14 1994, for nonresidential purposes within the following development nodes:

15 (A) Coldfoot:

16 Township 28 North, Range 12 West, Fairbanks Meridian

17 Sections 3 - 4

18 Sections 9 - 10

19 Sections 15 - 16

20 Sections 20 - 22

21 (B) Yukon River Crossing:

22 Township 12 North, Range 10 West, Fairbanks Meridian

23 Sections 6 - 7

24 Township 12 North, Range 11 West, Fairbanks Meridian

25 Sections 1 - 2

26 Section 12

27 Township 13 North, Range 10 West, Fairbanks Meridian

28 Sections 29 - 32

29 Township 13 North, Range 11 West, Fairbanks Meridian

30 Section 22

31 Sections 25 - 27

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Sections 34 - 36

(3) for nonresidential development within the following development

nodes:

(A) Deadhorse:

Township 10 North, Range 14 East, Umiat Meridian

Township 10 North, Range 15 East, Umiat Meridian

Section 8

Sections 17 - 20

Section 30

(B) Coldfoot:

Township 28 North, Range 12 West, Fairbanks Meridian

Sections 3 - 4

Sections 9 - 10

Sections 15 - 16

Sections 20 - 22

Township 29 North, Range 12 West, Fairbanks Meridian

Sections 23 - 27

Sections 34 - 35

(C) Franklin Bluffs:

Township 4 North, Range 14 East, Umiat Meridian

Sections 3 - 4

Sections 9 - 10

Sections 15 - 16

(D) Happy Valley:

Township 3 South, Range 14 East, Umiat Meridian

Sections 19 - 20

Sections 29 - 30

(E) Yukon River Crossing:

Township 12 North, Range 10 West, Fairbanks Meridian

Sections 6 - 7

Township 12 North, Range 11 West, Fairbanks Meridian

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Sections 1 - 2

Section 12

Township 13 North, Range 10 West, Fairbanks Meridian

Sections 29 - 32

Township 13 North, Range 11 West, Fairbanks Meridian

Section 22

Sections 25 - 27

Sections 34 - 36; or

(4) necessary for

(A) an oil and gas lease or gas only lease under AS 38.05.180;

(B) exploration, development, production, or transportation of oil and gas north of 68 degrees north latitude; or

(C) a state lease or materials sale for

(i) exploration, development, production, or transportation of oil or [AND] gas;

(ii) reconstruction or maintenance of state highways; or

(iii) construction or maintenance of airports.

* Sec. 4. AS 29.40.040 is amended by adding a new subsection to read:

(c) Land use regulations of a municipality adopted under this section establishing allowable uses and limitations on nonconventional gas exploration and development activities, including limitations that protect neighborhoods, protect the safety of residents, and limit audible noise, shall be given effect to the fullest extent allowed under the Constitution of the State of Alaska.

* Sec. 5. AS 31.05.030(j) is amended to read:

(j) For exploration and development operations involving nonconventional gas, the commission

(1) may not

(A) issue a permit to drill under this chapter if the well would be used to produce gas from an aquifer that serves as a source of water for human consumption or agricultural purposes unless the commission finds that the well will not adversely affect the aquifer as a

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1 source of water for human consumption or agricultural purposes; or
 2 (B) allow injection of produced water except at depths
 3 below known sources of water for human consumption or agricultural
 4 purposes;

5 (2) shall

6 (A) regulate hydraulic fracturing in nonconventional gas
 7 wells to assure protection of drinking water quality;

8 (B) regulate the disposal of wastes produced from the
 9 operations unless the disposal is otherwise subject to regulation by the
 10 Department of Environmental Conservation or the Environmental
 11 Protection Agency; and

12 (C) for the purposes of AS 46.04.030(b), [THE
 13 COMMISSION SHALL] determine whether a well drilled for
 14 nonconventional [SHALLOW NATURAL] gas may penetrate a formation
 15 capable of flowing oil and, if so, whether the volume of oil encountered will be
 16 of such quantities that an oil discharge prevention and contingency plan will be
 17 required.

18 * Sec. 6. AS 31.05.060(c) is amended to read:

19 (c) Notwithstanding the requirements of (a) and (b) of this section that relate
 20 to fixing a date for a hearing and causing notice of the hearing to be given, for an
 21 action under this chapter that involves the exploration for or development of
 22 nonconventional [SHALLOW NATURAL] gas and that has application to a single
 23 well or a single field, upon the request of a lessee or operator, the commission may,
 24 where operations might be unduly delayed, approve a variance from the commission's
 25 regulations that apply to the well or field without providing notice and opportunity to
 26 be heard. In the exercise of its authority to issue the variance,

27 (1) the commission may approve the variance if

28 (A) the approval provides at least an equally effective means of
 29 accomplishing the requirement set out in the commission's regulation; or

30 (B) the commission determines that the request is more
 31 appropriate to the proposed operation than compliance with the requirement of

1 the regulation; and

2 (2) the terms of the approval of the variance may include exempting
3 the lessee or operator from a requirement of a regulation if the commission determines
4 that the requirement is not necessary or not suited to the well or field taking into
5 consideration

6 (A) the nature of the operation involved;

7 (B) the characteristics of the well or field for which the
8 variance is sought; and

9 (C) the reasonably anticipated risks of the exemption from the
10 requirement to human safety and the environment.

11 * Sec. 7. AS 31.05.170 is amended by adding a new paragraph to read:

12 (16) "nonconventional gas" has the meaning given in AS 38.05.965.

13 * Sec. 8. AS 36.30.850(b)(25) is amended to read:

14 (25) acquisition of confidential seismic survey data necessary for pre-
15 sale oil and gas lease or gas only lease analyses under AS 38.05.180;

16 * Sec. 9. AS 36.30.850(b)(33) is amended to read:

17 (33) contracts between the Department of Natural Resources and
18 contractors qualified to evaluate hydrocarbon development, production, transportation,
19 and economics, to assist the commissioner of natural resources in evaluating
20 applications for [OIL AND GAS] royalty increases or decreases or other [OIL AND
21 GAS] royalty adjustments, and evaluating the related financial and technical data,
22 entered into under AS 38.05.180(j);

23 * Sec. 10. AS 38.04.065(i) is amended to read:

24 (i) An oil and gas lease sale or gas only lease sale is not subject to this
25 section. Oil and gas lease sales and gas only lease sales are subject to the planning
26 process established under AS 38.05.180.

27 * Sec. 11. AS 38.05.035(e) is amended to read:

28 (e) Upon a written finding that the interests of the state will be best served, the
29 director may, with the consent of the commissioner, approve contracts for the sale,
30 lease, or other disposal of available land, resources, property, or interests in them. In
31 approving a contract under this subsection, the director need only prepare a single

1 written finding. In addition to the conditions and limitations imposed by law, the
2 director may impose additional conditions or limitations in the contracts as the director
3 determines, with the consent of the commissioner, will best serve the interests of the
4 state. The preparation and issuance of the written finding by the director are subject to
5 the following:

6 (1) with the consent of the commissioner and subject to the director's
7 discretion, for a specific proposed disposal of available land, resources, or property, or
8 of an interest in them, the director, in the written finding,

9 (A) shall establish the scope of the administrative review on
10 which the director's determination is based, and the scope of the written
11 finding supporting that determination; the scope of the administrative review
12 and finding may address only reasonably foreseeable, significant effects of the
13 uses proposed to be authorized by the disposal;

14 (B) may limit the scope of an administrative review and finding
15 for a proposed disposal to

16 (i) applicable statutes and regulations;

17 (ii) the facts pertaining to the land, resources, or
18 property, or interest in them, that the director finds are material to the
19 determination and that are known to the director or knowledge of which
20 is made available to the director during the administrative review; and

21 (iii) issues that, based on the statutes and regulations
22 referred to in (i) of this subparagraph, on the facts as described in (ii) of
23 this subparagraph, and on the nature of the uses sought to be authorized
24 by the disposal, the director finds are material to the determination of
25 whether the proposed disposal will best serve the interests of the state;
26 and

27 (C) may, if the project for which the proposed disposal is
28 sought is a multiphased development, limit the scope of an administrative
29 review and finding for the proposed disposal to the applicable statutes and
30 regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that
31 pertain solely to the disposal phase of the project when

1 (i) the only uses to be authorized by the proposed
2 disposal are part of that phase;

3 (ii) the disposal is a [AN OIL AND GAS] disposal of
4 oil and gas, or of gas only, and, before the next phase of the project
5 may proceed, public notice and the opportunity to comment are
6 provided under regulations adopted by the department unless the
7 project is subject to a consistency review under AS 46.40 and public
8 notice and the opportunity to comment are provided under
9 AS 46.40.096(c);

10 (iii) the department's approval is required before the
11 next phase of the project may proceed; and

12 (iv) the department describes its reasons for a decision
13 to phase;

14 (2) the director shall discuss in the written finding prepared and issued
15 under this subsection the reasons that each of the following was not material to the
16 director's determination that the interests of the state will be best served:

17 (A) facts pertaining to the land, resources, or property, or an
18 interest in them other than those that the director finds material under (1)(B)(ii)
19 of this subsection; and

20 (B) issues based on the statutes and regulations referred to in
21 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
22 subsection;

23 (3) a written finding for an oil and gas lease sale or gas only lease sale
24 under AS 38.05.180 is subject to (g) of this section;

25 (4) a contract for the sale, lease, or other disposal of available land or
26 an interest in land is not legally binding on the state until the commissioner approves
27 the contract, but if the appraised value is not greater than \$50,000 in the case of the
28 sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or
29 interest in land, the director may execute the contract without the approval of the
30 commissioner;

31 (5) public notice requirements relating to the sale, lease, or other

1 disposal of available land or an interest in land for oil and gas, or for gas only,
2 proposed to be scheduled in the five-year oil and gas leasing program under
3 AS 38.05.180(b), except for a sale under (6)(F) of this subsection, are as follows:

4 (A) before a public hearing, if held, or in any case not less than
5 180 days before the sale, lease, or other disposal of available land or an interest
6 in land, the director shall make available to the public a preliminary written
7 finding that states the scope of the review established under (1)(A) of this
8 subsection and includes the applicable statutes and regulations, the material
9 facts and issues in accordance with (1)(B) of this subsection, and information
10 required by (g) of this section, upon which the determination that the sale,
11 lease, or other disposal will serve the best interests of the state will be based;
12 the director shall provide opportunity for public comment on the preliminary
13 written finding for a period of not less than 60 days;

14 (B) after the public comment period for the preliminary written
15 finding and not less than 90 days before the sale, lease, or other disposal of
16 available land or an interest in land for oil and gas or for gas only, the director
17 shall make available to the public a final written finding that states the scope of
18 the review established under (1)(A) of this subsection and includes the
19 applicable statutes and regulations, the material facts and issues in accordance
20 with (1) of this subsection, and information required by (g) of this section,
21 upon which the determination that the sale, lease, or other disposal will serve
22 the best interests of the state is based;

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

1 (A) a contract for a negotiated sale authorized under
2 AS 38.05.115;

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

4 (C) a permit or other authorization revocable by the
5 commissioner;

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

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

8 (F) an exempt oil and gas lease sale or gas only lease sale
9 under AS 38.05.180(d) of acreage subject to a best interest finding issued
10 within the previous 10 years or a reoffer oil and gas lease sale or gas only
11 lease sale under AS 38.05.180(w) of acreage subject to a best interest finding
12 issued within the previous 10 years, unless the commissioner determines that
13 substantial new information has become available that justifies a supplement to
14 the most recent best interest finding for the exempt oil and gas lease sale or
15 gas only lease sale acreage and for the reoffer oil and gas lease sale or gas
16 only lease sale acreage; however, for each oil and gas lease sale or gas only
17 lease sale described in this subparagraph, the director shall call for comments
18 from the public; the director's call for public comments must provide
19 opportunity for public comment for a period of not less than 30 days; if the
20 director determines that a supplement to the most recent best interest finding
21 for the acreage is required under this subparagraph,

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

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

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

29 (G) [A SHALLOW GAS LEASE AUTHORIZED UNDER
30 AS 38.05.177 IN AN AREA FOR WHICH LEASING IS AUTHORIZED
31 UNDER AS 38.05.177;

1 (H)] a surface use lease under AS 38.05.255;

2 (H) [(I)] a permit, right-of-way, or easement under
3 AS 38.05.850;

4 (7) the director shall include in

5 (A) a preliminary written finding, if required, a summary of
6 agency and public comments, if any, obtained as a result of contacts with other
7 agencies concerning a proposed disposal or as a result of informal efforts
8 undertaken by the department to solicit public response to a proposed disposal,
9 and the department's preliminary responses to those comments; and

10 (B) the final written finding a summary of agency and public
11 comments received and the department's responses to those comments.

12 * Sec. 12. AS 38.05.035(g) is amended to read:

13 (g) Notwithstanding (e)(1)(A) and (B) of this section, when the director
14 prepares a written finding required under (e) of this section for an oil and gas lease
15 sale or a gas only lease sale scheduled under AS 38.05.180, the director shall consider
16 and discuss

17 (1) in a preliminary or final written finding facts that are known to the
18 director at the time of preparation of the finding and that are

19 (A) material to issues that were raised during the period
20 allowed for receipt of public comment, whether or not material to a matter set
21 out in (B) of this paragraph, and within the scope of the administrative review
22 established by the director under (e)(1) of this section; or

23 (B) material to the following matters:

24 (i) property descriptions and locations;

25 (ii) the petroleum potential of the sale area, in general
26 terms;

27 (iii) fish and wildlife species and their habitats in the
28 area;

29 (iv) the current and projected uses in the area, including
30 uses and value of fish and wildlife;

31 (v) the governmental powers to regulate the [OIL AND

1 GAS] exploration, development, production, and transportation of oil
2 and gas or of gas only;

3 (vi) the reasonably foreseeable cumulative effects of
4 [OIL AND GAS] exploration, development, production, and
5 transportation for oil and gas or for gas only on the sale area,
6 including effects on subsistence uses, fish and wildlife habitat and
7 populations and their uses, and historic and cultural resources;

8 (vii) lease stipulations and mitigation measures,
9 including any measures to prevent and mitigate releases of oil and
10 hazardous substances, to be included in the leases, and a discussion of
11 the protections offered by these measures;

12 (viii) the method or methods most likely to be used to
13 transport oil or gas from the lease sale area, and the advantages,
14 disadvantages, and relative risks of each;

15 (ix) the reasonably foreseeable fiscal effects of the lease
16 sale and the subsequent activity on the state and affected municipalities
17 and communities, including the explicit and implicit subsidies
18 associated with the lease sale, if any;

19 (x) the reasonably foreseeable effects of [OIL AND
20 GAS] exploration, development, production, and transportation
21 involving oil and gas or gas only on municipalities and communities
22 within or adjacent to the lease sale area; and

23 (xi) the bidding method or methods adopted by the
24 commissioner under AS 38.05.180; and

25 (2) the basis for the director's preliminary or final finding, as
26 applicable, that, on balance, leasing the area would be in the state's best interest.

27 * Sec. 13. AS 38.05.036(a) is amended to read:

28 (a) The department may conduct audits regarding royalty and net profits under
29 oil and gas contracts, agreements, or leases under this chapter and regarding costs
30 related to [OIL AND GAS] exploration licenses entered into under AS 38.05.131 -
31 38.05.134 and exploration incentive credits under this chapter or under AS 41.09. For

1 purposes of audit under this section,

2 (1) the department may examine the books, papers, records, or
3 memoranda of a person regarding matters related to the audit; and

4 (2) the records and premises where a business is conducted shall be
5 open at all reasonable times for inspection by the department.

6 * Sec. 14. AS 38.05.127(e) is amended to read:

7 (e) The establishment of easements or rights-of-way for oil and gas, gas only,
8 and mineral leases under (a) of this section need not be made until the leases are ready
9 to be developed.

10 * Sec. 15. AS 38.05.131(a) is amended to read:

11 (a) Unless specifically provided otherwise in AS 38.05.132 - 38.05.134, the
12 provisions of AS 38.05.005 - 38.05.037, 38.05.140(f), 38.05.180, 38.05.182 -
13 38.05.184, and 38.05.920 - 38.05.990 apply to the issuance of [OIL AND GAS]
14 exploration licenses and leases for oil and gas, or for gas only, as appropriate,
15 under AS 38.05.132 - 38.05.134.

16 * Sec. 16. AS 38.05.132(a) is amended to read:

17 (a) To encourage exploration for oil and gas on state land, the commissioner
18 may issue [OIL AND GAS] exploration licenses. The commissioner may limit the
19 exploration licenses under AS 38.05.132 - 38.05.134 to exploration for and
20 recovery of gas only. The commissioner may not issue an exploration license on
21 land that is held under an existing coal lease entered into under AS 38.05.150 that
22 has an active permit for exploration or mining unless the licensee under this
23 subsection is also the lessee under AS 38.05.150 of that land.

24 * Sec. 17. AS 38.05.132(b) is amended to read:

25 (b) An [OIL AND GAS] exploration license issued under this section gives
26 the licensee

27 (1) the exclusive right to explore, for a term not to exceed 10 years,
28 [FOR DEPOSITS OF OIL AND GAS] on unleased state land described in the
29 exploration license for deposits of oil and gas, or for deposits of gas only, as
30 appropriate, unless the exploration license is terminated under (d)(1) of this section
31 or the land is earlier relinquished, removed, or deleted under (d)(2) of this section; and

1 (2) unless the exploration license is terminated under (d)(1) of this
2 section, the option to convert the exploration license for all or part of the state land,
3 except the land that is deleted or removed from the land described in the exploration
4 license under (d)(2) of this section, into an oil and gas lease, or a gas lease only, as
5 appropriate, upon fulfillment of the work commitments contained in the exploration
6 license.

7 * Sec. 18. AS 38.05.132(c) is amended to read:

8 (c) An exploration license awarded under this section

9 (1) is not subject to the acreage limitations imposed by
10 AS 38.05.140(c) or 38.05.180(m);

11 (2) may cover, subject to the maximum acreage limitation on
12 exploration licenses by one licensee under AS 38.05.131(e), an area of not less than
13 10,000 acres and not more than 500,000 acres, that must be reasonably compact and
14 contiguous;

15 (3) must be conditioned upon an obligation to perform a specified
16 work commitment, in total for the term of the license, expressed in dollars of direct
17 exploration expenditures; the specified work commitment

18 (A) may include a provision that adjusts the total amount of
19 work commitment, expressed in dollars of direct exploration expenditures, to
20 account for inflation;

21 (B) must include a requirement that the licensee complete at
22 least 25 percent of the licensee's total specified work commitment by the fourth
23 anniversary of the effective date of the issuance of the [OIL AND GAS]
24 exploration license;

25 (4) must be conditioned upon the posting of a bond or other security
26 acceptable to the commissioner, in favor of the state and subject to the following
27 requirements:

28 (A) the bond or other security must be renewed annually;

29 (B) the annual bond or other security shall be calculated as the
30 entire work commitment expressed in dollars, less the cumulative direct
31 exploration expenditures of the licensee as of the last day of the most recent

1 project year, divided by the number of years remaining in the term of the
2 exploration license;

3 (5) is subject to an annual review and revocation if the commissioner
4 determines that the licensee has failed to provide or maintain in effect the bond or
5 other security required by (4) of this subsection;

6 (6) must be conditioned upon the licensee's payment to the state of a
7 nonrefundable [OIL AND GAS] exploration license fee of \$1 for each acre of land or
8 fraction of each acre that is subject to the exploration license; and

9 (7) must be conditioned upon an agreement that exploration
10 expenditures are subject to audit by the commissioner.

11 * Sec. 19. AS 38.05.132(f) is amended to read:

12 (f) In this section,

13 (1) "direct exploration expenditure" means cash expenses undertaken
14 in performance of a specified work commitment under the provisions of AS 38.05.131
15 - 38.05.134 and necessarily incurred by the licensee in the permitting, mobilization,
16 conducting, demobilization, and evaluation of geophysical and geological surveys, or
17 the drilling, logging, coring, testing, and evaluation of oil and gas or gas only wells;
18 the term

19 (A) includes direct labor costs, including the cost of benefits,
20 for employees directly associated with the work commitment programs, the
21 cost of renting or leasing equipment from parties not affiliated with the
22 licensee, the reasonable costs of maintaining and operating equipment,
23 payments to consultants and independent contractors not affiliated with the
24 licensee, and costs of materials and supplies;

25 (B) does not include noncash expenses such as depreciation
26 and reserves, interest or other costs of borrowed funds, return on investment,
27 overhead, insurance or bond premiums, or any other expense that is
28 unreasonable or that the licensee has not incurred to satisfy the licensee's work
29 commitment;

30 (2) "work commitment" includes the drilling of one or more
31 exploration wells or the gathering of data from activities described in (1) of this

1 subsection, or both.

2 * Sec. 20. AS 38.05.133(a) is amended to read:

3 (a) The procedures in this section apply to the issuance of an [OIL AND GAS]
4 exploration license under AS 38.05.132.

5 * Sec. 21. AS 38.05.133(f) is amended to read:

6 (f) After considering proposals not rejected under (d) of this section and public
7 comment on those proposals, the commissioner shall issue a written finding
8 addressing all matters set out in AS 38.05.035(e) and (g), except for
9 AS 38.05.035(g)(1)(B)(xi). If the finding concludes that the state's best interests
10 would be served by issuing an [OIL AND GAS] exploration license, the finding must
11 (1) describe the limitations, stipulations, conditions, or changes from the initiating
12 proposal or competing proposals that are required to make the issuance of the
13 exploration license conform to the best interests of the state, and (2) if only one
14 proposal was submitted, identify the prospective licensee whom the commissioner
15 finds should be issued the exploration license. The commissioner shall attach to the
16 finding a copy of the exploration license to be issued and the form of lease that will be
17 used for any portion of the exploration license area subsequently converted to a [AN
18 OIL AND GAS] lease under AS 38.05.134.

19 * Sec. 22. AS 38.05.133(h) is amended to read:

20 (h) If competing proposals are submitted, and the commissioner's finding
21 under (f) of this section concludes that an [OIL AND GAS] exploration license should
22 be issued, the commissioner shall issue a request for competitive sealed bids, under
23 procedures adopted by the commissioner by regulation, to determine which
24 prospective licensee should be issued the exploration license. The finding provided to
25 the prospective licensees and the public under (f) of this section must contain notice
26 that (1) the commissioner intends to request competitive sealed bids, (2) a prospective
27 licensee who intends to participate in the bidding must notify the commissioner in
28 writing by the date specified in the notice, and (3) a prospective licensee's notice of
29 intent to participate in the bidding constitutes acceptance of issuance of the
30 exploration license, as limited or conditioned by the terms contained in the finding and
31 by the exploration license to be issued and the form of lease to be used that have been

1 attached to that finding, if the prospective licensee is the successful bidder. The
2 successful bidder is the prospective licensee who submits the highest bid in terms of
3 the minimum work commitment dollar amount.

4 * Sec. 23. AS 38.05.134 is amended to read:

5 Sec. 38.05.134. Conversion to lease. If the licensee requests and the
6 commissioner determines that the work commitment obligation set out in an [OIL
7 AND GAS] exploration license issued under AS 38.05.132 has been met, the
8 commissioner shall convert to one or more [OIL AND GAS] leases all or part, as the
9 licensee may indicate, of the area described in the exploration license that remains
10 after the relinquishments, removals, or deletions required by AS 38.05.132(d)(2). A
11 lease issued under this section

12 (1) is subject to the acreage limitations imposed by AS 38.05.140(c);

13 (2) is subject to AS 38.05.180(j) - (m), (o) - (u), and (x) - (z);

14 (3) must be conditioned upon a royalty in amount or value of not less
15 than 12.5 percent of production, except that

16 (A) the lessee who, proceeding under AS 38.05.131 -
17 38.05.134, under a lease issued in the Cook Inlet sedimentary basin who is the
18 first to file with the commissioner a nonconfidential sworn statement claiming
19 to be the first to have drilled a well discovering oil or gas in a previously
20 undiscovered oil or gas pool and who is certified by the commissioner within
21 one year of completion of that discovery well to have drilled a well in that pool
22 that is capable of producing in paying quantities shall pay a royalty of five
23 percent on all production of oil or gas from that pool attributable to that lease
24 for a period of 10 years following the date of discovery of that pool, and
25 thereafter the royalty payable on all production of oil or gas from the pool
26 attributable to that lease shall be determined and payable as specified in the
27 lease; the payment of the five percent royalty under this paragraph is
28 authorized only to a holder of a lease who meets the requirements of
29 AS 38.05.180(f)(4); and

30 (B) for nonconventional gas that is not produced in direct
31 competition with gas on which a royalty at a rate of at least 12.5 percent is

1 payable, if the licensee requests, the commissioner may negotiate with the
2 licensee and set a royalty rate for the gas of at least 6.25 percent; for
3 purposes of this subparagraph, "nonconventional gas" has the meaning
4 given in AS 38.05.965;

5 (4) must include an annual rent of \$3 per acre or fraction of an acre
6 initially paid to the state at inception of the lease and payable annually after that until
7 the income to the state from royalty under that lease exceeds the rental income to the
8 state under that lease for that year; and

9 (5) is subject to other conditions and obligations that are specified in
10 the lease.

11 * Sec. 24. AS 38.05.140(a) is amended to read:

12 (a) A person may not take or hold coal leases or permits during the life of coal
13 leases on state land exceeding an aggregate of 92,160 acres, except that a person may
14 apply for coal leases or permits for acreage in addition to 92,160 acres, not exceeding
15 a total of 5,120 additional acres of state land. The additional area applied for shall be
16 in multiples of 40 acres, and the application shall contain a statement that the granting
17 of a lease for additional land is necessary for the person to carry on business
18 economically and is in the public interest. On the filing of the application, except as
19 provided by AS 38.05.177(c)(7) [AS 38.05.177(a)(2)(C)], the coal deposits in the land
20 covered by the application shall be temporarily set aside and withdrawn from all other
21 forms of disposal provided under AS 38.05.135 - 38.05.181.

22 * Sec. 25. AS 38.05.140(f) is amended to read:

23 (f) The submerged and shoreland lying north of 57 degrees, 30 minutes, North
24 [NORTH] latitude and east of 159 degrees, 49 minutes, West [WEST] longitude
25 within the Bristol Bay drainage are designated as the Bristol Bay Fisheries Reserve.
26 Within the Bristol Bay Fisheries Reserve, a [NO] surface entry permit to develop an
27 oil or gas lease or an [OIL AND GAS] exploration license under AS 38.05.131 -
28 38.05.134 may not be issued on state owned or controlled land until the legislature by
29 appropriate resolution specifically finds that the entry will not constitute danger to the
30 fishery.

31 * Sec. 26. AS 38.05.150(f) is amended to read:

1 (f) Notwithstanding AS 38.05.132(a) and 38.05.177(c)(7) [AS 38.05.177], a
2 lease entered into under this section gives the lessee the right to vent or remove
3 methane and other gas held in association with the coal in the land covered by the
4 lease to ensure safe coal mining operations.

5 * Sec. 27. AS 38.05.177 is repealed and reenacted to read:

6 Sec. 38.05.177. **Nonconventional gas leases.** (a) When, under
7 AS 38.05.180(ff), leases are authorized and issued for the production of gas only, the
8 provisions of this section apply to the leasing of nonconventional gas.

9 (b) If, under AS 38.05.130, as applicable to a nonconventional gas lease

10 (1) the owner and the lessee enter into an agreement by which the
11 lessee makes provision to pay the owner of the land for all damages, the parties shall
12 incorporate in the agreement the provisions described in (c)(1) - (4) of this section that
13 are negotiated; or

14 (2) the owner and the lessee do not enter into an agreement by which
15 the state, or its lessees, successors, or assigns, will make provision to pay the owner of
16 the land for all damages, and the lessee proceeds to request the director to set the
17 amount of a surety bond, the owner may, in conjunction with notice and the
18 opportunity to be heard, provide the director with the owner's comments about the
19 appropriate location of wells, roads, and other improvements that may be made by the
20 lessee or the lessee's agent to secure the lessee's rights under the lease.

21 (c) For a nonconventional gas lease,

22 (1) the lease must provide for a water well testing requirement for each
23 lease that contains one or more wells that serve as a source of potable water; the
24 testing requirement of this paragraph applies to each water well that is located within a
25 square that bounds a circle with a radius of one-quarter mile around the drill site and
26 the sides of which are parallel or perpendicular to the four cardinal directions and are
27 tangent to the circle; under this subparagraph, the lessee shall, before commencement
28 of production testing and production activities on the lease,

29 (A) test each well for dissolved contents, including methane,
30 and water flow; and

31 (B) provide a copy of the test results to the owner, who shall

1 maintain the test record;

2 (2) the lease must provide for appropriate setbacks governing the
3 placement by the lessee or the lessee's agent of compressor stations on the lease;
4 setbacks developed under this paragraph must be determined with reference to the
5 population density of the parcel or parcels subject to the lease, the size of the owner's
6 parcels, and the general character of the land subject to the lease; the terms of the lease
7 must require the lessee or lessee's agent to negotiate to meet the requirement of this
8 paragraph, but the owner may not unreasonably withhold agreement;

9 (3) the lease must provide for reasonable and appropriate measures to
10 mitigate the noise of compressors, engines, and other equipment operated by the lessee
11 or the lessee's agent for compressor stations on the lease; noise mitigation measures
12 developed under this paragraph must be determined with reference to the population
13 density of the parcel or parcels subject to the lease, the size of the owner's parcels, and
14 the general character of the land subject to the lease; the terms of the lease shall
15 require the lessee or lessee's agent to negotiate to meet the requirement of this
16 paragraph, but the owner may not unreasonably withhold agreement;

17 (4) the lease must provide for action at the time of the termination or
18 abandonment of the lease to require the lessee or the lessee's agent to restore, reclaim,
19 or abate the adverse effects of the exploration and development operations using
20 natural revegetation or reseeded using endemic plant species; the lease may require
21 the lessee or the lessee's agent to consult with the director of the division of
22 agriculture;

23 (5) if a bond is sought under AS 38.05.130, before the amount of the
24 surety bond to be posted is determined by the director, require, as a condition for
25 issuing the lease, that the director, after notice and an opportunity to be heard,
26 determine that, to exercise rights under the reservation as set out in AS 38.05.125 and
27 the lease, the lessee has no other reasonable means of entry than access and entry upon
28 the land of the owner; the lessee has the burden of demonstrating compliance with the
29 requirement of this paragraph;

30 (6) the director shall require the lessee to provide written advance
31 notice to the owner of initial entry onto the property of the owner at least 30 days

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before initial entry;

(7) the provisions of this section do not apply to authorize a lease for the recovery of nonconventional gas on land that is held under an existing coal lease entered into under AS 38.05.150 that has an active permit for exploration or mining unless the lessee under this section is also the lessee under AS 38.05.150 of that land;

(8) issued before January 1, 2004, under former AS 38.05.177(c) the lease, may be extended at the discretion of the director; a lease may be extended under this paragraph upon application by the lessee; the director may once extend the lease for a period of not more than three years; in exercising discretion to extend a lease under this paragraph, the director may not extend the lease unless the director considers

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(A) the extent of the shallow natural gas exploration activity already conducted on the lease and on adjacent areas;

(B) the probability that further shallow natural gas exploration activity will occur on the lease and will lead to shallow natural gas development and production; and

(C) whether extension of the lease's primary term will accelerate the eventual production of shallow natural gas from the lease;

(9) a lessee holding a lease modified under AS 38.05.180(n)(2) may exercise the rights authorized by this section and the lease; the rights granted by the lease must be exercised in a manner that does not unreasonably interfere with eventual development of other mineral deposits on the land leased; however, in a lease entered into

(A) under AS 38.05.150 for land that is already subject to a lease covered under this section, coal may not be mined or extracted by the coal lessee from the coal lease without prior agreement with the lessee holding the lease covered under this section; and

(B) under AS 38.05.205 or 38.05.250 for land that is already subject to a lease covered under this section, minerals may not be mined or extracted by the mineral lessee from the mineral lease without prior agreement with the lessee holding the lease covered under this section.

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(d) For management and oversight of nonconventional gas,

(1) the commissioner shall adopt regulations under AS 38.05.127(b) and this paragraph to ensure that exploration and development activities under a gas only lease for nonconventional gas do not materially interfere with the public's right to access and enjoy ^{NAV} recreational waters, waters that contain appreciable quantities of resident or anadromous fish, and areas important to sport or subsistence hunting activities;

(2) unless provision is otherwise made in the lease by the Alaska Oil and Gas Conservation Commission under AS 31.05.030(j) that would govern the lessee's disposal of water produced from a coal seam as salt water or nonpotable water in a manner that does not add to or contaminate surface or subsurface water supplies, the lease must contain a term or condition that governs the lessee's disposal of the produced water in a manner that does not add to or contaminate surface water supplies; and

(3) the lease must contain a term or condition that protects the water quality, water quantity, and habitat of fish-bearing surface water; the term or condition may not take effect until approved by the commissioner of fish and game. OHMP

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

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

(2) the lease may not be transferred or assigned until a well capable of production of gas in paying quantities has been drilled on the lease; however, this paragraph does not prohibit the lessee from entering into a farm out agreement or similar arrangement with a third party under which the third party assists in exploration and development of production from the lease if the agreement or arrangement does not require a payment of consideration by the third party to the

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1 lessee, except that the lessee may retain an overriding royalty interest in the lease or
2 may retain a net profit or other production payment.

3 * Sec. 28. AS 38.05.180(a) is amended to read:

4 (a) The legislature finds that

5 (1) the people of Alaska have an interest in the development of the
6 state's oil and gas resources to

7 (A) maximize the economic and physical recovery of the
8 resources;

9 (B) maximize competition among parties seeking to explore
10 and develop the resources;

11 (C) maximize use of Alaska's human resources in the
12 development of the resources;

13 (2) it is in the best interests of the state

14 (A) to encourage an assessment of its oil and gas resources and
15 to allow the maximum flexibility in the methods of issuing leases to

16 (i) recognize the many varied geographical regions of
17 the state and the different costs of exploring for oil and gas in these
18 regions;

19 (ii) minimize the adverse impact of exploration,
20 development, production, and transportation activity; and

21 (B) to offer acreage for oil and gas leases or for gas only
22 leases, specifically including

23 (i) state acreage that has been the subject of a best
24 interest finding at annual areawide lease sales; and

25 (ii) land in areas that, under (d) of this section, may be
26 leased without having been included in the leasing program prepared
27 and submitted under (b) of this section.

28 * Sec. 29. AS 38.05.180(b) is amended to read:

29 (b) The commissioner shall biennially prepare and, between the first and the
30 15th day of the first regular session of each legislature, notify the legislature of the
31 availability of, a five-year proposed oil and gas leasing program consisting of a

1 schedule of proposed lease sales and specifying as precisely as practicable the location
2 of tracts proposed to be offered for oil and gas leasing or for leasing of gas only
3 during the calendar year in which the proposed program is made available to the
4 legislature and the following four calendar years.

5 * Sec. 30. AS 38.05.180(c) is amended to read:

6 (c) Except as provided in (d) and (w) of this section, an oil and gas lease sale
7 or gas only lease sale may not be held unless it was included in the proposed leasing
8 programs submitted to the legislature during the two calendar years preceding the year
9 in which the sale is held. A lease sale, whether for oil and gas or for gas only, may
10 not be held before the date it is scheduled in the proposed oil and gas leasing program.

11 * Sec. 31. AS 38.05.180(d) is amended to read:

12 (d) The commissioner

13 (1) may annually offer leases for oil and gas or leases for gas only
14 [LEASES] of the acreage described in AS 38.05.035(e)(6)(F);

15 (2) may issue [OIL AND GAS] leases in an area that has not been
16 included in a leasing program prepared, in accordance with (b) of this section, if the
17 land to be leased

18 (A) was previously subject to a valid state oil and gas lease, a
19 valid state gas lease, or a valid federal oil and gas lease;

20 (B) is contiguous to land already under state, federal, or private
21 lease and the commissioner makes a written finding, after hearing, that leasing
22 of the land would result in a substantial probability of early evaluation and
23 development of the land to be leased;

24 (C) is adjacent to land owned or controlled by another party on
25 which a discovery of commercial quantities of oil or gas has been made, and
26 the commissioner finds, after hearing, that there is a reasonable probability that
27 the land to be leased contains oil or gas in communication with the oil or gas
28 discovered on the land of the other party;

29 (D) is adjacent to land included in the federal five-year Outer
30 Continental Shelf leasing program under 43 U.S.C. 1344, and the
31 commissioner makes a written finding, after hearing, that coordinated or

1 simultaneous leasing with the federal government is in the public interest; or

2 (E) is the subject of an [OIL AND GAS] exploration license
3 issued under AS 38.05.131 - 38.05.134; however, if the license issued was
4 for exploration for and recovery of gas only, then the lease issued under
5 this subsection shall be limited to exploration for and recovery of gas only.

6 * Sec. 32. AS 38.05.180(f) is amended to read:

7 (f) Except as provided by AS 38.05.131 - 38.05.134 [AND 38.05.177], the
8 commissioner may issue oil and gas leases or leases for gas only on state land to the
9 highest responsible qualified bidder as follows:

10 (1) the commissioner shall issue an oil and gas lease or a gas only
11 lease, as appropriate, to the successful bidder determined by competitive bidding
12 under regulations adopted by the commissioner; bidding may be by sealed bid or
13 according to any other bidding procedure the commissioner determines is in the best
14 interests of the state;

15 (2) whenever under any of the leasing methods listed in this
16 subsection, a royalty share is reserved to the state, it shall be delivered in pipeline
17 quality and free of all lease or unit expenses, including but not limited to separation,
18 cleaning, dehydration, gathering, salt water disposal, and preparation for transportation
19 off the lease or unit area;

20 (3) following a pre-sale analysis, the commissioner may choose at least
21 one of the following leasing methods:

22 (A) a cash bonus bid with a fixed royalty share reserved to the
23 state of not less than 12.5 percent in amount or value of the production
24 removed or sold from the lease;

25 (B) a cash bonus bid with a fixed royalty share reserved to the
26 state of not less than 12.5 percent in amount or value of the production
27 removed or sold from the lease and a fixed share of the net profit derived from
28 the lease of not less than 30 percent reserved to the state;

29 (C) a fixed cash bonus with a royalty share reserved to the state
30 as the bid variable but no less than 12.5 percent in amount or value of the
31 production removed or sold from the lease;

1 (D) a fixed cash bonus with the share of the net profit derived
2 from the lease reserved to the state as the bid variable;

3 (E) a fixed cash bonus with a fixed royalty share reserved to the
4 state of not less than 12.5 percent in amount or value of the production
5 removed or sold from the lease with the share of the net profit derived from the
6 lease reserved to the state as the bid variable;

7 (F) a cash bonus bid with a fixed royalty share reserved to the
8 state based on a sliding scale according to the volume of production or other
9 factor but in no event less than 12.5 percent in amount or value of the
10 production removed or sold from the lease;

11 (G) a fixed cash bonus with a royalty share reserved to the state
12 based on a sliding scale according to the volume of production or other factor
13 as the bid variable but not less than 12.5 percent in amount or value of the
14 production removed or sold from the lease;

15 (H) for nonconventional gas that will not be produced in
16 direct competition with gas on which a royalty at a rate of at least 12.5
17 percent is payable, a royalty share reserved to the state of at least 6.25
18 percent in amount or value of the production removed or sold from the
19 lease;

20 (4) notwithstanding a requirement in the leasing method chosen of a
21 minimum fixed royalty share, on and after March 3, 1997, the lessee under a lease
22 issued in the Cook Inlet sedimentary basin who is the first to file with the
23 commissioner a nonconfidential sworn statement claiming to be the first to have
24 drilled a well discovering oil or gas in a previously undiscovered oil or gas pool and
25 who is certified by the commissioner within one year of completion of that discovery
26 well to have drilled a well in that pool that is capable of producing in paying quantities
27 shall pay a royalty of five percent on all production of oil or gas from that pool
28 attributable to that lease for a period of 10 years following the date of discovery of that
29 pool, and thereafter the royalty payable on all production of oil or gas from the pool
30 attributable to that lease shall be determined and payable as specified in the lease; for
31 purposes of this paragraph, the reduced royalty authorized by this paragraph is subject

1 to the following:

2 (A) only one reduction of royalty authorized by this paragraph
3 may be allowed on each lease that qualifies for reduction of royalty under this
4 paragraph;

5 (B) if, under this paragraph, application is made for a royalty
6 reduction for a lease that was entered into before March 3, 1997, the
7 commissioner may approve the application only if, on that date, the lease was a
8 nonproducing lease that was not committed to a unit approved by the
9 commissioner under (m) of this section, that is not part of a unit under (p) or
10 (q) of this section, and that has not been made part of a unit under AS 31.05;

11 (C) if application for a royalty reduction is made under this
12 paragraph for a lease on which a discovery royalty was claimed or may be
13 claimed under the discovery royalty provisions of former AS 38.05.180(a) in
14 effect before May 6, 1969, the commissioner shall disallow the application
15 under this paragraph unless the applicant waives the right to claim the right to
16 a reduced royalty under the discovery royalty provisions of former
17 AS 38.05.180(a) in effect before May 6, 1969; and

18 (D) the commissioner shall adopt regulations setting out the
19 standards, criteria, and definitions of terms that apply to implement the filing
20 of applications for, and the review and certification of, discovery [OIL AND
21 GAS ROYALTY] certifications under this paragraph;

22 (5) notwithstanding and in lieu of a requirement in the leasing method
23 chosen of a minimum fixed royalty share, or the royalty provision of a lease, for leases
24 unitized as described in (p) of this section, leases subject to an agreement described in
25 (s) or (t) of this section, or interests unitized under AS 31.05, the lessee of all or part of
26 an oil or gas field identified in this section that has been granted approval of a written
27 plan submitted to the Alaska Oil and Gas Conservation Commission under
28 AS 31.05.030(i) shall, subject to (dd) of this section, pay a royalty of five percent on
29 the first 25,000,000 barrels of oil and the first 35,000,000,000 cubic feet of gas
30 produced for sale from that field that occurs in the 10 years following the date on
31 which the production for sale commences; the fields eligible for royalty reduction

1 under this paragraph, all of which are located within the Cook Inlet sedimentary basin,
2 were discovered before January 1, 1988, and have been undeveloped or shut in from at
3 least January 1, 1988, through December 31, 1997, are

- 4 (A) Falls Creek;
- 5 (B) Nicolai Creek;
- 6 (C) North Fork;
- 7 (D) Point Starichkof;
- 8 (E) Redoubt Shoal; and
- 9 (F) West Foreland;

10 (6) notwithstanding and in lieu of a requirement in the leasing method
11 chosen of a minimum fixed royalty share, or the royalty provision of a lease, for leases
12 unitized as described in (p) of this section, leases subject to an agreement described in
13 (s) or (t) of this section, or interests unitized under AS 31.05, the lessee of all or part of
14 an oil field located offshore in Cook Inlet on which an oil production platform
15 specified in (A), (C), or (E) of this paragraph operates, or the lessee of all or part of the
16 field located offshore in Cook Inlet and described in (G) of this paragraph,

17 (A) shall pay a royalty of five percent on oil produced from the
18 platform if oil production that equaled or exceeded a volume of 1,200 barrels a
19 day declines to less than that amount for a period of at least one calendar
20 quarter, as certified by the Alaska Oil and Gas Conservation Commission, for
21 as long as the volume of oil produced from the platform remains less than
22 1,200 barrels a day; the provisions of this subparagraph apply to

- 23 (i) Dolly;
- 24 (ii) Grayling;
- 25 (iii) King Salmon;
- 26 (iv) Steelhead; and
- 27 (v) Monopod;

28 (B) shall pay a royalty calculated under this subparagraph if the
29 volume of oil produced from the platform that was certified by the Alaska Oil
30 and Gas Conservation Commission under (A) of this paragraph later increases
31 to 1,200 or more barrels a day and remains at 1,200 or more barrels a day for a

1 period of at least one calendar quarter; until the royalty rate determined under
2 this subparagraph applies, the royalty continues to be calculated under (A) of
3 this paragraph; on and after the first day of the month following the month the
4 increased production exceeds the period specified in this subparagraph, the
5 royalty payable under this subparagraph is

6 (i) for production of at least 1,200 barrels a day but not
7 more than 1,300 barrels a day - seven percent;

8 (ii) for production of more than 1,300 barrels a day but
9 not more than 1,400 barrels a day - 8.5 percent;

10 (iii) for production of more than 1,400 barrels a day but
11 not more than 1,500 barrels a day - 10 percent; and

12 (iv) for production of more than 1,500 barrels a day -
13 12.5 percent;

14 (C) shall pay a royalty of five percent on oil produced from the
15 platform if oil production that equaled or exceeded a volume of 975 barrels a
16 day declines to less than that amount for a period of at least one calendar
17 quarter, as certified by the Alaska Oil and Gas Conservation Commission, for
18 as long as the volume of oil produced from the platform remains less than 975
19 barrels a day; the provisions of this subparagraph apply to

20 (i) Baker;

21 (ii) Dillon;

22 (iii) XTO.A; and

23 (iv) XTO.C;

24 (D) shall pay a royalty calculated under this subparagraph if the
25 volume of oil produced from the platform that was certified by the Alaska Oil
26 and Gas Conservation Commission under (C) of this paragraph later increases
27 to 975 or more barrels a day and remains at 975 or more barrels a day for a
28 period of at least one calendar quarter; until the royalty rate determined under
29 this subparagraph applies, the royalty continues to be calculated under (C) of
30 this paragraph; on and after the first day of the month following the month the
31 increased production exceeds the period specified in this subparagraph, the

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royalty payable under this subparagraph is

(i) for production of at least 975 barrels a day but not more than 1,100 barrels a day - seven percent;

(ii) for production of more than 1,100 barrels a day but not more than 1,200 barrels a day - 8.5 percent;

(iii) for production of more than 1,200 barrels a day but not more than 1,350 barrels a day - 10 percent; and

(iv) for production of more than 1,350 barrels a day - 12.5 percent;

(E) shall pay a royalty of five percent on oil produced from the platform if oil production that equaled or exceeded a volume of 750 barrels a day declines to less than that amount for a period of at least one calendar quarter, as certified by the Alaska Oil and Gas Conservation Commission, for as long as the volume of oil produced from the platform remains less than 750 barrels a day; the provisions of this subparagraph apply to

(i) Granite Point;

(ii) Anna; and

(iii) Bruce;

(F) shall pay a royalty calculated under this subparagraph if the volume of oil produced from the platform that was certified by the Alaska Oil and Gas Conservation Commission under (E) of this paragraph later increases to 750 or more barrels a day and remains at 750 or more barrels a day for a period of at least one calendar quarter; until the royalty rate determined under this subparagraph applies, the royalty continues to be calculated under (E) of this paragraph; on and after the first day of the month following the month the increased production exceeds the period specified in this subparagraph, the royalty payable under this subparagraph is

(i) for production of at least 750 barrels a day but not more than 850 barrels a day - seven percent;

(ii) for production of more than 850 barrels a day but not more than 1,000 barrels a day - 8.5 percent;

1 (iii) for production of more than 1,000 barrels a day but
2 not more than 1,200 barrels a day - 10 percent; and

3 (iv) for production of more than 1,200 barrels a day -
4 12.5 percent;

5 (G) shall pay a royalty of five percent on oil produced from the
6 field if oil production that equaled or exceeded a volume of 750 barrels a day
7 declines to less than that amount for a period of at least one calendar quarter,
8 as certified by the Alaska Oil and Gas Conservation Commission, for as long
9 as the volume of oil produced from the field remains less than 750 barrels a
10 day; the provisions of this subparagraph apply to the West McArthur River
11 field;

12 (H) shall pay a royalty calculated under this subparagraph if the
13 volume of oil produced from the field that was certified by the Alaska Oil and
14 Gas Conservation Commission under (G) of this paragraph later increases to
15 750 or more barrels a day and remains at 750 or more barrels a day for a period
16 of at least one calendar quarter; until the royalty rate determined under this
17 subparagraph applies, the royalty continues to be calculated under (G) of this
18 paragraph; on and after the first day of the month following the month the
19 increased production exceeds the period specified in this subparagraph, the
20 royalty payable under this subparagraph is

21 (i) for production of at least 750 barrels a day but not
22 more than 850 barrels a day - seven percent;

23 (ii) for production of more than 850 barrels a day but
24 not more than 1,000 barrels a day - 8.5 percent;

25 (iii) for production of more than 1,000 barrels a day but
26 not more than 1,200 barrels a day - 10 percent; and

27 (iv) for production of more than 1,200 barrels a day -
28 12.5 percent; and

29 (I) may obtain the benefits of the royalty adjustments set out in
30 (A) - (H) of this paragraph only if the commissioner determines that the
31 reduction in production from the platform or the field is

1 (i) based on the average daily production during the
2 calendar quarter based on reservoir conditions; and

3 (ii) not the result of short-term production declines due
4 to mechanical or other choke-back factors, temporary shutdowns or
5 decreased production due to environmental or facility constraints, or
6 market conditions.

7 * Sec. 33. AS 38.05.180(h) is amended to read:

8 (h) The commissioner may include terms in any [OIL AND GAS] lease
9 imposing a minimum work commitment on the lessee. These terms shall be made
10 public before the sale, and may include appropriate penalty provisions to take effect in
11 the event the lessee does not fulfill the minimum work commitment. If it is
12 demonstrated that a lease has been proven unproductive by actions of adjacent lease
13 holders, the commissioner may set aside a work commitment. The commissioner may
14 waive for a period not to exceed one two-year period any term of a minimum work
15 commitment if the commissioner makes a written finding either that conditions
16 preventing drilling or exploration were beyond the lessee's reasonable ability to
17 foresee or control or that the lessee has demonstrated through good faith efforts an
18 intent and ability to drill or develop the lease during the term of the waiver.

19 * Sec. 34. AS 38.05.180(i) is amended to read:

20 (i) The commissioner may provide for the establishment of an exploration
21 incentive credit system under which a lessee of state land drilling an exploratory well
22 on that land may earn credits based upon the footage drilled and the region in which
23 the well is situated. The commissioner may also provide for credits to be earned by
24 persons performing geophysical work on state land, if that work is performed during
25 the two seasons immediately preceding an announced lease sale and on land included
26 within the sale area and the geophysical information is made public following the sale.
27 Credits may not exceed 50 percent of the cost of the drilling or geophysical work.
28 Credits may be used during a limited period established by the commissioner and may
29 be assigned during that period. Credits may be applied against (1) [OIL AND GAS]
30 royalty and rental payments for oil and gas or for gas only payable to the state or (2)
31 taxes payable under AS 43.55. A credit may not exceed 50 percent of the payment

1 toward which it is being applied. Amounts due the Alaska permanent fund
2 (AS 37.13.010) shall be calculated before the application of credits under this
3 subsection.

4 * Sec. 35. AS 38.05.180(j) is amended to read:

5 (j) The commissioner

6 (1) may provide for modification of royalty on individual leases, leases
7 unitized as described in (p) of this section, leases subject to an agreement described in
8 (s) or (t) of this section, or interests unitized under AS 31.05

9 (A) to allow for production from an oil or gas field or pool if

10 (i) the oil or gas field or pool has been sufficiently
11 delineated to the satisfaction of the commissioner;

12 (ii) the field or pool has not previously produced oil or
13 gas for sale; and

14 (iii) oil or gas production from the field or pool would
15 not otherwise be economically feasible;

16 (B) to prolong the economic life of an oil or gas field or pool as
17 per barrel or barrel equivalent costs increase or as the price of oil or gas
18 decreases, and the increase or decrease is sufficient to make future production
19 no longer economically feasible; or

20 (C) to reestablish production of shut-in oil or gas that would
21 not otherwise be economically feasible;

22 (2) may not grant a royalty modification unless the lessee or lessees
23 requesting the change make a clear and convincing showing that a modification of
24 royalty meets the requirements of this subsection and is in the best interests of the
25 state;

26 (3) shall provide for an increase or decrease or other modification of
27 the state's royalty share by a sliding scale royalty or other mechanism that shall be
28 based on a change in the price of oil or gas and may also be based on other relevant
29 factors such as a change in production rate, projected ultimate recovery, development
30 costs, and operating costs

31 (4) may not grant a royalty reduction for a field or pool

1 (A) under (1)(A) of this subsection if the royalty modification
2 for the field or pool would establish a royalty rate of less than five percent in
3 amount or value of the production removed or sold from a lease or leases
4 covering the field or pool;

5 (B) under (1)(B) or (1)(C) of this subsection if the royalty
6 modification for the field or pool would establish a royalty rate of less than
7 three percent in amount or value of the production removed or sold from a
8 lease or leases covering the field or pool;

9 (5) may not grant a royalty reduction under this subsection without
10 including an explicit condition that the royalty reduction is not assignable without the
11 prior written approval, which may not be unreasonably withheld, by the
12 commissioner; the commissioner shall, in the preliminary and final findings and
13 determinations, set out the conditions under which the royalty reduction may be
14 assigned;

15 (6) shall require the lessee or lessees to submit, with the application for
16 the royalty reduction, financial and technical data that demonstrate that the
17 requirements of this subsection are met; the commissioner

18 (A) may require disclosure of only the financial and technical
19 data related to development, production, and transportation of oil and gas or
20 gas only from the field or pool that are reasonably available to the applicant;
21 and

22 (B) shall keep the data confidential under AS 38.05.035(a)(9)
23 at the request of the lessee or lessees making application for the royalty
24 reduction; the confidential data may be disclosed by the commissioner to
25 legislators and to the legislative auditor and as directed by the chair or vice-
26 chair of the Legislative Budget and Audit Committee to the director of the
27 division of legislative finance, the permanent employees of their respective
28 divisions who are responsible for evaluating a royalty reduction, and to agents
29 or contractors of the legislative auditor or the legislative finance director who
30 are engaged under contract to evaluate the royalty reduction, if they sign an
31 appropriate confidentiality agreement;

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(7) may

(A) require the lessee or lessees making application for the royalty reduction under (1)(A) of this subsection to pay for the services of an independent contractor, selected by the lessee or lessees from a list of qualified consultants compiled by the commissioner, to evaluate hydrocarbon development, production, transportation, and economics and to assist the commissioner in evaluating the application and financial and technical data; if, under this subparagraph, the commissioner requires payment for the services of an independent contractor, the total cost of the services to be paid for by the lessee or lessees may not exceed \$150,000 for each application, and the commissioner shall determine the relevant scope of the work to be performed by the contractor; selection of an independent contractor under this subparagraph is not subject to AS 36.30;

(B) with the mutual consent of the lessee or lessees making application for the royalty reduction under (1)(B) or (1)(C) of this subsection, request payment for the services of an independent contractor, selected from a list of qualified consultants to evaluate hydrocarbon development, production, transportation, and economics by the commissioner to assist the commissioner in evaluating the application and financial and technical data; if, under this subparagraph, the commissioner requires payment for the services of an independent contractor, the total cost of the services that may be paid for by the lessee or lessees may not exceed \$150,000 for each application, and the commissioner shall determine the relevant scope of the work to be performed by the contractor; selection of an independent contractor under this subparagraph is not subject to AS 36.30;

(8) shall make and publish a preliminary findings and determination on the royalty reduction application, give reasonable public notice of the preliminary findings and determination, and invite public comment on the preliminary findings and determination during a 30-day period for receipt of public comment;

(9) shall offer to appear before the Legislative Budget and Audit Committee, on a day that is not earlier than 10 days and not later than 20 days after

1 giving public notice under (8) of this subsection, to provide the committee a review of
2 the commissioner's preliminary findings and determination on the royalty reduction
3 application and administrative process; if the Legislative Budget and Audit Committee
4 accepts the commissioner's offer, the committee shall give notice of the committee's
5 meeting to all members of the legislature;

6 (10) shall make copies of the preliminary findings and determination
7 available to

8 (A) the presiding officer of each house of the legislature;

9 (B) the chairs of the legislature's standing committees on
10 resources; and

11 (C) the chairs of the legislature's special committees on oil and
12 gas, if any;

13 (11) shall, within 30 days after the close of the public comment period
14 under (8) of this subsection,

15 (A) prepare a summary of the public response to the
16 commissioner's preliminary findings and determination;

17 (B) make a final findings and determination; the
18 commissioner's final findings and determination prepared under this
19 subparagraph regarding a royalty reduction is final and not appealable to the
20 court;

21 (C) transmit a copy of the final findings and determination to
22 the lessee;

23 (D) with the applicant's consent, amend the applicant's lease or
24 unitization agreement consistent with the commissioner's final decision; and

25 (E) make copies of the final findings and determination
26 available to each person who submitted comment under (8) of this subsection
27 and who has filed a request for the copies;

28 (12) is not limited by the provisions of AS 38.05.134(3) or (f) of this
29 section in the commissioner's determination under this subsection.

30 * Sec. 36. AS 38.05.180(*l*) is amended to read:

31 (*l*) Subject to the provisions of AS 31.05, the commissioner has discretion to

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enter into an agreement whereby, with the consent of the lessee, the state's royalty share of [OIL AND GAS] production of oil and gas or gas only may be stored or retained in storage by the lessee, or the commissioner may enter into an agreement with one or more of the affected field lease holders to trade current royalty production from a field for a like amount, kind, and quality of future production, on the condition that the state receives back its stored or traded royalty share during the first half of the estimated field life or no later than 15 years after start of production, whichever is sooner.

* Sec. 37. AS 38.05.180(m) is amended to read:

(m) An oil and gas lease or a gas only lease must cover a reasonably compact area not exceeding 5,760 acres, and may be for a maximum period of 10 years, except that the commissioner may issue a lease for a period not less than five years upon a finding that it is in the best interests of the state. An oil and gas lease shall be automatically extended if and for so long thereafter as oil or gas is produced in paying quantities from the lease or if the lease is committed to a unit approved by the commissioner. A gas only lease shall be automatically extended if and for so long thereafter as gas is produced in paying quantities from the lease or if the lease is committed to a unit approved by the commissioner. On application by the lessee, the director may extend a gas only lease for nonconventional gas issued under AS 38.05.177 and this section for a period of not more than 10 years if the gas produced from the lease is to be used by the lessee solely for its mining operations. A lease issued under this section covering land on which there is a well capable of producing oil or gas in paying quantities does not expire because the lessee fails to produce oil or gas unless the lessee is allowed reasonable time to place the well on a producing status. Upon extension, the commissioner may increase lease rentals so long as the increased rental rate does not exceed 150 percent of the rate for the preceding year. If drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, including such operations as redrilling, sidetracking, or other means necessary to reach the originally proposed bottom hole location, the lease continues in effect until 90 days after drilling has ceased and for so long thereafter as oil or gas is produced in paying quantities. An oil

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1 and gas lease or a gas only lease issued under this section which is subject to
2 termination by reason of cessation of production does not terminate if, within 60 days
3 after production ceases, reworking or drilling operations are commenced on the land
4 under lease and are thereafter conducted with reasonable diligence during the period
5 of nonproduction.

6 * Sec. 38. AS 38.05.180(n) is amended to read:

7 (n) The commissioner may establish by regulation that after a well has been
8 plugged and abandoned, the rental rate which was in effect during the year of
9 abandonment is maintained for the remainder of the term. Rental is payable in
10 advance and continues until income to the state from royalty or net profit share
11 exceeds rental income to the state for that year. Under this subsection,

12 (1) [OIL AND GAS] leases for oil and gas or for gas only shall
13 provide for payment to the state of rental on the following basis:

14 (A) [(1)] for the first year, \$1.00 per acre;

15 (B) [(2)] for the second year, \$1.50 per acre;

16 (C) [(3)] for the third year, \$2.00 per acre;

17 (D) [(4)] for the fourth year, \$2.50 per acre;

18 (E) [(5)] for the fifth and following years, \$3.00 per acre;

19 (2) if the lessee under a gas only lease demonstrates to the
20 commissioner that the potential resources underlying the lease are reasonably
21 estimated to be only nonconventional gas, the rental payment is \$1.00 per acre
22 until the lease expires or paying quantities of conventional oil or gas are
23 discovered underlying the lease.

24 * Sec. 39. AS 38.05.180(p) is amended to read:

25 (p) To conserve the natural resources of all or a part of an oil or gas pool,
26 field, or like area, the lessees and their representatives may unite with each other, or
27 jointly or separately with others, in collectively adopting or operating under a
28 cooperative or a unit plan of development or operation of the pool, field, or like area,
29 or a part of it, when determined and certified by the commissioner to be necessary or
30 advisable in the public interest. The commissioner may, with the consent of the
31 holders of leases involved, establish, change, or revoke drilling, producing, and

1 royalty requirements of the leases and adopt regulations with reference to the leases,
2 with like consent on the part of the lessees, in connection with the institution and
3 operation of a cooperative or unit plan as the commissioner determines necessary or
4 proper to secure the proper protection of the public interest. The commissioner may
5 not reduce royalty on leases in connection with a cooperative or unit plan except as
6 provided in (j) of this section. The commissioner may require a lease [OIL AND
7 GAS LEASES] issued under this section to contain a provision requiring the lessee to
8 operate under a reasonable cooperative or unit plan, and may prescribe a plan under
9 which the lessee must operate. The plan must adequately protect all parties in interest,
10 including the state.

11 * Sec. 40. AS 38.05.180 is amended by adding a new subsection to read:

12 (ff) The provisions of this section that authorize oil and gas leases also apply
13 to authorize the commissioner to issue leases for the production of gas only, subject to
14 the following:

15 (1) in authorizing and managing leases under this subsection, the terms
16 "oil and gas" or "oil or gas" as they are used in this chapter may be read and applied as
17 appropriate as referring to gas only;

18 (2) when a lease is authorized as a gas only lease, the lease does not
19 give the lessee the right to produce oil; if a well drilling for gas under a gas only lease
20 authorized by this subsection penetrates a formation capable of producing oil, the
21 owner or operator

22 (A) shall notify the department and the Alaska Oil and Gas
23 Conservation Commission; and

24 (B) may not conduct further operations in the drilled well until
25 the facility complies with all applicable laws and regulations relating to oil and
26 gas exploration and production; however, this subparagraph does not prevent
27 the owner or operator from conducting activities that may be required by the
28 Alaska Oil and Gas Conservation Commission to plug, plug-back, or abandon
29 a well.

30 * Sec. 41. AS 38.05.860(a) is amended to read:

31 (a) The commissioner may require an applicant seeking the sale, lease, or

1 other disposal of land or an interest in land, other than under an oil and gas lease, gas
2 only lease, or mineral lease, to deposit an amount covering the estimated cost of an
3 appraisal, survey, and other costs necessary to offer the land or interest in land,
4 including advertising. All deposited funds not expended shall be refunded to the
5 applicant. If the land or interest in land is awarded to a person other than the applicant
6 making the deposit, the person awarded the land shall pay the total actual cost incurred
7 by the department in making the disposal, and the deposit shall be returned to the
8 original applicant. In lieu of requiring the deposit under this subsection, the
9 commissioner may enter into an agreement with an applicant seeking land or an
10 interest in land requiring the applicant to reimburse the department for costs incurred
11 in the disposal if the applicant is awarded the land or interest in land.

12 * Sec. 42. AS 38.05.860(c) is amended to read:

13 (c) The commissioner shall require each bidder for the competitive leasing of
14 [OIL AND GAS] land for oil and gas, or for gas only, to submit with each bid a
15 deposit of money equal to 20 percent of the bonus.

16 * Sec. 43. AS 38.05.945(a) is amended to read:

17 (a) This section establishes the requirements for notice given by the
18 department for the following actions:

19 (1) classification or reclassification of state land under AS 38.05.300
20 and the closing of land to mineral leasing or entry under AS 38.05.185;

21 (2) zoning of land under applicable law;

22 (3) issuance of a

23 (A) preliminary written finding under AS 38.05.035(e)(5)(A)
24 regarding the sale, lease, or disposal of an interest in state land or resources for
25 oil and gas, or for gas only, subject to AS 38.05.180(b);

26 (B) [REPEALED

27 (C)] written finding for the sale, lease, or disposal of an interest
28 in state land or resources under AS 38.05.035(e)(6), except a [AN OIL OR
29 GAS] lease sale described in AS 38.05.035(e)(6)(F) for which the director
30 must provide opportunity for public comment under the provisions of that
31 subparagraph;

1 (4) a competitive disposal of an interest in state land or resources after
2 final decision under AS 38.05.035(e);

3 (5) a preliminary finding under AS 38.05.035(e) concerning sites for
4 aquatic farms and related hatcheries;

5 (6) a decision under AS 38.05.132 - 38.05.134 regarding the sale,
6 lease, or disposal of an interest in state land or resources.

7 * Sec. 44. AS 38.05.965 is amended by adding a new paragraph to read:

8 (25) "nonconventional gas" means coal bed methane, shales containing
9 gas, or gas hydrates.

10 * Sec. 45. AS 38.06.080(2) is amended to read:

11 (2) "state lease" means an oil and gas lease or gas only lease on state
12 land.

13 * Sec. 46. AS 38.35.020(a) is amended to read:

14 (a) Rights-of-way on state land including rights-of-way over, under, along,
15 across, or upon the right-of-way of a public road or highway or the right-of-way of a
16 railroad or other public utility, or across, upon, over, or under a river or other body of
17 water or land belonging to or administered by the state may be granted by
18 noncompetitive lease by the commissioner for pipeline purposes for the transportation
19 of oil, products, or natural gas under those conditions prescribed by law or by
20 administrative regulation. Except to the extent authorized by an oil and gas lease, a
21 gas only lease, or an oil and gas or gas only unit agreement approved by the state, no
22 person may engage in any construction or operation of any part of an oil, products, or
23 natural gas pipeline, which in whole or in part is or is proposed to be on state land
24 unless that person has obtained from the commissioner a right-of-way lease of the land
25 under this chapter.

26 * Sec. 47. AS 43.20.072(c) is amended to read:

27 (c) A taxpayer's business income shall be apportioned to this state by
28 multiplying the taxpayer's income determined under (b) of this section by the
29 apportionment factor applicable to the taxpayer among the following factors:

30 (1) the apportionment factor of a taxpayer subject to this section but
31 not engaged in the production of oil and gas, or of gas only, as appropriate, from a

1 lease or property in this state during the tax period is a fraction, the numerator of
2 which is the sum of the property factor under AS 43.19 (Multistate Tax Compact) and
3 the sales factor under (d) of this section for the taxpayer for that tax period, and the
4 denominator of which is two;

5 (2) the apportionment factor of a taxpayer subject to this section but
6 not engaged in the pipeline transportation of oil or gas in this state during the tax
7 period is a fraction, the numerator of which is the sum of the property factor under (e)
8 of this section and the extraction factor under (f) of this section for the taxpayer for the
9 tax period, and the denominator of which is two;

10 (3) the apportionment factor of a taxpayer engaged both in the
11 production of oil or gas from a lease or property in this state and in the pipeline
12 transportation of oil or gas in this state during the tax period is a fraction, the
13 numerator of which is the sum of the sales factor under (d) of this section, the property
14 factor under (e) of this section, and the extraction factor under (f) of this section for
15 the taxpayer for the tax period, and the denominator of which is three.

16 * Sec. 48. AS 43.55.025(a) is amended to read:

17 (a) Subject to the terms and conditions of this section, on oil and gas produced
18 from an oil and gas lease, or on gas produced from a gas only lease, on or after
19 July 1, 2004, a credit against the tax due under this chapter is allowed in an amount
20 equal to

21 (1) 20 percent of the total exploration expenditures that qualify under
22 (b) and (c) of this section, 20 percent of the total exploration expenditures that qualify
23 under (b) and (d) of this section, or both, for a total credit that does not exceed 40
24 percent of the total exploration expenditures; or

25 (2) 40 percent of the total exploration expenditures that qualify under
26 (b) and (e) of this section, for a total production tax credit that does not exceed 40
27 percent of the total qualified exploration expenditures.

28 * Sec. 49. AS 43.55.900(9) is amended to read:

29 (9) "lease or property" means any right, title, or interest in or the right
30 to produce or recover oil or gas including:

31 (A) a mineral interest,

- 1 (B) a leasehold interest,
2 (C) a working interest, royalty interest, overriding royalty
3 interest, production payment, net profit interest or any other interest in a lease,
4 concession, joint venture, or other agreement for [OIL AND GAS] exploration,
5 development, or production of oil and gas or of gas only,
6 (D) a working interest, royalty interest, overriding royalty
7 interest, production payment, net profit interest or any other interest in an
8 agreement for unitization or pooling under the provisions of 26 U.S.C.
9 614(b)(3) (Internal Revenue Code) as defined on January 1, 1974;

10 * Sec. 50. AS 46.03.100(f) is amended to read:

11 (f) This section does not apply to discharges of solid or liquid waste material
12 or water discharges from the following activities if the discharge is incidental to the
13 activity and the activity does not produce a discharge from a point source, as that term
14 is defined in regulations adopted under this chapter, directly into any surface water of
15 the state:

- 16 (1) mineral drilling, trenching, ditching, and similar activities;
17 (2) landscaping;
18 (3) water well drilling and [,] geophysical drilling [, OR COAL BED
19 METHANE DRILLING OR OTHER NATURAL GAS DRILLING TO RECOVER
20 GAS FROM A FIELD IF A PART OF THE FIELD IS WITHIN 3,000 FEET OF THE
21 SURFACE]; or
22 (4) drilling, ditching, trenching, and similar activities associated with
23 facility construction and maintenance or with road or other transportation facility
24 construction and maintenance; however, the exemption provided by this paragraph
25 does not relieve a person from obtaining a permit under this section if
26 (A) the drilling, ditching, trenching, or similar activity will
27 involve the removal of the groundwater, stormwater, or wastewater runoff that
28 has accumulated and is present at an excavation site for facility, road, or other
29 transportation construction or maintenance; and
30 (B) a permit is otherwise required by this section.

31 * Sec. 51. AS 46.04.030(b) is amended to read:

1 (b) A person may not cause or permit the operation of a pipeline or an
2 exploration or production facility in the state unless an oil discharge prevention and
3 contingency plan for the pipeline or facility has been approved by the department and
4 the person is in compliance with the plan. This subsection does not apply to an
5 exploration or production facility used solely to explore for or to develop or produce
6 nonconventional [SHALLOW NATURAL] gas resources, except that this exemption
7 does not apply if the Alaska Oil and Gas Conservation Commission determines under
8 AS 31.05.030(j) that

9 (1) a well drilled for nonconventional [SHALLOW NATURAL] gas
10 may penetrate a formation capable of flowing oil; and

11 (2) the volume of oil encountered will be of such quantities that a
12 contingency plan will be required.

13 * Sec. 52. AS 46.04.040(b) is amended to read:

14 (b) A person may not cause or permit the operation of a pipeline or an
15 exploration or production facility in the state unless the person has furnished to the
16 department, and the department has approved, proof of financial ability to respond in
17 damages. Proof of financial responsibility required for

18 (1) a pipeline or an offshore exploration or production facility is
19 \$50,000,000 per incident;

20 (2) an onshore production facility is

21 (A) \$20,000,000 per incident if the facility produces over
22 10,000 barrels per day of oil;

23 (B) \$10,000,000 per incident if the facility produces over 5,000
24 barrels per day but not more than 10,000 barrels per day of oil;

25 (C) \$5,000,000 per incident if the facility produces over 2,500
26 barrels per day but not more than 5,000 barrels per day of oil;

27 (D) \$1,000,000 per incident if the facility produces 2,500
28 barrels per day or less of oil;

29 (3) an onshore exploration facility is

30 (A) \$25,000 per incident for a facility used solely to explore for
31 nonconventional [SHALLOW NATURAL] gas by means of drilling a well to

1 explore for the gas [, WHETHER METHANE ASSOCIATED WITH AND
2 DERIVED FROM COAL DEPOSITS OR OTHERWISE, FROM A FIELD IF
3 A PART OF THE FIELD IS WITHIN 3,000 FEET OF THE SURFACE]; and

4 (B) except as provided by (A) of this paragraph, \$1,000,000 per
5 incident.

6 * Sec. 53. AS 46.04.900 is amended by adding a new paragraph to read:

7 (31) "nonconventional gas" has the meaning given in AS 38.05.965.

8 * Sec. 54. AS 46.40.205 is amended to read:

9 **Sec. 46.40.205. Consistency determinations for certain activities involving**
10 **nonconventional [SHALLOW NATURAL] gas.** (a) When conducted under
11 oversight and regulation of the Alaska Oil and Gas Conservation Commission and the
12 state's resource agencies, projects for the exploration and development of
13 **nonconventional [SHALLOW NATURAL] gas** are consistent with the program
14 described in this chapter. Persons responsible for activities subject to this section shall
15 obtain all required permits and approvals from municipal, state, and federal agencies
16 as otherwise required by law.

17 (b) In this section, "**nonconventional [SHALLOW NATURAL] gas**" has the
18 meaning given in AS 38.05.965 [AS 46.04.900].

19 * Sec. 55. AS 46.40.210(12) is amended to read:

20 (12) "uses of state concern" means those land and water uses that
21 would significantly affect the long-term public interest; "uses of state concern" include

22 (A) uses of national interest, including the use of resources for
23 the siting of ports and major facilities that contribute to meeting national
24 energy needs, construction and maintenance of navigational facilities and
25 systems, resource development of federal land, and national defense and
26 related security facilities that are dependent upon coastal locations;

27 (B) uses of more than local concern, including those land and
28 water uses that confer significant environmental, social, cultural, or economic
29 benefits or burdens beyond a single coastal resource district;

30 (C) the siting of major energy facilities, activities pursuant to a
31 state oil and gas lease, a state gas only lease, or a federal oil and gas lease, or

1 large-scale industrial or commercial development activities that are dependent
2 on a coastal location and that, because of their magnitude or the magnitude of
3 their effect on the economy of the state or the surrounding area, are reasonably
4 likely to present issues of more than local significance;

5 (D) facilities serving statewide or interregional transportation
6 and communication needs; and

7 (E) uses in areas established as state parks or recreational areas
8 under AS 41.21 or as state game refuges, game sanctuaries, or critical habitat
9 areas under AS 16.20.

10 * Sec. 56. The uncodified law of the State of Alaska added by sec. 1, ch. 45, SLA 2003, is
11 amended to read:

12 LEGISLATIVE FINDINGS. The legislature finds that

13 (1) [THE DEVELOPMENT OF SHALLOW NATURAL GAS
14 RESOURCES IS IN THE BEST INTERESTS OF THE STATE OF ALASKA;

15 (2)] shallow natural gas is abundant and widespread in Alaska and
16 bears the promise of providing Alaskans, particularly Alaskans living in rural areas,
17 with an inexpensive and clean source of energy if those resources can be economically
18 developed;

19 (2) [(3)] the development of shallow natural gas poses significantly
20 fewer risks and creates substantially less impact to the environment than traditional
21 deep oil and gas projects, which have served as the model for oil and gas industry and
22 environmental regulations to date in Alaska;

23 (3) [(4)] the regulatory requirements developed and applied to
24 traditional deep oil and gas projects in Alaska are ill-suited and unduly onerous when
25 applied to shallow natural gas projects, threatening the economic viability of otherwise
26 desirable exploration and development projects;

27 (4) [(5)] there is an immediate state and national need for the
28 development of clean and economical unconventional energy sources, such as shallow
29 natural gas resources;

30 (5) [(6)] reform of existing laws and regulations is needed to remove
31 unnecessary regulatory burdens on the private sector to foster and encourage the

1 development in Alaska of these necessary resources;

2 (6) [(7)] the legislature is acting in the interest of promoting the active
3 development of such resources, while ensuring that suitable measures are taken to
4 protect human health and safety and the natural environment,

5 (A) to remove impediments to the responsible development of
6 shallow natural gas; and

7 (B) to provide the proper state agencies with clear authority and
8 discretion to adopt regulatory practices appropriate to shallow natural gas
9 exploration and development projects, in recognition of the lower risks posed
10 by such projects to human health and safety and the natural environment [;
11 AND

12 (C) TO RESERVE ALL RIGHTS AND POWERS NOT
13 PREEMPTED BY FEDERAL LAW AND REGULATION IN ORDER TO
14 ASSERT STATE PRIMACY OVER THE REGULATION OF SHALLOW
15 NATURAL GAS].

16 * Sec. 57. AS 31.05.125, 31.05.170(14); and AS 46.04.900(25) are repealed.

17 * Sec. 58. The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 APPLICABILITY. The provisions of AS 38.05.177(b), (c), and (e), as repealed and
20 reenacted by sec. 27 of this Act, apply to leases issued under former AS 38.05.177 and in
21 effect on the effective date of sec. 27 of this Act.

22 * Sec. 59. The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 CONVERSION OF EXISTING SHALLOW NATURAL GAS LEASE
25 APPLICATIONS. (a) The applicant for a shallow natural gas lease under AS 38.05.177
26 whose application was received by the Department of Natural Resources before the effective
27 date of this section may, not later than August 31, 2004, or 60 days after the effective date of
28 this Act, whichever is later, convert the application to an exploration license and lease
29 application under AS 38.05.131(a), as amended by sec. 15 of this Act. An applicant
30 converting an application under this subsection

31 (1) may apply for as few as 3,000 acres, notwithstanding the minimum

1 limitation of acreage set out in AS 38.05.132(c)(2);

2 (2) shall pay the fee required by AS 38.05.132(c)(6);

3 (3) is subject to a three-year work commitment in lieu of a work commitment
4 of any other duration required by AS 38.05.132 and, notwithstanding AS 38.05.132(c)(3), is
5 under an obligation to perform a specified work commitment of \$1 per acre per year; and

6 (4) may, subject to (b) of this section, convert an exploration license to a lease
7 under AS 38.05.134, as amended by sec. 23 of this Act.

8 (b) The provisions of AS 38.05.035(e) apply to an application made under (a) of this
9 section.

10 (c) For an application made under (a) of this section, the director of the division of
11 lands shall remit to the applicant the application fee paid by the applicant under former
12 AS 38.05.177(b)(2) before its repeal and reenactment by this Act.

13 * Sec. 60. This Act takes effect July 1, 2004.

| CBM/SNG Issue | Current Status | DNR Draft Enforceable Standards for the Mat-Su Borough | HB 395 (RES) | HB 531 (RES) |
|--|---|---|--|---|
| Best Interest Finding Requirement on Shallow Gas Leases | No BIF is required for Shallow Gas Leasing Program | None | None | Eliminates Shallow Gas Leasing Program so all oil and gas leases are subject to a BIF |
| Public Notice Requirements | | | | |
| Shallow Gas Leasing | The detailed provisions of AS 38.05.945 cover oil and gas area-wide lease sales, but does not cover shallow gas leases | Applies AS 38.05.945 to Shallow Gas Leasing Program and adds additional requirements including display ads, public service announcements, and direct notice to those who request it | Applies AS 38.05.945 provisions to the Shallow Gas Leasing Program | Eliminates Shallow Gas Leasing Program so AS 38.05.945 applies |
| Operations | | | | |
| -- DNR Managed Lands | Prior to the drilling of gas wells: notice to landowners within ½-mile of operations, legal ad, notice to municipalities, tribes, and community councils that request it. | Includes additional requirement to provide notice to individuals who request it | None* | None* |
| -- Non-DNR Managed Lands | AOGCC permit to drill is the only state agency permit that is required for all CBM wells. Most permits to drill are reviewed and approved prior to public notice. AOGCC is considering adding a public notice requirement | Recommends AOGCC continue to pursue a public notice requirement | None* | None* |

* Existing standards as well as DNR Draft Enforceable Standard would apply.

| CBM/SNG Issue | Current Status | DNR Draft Enforceable Standards for the Mat-Su Borough | HB 395 (RES) | HB 531 (RES) |
|--|--|--|--|--|
| Public Information Disclosure | Materials used for fracturing coal are provided to AOGCC but kept confidential for two years | Requires plan of operations to include a list of fracturing materials (but does not require disclosure of mixing formula). Also, operator must post the Material Data Safety Sheet of all hazardous materials used at a site | None* | None* |
| Split Estate Issues | | | | |
| Surface Owner's Agreement prior to entry | | | | |
| -- On DNR managed lands | AS 38.05.130 requires agreement on damages, or must post bond set by DNR | Requires demonstration of good faith efforts to negotiate an agreement and at least 60 days elapse since initial contact before a bond hearing will be held | Requires 30 days notice, requires DNR to determine that lessee has no other reasonable means of entry than access and entry upon owners lands. | Requires DNR to determine that lessee has no other reasonable means of entry than access and entry upon owners lands |
| -- On non-DNR managed lands | State law is silent on this issue | None | Requires a 20 day notice be given to the surface owner, negotiations of a damage agreement, if no agreement can be reached, then DNR process is used to set a bond | None |

* Existing standards as well as DNR Draft Enforceable Standard would apply.

| CBM/SNG Issue | Current Status | DNR Draft Enforceable Standards for the Mat-Su Borough | HB 325 (RES) | HB 531 (RES) |
|------------------------|--|---|---|--|
| Bond Amount | Amount of damages as determined by DNR | DNR shall consider the current market value of the property, the potential duration of the operations, the potential future value of the property, the loss of use of the property during operations, and the potential cost of damage to existing surface improvements, crops, and timber. | Bond to include payment of reasonable compensation for loss of use and enjoyment of property. | None* |
| Surface Impacts | | | | |
| Setbacks | Not in current statutes or regulations but there is a general requirement in lease stipulations and mitigation measures. | Compressors must be 1500 feet and drill pads 500 feet from residences and public facilities such as schools and hospitals. In addition, no drill pads or compressors within subdivisions of lots of less than 5 acres. | DNR must establish setbacks | None* |
| Noise Mitigation | Operators must minimize noise disturbance | Plan of operations must include a noise mitigation plan with an extensive list of possible techniques to minimize noise | DNR must require noise mitigation | None* |
| Visual Mitigation | Not in current statutes or regulations but there is a general requirement in lease stipulation and mitigation measures. | Plan of operations must include a visual mitigation plan with an extensive list of possible techniques to minimize visual disturbance | None* | None* |
| Solid Waste Disposal | Regulated by DEC. CBM exploration exempt from solid waste and wastewater permit requirement, but must get plan | No open pit storage in residential areas | Removes DEC permit exemption for CBM exploration | Removes DEC permit exemption for CBM exploration |

* Existing standards as well as DNR Draft Enforceable Standard would apply.

| | approved | | | |
|-----------------------------------|---|---|--|---------------------|
| CBM/SNG Issue | Current Status | DNR Draft Enforceable Standards for the Mat-Su Borough | HB 395 (RES) | HB 531 (RES) |
| Erosion Control | Considered if Army Corps permit is required | Plan of operations must include measures to mitigate soil erosion. | None* | None* |
| Well Spacing | Regulated by AOGCC | Reviewed in a Unit plan of development and will be based on a balancing of gas pool management needs and anticipated surface impacts | None* | None* |
| Water Management | | | | |
| Baseline Testing – Water Quantity | No set standards | DNR will establish a drinking well testing requirement for water quantity to be conducted by operator prior to drilling of CBM well that might unduly impact water volume available for a drinking water well | Operator must test all wells within 1/4 mile of CBM well | None* |
| Baseline Testing – Water Quality | No set standards | DNR recommends AOGCC adopt a drinking well testing requirement for water quality to be conducted by operator prior to drilling of CBM well that might unduly impact drinking water well | Operator must test all wells within ¼ mile of CBM well | None* |
| Monitoring - Water Quantity | No set standards | DNR will establish a monitoring requirement for water quantity to be conducted by operator of a CBM well that might unduly impact water volume available for a drinking water well | | |

* Existing standards as well as DNR Draft Enforceable Standard would apply.

| CBM/SNG Issue | Current Status | DNR Draft Enforceable Standards for the Mat-Su Borough | HB 395 (RES) | HB 531 (RES) |
|---|--|---|---|---|
| Monitoring - Water Quality | No set standards | DNR recommends AOGCC adopt a drinking well testing requirement for water quality to be conducted by operator prior to drilling of CBM well that might unduly impact drinking water well | | |
| Produced Water Surface Disposal Limitations | Surface disposal must meet state water quality standards | Must meet water quality standards and not result in negative environmental impacts | None* | None* |
| Hydraulic Fracturing Materials | Any hydraulic fracturing materials can be considered by AOGCC for approval | Prohibits the use of diesel based fracturing materials | Requires AOGCC to regulate fracturing to protect drinking water sources | Requires AOGCC to regulate fracturing to protect drinking water sources |

* Existing standards as well as DNR Draft Enforceable Standard would apply.

HB 531

- Repeals existing over the counter shallow gas leasing program and replace it with current exploration licensing and conventional competitive leasing programs.
Both these programs require the Department of Natural Resources to do a Best Interest Finding (BIF) prior to leasing. The BIF process has extensive public noticing and public input and requires the Commissioner to balance interests prior to holding a lease sale or issuing a license.
- Includes additional ground water protections involving the production of non-conventional gas through requiring the AOGCC to regulate:
 - Hydraulic fracturing,
 - Disposal of wastes,
 - reinjection of produced water
 - prohibiting the production of gas from aquifers that serve as a source of water for human consumption or agricultural purposes unless it can be demonstrated that it will not adversely affect the aquifer
- Limits the discretion of DNR to extend the existing shallow gas leases
- Gives the Commissioner the discretion to issue either oil and gas or gas only leases
- On a gas-only-lease allows for the lessee to make a showing to DNR that can result in lower rentals and royalties if: The gas doesn't compete with other gas and the lease has only nonconventional gas potential.
- Repeals the HB 69 provisions allowing the Commissioner of DNR override authority over local zoning ordinances
- Gives a one-time opportunity for pending lease applicants to apply for a noncompetitive exploration license with a Best Interest Finding and a work commitment.
- As amended requires the DNR Commissioner to establish setbacks and noise mitigation measures for compressor stations prior to approving coalbed methane operations on any state leases.
- As amended requires the operator design and implement a water well testing program to provide baseline data on water quality and quantity as a condition for approval of a AOGCC permit to drill a coalbed methane well for production or production testing
- As amended specifies bonding requirements on gas-only-leases

Sec. 60. Conversion of existing Shallow Natural Gas Applications: This section gives pending shallow natural gas applicants a one-time opportunity to convert to a noncompetitive Exploration License application. DNR would be required to undergo a best interest finding process under AS 38.05.035 before making the decision to issue the exploration license.

- Applicants with pending shallow natural gas applications will have 60 days from the effective date or no later than August 31, 2004 to convert applications to an exploration license application.
- The one-time conversion may be for as few as 3,000 acres.
- Those converting would pay a \$1 per acre application fee and make a minimum 3-year work commitment. The shallow natural gas application fee would be refunded to the applicant.
- The work commitment will be \$1 per acre per year.
- This amendment would also require DNR to conduct a best interest finding process under AS 38.05.035 prior to issuing the license. This will allow the public to participate and comment prior to an agency decision to issue the license. As part of the best interest finding process, the state will develop stipulations and mitigation measures that will include such things as where surface access for drilling is prohibited, setbacks for facilities, noise abatement etc. The issuance of the license does not give the right to drill. In order to drill within the license area the lessee must have an approved plan of operations by DNR and permits to drill from AOGCC, regardless of who owns the surface estate.
- At the end of the Exploration License term, the licensee will have the right to convert some or all of the acreage to either gas only or conventional oil and gas leases. Prior to drilling operations on any leases the lessee must have an approved plan of operation by DNR and permits to drill from AOGCC, regardless of who owns the surface estate.
- In this particular circumstance, the exploration license applications are non-competitive because the shallow natural gas applicants have legal, pending applications under the current, existing shallow natural gas program. Under HB 531 the only way the applicants for those leases can proceed is with an application for a license which will be considered after the completion of the above mentioned Best Interest Finding.

Exploration Licensing Public Process

- Company submits a proposal consisting of
 - Proposed license area (up to 500,000 acres)
 - Work commitment (\$\$ to be spent on exploration)
 - Term of license (up to 10 years)
- DO&G issues *Notice of Intent to Evaluate a License Proposal* and requests public comment
 - Public comment period must be for at least 30 days
 - Notice is:
 - placed in statewide and local newspapers
 - posted on state and division websites
 - mailed to addressees on division's mailing list
 - posted in local post offices
- DO&G issues *Request for Agency Information*
 - Sent to state and federal agencies, local governments and tribal organizations
 - Minimum of 60 days to submit information
- DO&G issues *Notice of Preliminary Best Interest Finding* and requests public comment; if within the coastal zone, DO&G also issues *ACMP Consistency Analysis*
 - 60-day public comment period
 - Notice is:
 - placed in statewide and local newspapers: 1-time posting
 - posted on state and division websites
 - mailed to addressees on division's mailing list
 - posted in local post offices
 - Display ads placed in statewide and local newspapers; 1 per week for 2 weeks
 - Division conducts public meetings to hear public testimony
- If within the coastal zone, DO&G issues *Proposed ACMP Consistency Determination*
 - 5 days to request elevation to resource commissioners (DNR, DEC, DF&G)
- DO&G issues *Notice of Final Finding, ACMP Consistency Determination*, and awards license
 - Those who participated in the public process have 20 days to request reconsideration by the commissioner

Contents of Best Interest Finding for Exploration Licenses and Areawide Lease Sales

1. Property descriptions and locations;
2. The petroleum potential of the license or sale area, in general terms;
3. Fish and wildlife species and their habitats in the area;
4. Current and projected uses in the area, including uses and value of fish and wildlife;
5. The governmental powers to regulate oil and gas exploration, development, production, and transportation;
6. Reasonably foreseeable cumulative effects of oil and gas exploration, development, production, and transportation on the license or sale area, including effects on subsistence uses, fish and wildlife habitat and populations and their uses, and historic and cultural resources;
7. Stipulations and mitigation measures, including any measures to prevent and mitigate releases of oil and hazardous substances, to be included in the license or leases, and a discussion of the protections offered by these measures;
8. Method or methods most likely to be used to transport oil or gas from the lease sale or license area, and the advantages and disadvantages, and relative risks of each;
9. Reasonably foreseeable fiscal effects of the exploration license or lease sale and the subsequent activity on the state and affected municipalities and communities, including the explicit and implicit subsidies associated with the exploration license or lease sale, if any;
10. Reasonably foreseeable effects of oil and gas exploration, development, production, and transportation on the municipalities and communities within or adjacent to the exploration license or lease sale area; and
11. For lease sales: the bidding method or methods adopted by the commissioner;

For exploration licenses:

- a. describe the limitations, stipulations, conditions or changes from the proposal that are required to make the issuance of the license conform to the best interests of the state; and
- b. if only one proposal was submitted, identify the prospective licensee.

Areawide Leasing Public Process

- Lease sale placed on 5-year leasing schedule
- DO&G issues *Request for Agency Information and Call for Public Comments*
 - Sent to state and federal agencies, local governments and tribal organizations
 - Minimum of 60 days to submit information
 - Notice is:
 - posted on state and division websites
 - mailed to addressees on division's mailing list
- DO&G issues *Notice of Preliminary Best Interest Finding* and requests public comment; if within the coastal zone, DO&G also issues *ACMP Consistency Analysis*
 - 60-day public comment period
 - Notice is:
 - placed in statewide and local newspapers: 1-time posting
 - posted on state and division websites
 - mailed to addressees on division's mailing list
 - posted in local post offices
 - Display ads placed in statewide and local newspapers; 1 per week for 2 weeks
 - Division conducts public meetings to hear public testimony
- If within the coastal zone, DO&G issues *Proposed ACMP Consistency Determination*
 - 5 days to request elevation to resource commissioners (DNR, DEC, DF&G)
- DO&G issues *Notice of Final Finding, ACMP Consistency Determination*, and decision to lease 90 days prior to lease sale
 - Those who participated in the public process have 20 days to request reconsideration by the commissioner

Relationship of HB 395 to SCS CSHB 531(FIN) (by HB 395 section number):

- 1 Not included in 531. Provision is unnecessary given repeal of provisions in HB69 dealing with Commissioner's ability to override local authority approvals (see HB531, sec. 58, which repeals AS 31.05.125 and AS 38.05.177(o)).
- 2 Included in sec. 4 of 531.
- 3 Repeat of sec 2 (included in sec. 4 of 531)
- 4 Not included in 531. Provision is unnecessary because AOGCC currently has the ability to consider and resolve complaints.
- 5 Repeat of 4.
- 6 Repealed in 531. Provision is unnecessary given definition of nonconventional gas.
- 7 This same definition of nonconventional gas is included in 531; defining in AS31 not needed given repeal of shallow natural gas program.
- 8 Not included in 531. Inclusion of this provision will require a title change to HB531. Represents a major policy change regarding the State's jurisdiction on land where the surface and subsurface are both privately owned, including land owned by Native village and regional corporations under the Alaska Native Claims Settlement Act.
- 9 Repealed in 531 given repeal of shallow natural gas program.
- 10 (f)(1): Unnecessary given repeal of shallow natural gas program.
(f)(2): Water well testing addressed in 531, Sec. 4
(f)(3)&(4): Setbacks and noise mitigation addressed in 531, sec. 41, new (gg) (1) and (2)
(f)(5) Not included in 531. Unnecessary given existing authorities of DNR and AOGCC re: termination and abandonment.
- 11 Not included in 531 because 531 repeals this section (AS38.05.177(h)). (h)(1) is unnecessary because DNR would not reissue a lease under the repealed shallow natural gas program; (h)(3) is unnecessary because AOGCC regulation of produced water is addressed in 531, sec 4 and issues would be addressed in Best Interest Finding and AOGCC existing regulations. (h)(4) is unnecessary because water quality and habitat protection issues will be addressed through the Best Interest Finding process and existing regulations and authorities of ADF&G.
- 12 Not included because 531 repeals this section (AS38.05.177(k)) (k)(1)-(4) bonding provisions addressed in section 41, (gg)(1) of 531; (k)(5) would be addressed in Best Interest Finding.
- 13 Bonding provisions included in 531 at section 41, (gg) (1).
- 14 Repeat of previous sections of 395; addressed in other sections of 531 .
- 15 Not included in 531 because this section addresses notice provisions under the shallow natural gas program which is repealed in 531.
- 16 Not included in 531 because this section addresses provisions of the shallow natural gas program which is repealed in 531.
- 17 Not included (17 repeals & re-enacts #16 w/o amendment language)
- 18 In 531.
- 19 In 531.
- 20 Not included in 531 because definition of shallow natural gas not needed given repeal of shallow natural gas program in 531.
- 21 In 531.
- 22 In 531.
- 23 In 531.
- 24 In 531.
- 25 N/A (transition/conformance language)
- 26 Not included in 531 because DNR would not reissue a lease under a repealed shallow natural gas program (see 11, (h)(a), above).
- 27 N/A (transition/conformance language).

- 28 N/A (transition/conformance language).
- 29 Effective date provision.

Summary:

Sections of 395 either included in 531, addressed in 531, or unnecessary given repeal of Shallow Natural Gas Leasing Program:

2, 3, 6, 7, 9, 10 [except (f)(5)]; 12 [except (k)(5)]; 13, 14 [except (f)(4)(D) and (5)(A)-(C)]; 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29.

21 sections included in their entirety.

3 sections partially included for reasons given above.

5 sections not included for reasons given above.

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Lieutenant Governor

The Alaska Constitution

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The Constitution of the State of Alaska

Adopted by the Constitutional Convention February 5, 1956
Ratified by the People of Alaska April 24, 1956
Became Operative with the Formal Proclamation of Statehood January 3, 1959

Article 8 - Natural Resources

§ 1. Statement of Policy

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. General Authority

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.

§ 3. Common Use

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

§ 4. Sustained Yield

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

§ 5. Facilities and Improvements

The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

§ 6. State Public Domain

Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain.

§ 7. Special Purpose Sites

The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.

§ 8. Leases

The legislature may provide for the leasing of, and the issuance of permits for exploration of, any part of the public domain or interest therein, subject to reasonable concurrent uses. Leases and permits shall provide, among other conditions, for payment by the party at fault for damage or injury arising from noncompliance with terms governing concurrent use, and for forfeiture in the event of breach of conditions.



"We the people of Al God and to those wh nation and pioneerer order to secure and i succeeding generati political, civil, and re the Union of States, establish this constib of Alaska."

Lt. Governor Re

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- Administrative Jour
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§ 9. Sales and Grants

Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.

§ 10. Public Notice

No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

§ 11. Mineral Rights

Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law. Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

§ 12. Mineral Leases and Permits

The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law. Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas, subject to reasonable concurrent exploration as to different classes of minerals, may be authorized by law. Like leases and permits giving the exclusive right of prospecting by geophysical, geochemical, and similar methods for all minerals may also be authorized by law.

§ 13. Water Rights

All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

§ 14. Access to Navigable Waters

Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

§ 15. No Exclusive Right of Fishery

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. [Amended 1972]

§ 16. Protection of Rights

No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

§ 17. Uniform Application

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

§ 18. Private Ways of Necessity

Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources. Just compensation shall be made for property taken or for resultant damages to other property rights.

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except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of September 27, 1944 (58 Stat. 748; 43 U. S. C., sec. 282), as now or hereafter amended, but not over other preference rights now conferred by law. Where any lands desired by the State are unsurveyed at the time of their selection, the Secretary of the Interior shall survey the exterior boundaries of the area requested without any interior subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey; where any lands desired by the State are surveyed at the time of their selection, the boundaries of the area requested shall conform to the public land subdivisions established by the approval of the survey. All lands duly selected by the State of Alaska pursuant to this Act shall be patented to the State by the Secretary of the Interior. Following the selection of lands by the State and the tentative approval of such selection by the Secretary of the Interior or his designee, but prior to the issuance of final patent, the State is hereby authorized to execute conditional leases and to make conditional sales of such selected lands. As used in this subsection, the words "equitable claims subject to allowance and confirmation" include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands.

(h) Any lease, permit, license, or contract issued under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C., sec. 181 and following), as amended, or under the Alaska Coal Leasing Act of October 20, 1914, (38 Stat. 741; 30 U. S. C., sec. 432 and following), as amended, shall have the effect of withdrawing the lands subject thereto from selection by the State of Alaska under this Act, unless such lease, permit, license, or contract is in effect on the date of approval of this Act, and unless an application to select such lands is filed with the Secretary of the Interior within a period of five years after the date of the admission of Alaska into the Union. Such selections shall be made only from lands that are otherwise open to selection under this Act, and shall include the entire area that is subject to each lease, permit, license, or contract involved in the selections. Any patent for lands so selected shall vest in the State of Alaska all right, title, and interest of the United States in and to any such lease, permit, license, or contract that remains outstanding on the effective date of the patent, including the right to all rentals, royalties, and other payments accruing after that date under such lease, permit, license, or contract, and including any authority that may have been retained by the United States to modify the terms and conditions of such lease, permit, license, or contract: Provided, That nothing herein contained shall affect the continued validity of any such lease, permit, license, or contract or any rights arising thereunder.

(i) All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral

lands so granted shall be subject to and contain reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: Provided, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

(j) The schools and colleges provided for in this Act shall forever remain under the exclusive control of the State, or its governmental subdivisions, and no part of the proceeds arising from the sale or disposal of any lands granted herein for educational purposes shall be used for the support of any sectarian or denominational school, college, or university.

(k) Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission. Effective upon the admission of the State of Alaska into the Union, section 1 of the Act of March 4, 1915 (38 Stat. 1214; 48 U. S. C., sec. 353), as amended, and the last sentence of section 35 of the Act of February 25, 1920 (41 Stat. 450; 30 U. S. C., sec. 191), as amended, are repealed and all lands therein reserved under the provisions of section 1 as of the date of this Act shall, upon the admission of said State into the Union, be granted to said State for the purposes for which they were reserved; but such repeal shall not affect any outstanding lease, permit, license, or contract issued under said section 1, as amended, or any rights or powers with respect to such lease, permit, license, or contract, and shall not affect the disposition of the proceeds or income derived prior to such repeal from any lands reserved under said section 1, as amended, or derived thereafter from any disposition of the reserved lands or an interest therein made prior to such repeal.

(l) The grants provided for in this Act shall be in lieu of the grant of land for purposes of internal improvements made to new States by section 8 of the Act of September 4, 1841 (5 Stat. 455), and sections 2378 and 2379 of the Revised Statutes (43 U. S. C., sec. 857), and in lieu of the swampland grant made by the Act of September 28, 1850 (9 Stat. 520), and section 2479 of the Revised Statutes (43 U. S. C., sec. 982), and in lieu of the grant of thirty thousand acres for each Senator and Representative in Congress made by the Act of July 2, 1862, as amended (12 Stat. 503; 7 U. S. C., secs. 301-308), which grants are hereby declared not to extend to the State of Alaska.

(m) The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder.

SEC. 7.

Upon enactment of this Act, it shall be the duty of the President of the United States, not later than July 3, 1958, to certify such fact to the Governor of Alaska. Thereupon the Governor, on or after July 3, 1958, and not later than August 1, 1958, shall issue his proclamation for the



MATANUSKA-SUSITNA BOROUGH

Borough Mayor

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May 4, 2004

Senator Scott Ogan and the Senate Resource Committee
Juneau, Alaska

Mr. Chair and Committee Members:

Please consider this as written testimony to your Committee as the Boroughs official position on the coal bed methane issue here in our Borough. The Borough assembly unanimously passed resolutions 04-035 and 04-036 stating our positions on some of the issues surrounding CBM. It is my understanding that copies of these resolutions have been provided to you in your committee packet.

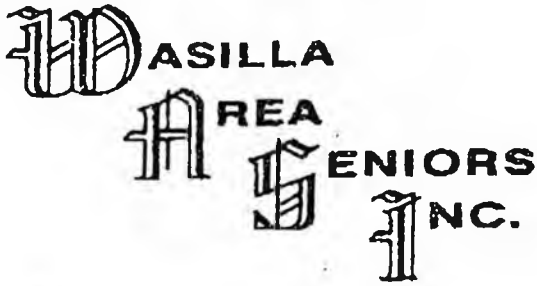
When the assembly discussed these issues and passed the resolutions they also recognized that DNR was taking considerable public comment in the Mat-Su and would be hearing the residents concerns and that those concerns would be made available to the legislature and included in the process.

We have not taken a direct position on any bill currently under consideration. We have specified positions in our resolutions. Any support or opposition to a particular bill will require an assembly meeting, which we can call with required public notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Anderson".

Tim Anderson
Borough Mayor



Phone (907)376-3104 Fax (907) 373-5170

FAX TRANSMISSION SHEET

DATE: 5/4/04

FAX: _____

TO: LINDA

SEW OCEAN OFF

FROM: TIM AWARD

Number of Pages Including Cover Page: 2

MESSAGE:

Please provide the Attached Board Letter to the Sewer Reserve Committee as written testimony on the CBM issue

Thanks

Tim

