

ALASKA LEGISLATURE
HOUSE and SENATE FINANCE COMMITTEE FILES, 1993-1994 1212

286

Programs in Landscape Architecture
UNIVERSITY OF WASHINGTON

Undergraduate and Graduate Programs:

As landscape architects we *Visualize* concepts and spaces, seeing with an educated eye and mind; *Create* new patterns and forms, blending living plants with wood, stone, metal, water, and earth; *Express* aesthetics, inspiring interaction; *Evaluate* facts and ideas, learning from history and present research to make decisions.

Degrees:

BLA & MLA Programs (Both the Undergraduate 5 yr. program and Graduate 3 yr. programs are accredited by the American Society of Landscape Architects)

Undergraduate Curriculum:

Course work includes planning and design studios, history, theory, graphics, professional practice and construction and directed electives in computers, urban design and planning, ecology, environmental legislation, environmental geology, soils, landscape plant management, plant identification.

Graduate Curriculum:

Course work consists of a basic core including design studios, construction, graphics, history, planting design, natural processes, professional practice, plant identification, environmental geology, and soils. In addition, required graduate curriculum also includes graduate design studios, research methods, theory, thesis preparation and writing, thesis, environmental law as well as directed free electives.

Programs in Landscape Architecture
UNIVERSITY OF MINNISOTA

Undergraduate and Graduate Programs:

The Landscape Architecture degree programs at the University of Minnesota emphasize the design process and an understanding of the various facets of nature, culture, and human behavior that affect the design, planning and management of land. The programs are organized around a six year time period during which students acquire basic professional training for the practice of landscape architecture, and students are encouraged to explore the expanding areas of professional practice.

Degrees:

The Department of Landscape Architecture offers an undergraduate program leading to the bachelor of environmental design (B.E.D.). In conjunction with the Graduate School, the department offers accredited professional master of landscape architecture (M.L.A.) and research-oriented master of science (M.S.) degrees.

Graduate Curriculum:

The study of landscape architecture for a graduate degree includes requirements within five subject 'core' areas. Completion of a minimum 140 credit hours is required within the following subject areas:

- A. Design
- B. Technology
- C. History
- D. Visual & Verbal Communications
- E. Theory and Research Skills



Alaska Designs

Volume 16, No. 11, December 1993

The Official Newsletter of the Alaska Professional Design Council

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by Dwayne Adams

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The State Board of Registration has raised three questions that should be discussed: 1) What should be the definition of landscape architecture? 2) Will there be a mandate for the use of landscape architects in specific circumstances, and 3) Are landscape architects in Alaska precluded from doing work that they are qualified to do? Each question deserves consideration:

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in which landscape architects traditionally practice. It also parallels the definitions of our sister professions. Landscape architects do planning work, but do not seek authorization to do platting anymore than architects seek such authority as is allowed within the definition of architecture. They seek the authority to design minor site structures such as seating, information kiosks, and trails, but do not request authority to design overpasses or other significant structures any more than architects are allowed by definition to do: "...structural design of minor importance." Landscape architects wish to provide design of site rehabilitation through site contouring and revegetation but do not seek allowance to design remediation systems for environmental pollutants.

The question then is how to provide for the areas of traditional practice while being concise. The existing definitions of the other professions allow the practices to be "...by regulation of the board." Landscape architects suggest that the definition of landscape architecture be parallel to the definitions of the other areas of practice. To define "planning", "minor site structures" or "rehabilitation of disturbed lands"

See LANDSCAPE, page 2

AELS Board to Consider Licensure for Environmental Professionals

by Carl H. Harmon, Chair
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The AAEP and NAEP believe that the environmental field is a specific and identifiable area of professional practice. To practice as an Environmental Professional requires the professional application of specialized education, knowledge, experience and training in the physical or natural sciences. It is the position of

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within the statute would be voluminous and out of character with the other definitions. The board is in place to address these issues and the landscape architects suggest that the board would effectively deal with these issues.

The second concern has to do with whether there are circumstances in which landscape architectural services would be required by statute. Landscape architects do not request any such allowance or restriction. They request that they be allowed to work in those areas in which they traditionally practice. In many circumstances it is not appropriate to require landscape architectural design. Landscape architects do not seek to restrict architects or civil engineers from performing minor planting design if that meets the desires of a client. However, if a client would prefer that a landscape architect perform trail design, planting design or site grading, then the client should have that option.

The third concern has to do with whether Alaskan landscape architects are deprived of work that should be done in state. Currently, more landscape architecture work is performed by out of state landscape architectural offices than is performed by in-state offices. These out-of-state landscape architects have little or no training in arctic engineering, seldom have knowledge of local maintenance practices, and have little knowledge of local plant materials. The Alaskan landscape architects feel that the public's interest is best protected when these professionals have knowledge of Alaskan engineering practices, Alaskan maintenance practices and Alaskan plant materials.

In summary, the landscape architects request only that they be allowed to practice within their traditional areas of practice and

within the limits of their professional education and training. They do not ask that other professionals be excluded from practicing in those areas in which they work, but do ask that clients be given the option of using a landscape architect. Lastly, they ask that landscape architectural work that is performed within the state of Alaska be done by persons trained and experienced with design for Alaska. It is in the public's best interest and the interest of all of the planning and design professions that the practice of landscape architecture be regulated in the state of Alaska.

A summary of the proposed changes to Alaska Statutes and Alaska Administrative Code to allow licensing for landscape architects is on page 5, including a definition of landscape architecture as proposed by the Alaska Chapter of the American Society of Landscape Architects.

•ENVIRONMENTAL

Continued from page 1

the AAEP and NAEP that the skills necessary for the practice of Environmental Professionals can be determined through the administration of an exam, given to those individuals possessing the prerequisite qualifications of education and experience. The practice by Environmental Professionals should be restricted to those individuals who have qualified for licensure through examination or endorsement from an equivalent process from another state.

While other professions may practice in fields which are similar or may overlap to some extent with the practice by Environmental Professionals, it is the position of the AAEP and NAEP that licensure of Environmental Professionals will not result in the restriction of any area of practice of any currently licensed profession, including engi-

neers, geologists, surveyors and landscape architects. The licensure of Environmental Professionals will assure that the individuals responsible for the practice of professional environmental management are directly liable and responsible for the consequences of their efforts.

Ethical standards are essential for the responsible practice by Environmental Professionals. It is the position of the AAEP and NAEP that a Code of Ethics for Environmental Professionals must be a component of the regulation of the practice of professional environmental management. Identification of the fundamental canons, rules of practice and professional obligations of Environmental Professionals will provide assurance that appropriate ethical standards have been established and are being met.

There are professional organizations which review and certify the credentials of Environmental Professionals performing work in certain disciplines of environmental management. It is the position of the AAEP and NAEP that the licensing of Environmental Professionals will neither eliminate the need for, nor diminish the importance of, these certifications. Licensure and certification can provide the complementary assurance of repeated practice and peer recognition of qualifications.

The AAEP and NAEP believe that they are not alone among the organizations of Environmental Professionals in recognizing the necessity of licensure of Environmental Professionals. It is the position of the AAEP and NAEP that licensure can only be accomplished with the unified cooperation and support of the existing organizations whose members are Environmental Professionals. The AAEP and NAEP urge all groups with an interest in this issue to join together to achieve the goal of licensure of Environmental Professionals.

Continued from page 1

- Are cable utilities included?
- Are telephone utilities included?
- Can standard details be used for repetitive projects, such as line extensions or service drops, without special site specific plans?
- Can the Board legally pick an enforcement date later than statute requirements?

MLA plans to comply as soon as possible, but they must go through an extensive class specification change, including negotiations with the International Brotherhood of Electrical Workers (IBEW), before this can be implemented. Contact Dick Armstrong, 276-0521, with questions or comments.

15. 1994 Meeting Dates. The AELS Board preliminary meeting dates are 1/27/94-1/28/94 in Juneau; 5/19/94-5/20/94 in Anchorage; 8/18/94-8/19/94 in Fairbanks and 11/17/94-11/18/94 in Anchorage.

Proposed Changes for Landscape Architect Licensing

The Alaska Chapter of the American Society of Landscape Architects has drafted proposed statutes and regulations to allow registration of landscape architects. Changes to Alaska Statutes Chapter 48 include:

- Add the words "Landscape Architect" in Chapter title, list of professions to be registered and throughout applicable sections.
- Add two members to the Board to allow for a Landscape Architect member and another public member (to prevent tie votes).
- Allow registration by comity for

landscape architects holding certificates of registration elsewhere. Allow registration of persons holding a certificate of qualification issued by the Council of Landscape Architectural Registration Board.

- Add definitions; "landscape architect" means a professional Landscape Architect and "practice of landscape architecture" means professional service or creative work in the planning of land, the design of grading, drainage, irrigation, planting layout, minor site structures, and rehabilitation of disturbed lands, the evaluation of scenic values, the teaching of advanced landscape architectural courses in institutions of higher learning, consultation, investigation, evaluation, planning, design and professional inspection and contract administration of construction of public or private sitework, and landscape architectural review of drawings and specifications by regulatory agencies.

Alaska Administrative Code Chapter 36 would be amended as proposed below:

- Add a section defining eligibility for landscape architect registration to include successful completion of all educational requirements to obtain an undergraduate degree in a landscape architecture curriculum accredited by ASLA, as documented by the applicant's educational institution; or satisfactory evidence of equivalent education and experience.
- Add the words "Landscape Architect" throughout applicable sections.
- Require, for registration by comity, a CLARB record, completed application, verification of registration in another jurisdiction and proof of completion of Arctic Engineering.

Directory of Sustaining Members

Goldier Associates, Inc.
Geotechnical & Environmental Engineers
8740 Hartzell Suite 200, Anchorage, AK 99507
Phone (907) 344-6001 Fax (907) 344-6011

Harding Lawson Associates
Engineering and Environmental Services
601 East 57th Place
Anchorage, AK 99518
Phone (907) 583-8102 Fax (907) 561-4574

Hart Crowner Inc.
Earth and Environmental Technologies
2550 Denali Street, Suite 705
Anchorage, AK 99503 (907) 276-7475

James M. Montgomery
Consulting Engineers Inc.
Environmental and Civil Engineering
4000 Credit Union Dr. Suite 600
Anchorage, Alaska 99503 (907) 561-5829

Kumins Associates, Inc. — Architects
Phone 563-8877 Fax 561-0378

Lake & Berwall
Consulting Electrical Engineers, Inc.
543 Third Avenue, Suite 208
Fairbanks, AK 99701 (907) 452-1441

Loftus & Doolley Inc.
Structural Engineering—Design Management
341 West Tudor Road, Anchorage AK 99503
1028 Aurora Drive, Fairbanks, AK 99701

Lounsbury & Associates, Inc.
Surveyors • Engineers • Planners
723 West Sixth Avenue
Anchorage, AK 99501 (907) 272-5451

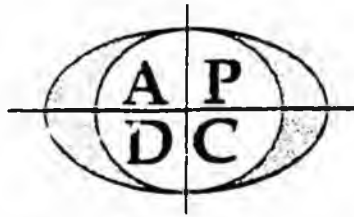
A.W. Murfitt Company
Engineering and Testing
Phone (907) 345-2737 Fax (907) 345-3264

Peratrovich, Nottingham & Drage, Inc.
Engineering Consultants
1506 West 36th Avenue
Anchorage, AK 99503 (907) 561-1011
Offices in Anchorage, Juneau and Seattle

RSA Engineering, Inc.
Mechanical • Electrical
2522 Arctic Boulevard, Suite 200
Anchorage, AK 99503-2516 (907) 276-0521

Technology Plus
AutoCAD, ArcCAD, PC ARC/INFO
LandCADD, Archibus, ArcView
Phone & Fax (907) 780-6211

Tryck Nyman Hayes, Inc.
Engineers • Surveyors • Landscape Architects
Transportation and Community Planning
911 West 8th Avenue
Anchorage, Alaska 99501
Phone (907) 279-0543 Fax (907) 276-7679



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Alaska Professional Design Council

— ALASKA DESIGNS ARTICLE ON
LANDSCAPE ARCHITECTS —

• LANDSCAPE

Continued from page 1

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HEALTH, SAFETY AND WELFARE

"Clear and direct" relationships between protection of the public and the practice of Landscape Architecture may be seen in the following examples:

- A. Inadequate design of outdoor structures such as those used in parks and other recreational facilities could result in injury should those structures fail. Such structures can include small shelters, footbridges, gazebos, kiosks, decks, walls, rest facilities, among others.
- B. Specification of unsafe playground equipment, inadequate fall zones or safety surfacing could result in injury and consequent liabilities.
- C. Inadequate provision for drainage can result in flooding of foundations, basements, walkways, highway rights of way, recreation areas, and other kinds of facilities used by the public. This could present particularly serious hazards under the freezing conditions of Alaska.
- D. Improper specifications for grading and filling can result in soil slippage and washing or even massive erosion.
- E. Improperly specified relationships between water supplies, such as to artificial ponds, fountains, etc. and water drainage facilities could result in contamination of a water supply system of an entire community.
- G. Lack of adequate knowledge of plant materials and their functional characteristics and interrelationships with various kinds of soils and other environmental elements can present at least these kinds of hazards:
 - 1. Trees placed in soils whose structural characteristics do not provide its root system adequate physical support under stress of certain wind conditions.
 - 2. Root systems placed too near foundations of structures will ultimately weaken the structure.
 - 3. Certain toxic or otherwise harmful species could harm children in a variety of ways.
 - 4. Specification of hardwood trees on highway medians or otherwise too close to rights-of-way present a serious hazard to motorists and their passengers.
 - 5. Specification of plant materials on incompatible soils can result in deadwood that provides fire hazards.

FISCAL YEAR 1993

Board: Architects, Engineers and Land Surveyors

Method: Check the appropriate method in which licenses are issued (not including examination), and cite the specific statutory authority.

_____	Credentials	AS 08.	_____
_____	Reciprocity	AS 08.	_____
<u>x</u>	Comity	AS 08.	<u>48.191</u>
_____	Endorsement	AS 08.	_____

New Licenses*: List each category and the number of new licenses issued within each category during the fiscal year.

CATEGORY:

(1)	civil engineers	<u>87</u>
(2)	electrical engineers	<u>22</u>
(3)	mechanical engineers	<u>33</u>
(4)	mining engineers	<u>0</u>
(5)	chemical engineers	<u>1</u>

NUMBER OF LICENSES:

(6)	petroleum eng.	<u>5</u>
(7)	land surveyors	<u>8</u>
(8)	architects	<u>19</u>
(9)	corporate auth.	<u>18</u>

Total 193

Permits: If applicable, list each category and total number of permits issued during the fiscal year.

PERMIT CATEGORY:

(1)	<u>N/A</u>
(2)	_____
(3)	_____
(4)	_____
(5)	_____

NUMBER OF PERMITS:

(1)	_____
(2)	_____
(3)	_____
(4)	_____
(5)	_____

Total _____

(Use Additional paper if necessary)

Number of CURRENT/ACTIVE licenses for each category.

CATEGORY:

(1)	civil engineers	<u>2297</u>
(2)	electrical engineers	<u>416</u>
(3)	mechanical engineers	<u>491</u>
(4)	mining engineers	<u>66</u>
(5)	chemical engineers	<u>61</u>

NUMBER OF LICENSES:

(6)	petroleum eng.	<u>58</u>
(7)	land surveyors	<u>705</u>
(8)	architects	<u>552</u>
(9)	corporate auth.	<u>219</u>

Total 4265

(Use Additional paper if necessary)

Number of CURRENT/INACTIVE licenses (not lapsed - all categories): n/a

NOTE: SOME PROFESSIONS DO NOT HAVE THE "INACTIVE" DESIGNATION.

Number of CURRENT/ACTIVE licenses on probation: 2

Number of CURRENT/LICENSES which have been suspended (if applicable): 0

Other CURRENT/ACTIVE licenses not included above (please explain status): _____

Post-It® brand fax transmittal memo 7671 # of pages 4

From <u>George</u>	To <u>Mary</u>
Dept.	Phone #
Fax #	Fax # <u>465-2974</u>

*Whenever the word license is used, it refers to registrations, certificates, endorsements, which are issued as applicable.

SENATE COMMITTEE REPORT

(FIRST COMMITTEE OF REFERRAL)

Frank

DATE: 2/14/94

FURTHER: Finance

Date of 5-Day Notice: 3/24/94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-11-94

L&C Committee considered SB 305

"An Act relating to licensure of landscape architects."

and recommends it be replaced with

and recommends:

[] replace with _____ CS SB 305 (L&C)

[] attaches amendment(s)

and report it back as follows

same title
 new title
 technical title change (HB only)

[] adopts _____ Letter of Intent

[] further referral to the _____

[] do pass

[] do not pass

[] no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
<u>SB</u> <u>CSB</u> DEED	<u>4/6/94</u>		<input checked="" type="checkbox"/>

Department	Date	Zero	Fiscal

[] Appropriation No Fiscal Note

[] Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

(2) Agree No Recommendation
(2) Don't Agree - N.R.
(2) Disagree - N.R.

Tim Kelly - Do Pass

Chair: Signature and Recommendation

SB

308

SFIN

FILE

This fiscal note sent along after the bill was reported out. It zeroes 34.2 note.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

No. 6
Bill Version: CSSB 308 (FIN)
(S) Publish Date: 4.21.94

Revision Date: 15-Apr-94 Dept Affected: Natural Resources
Title: "An Act modifying administrative procedures and decisions by state agencies that relate to uses and dispositions..." BRU: Resource Development
Sponsor: Senate Resources Committee Component: Oil & Gas Development
Requestor: Senator Pearce Component Serial No. 439

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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JND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED.

Prepared by: Jim Eason, Director Phone: 762-2547
Division: Oil & Gas Date: 15-Apr-94
Approved by Commissioner: Harry A. Noah Date: 15-Apr-94
Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Attachment to CSSB308(FIN)am
April 15, 1994

The fiscal note is revised to reflect the effects of amendments since the last fiscal note was prepared. As a result of amendments expanding the administrative process and extending timelines for potential appeals of best interest findings, current sale schedules will have to be revised to assure time for compliance with the new provisions. This will result in fewer sales during the next two years, allowing funds from deferred sales to be used to pay for the increased costs associated with remaining sales. To balance delays of some future sales, however, CSSB308 should provide increased defensibility of sales and disposals conducted under its provisions. In addition, public participation and acceptance of these disposals should increase.

SENATE FINANCE COMMITTEE REPORT

DATE: 2/23/94

FURTHER:

DATE TURNED INTO OFFICE: 4-13-94

The Finance Committee considered **SENATE BILL NO. 308**

"An Act modifying administrative procedures and decisions by state agencies that relate to uses and dispositions of state land, property, and resources, and to the interests within them, and that relate to land, property, and resources, and to the interests within them, that are subject to the coastal management program; and providing for an effective date."

and recommends:

- replace with CS SB 308 (FINANCE)
- or adopt previous CS _____ (_____)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
DNR	4-7-94		34.2

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DFAB	7/14/94	<input checked="" type="checkbox"/>	
Gov.	2/14/94	<input checked="" type="checkbox"/>	
DEC	2/14/94	<input checked="" type="checkbox"/>	

Appropriation No Fiscal Note

DO PASS:

Tim Kelly

Bob Sharp

OTHER RECOMMENDATIONS:

Steve King No Recommendation
J. Kettle Do Not pass

1. *Frank Do Pass*
Co-Chair: Signature/Recommendation

2. *Steve Pearce 10/3/94*
Co-Chair: Signature/Recommendation

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB308(FIN)

Revision Date: 7-Apr-94 Dept Affected: Natural Resources
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 Sponsor: Senate Resources Committee Component: Oil & Gas
 Requestor: Senate Resources Committee Component Serial No. 439

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	34.2	35.2	36.2	37.3	38.4	40.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	34.2	35.2	36.2	37.3	38.4	40.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	34.2	35.2	36.2	37.3	38.4	40.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	34.2	35.2	36.2	37.3	38.4	40.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED.

Prepared by: Jim Eason, Director Phone: 762-2547
 Division: Oil & Gas Date: 7-Apr-94
 Approved by Commissioner: [Signature]
 Agency: Harry A. Noah Date: 7-Apr-94
Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Attachment to Fiscal Note for SB308
April 7, 1994

Analysis:

Under Section AS 38.05.945(b) the department is currently required to give notice of a decision to conduct an oil and gas lease sale by publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action. This requirement has been met by placing a legal notice in each newspaper one time. As amended, this section would increase this requirement to at least once a week for two consecutive weeks, doubling the current cost. In addition, the department would be required to place a display ad in the newspapers at least once a week for two consecutive weeks. Increased costs per sale would be:

Legal Notice (1 additional)	\$2115
Display Ad (2)	\$1920
TOTAL	\$4035

Also, amended AS 38.05.945(b) would require the same notifying requirements in newspapers for a preliminary written finding. It would also require the department to give notice of the preliminary finding by public service announcements on the electronic media and by notifying parties known or likely to be affected by the final action. The preliminary written finding notification costs for each oil and gas lease sale would be:

Printing of Notice	\$ 400
Mailout	\$ 800
Legal Notice (2)	\$4230
Display Ad (2)	\$1920
TOTAL	\$7350

There is no cost to issuing public service announcements on the electronic media.

The total additional cost for each sale would be \$11,385 (\$4035 + \$7350). If the division were to continue to conduct three lease sales per year, additional costs for these requirements would be \$34,155. It is anticipated that such costs will increase approximately three percent per year.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill No: SB 308
Bill Version: SB 308
(S) Publish Date: 2-23-94

Revision Date: _____
Title: An Act Modifying Administrative Procedures
Sponsor: Senate Resources Committee
Requestor: Senate Resources Committee

Department Affected: Environmental Conservation
BRU: Environmental Quality
Component: Water Quality Management

COMPONENT SERIAL NO. 645

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ _____

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary.)

Changes in CSS 3308 (Res) have no fiscal impact. This fiscal note is appropriate.

2-23-94
date

ASD
Comite Aide (initial)

Prepared by: Bob Poe, Director
Division: Information & Administrative Services

Phone: 465-5010

Date: 2/14/94

Approved by Commissioner: [Signature]
Agency: Department of Environmental Conservation

Date: 2/14/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

Bill Version: SB 308
 (S) Publish Date: 2-23-94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Office of the Governor
 Title: Modifying administrative procedures and decisions by State agencies that relate to uses of State land BRU: Office of Management & Budget
 Component: Governmental Coordination
 Sponsor: Senate Resources Committee
 Requestor: _____ COMPONENT SERIAL NO. 0018

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY94) cost \$ 0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Changes in CSSB 308 (RES) have no fiscal impact. This fiscal note is appropriate.

2-23-94 date AS Comptroller (initial)

Prepared by: Paul C. Rusanowski, Director
 Division: Governmental Coordination
 Approved by Commissioner: [Signature]
 Agency: _____

Phone: 465-3562
 Date: 2/14/94
 Date: 2-14-94

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FISCAL NOTE

No. 3

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NC

Bill Version: SB 308

(S) Publish Date: 2-23-94

Revision Date: _____
 Title: "An act modifying administrative procedures related to land disposal."
 Sponsor: Senate Resources
 Requestor: Senate Resources

Dept. Affected: Fish and Game
 BRU: Habitat and Restoration
 Component: Habitat
 COMPONENT SERIAL NO. 486

Expenditures/Revenues	(Thousands of Dollars)					
	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUND SOURCE	(Thousands of Dollars)					
	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTLA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Frank Rue *Frank Rue* Phone: 465-3065
 Division: Habitat and Restoration Date: 2/14/94
 Approved by Commissioner: *[Signature]*
 Agency: Alaska Department of Fish and Game Date: 2/14/94

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

Changes in CSSB 308 (Res)
 have no fiscal impact. This
 fiscal note is appropriate.
2-23-94 *[Signature]*
 date Comte Aide (initial)

4-12-94

8-LS1689U.2 /
Chenoweth
4/8/94

SR 3
Adopted

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308()

Page 1, lines 30 - 31:

Delete "[AND THE DEPARTMENT'S RESPONSES TO THOSE COMMENTS]"

Insert "and the department's responses to those comments"

SENATE FINANCE
COMMITTEE

Amendment Number: ①

Bill Number: SB 308 - Version U

Sponsor: _____ Date: 4/9/94

Logged In By: (RM)

CJ-3
Adopted

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308()

Page 5, line 11:

Delete "21 days"

Insert "90 days"

SENATE FINANCE
COMMITTEE

Amendment Number: (2)
Bill Number: SB 308 - Version U
Sponsor: _____ Date: 4/9/94
Logged In By: (signature)

4-12-94
65
3
Adopted

S-LS1689NJ.3
Chenoweth
4/8/94

A M E N D M E N T

OFFERED IN THE SENATE

TO: Draft CSSB 308()

SENATE FINANCE
COMMITTEE
Amendment Number: 3
Bill Number: SB 308
Sponsor: _____ Date: 4/11/94
Logged In By: [Signature]

Page 8, line 23, through page 9, line 5:

Delete all material and insert:

"(i) A person who is eligible to file a request for reconsideration under this subsection and who is aggrieved by the final written finding of the director entered under (e)(~~4~~) or (~~b~~) of this section may, within 20 days after the issuance of the final written finding, request reconsideration of the decision by the commissioner. A person is eligible to file a request for reconsideration if the person

(1) meaningfully participated in the process set out in this chapter for receipt of public comment by

(A) submitting written comment during the period for receipt of public comment;

(B) presenting oral testimony at a public hearing, if a public hearing was held; or

(C) adopting as the person's own testimony concerns that were expressed by another, either by submitting a written statement to that effect during the period for receipt of public comment or by so declaring during a public hearing; and

(2) is affected by the final written finding.

(j) A request for reconsideration submitted under (i) of this section must specify the written finding complained of and the specific basis upon which it is challenged. The commissioner shall grant or deny the request within 30 days after issuance of the final written finding. Failure of the commissioner to act on the request for reconsideration within this period is a denial of the request for reconsideration and a final administrative decision for purposes of appeal to the superior court."

Reletter the following subsections accordingly.

Page 9, line 17:

Delete "(k)"

Insert "(l)"



4-12-94

CJ

8-LS1689U.5
Chenoweth
4/11/94

Adopte.

A M E N D M E N T

OFFERED IN THE SENATE

TO: Draft CSSB 308()

Page 4, following line 17:

Insert a new paragraph to read:

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

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

(B) issues based on the statutes and regulations referred to in (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this subsection:"

Page 4, line 18:

Delete "(2)"

Insert "(3)"

Page 4, line 20:

Delete "(3)"

Insert "(4)"

Page 4, line 26:

Delete "(4)"

Insert "(5)"

SENATE FINANCE
COMMITTEE

Amendment Number: (4)

Bill Number: SB 308

Sponsor: _____ Date: 4/11/94

Logged In By: BM

Page 5, line 19:

Delete "(5)" ✓

Insert "(6)"

Page 5, line 22:

Delete "under (4)" ✓

Insert "under (5)"

Page 8, line 25:

Delete "under (e)(4) or (5)" ✓

Insert "under (e)(5) or (6)"

Page 9, line 9:

Delete "under (e)(4) or (5)" ✓

Insert "under (e)(5) or (6)"

Page 9, line 31:

Delete "AS 38.05.035(e)(4)(A)" ✓

Insert "AS 38.05.035(e)(5)(A)"

Page 10, line 3:

Delete "AS 38.05.035(e)(4)(B)" ✓

Insert "AS 38.05.035(e)(5)(B)"

Page 10, line 8:

Delete "AS 38.05.035(e)(5)" ✓

Insert "AS 38.05.035(e)(6)"

4-12-94
GJ-3

S-LS1689U.6 ✓
Chenoweth
4/11/94

Adopted

A M E N D M E N T

OFFERED IN THE SENATE

TO: Draft CSSB 308()

Page 2, line 1, after "determination": ✓

Insert "under AS 38.05"

SENATE FINANCE
COMMITTEE

Amendment Number: ©
Bill Number: SB 308
Sponsor: Date: 4/11/94
Logged In By:

4-12-94
GTZ

8-LS1689U.7 ✓
Chenoweth
4/11/94

Adopted

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308()

Page 2, line 19, after "scope":

Insert "of review" ✓

SENATE FINANCE
COMMITTEE
Amendment Number: 6
Bill Number: SB 308
Sponsor: _____ Date: 4/14/94
Logged In By: Tom

4-12-94

65

8-LS1689U.8 ✓

Chenoweth

4/11/94

Adopted

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308()

Page 3, line 4, after "environmental":

Delete "or"

Insert ", "

After "sociological"

Insert ", or economic"

SENATE FINANCE
COMMITTEE

Amendment Number: ①

Bill Number: 308

Sponsor: _____

Logged In By: _____

Date: 7/11/94

4-12-94

CT ✓

8-LS1689U.9

Chenoweth

4/11/94

BSG

Accepted

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308()

Page 3, line 4, after "intended":

Insert "to artificially divide or segment a proposed development project to avoid thorough review of the project or"

SENATE FINANCE
COMMITTEE

Amendment Number: 0

Bill Number: SB 303

Sponsor: _____ Date: 4/11/94

Logged In By: [Signature]

4-12-94
CT-3

8-LS1689U.11
Chenoweth
4/11/94

CT-3

3F

A M E N D M E N T

OFFERED IN THE SENATE
TO: Draft CSSB 308()

SENATE FINANCE
COMMITTEE
Amendment Number: 9
Bill Number: SB 308
Sponsor: _____ Date: 4/11/94
Logged In By: FW

Adopted

Page 6, line 16, after "finding":

Insert ":

(6) in

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

(B) in the final written finding, a summary of agency and public comments received and the department's responses to those comments"

Page 7, line 29, after "(2)":

Delete "in a final written finding, a summary of agency and public comments received [AND THE DEPARTMENT'S RESPONSES TO THOSE COMMENTS];

(3)"

Page 8, line 8, after "subsection":

Insert "[A SUMMARY OF AGENCY AND PUBLIC COMMENTS RECEIVED AND THE DEPARTMENT'S RESPONSES TO THOSE COMMENTS;]"

Page 8, line 9:

Delete "(4) [(3)]"

Insert "(3)"

4-12-94
CT-3

8-LS1689U.12
Chenoweth
4/11/94

Adopted

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 308()

Page 12, line 27, after "phase":

Insert ";

(3) shall, when the consistency review is limited under (1) of this subsection, prepare and issue a written statement describing the reasons for its decision to make the consistency determination for the use or activity in phases"

SENATE FINANCE
COMMITTEE
Amendment Number: 10
Bill Number: SB 308
Sponsor: _____ Date: 4/11/94
Logged In By: BW



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

TO: All Legislative Information Offices

FROM: Billy Miles, Junior Staffer *BM*
Senate Finance Committee

DATE: April 7, 1994
7:00 p.m.

RE: Errata for SB 308, Administrative Action Regarding
Land/Resources/Property

ERRATA

Proposed CS for Senate Bill No. 308()

Page 7, lines 29, 30 and 31 should read as follows:"

(2) in a final written finding, a summary of agency and public comments received and the department's responses to those comments.

No deletion was intended.

NOTICE

Please attach to page 7 of CSSB 308,
Version U

8-LS1659U
Chenoweth
4/7/94

CS FOR SENATE BILL NO. 308()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE RESOURCES COMMITTEE *

A BILL

FOR AN ACT ENTITLED

1 "An Act modifying administrative procedures and decisions by state agencies that
2 relate to uses and dispositions of state land, property, and resources, and to the
3 interests within them; and modifying administrative procedures and decisions by
4 state agencies that relate to uses and activities involving land, property, and
5 resources, and to the interests within them, that are subject to the coastal
6 management program when the use or activity is to be authorized or developed
7 in phases; and providing for an effective date."

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

9 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that
10 (1) in order for the state to make a disposal of state land or of an interest in
11 state land, the legislature has previously determined that it is the responsibility of the director
12 of the division of lands in the Department of Natural Resources to make a written
13 determination that the interests of the state will be best served;

1 (2) each determination that the interests of the state will be best served is a
2 policy decision involving facts unique to each proposed disposal, and complex issues the
3 analysis and resolution of which are most appropriately left to the expertise of the agency
4 making the determination:

5 (3) it is the intent of the legislature to confirm that the determination of when
6 and under what circumstances a disposal is in the state's best interest is vested in the
7 discretion of the director of the division of lands, subject to the consent of the commissioner
8 of natural resources and the policy guidance provided by this Act;

9 (4) the scope of the review undertaken by the director of the division of lands
10 in support of a proposed disposal is to be established in the director's written finding made
11 under the provisions of this Act, and is to be based upon the known information or
12 information that is made known to the director during the administrative review;

13 (5) in delegating this discretion, it is not the intent of the legislature to limit
14 public comment or the public's opportunity to participate in the administrative review that
15 takes place before the determination by the director of the division of lands that a disposal is
16 in the state's best interest;

17 (6) it is the legislature's intent to ensure that the public participates in a timely
18 and meaningful manner in the development of the administrative record that will be used by
19 the director of the division of lands to define the scope of the written finding;

20 (7) analyses comparable to those generally required by 42 U.S.C. 4321 - 4370a
21 (National Environmental Policy Act of 1969, as amended) for the preparation of an
22 environmental impact statement under 42 U.S.C. 4332(2)(C) are not necessary for support of
23 best interest findings issued under AS 38.05 or conclusive coastal zone consistency
24 determinations issued under AS 46.40;

25 (8) speculation concerning future development activities that will be subject
26 to independent permitting requirements is not necessary at the time a decision is made to
27 dispose of state land or an interest in state land;

28 (9) this Act is not intended to allow the director of the division of lands to
29 limit the scope of an administrative review so as to omit issues or disregard concerns that
30 otherwise must be addressed under the provisions of applicable statutes and regulations;

31 (10) conducting phased coastal zone consistency determinations is appropriate

1 in those instances where there is insufficient information to determine the consistency of a
2 proposed development project from planning to completion; and

3 (11) consideration of a disposal as a phase of a development project is not
4 intended to avoid consideration of potential future environmental or sociological effects, but
5 rather is intended to allow for consideration of those issues when sufficient data are available
6 upon which to make reasoned decisions.

7 * Sec. 2. AS 38.05.035(e) is amended to read:

8 (e) Upon a written finding that the interests of the state will be best served,
9 the director may, with the consent of the commissioner, approve contracts for the sale,
10 lease, or other disposal of available land, resources, property, or interests in them, and,
11 in addition to the conditions and limitations imposed by law, may impose additional
12 conditions or limitations in the contracts as the director determines, with the consent
13 of the commissioner, will best serve the interests of the state. The preparation and
14 issuance of the written finding by the director is subject to the following:

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

18 (A) shall establish the scope of the administrative review on
19 which the director's determination is based, and the scope of the written
20 finding supporting that determination; the scope of the review and finding
21 may address only reasonably foreseeable, significant effects of the uses
22 proposed to be authorized by the disposal;

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

25 (i) applicable statutes and regulations;

26 (ii) the facts pertaining to the land, resources, or
27 property, or interest in them, that the director finds are material to
28 the determination and that are known to the director or knowledge
29 of which is made available to the director during the administrative
30 review; and

31 (iii) issues that, based on the statutes and regulations

1 referred to in (i) of this subparagraph, on the facts as described in
2 (ii) of this subparagraph, and on the nature of the uses sought to be
3 authorized, the director finds are material to the determination of
4 whether the proposed disposal will best serve the interests of the
5 state; and

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

11 (i) the only uses to be authorized by the proposed
12 disposal are part of that discrete phase;

13 (ii) the department's approval is required before the
14 next phase of the project may proceed; and

15 (iii) the department conditions its approval to ensure
16 that any additional uses or activities proposed for that or any later
17 phase of the project will serve the best interests of the state;

18 (2) a [A] written finding for an oil and gas lease sale under
19 AS 38.05.180 is subject to (g) of this section;

20 (3) a [A] contract for the sale, lease, or other disposal of available
21 land or an interest in land is not legally binding on the state until the commissioner
22 approves the contract but if the appraised value is not greater than \$50,000 in the case
23 of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of
24 land or interest in land, the director may execute the contract without the approval of
25 the commissioner;

26 (4) public notice requirements relating to the sale, lease, or other
27 disposal of available land or an interest in land for oil and gas proposed to be
28 scheduled in the five-year oil and gas leasing program under AS 38.05.180(b), are
29 as follows:

30 (A) before a public hearing, if held, or in any case not less
31 than 180 days before the sale, lease, or other disposal of available land or

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

10 (B) after the public comment period for the preliminary
 11 written finding and not less than 21⁹⁰ days before the sale, lease, or other
 12 disposal of available land or an interest in land for oil and gas, the director
 13 shall make available to the public a final written finding that states the
 14 scope of the review established under (1)(A) of this subsection and includes
 15 the applicable statutes and regulations, the material facts and issues in
 16 accordance with (e)(1) of this subsection, and information required by (g)
 17 of this section, upon which the determination that the sale, lease, or other
 18 disposal will serve the best interests of the state is based ;

19 (5) before [BEFORE] a public hearing, if held, or in any case not
 20 [NO] less than 21 days before the sale, lease, or other disposal of available land,
 21 property, resources, or interests in them other than a sale, lease, or other disposal
 22 of available land or an interest in land for oil and gas under (4) of this subsection,
 23 the director shall make available to the public a written finding that, in accordance
 24 with (1) of this subsection, sets out the material facts and applicable statutes and
 25 regulations and any other information required by statute or regulation to be
 26 considered [LAW] upon which the determination that the sale, lease, or other disposal
 27 will best serve the interests of the state was based; however, a [A] written finding
 28 is not required before the approval of

29 (A) [(1)] a contract for a negotiated sale authorized under
 30 AS 38.05.115;

31 (B) [(2)] a lease of land for a shore fishery site under

1 AS 38.05.082;

2 (C) [(3)] a permit or other authorization revocable by the
3 commissioner;

4 (D) [(4)] a mineral claim located under AS 38.05.195;

5 (E) [(5)] a mineral lease issued under AS 38.05.205;

6 (F) [(6)] a production license issued under AS 38.05.207;

7 (G) [(7)] an exempt oil and gas sale under AS 38.05.180(d) of
8 acreage offered in a sale that was held within the previous five years if the sale
9 was subject to a written best interest finding, unless the commissioner
10 determines that new information has become available that justifies a revision
11 of the best interest finding; or

12 (H) [(8)] a lease sale under AS 38.05.180(w) of acreage offered
13 in a sale that was held within the previous five years if the sale was subject to
14 a best interest finding, unless the commissioner determines that new
15 information has become available that justifies a revision of the best interest
16 finding.

17 * Sec. 3. AS 38.05.035(g) is amended to read:

18 (g) Notwithstanding (e)(1)(A) and (B) of this section, when [WHEN] the
19 director prepares a written finding required under (e) of this section for an oil and gas
20 lease sale scheduled under AS 38.05.180, the director shall consider and discuss

21 (1) in a final written [THE] finding [(1)] facts that are known to the
22 director at the time of preparation of the finding and that are

23 (A) material to [THE FOLLOWING MATTERS OR TO] issues
24 that were raised during the period allowed for receipt of public comment,
25 whether or not material to a matter set out in (B) of this paragraph, and
26 within the scope of the administrative review established by the director
27 under (e)(1) of this section; or

28 (B) material to the following matters:

29 (i) [; (A)] property descriptions and locations;

30 (ii) [(B)] the petroleum potential of the sale area, in
31 general terms;

1 (3) in a preliminary written finding, facts that are known to the
2 director at the time of preparation of the finding and that are

3 (A) material to issues that the department identifies, whether
4 or not material to a matter set out in (B) of this paragraph, and within the
5 scope of the administrative review established by the director under (e)(1)
6 of this section; or

7 (B) material to a matter described in (1)(B) of this
8 subsection; and

9 ~~(4)~~ [(3)] the basis for the director's preliminary or final finding, as
10 applicable, [DETERMINATION] that, on balance, leasing the area would be in the
11 state's best interest.

12 * Sec. 4. AS 38.05.035 is amended by adding new subsections to read:

13 (h) In preparing a written finding under (e)(1) of this section, the director may
14 not be required to speculate about possible future effects subject to future permitting
15 that cannot reasonably be determined until the project or proposed use for which a
16 written best interest finding is required is more specifically defined, including
17 speculation about

18 (1) effects that are remote in time or place;

19 (2) the exact location and size of an ultimate use and related facilities;

20 (3) the economic feasibility of ultimate development; and

21 (4) future environmental or other laws that may apply at the time of

22 any future development.

23 (i) A person who is eligible to file a request for reconsideration under this
24 subsection and who is aggrieved by the final written finding of the director entered
25 under (e)(4) or (5) of this section may, within 20 days after the issuance of the final
26 written finding, request reconsideration of the decision by the commissioner. A person
27 is eligible to file a request for reconsideration if the person meaningfully participated
28 in the process set out in this chapter for receipt of public comment by submitting
29 written comment during the period for receipt of public comment and if the person is
30 affected by the final written finding. A request for reconsideration submitted under
31 this subsection must specify the written finding complained of and the specific basis

1 upon which it is challenged. The commissioner shall grant or deny the request within
2 30 days after issuance of the final written finding. Failure of the commissioner to act
3 on the request for reconsideration within this period is a denial of the request for
4 reconsideration and a final administrative decision for purposes of appeal to the
5 superior court.

6 ~~(K)~~ If a request for reconsideration is granted, the commissioner may order the
7 director to issue a new final written finding after reconsideration as may be required
8 under the circumstances.

9 ~~(L)~~ A person may appeal a final written finding issued under (e)(4) or (5) of
10 this section to the superior court, but only if the person was eligible to request, and did
11 request, reconsideration of that finding under (i) of this section. The person shall
12 initiate the appeal within 30 days from the date that the decision on reconsideration
13 is mailed or otherwise distributed, or the date the request for reconsideration is
14 considered denied by the commissioner's failure to act on the request, whichever is
15 earlier. The points on appeal are limited to those presented to the commissioner in the
16 person's request for reconsideration.

17 ~~(M)~~ For purposes of appeal under (k) of this section, the burden is upon the
18 party seeking review to establish the invalidity of the finding.

19 * Sec. 5. AS 38.05.075(h) is amended to read:

20 (h) A person aggrieved by a decision of the commissioner under this section
21 may appeal to the commissioner within five days of the prequalification decision. The
22 decision of the commissioner under this subsection [OR UNDER AS 38.05.035(e)]
23 may be appealed to the superior court.

24 * Sec. 6. AS 38.05.945(a) is amended to read:

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

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

29 (2) zoning of land under applicable law;

30 (3) issuance of a

31 (A) preliminary written finding under AS 38.05.035(e)(4)(A)

1 regarding the sale, lease, or disposal of an interest in state land or
2 resources for oil and gas subject to AS 38.05.180(b):

3 (B) final written finding under AS 38.05.035(e)(4)(B)
4 regarding the sale, lease, or disposal of an interest in state land or
5 resources for oil and gas subject to AS 38.05.180(b):

6 (C) written finding for [A DECISION UNDER
7 AS 38.05.035(e) REGARDING] the sale, lease, or disposal of an interest in
8 state land or resources under AS 38.05.035(e)(5):

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

11 (5) a public hearing under AS 38.05.856(b);

12 (6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c)
13 concerning sites for aquatic farms and related hatcheries.

14 * Sec. 7. AS 38.05.945(b) is amended to read:

15 (b) When notice is required to be given under this section,

16 (1) the notice must contain sufficient information in commonly
17 understood terms to inform the public of the nature of the action and the
18 opportunity of the public to comment on it;

19 (2) if the notice is of a preliminary written finding described in
20 (a)(3)(A) of this section, the department shall give notice at the beginning of the
21 public comment period for the preliminary written finding, notifying the public
22 of the right to submit comments; the department shall give notice by

23 (A) publication of a legal notice in newspapers of statewide
24 circulation and in newspapers of general circulation in the vicinity of the
25 proposed action at least once a week for two consecutive weeks;

26 (B) publication of a notice in display advertising form in the
27 newspapers described in (A) of this paragraph at least once a week for two
28 consecutive weeks;

29 (C) public service announcements on the electronic media
30 serving the area to be affected by the proposed action; and

31 (D) one or more of the following methods:

- 1 (i) posting in a conspicuous location in the vicinity of
2 the action:
3 (ii) notification of parties known or likely to be
4 affected by the action; or
5 (iii) another method calculated to reach affected
6 parties;

7 (3) if the notice is of an action [NOTICE OF ONE OR MORE
8 ACTIONS] described in (a) of this section, other than notice of an action under
9 (a)(3)(A) of this section, the department shall give notice [SHALL BE GIVEN] at
10 least 30 days before the action by publication in newspapers of statewide circulation
11 and in newspapers of general circulation in the vicinity of the proposed action and one
12 or more of the following methods:

13 (A) [(1)] publication through public service announcements on
14 the electronic media serving the area affected by the action;

15 (B) [(2)] posting in a conspicuous location in the vicinity of the
16 action;

17 (C) [(3)] notification of parties known or likely to be affected
18 by the action; or

19 (D) [(4)] another method calculated to reach affected persons
20 [. A NOTICE SHALL CONTAIN SUFFICIENT INFORMATION IN
21 COMMONLY UNDERSTOOD TERMS TO INFORM THE PUBLIC OF THE
22 NATURE OF THE ACTION AND THE OPPORTUNITY OF THE PUBLIC
23 TO COMMENT ON THE ACTION].

24 * Sec. 8. AS 46.40 is amended by adding a new section to read:

25 Sec. 46.40.094. CONSISTENCY DETERMINATIONS FOR PHASED USES
26 AND ACTIVITIES. (a) The provisions of this section apply to a use or activity for
27 which a consistency determination is required if

28 (1) at the time the proposed use or activity is initiated, there is
29 insufficient information to evaluate and render a consistency determination for the
30 entirety of the proposed use or activity;

31 (2) the proposed use or activity is capable of proceeding in discrete

- 1 phases based upon developing information obtained in the course of a phase; and
- 2 (3) each subsequent phase of the proposed use or activity is subject to
- 3 discretion to implement alternative decisions based upon the developing information.
- 4 (b) When a use or activity is authorized or developed in discrete phases and
- 5 each phase will require decisions relating to a permit, lease, or authorization for that
- 6 particular phase, the agency responsible for the consistency determination for the
- 7 particular phase
- 8 (1) may, in its discretion, limit the consistency review to that particular
- 9 phase if, but only if,
- 10 (A) the agency or another state agency must carry out a
- 11 subsequent consistency review and make a consistency determination before a
- 12 later phase may proceed; and
- 13 (B) the agency responsible conditions its consistency
- 14 determination for that phase on a requirement that a use or activity authorized
- 15 in a subsequent phase be consistent with the Alaska coastal management
- 16 program; and
- 17 (2) shall, when the consistency review is limited under (1) of this
- 18 subsection, conduct the consistency review for the particular phase and make the
- 19 consistency determination based on
- 20 (A) applicable statutes and regulations;
- 21 (B) the facts pertaining to a use or activity proposed for that
- 22 phase that are
- 23 (i) known to the state agency responsible or made a part
- 24 of the record during the consistency review; and
- 25 (ii) material to the consistency determination; and
- 26 (C) the reasonably foreseeable, significant effects of the use or
- 27 activity proposed for that phase.
- 28 (c) In this section,
- 29 (1) "agency responsible for the consistency determination" means
- 30 (A) the office of management and budget, for a consistency
- 31 determination required to be made under AS 44.19.145(a)(11); and

1 (B) the commissioner of the resource agency that coordinates
2 a consistency review for a proposed use or activity, or for a proposed phase of
3 a use or activity, when required by this chapter for which a permit, lease, or
4 authorization is required to be approved or issued only by that resource agency;

5 (2) "resource agency" has the meaning given in AS 44.19.152.

6 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

CS FOR SENATE BILL NO. 308(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act modifying administrative procedures and decisions by state agencies that
2 relate to uses and dispositions of state land, property, and resources, and to the
3 interests within them; and modifying administrative procedures and decisions by
4 state agencies that relate to uses and activities involving land, property, and
5 resources, and to the interests within them, that are subject to the coastal
6 management program when the use or activity is to be authorized or developed
7 in phases; and providing for an effective date."

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

9 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that

10 (1) in order for the state to make a disposal of state land or of an interest in
11 state land, the legislature has previously determined that it is the responsibility of the director
12 of the division of lands in the Department of Natural Resources to make a written
13 determination that the interests of the state will be best served;

1 (2) each determination under AS 38.05 that the interests of the state will be
2 best served is a policy decision involving facts unique to each proposed disposal, and complex
3 issues the analysis and resolution of which are most appropriately left to the expertise of the
4 agency making the determination;

5 (3) it is the intent of the legislature to confirm that the determination of when
6 and under what circumstances a disposal is in the state's best interest is vested in the
7 discretion of the director of the division of lands, subject to the consent of the commissioner
8 of natural resources and the policy guidance provided by this Act;

9 (4) the scope of the review undertaken by the director of the division of lands
10 in support of a proposed disposal is to be established in the director's written finding made
11 under the provisions of this Act, and is to be based upon the known information or
12 information that is made known to the director during the administrative review;

13 (5) in delegating this discretion, it is not the intent of the legislature to limit
14 public comment or the public's opportunity to participate in the administrative review that
15 takes place before the determination by the director of the division of lands that a disposal is
16 in the state's best interest;

17 (6) it is the legislature's intent to ensure that the public participates in a timely
18 and meaningful manner in the development of the administrative record that will be used by
19 the director of the division of lands to define the scope of review of the written finding;

20 (7) analyses comparable to those generally required by 42 U.S.C. 4321 - 4370a
21 (National Environmental Policy Act of 1969, as amended) for the preparation of an
22 environmental impact statement under 42 U.S.C. 4332(2)(C) are not necessary for support of
23 best interest findings issued under AS 38.05 or conclusive coastal zone consistency
24 determinations issued under AS 46.40.

25 (8) speculation concerning future development activities that will be subject
26 to independent permitting requirements is not necessary at the time a decision is made to
27 dispose of state land or an interest in state land;

28 (9) this Act is not intended to allow the director of the division of lands to
29 limit the scope of an administrative review so as to omit issues or disregard concerns that
30 otherwise must be addressed under the provisions of applicable statutes and regulations;

31 (10) conducting phased coastal zone consistency determinations is appropriate

1 in those instances where there is insufficient information to determine the consistency of a
2 proposed development project from planning to completion; and

3 (ii) consideration of a disposal as a phase of a development project is not
4 intended to artificially divide or segment a proposed development project to avoid thorough
5 review of the project or to avoid consideration of potential future environmental, sociological,
6 or economic effects, but rather is intended to allow for consideration of those issues when
7 sufficient data are available upon which to make reasoned decisions.

8 * Sec. 2. AS 38.05.035(e) is amended to read:

9 (e) Upon a written finding that the interests of the state will be best served,
10 the director may, with the consent of the commissioner, approve contracts for the sale,
11 lease, or other disposal of available land, resources, property, or interests in them, and,
12 in addition to the conditions and limitations imposed by law, may impose additional
13 conditions or limitations in the contracts as the director determines, with the consent
14 of the commissioner, will best serve the interests of the state. The preparation and
15 issuance of the written finding by the director is subject to the following:

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

19 (A) shall establish the scope of the administrative review on
20 which the director's determination is based, and the scope of the written
21 finding supporting that determination: the scope of the review and finding
22 may address only reasonably foreseeable, significant effects of the uses
23 proposed to be authorized by the disposal;

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

26 (i) applicable statutes and regulations;

27 (ii) the facts pertaining to the land, resources, or
28 property, or interest in them, that the director finds are material to
29 the determination and that are known to the director or knowledge
30 of which is made available to the director during the administrative
31 review; and

1 (iii) issues that, based on the statutes and regulations
2 referred to in (i) of this subparagraph, on the facts as described in
3 (ii) of this subparagraph, and on the nature of the uses sought to be
4 authorized, the director finds are material to the determination of
5 whether the proposed disposal will best serve the interests of the
6 state: and

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

12 (i) the only uses to be authorized by the proposed
13 disposal are part of that discrete phase:

14 (ii) the department's approval is required before the
15 next phase of the project may proceed: and

16 (iii) the department conditions its approval to ensure
17 that any additional uses or activities proposed for that or any later
18 phase of the project will serve the best interests of the state:

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

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

26 (B) issues based on the statutes and regulations referred to
27 in (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
28 subsection:

29 (3) a [A] written finding for an oil and gas lease sale under
30 AS 38.05.180 is subject to (g) of this section;

31 (4) a [A] contract for the sale, lease, or other disposal of available

land or an interest in land is not legally binding on the state until the commissioner approves the contract but if the appraised value is not greater than \$50,000 in the case of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner;

(5) public notice requirements relating to the sale, lease, or other disposal of available land or an interest in land for oil and gas proposed to be scheduled in the five-year oil and gas leasing program under AS 38.05.180(b), are as follows:

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

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

(6) before [BEFORE] a public hearing, if held, or in any case not [NO] less than 21 days before the sale, lease, or other disposal of available land,

1 property, resources, or interests in them other than a sale, lease, or other disposal
2 of available land or an interest in land for oil and gas under (5) of this subsection.
3 the director shall make available to the public a written finding that, in accordance
4 with (1) of this subsection, sets out the material facts and applicable statutes and
5 regulations and any other information required by statute or regulation to be
6 considered [LAW] upon which the determination that the sale, lease, or other disposal
7 will best serve the interests of the state was based; however, a [A] written finding
8 is not required before the approval of

9 (A) [(1)] a contract for a negotiated sale authorized under
10 AS 38.05.115;

11 (B) [(2)] a lease of land for a shore fishery site under
12 AS 38.05.082;

13 (C) [(3)] a permit or other authorization revocable by the
14 commissioner;

15 (D) [(4)] a mineral claim located under AS 38.05.195;

16 (E) [(5)] a mineral lease issued under AS 38.05.205;

17 (F) [(6)] a production license issued under AS 38.05.207;

18 (G) [(7)] an exempt oil and gas sale under AS 38.05.180(d) of
19 acreage offered in a sale that was held within the previous five years if the sale
20 was subject to a written best interest finding, unless the commissioner
21 determines that new information has become available that justifies a revision
22 of the best interest finding; or

23 (H) [(8)] a lease sale under AS 38.05.180(w) of acreage offered
24 in a sale that was held within the previous five years if the sale was subject to
25 a best interest finding, unless the commissioner determines that new
26 information has become available that justifies a revision of the best interest
27 finding;

28 (7) the director shall include in

29 (A) a preliminary written finding a summary of agency and
30 public comments, if any, obtained as a result of contacts with other
31 agencies concerning a proposed disposal or as a result of informal efforts

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1 undertaken by the department to solicit public response to a proposed
2 disposal, and the department's preliminary responses to those comments:
3 and

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

7 * Sec. 3. AS 38.05.035(g) is amended to read:

8 (g) Notwithstanding (e)(1)(A) and (B) of this section, when [WHEN] the
9 director prepares a written finding required under (e) of this section for an oil and gas
10 lease sale scheduled under AS 38.05.180, the director shall consider and discuss

11 (1) in a final written [THE] finding [(1)] facts that are known to the
12 director at the time of preparation of the finding and that are

13 (A) material to [THE FOLLOWING MATTERS OR TO] issues
14 that were raised during the period allowed for receipt of public comment,
15 whether or not material to a matter set out in (B) of this paragraph, and
16 within the scope of the administrative review established by the director
17 under (e)(1) of this section: or

18 (B) material to the following matters:

19 (i) [; (A)] property descriptions and locations:

20 (ii) [(B)] the petroleum potential of the sale area, in
21 general terms;

22 (iii) [(C)] fish and wildlife species and their habitats in
23 the area:

24 (iv) [(D)] the current and projected uses in the area,
25 including uses and value of fish and wildlife;

26 (v) [(E)] the governmental powers to regulate oil and
27 gas exploration, development, production, and transportation:

28 (vi) [(F)] the reasonably foreseeable cumulative effects
29 of oil and gas exploration, development, production, and transportation
30 on the sale area, including effects on subsistence uses, fish and wildlife
31 habitat and populations and their uses, and historic and cultural

resources:

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

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

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

(x) [(J)] the reasonably foreseeable effects of oil and gas exploration, development, production, and transportation on municipalities and communities within or adjacent to the lease sale area; and

(xi) [(K)] the bidding method or methods adopted by the commissioner under AS 38.05.180;

(2) in a preliminary written finding, facts that are known to the director at the time of preparation of the finding and that are

(A) material to issues that the department identifies, whether or not material to a matter set out in (B) of this paragraph, and within the scope of the administrative review established by the director under (e)(1) of this section: or

(B) material to a matter described in (1)(B) of this subsection [A SUMMARY OF AGENCY AND PUBLIC COMMENTS RECEIVED AND THE DEPARTMENT'S RESPONSES TO THOSE COMMENTS]; and

(3) the basis for the director's preliminary or final finding, as applicable, [DETERMINATION] that, on balance, leasing the area would be in the state's best interest.

1 * Sec. 4. AS 38.05.035 is amended by adding new subsections to read:

2 (h) In preparing a written finding under (e)(1) of this section, the director may
3 not be required to speculate about possible future effects subject to future permitting
4 that cannot reasonably be determined until the project or proposed use for which a
5 written best interest finding is required is more specifically defined, including
6 speculation about

7 (1) effects that are remote in time or place;

8 (2) the exact location and size of an ultimate use and related facilities;

9 (3) the economic feasibility of ultimate development; and

10 (4) future environmental or other laws that may apply at the time of
11 any future development.

12 (i) A person who is eligible to file a request for reconsideration under this
13 subsection and who is aggrieved by the final written finding of the director entered
14 under (e)(5) or (6) of this section may, within 20 days after the issuance of the final
15 written finding, request reconsideration of the decision by the commissioner. A person
16 is eligible to file a request for reconsideration if the person

17 (1) meaningfully participated in the process set out in this chapter for
18 receipt of public comment by

19 (A) submitting written comment during the period for receipt
20 of public comment;

21 (B) presenting oral testimony at a public hearing, if a public
22 hearing was held; or

23 (C) adopting as the person's own testimony concerns that were
24 expressed by another, either by submitting a written statement to that effect
25 during the period for receipt of public comment or by so declaring during a
26 public hearing; and

27 (2) is affected by the final written finding.

28 (j) A request for reconsideration submitted under (i) of this section must
29 specify the written finding complained of and the specific basis upon which it is
30 challenged. The commissioner shall grant or deny the request within 30 days after
31 issuance of the final written finding. Failure of the commissioner to act on the request

1 for reconsideration within this period is a denial of the request for reconsideration and
2 a final administrative decision for purposes of appeal to the superior court.

3 (k) If a request for reconsideration is granted, the commissioner may order the
4 director to issue a new final written finding after reconsideration as may be required
5 under the circumstances.

6 (l) A person may appeal a final written finding issued under (e)(5) or (6) of
7 this section to the superior court, but only if the person was eligible to request, and did
8 request, reconsideration of that finding under (i) of this section. The person shall
9 initiate the appeal within 30 days from the date that the decision on reconsideration
10 is mailed or otherwise distributed, or the date the request for reconsideration is
11 considered denied by the commissioner's failure to act on the request, whichever is
12 earlier. The points on appeal are limited to those presented to the commissioner in the
13 person's request for reconsideration.

14 (m) For purposes of appeal under (l) of this section, the burden is upon the
15 party seeking review to establish the invalidity of the finding.

16 * Sec. 5. AS 38.05.075(h) is amended to read:

17 (h) A person aggrieved by a decision of the commissioner under this section
18 may appeal to the commissioner within five days of the prequalification decision. The
19 decision of the commissioner under this subsection [OR UNDER AS 38.05.035(e)]
20 may be appealed to the superior court.

21 * Sec. 6. AS 38.05.945(a) is amended to read:

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

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

26 (2) zoning of land under applicable law;

27 (3) issuance of a

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

31 (B) final written finding under AS 38.05.035(e)(5)(B)

1 regarding the sale, lease, or disposal of an interest in state land or
2 resources for oil and gas subject to AS 38.05.180(b):

3 (C) written finding for [A DECISION UNDER
4 AS 38.05.035(e) REGARDING] the sale, lease, or disposal of an interest in
5 state land or resources under AS 38.05.035(e)(6):

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

8 (5) a public hearing under AS 38.05.856(b);

9 (6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c)
10 concerning sites for aquatic farms and related hatcheries.

11 * Sec. 7. AS 38.05.945(b) is amended to read:

12 (b) When notice is required to be given under this section,

13 (1) the notice must contain sufficient information in commonly
14 understood terms to inform the public of the nature of the action and the
15 opportunity of the public to comment on it;

16 (2) if the notice is of a preliminary written finding described in
17 (a)(3)(A) of this section, the department shall give notice at the beginning of the
18 public comment period for the preliminary written finding, notifying the public
19 of the right to submit comments: the department shall give notice by

20 (A) publication of a legal notice in newspapers of statewide
21 circulation and in newspapers of general circulation in the vicinity of the
22 proposed action at least once a week for two consecutive weeks;

23 (B) publication of a notice in display advertising form in the
24 newspapers described in (A) of this paragraph at least once a week for two
25 consecutive weeks;

26 (C) public service announcements on the electronic media
27 serving the area to be affected by the proposed action; and

28 (D) one or more of the following methods:

29 (i) posting in a conspicuous location in the vicinity of
30 the action;

31 (ii) notification of parties known or likely to be

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affected by the action: or

(iii) another method calculated to reach affected

parties:

(3) if the notice is of an action [NOTICE OF ONE OR MORE ACTIONS] described in (a) of this section, other than notice of an action under (a)(3)(A) of this section. the department shall give notice [SHALL BE GIVEN] at least 30 days before the action by publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action and one or more of the following methods:

(A) [(1)] publication through public service announcements on the electronic media serving the area affected by the action;

(B) [(2)] posting in a conspicuous location in the vicinity of the action;

(C) [(3)] notification of parties known or likely to be affected by the action: or

(D) [(4)] another method calculated to reach affected persons [A NOTICE SHALL CONTAIN SUFFICIENT INFORMATION IN COMMONLY UNDERSTOOD TERMS TO INFORM THE PUBLIC OF THE NATURE OF THE ACTION AND THE OPPORTUNITY OF THE PUBLIC TO COMMENT ON THE ACTION].

* Sec. 8. AS 46.40 is amended by adding a new section to read:

Sec. 46.40.094. CONSISTENCY DETERMINATIONS FOR PHASED USES AND ACTIVITIES. (a) The provisions of this section apply to a use or activity for which a consistency determination is required if

(1) at the time the proposed use or activity is initiated, there is insufficient information to evaluate and render a consistency determination for the entirety of the proposed use or activity;

(2) the proposed use or activity is capable of proceeding in discrete phases based upon developing information obtained in the course of a phase; and

(3) each subsequent phase of the proposed use or activity is subject to discretion to implement alternative decisions based upon the developing information.

1 (b) When a use or activity is authorized or developed in discrete phases and
2 each phase will require decisions relating to a permit, lease, or authorization for that
3 particular phase, the agency responsible for the consistency determination for the
4 particular phase

5 (1) may, in its discretion, limit the consistency review to that particular
6 phase if, but only if,

7 (A) the agency or another state agency must carry out a
8 subsequent consistency review and make a consistency determination before a
9 later phase may proceed; and

10 (B) the agency responsible conditions its consistency
11 determination for that phase on a requirement that a use or activity authorized
12 in a subsequent phase be consistent with the Alaska coastal management
13 program; and

14 (2) shall, when the consistency review is limited under (1) of this
15 subsection, conduct the consistency review for the particular phase and make the
16 consistency determination based on

17 (A) applicable statutes and regulations;

18 (B) the facts pertaining to a use or activity proposed for that
19 phase that are

20 (i) known to the state agency responsible or made a part
21 of the record during the consistency review; and

22 (ii) material to the consistency determination; and

23 (C) the reasonably foreseeable, significant effects of the use or
24 activity proposed for that phase;

25 (3) shall, when the consistency review is limited under (1) of this
26 subsection, prepare and issue a written statement describing the reasons for its decision
27 to make the consistency determination for the use or activity in phases.

28 (c) In this section,

29 (1) "agency responsible for the consistency determination" means

30 (A) the office of management and budget, for a consistency
31 determination required to be made under AS 44.19.145(a)(11); and

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(B) the commissioner of the resource agency that coordinates a consistency review for a proposed use or activity, or for a proposed phase of a use or activity, when required by this chapter for which a permit, lease, or authorization is required to be approved or issued only by that resource agency;

(2) "resource agency" has the meaning given in AS 44.19.152.

* Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

Amendment #1

By Rieyer

Page 2, Line 3

after "determination;" insert "may limit"

Page 2, Line 9

delete "may address" and replace with "to"

Page 2, Line 9

after "direct" insert "risks and"

Amendment # 2

By Rieger

Page 2, line 15

after "them" delete ", that the director finds
insert "which"

Page 2, line 20

delete "the director finds"

Amendment #1

8-LS1689E.1
Chenoweth
2/22/94

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 308

Added

Page 2, line 21:

Delete "and"

Page 2, lines 22 - 31:

Delete all material and insert:

"(2) subject to the director's discretion, and with the consent of both the commissioner and the person seeking the proposed disposal, for a specific proposed disposal of available land, resources, or property, or of an interest in them, the director may, if the project for which the proposed disposal is sought is a multiphased development, limit the scope of an administrative review and finding for the proposed disposal to the applicable law, facts, and issues identified in (1)(B)(i) and (ii) of this subsection that pertain solely to a discrete phase of the project: an administrative review and finding that is limited under this paragraph is subject to each of the following:

(A) the only uses of the land, resources, or property, or the interest in them, to be authorized by the proposed disposal are uses that are part of the discrete phase of the project;

(B) the person seeking the proposed disposal agrees in writing that the person understands and agrees that

(i) the director's approval of the proposed disposal does not give the person a vested right to proceed beyond the discrete phase of the project for which the approval is given;

(ii) the person's investment, if any, made in the discrete phase of the project following the director's approval of the proposed disposal is at the person's own risk;

(iii) the director may disapprove a subsequent related disposal for the multiphased development if the director determines that the subsequent related disposal will not serve the state's best interest; and

(iv) the director may not, during any determination of the best interest of the state in conjunction with a subsequent related disposal for the multiphased development, consider the investment made by the person following the director's previous approval of a proposed disposal for the project; and

(C) if, during an administrative review of a proposed disposal that represents a phase of the multiphased development, the director considers the costs of the project related to that phase, the director may not consider benefits from the proposed disposal that do not result directly from the same phase:"

Renumber the following internal paragraph designation within AS 38.05.035(e) accordingly.

Amendment # 2

S-LS1689E.2
Chenoweth
2/22/94

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 308

Page 1, line 3, after "them":

Insert "and to cooperative resource management or development agreements based on them"

Page 1, following line 6:

Insert a new bill section to read:

** Section 1. AS 38.05.027(a) is amended to read:

(a) Consistent with the authority of the commissioner under law, the commissioner, after determining that the agreement is in the best interests of the public and the state, may enter into cooperative resource management or development agreements with the federal government, a state agency, a village or municipality, or a person. Before [SPECIFIC GUIDELINES TO PROTECT THE STATE AND PUBLIC INTEREST SHALL BE ESTABLISHED, IF NECESSARY, BY THE COMMISSIONER BEFORE] entering into an agreement under this section, the commissioner shall

(1) for a cooperative resource management or development agreement entered into with a municipality, a village, or a person for a proposed sale, lease, or other disposal of land, resources, or property, or of an interest in them, that is for a multiphased development project, require the municipality, village, or person to indemnify the state for costs incurred for the sale, lease, or disposal, and any investment made as a result of the sale, lease, or other disposal, if

(A) the project for which the agreement is to be made requires the department to issue a permit or other authorization; and

(B) the commissioner revokes the permit or authorization

before completion of the final phase of the project: and

(2) establish other specific guidelines to protect the state and public
interest."

Page 1, line 7:

Delete "* Section 1."

Insert "* Sec. 2."

Renumber the following bill sections accordingly.

Amend # 11

4-12-94

JK

DP-En

2/1/94

Vote

JK +

SR for

Amendment to SB 308

Page 12 line 26 after the word "significant" add the word "future"

all others
against

Page 12, line 27 after the word "proposed" delete "for that phase".

(cut out)

Failed

BS did not
vote.

FISCAL NOTE

No. 4
 Bill Version: SB 308
 (S) Publish Date: 2-23-94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

BILL

Revision Date: Original Dept Affected: Natural Resources
 Title: *An Act modifying administrative procedures BRU: Resource Development
and decisions by state agencies that relate to uses and dispositions... Component: All
 Sponsor: Senate Resources Committee
 Requestor: Senate Resources Committee Component Serial No. All

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
 There is no anticipated fiscal impact associated with this bill in the Department of Natural Resources.

Changes in CS SB 308 (RES) have no fiscal impact. This fiscal note is appropriate.
2-23-94 date SS Comte Aide (initial)

Prepared by: Jerry Gallagher, Legislative Liaison Phone: 465-2400
 Division: Commissioner's Office Date: 14-Feb-94
 Approved by Commissioner: Harry A. Noah Date: 14-Feb-94
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

STATE OF ALASKA
 DEPARTMENT OF LAW
 CIVIL DIVISION
 OFFICE OF THE ATTORNEY GENERAL
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 FAX NUMBER: 465-2181

TOTAL NUMBER OF PAGES 4 INCLUDING COVER LETTER.

COMMENTS: _____

DATE SENT: 3-22 TIME: 3:30

FROM: Mary Lundquist
Oil, Gas & Mining Section
Attorney General's Office, Anchorage

RE: SUBJECT/FILE NUMBER: _____

IF YOU DO NOT RECEIVE ALL THE PAGES, OR HAVE ANY PROBLEMS WITH THE FAX, PLEASE CALL: Lorina or Asha at (907) 269-5256 or 269-5254.

MEMORANDUM

State of Alaska
Department of LawTO: Senate Finance Committee:
Senators Pearce, Frank, Jacko,
Kelly, Kerttula, Rieger & Sharp

DATE: March 22, 1994

FILE NO. 221-94-0515

TEL. NO.: 269-5255

SUBJECT: Sale 78 Administrative
Appeal

FROM:

MAJ
Mary Ann Lundquist
Assistant Attorney General
Oil, Gas & Mining - Anchorage

In response to a request made this morning by the senate finance subcommittee on SB308, enclosed is the Department of Law's response to Trustee's offer of settlement of the Sale 78 administrative appeal.

If I can be of further assistance, please do not hesitate to contact me.

Attachment

cc: James E. Eason, Director, Division of Oil and Gas

MA:ars

F
WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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JUNEAU, ALASKA 99811-0300
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FAX: (907) 463-5295

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 10, 1994

Mr. Peter Van Tuyn
Trustees for Alaska
725 Christensen Drive
Anchorage, Alaska 99501

Re: Ninilchik Traditional Council v. State
AGO File No. 221-94-0515 Civ.

Dear Mr. Van Tuyn:

I am responding to your Offer of Settlement dated February 7, 1994. It has come to my attention that the substance of Trustees' settlement offer, which was labeled "Confidential - For Settlement Purposes Only" has been widely disseminated in Juneau since it was presented to the state. Since the state has treated this letter as a confidential document up to this point, we can only assume that Trustees of Alaska have chosen to selectively disseminate the terms of this offer of settlement. In light of the general knowledge of this settlement offer, the state will not be treating the letter, nor this response on behalf of the Department of Natural Resources, as confidential.

The terms of settlement you propose are not acceptable, and the Department of Natural Resources is reluctant to entertain settlement of the Lease Sale 78 administrative appeal at this time.

Our reasons for declining your offer should be readily apparent. First, you do not offer dismissal of the lawsuit with prejudice. You simply point out the obvious - that it is unlikely, absent the Supreme Court's reversal of the Superior Court's injunction or legislative intervention, that the state can proceed with Sale 78 until mid-1998. Then you suggest that "settlement may be possible within a time frame which would allow the state to proceed with the sale this year." Feb. 7, 1994 letter (emphasis added). Therefore, Trustees' offer of settlement may not offer the state anything for settling.

Presumably, Trustees mean by its settlement offer that it would cooperate to have the injunction removed, allowing the sale to be held while litigation on the underlying issue continues. The state would still be exposed to the continuing costs of pursuing this and other sale-related litigation in which it is engaged with Trustees. Both the state and its lessees would

TO: Peter Van Tuyn
RE: AGO file no. 221-94-0515

February 14, 1994
Page -2-

be subjected to prolonged uncertainty regarding the validity, terms and conditions of any leases which might be issued under those circumstances.

Moreover, dismissal of the Sale 78 litigation in its entirety does not address the broader question of the substantial risks to the state's ability to conduct its competitive leasing programs which have been created by the lawsuits which Trustees have pursued against Sales 50, 55 and 78 (as well as the appeal of the department's Good News Bay decision). The legislature will shortly be addressing the broader question and exploring legislation to clarify its intent regarding what the scope and content of Best Interest Findings and ACMP Consistency Determinations should be.

I think that it is also important to note that while the Trustees have alleged (albeit vaguely) wide-reaching problems with respect to the Final Best Interest Finding and the Consistency Determination, it appears from your settlement offer that the Trustees' concerns are, in fact, much narrower. If the public interest litigants are willing to trade off their much broader concerns, as were alleged in the appeal, for the much narrower concerns of the commercial fishing industry, then perhaps we should revisit the public interest litigant status of the appellants.

In conclusion, the state has determined that it would set a bad precedent to settle the injunction while continuing the costs of litigation and perpetuating the uncertainty which has been cast over the state's leasing program. The state also sees no advantage to settling this appeal in its entirety. Further, while the Superior Court has granted the Trustees' motion for stay of Lease Sale 78, the state has petitioned the Alaska Supreme Court regarding the correctness of the Superior Court's decision. If the Supreme Court timely reverses the Superior Court with regard to the stay, Lease Sale 78 will be able to proceed in a timely manner.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Mary Ann Lundquist
Assistant Attorney General

M.L.A.R.S.

SB 300110

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 1
To	KYLE PARKER	
From	MARY LUNDQUIST	
Co.	Governor's office	
Co.	DOL	
Dept.		
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Fax #		

LEADS

APPELLATE COURTS CLERK
 303 K STREET
 ANCHORAGE, AK 99501

RECEIVED
 Department of Law

FEB 22 1994

Case Title: STATE V NINILCHIK TRADITIONAL

Office of the Attorney General
 Branch
 Anchorage, Alaska

***** O R D E R *****

02/22/94

IT IS ORDERED: THE PETITION FOR REVIEW FILED ON JANUARY 28, 1994, IS DENIED. ENTERED AT THE DIRECTION OF THE SUPREME COURT ON FEBRUARY 22, 1994. (CHIEF JUSTICE MOORE NOT PARTICIPATING; JUSTICE BRYNER, PRO TEM).

CC: JUSTICES, JUDGE CRANSTON, CLERK OF THE TRIAL COURT
 SKN-93-1174 CIVIL

TRW

Clerk of The Appellate Courts

MARY ANN LUNDQUIST ESQ
 ASSISTANT ATTORNEY GENERAL
 DEPARTMENT OF LAW
 1031 W 4TH #200
 ANCHORAGE AK 99501

SB 308

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
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Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

FEB 24 1994

MEMORANDUM

February 24, 1994

SUBJECT: CSSB 308 (Resources) -- Sectional analysis
(Work Order No. 8-LS1689(K))

TO: Senator Drue Pearce, Co-Chair
Senate Finance Committee
Attn: Bill Miles

FROM: Jack Chenoweth
Legislative Counsel



My comments are to the version of the bill reported yesterday from the Senate Resources Committee and under consideration by the Senate Finance Committee.

The bill title describes the measure as one to modify administrative procedures and decisions relating to uses and disposition of state land, property, and resources, and related interests and to similar purposes involving proposed multiphased uses and activities that are subject to the state's coastal management program. The measure is applicable to administrative procedures and decisions made by the commissioner of natural resources under the Alaska Land Act (AS 38.05)^{1/} and by the party

^{1/} The issue appears to arise out of a decision adverse to the Department of Natural Resources in the issue of coal mining permits under the state's Surface Coal Mining Control Act, AS 27.21. In *Trustees for Alaska v. Gorsuch*, 835 P.2d 1239 (Alaska 1992), the court disposed of one issue in favor of the plaintiffs by noting that "statutory language does support Trustees' . . . argument that [the department] may not ignore cumulative effects of mining and related support facilities by unreasonably restricting its jurisdiction and disregarding the effects of activities outside that jurisdiction." Looking, first, at purposes and policies that underlay the statutes in question, the court reached this determination:

These purposes cannot be accomplished by ignoring cumulative impacts. Based on the policies inherent in these purposes, we conclude that DNR may not ignore cumulative effects of mining and related support facilities by unreasonably restricting its jurisdiction or by permitting facilities separately. These purposes require that at the time DNR reviews any [Surface Coal Mining Control Act] permit application it consider the probable cumulative impact of all anticipated activities which will be part of a "surface coal

(continued...)

charged with making consistency determinations under the coastal management program (AS 46.40).^{2/}

*

Alaska Land Act: Department of Natural Resources --

AS 38.05.035(e) directs the director of the division of lands to make written "best interest" findings in a range of applications and actions involving the lease, sale, or other disposal of state land, resources, property, or interests in them. The significant substantive change wrought to that subsection by the measure's bill section 1 would authorize the division director to

-- (1) under subparagraph (1)(A), define "the scope of the administrative review on which the director's determination is [to be] based, and the scope of the written finding supporting that determination"; further, under the limitation proposed, that scope and that written finding are proposed to be limited to "only reasonably foreseeable, significant, direct effects of the uses proposed to be authorized by the disposal";

^{1/}(...continued)

mining operation," whether or not the activities are part of the permit under review. If DNR determines that the cumulative effect is problematic, the problems must be resolved before the initial permit is approved.

835 P.2d at 1246.

^{2/} On the matter of review of cumulative impacts, the Gorsuch conclusion was followed in Trustees for Alaska v. Department of Natural Resources, 851 P.2d 1340 (Alaska 1993), a challenge to the Camden Bay lease sale, Lease Sale 50, wherein the department had been charged with making a consistency determination under the Alaska coastal management program, a determination that plaintiffs contended was inadequate. Again, the court noted:

... [D]eferring a careful and detailed look at particularized geophysical hazards to later stages of the development process, as DNR evidently intends, entails certain practical risks. First, DNR's method means that particularized geophysical hazards will be considered on a lease-site-by-lease-site basis. This may tend to mask appreciation of any cumulative environmental threat that would otherwise be apparent if DNR began with a detailed and comprehensive identification of those hazards. Second, as we noted in Trustees for Alaska v. Gorsuch, 835 P.2d 1239, 1246 n. 6 (Alaska 1992), the more segmented an assessment of environmental hazards, the greater the risk that prior permits will compel DNR to approve later, environmentally unsound permits.

Trustees for Alaska v. State, Department of Natural Resources, 851 P.2d 1340, at 1346.

-- (2) under subparagraph (1)(B), restrict the scope of the review and the written finding,

-- to applicable law and to facts that the director "finds are material to the determination and that are known to the director" or the knowledge of which derives from the administrative review process; and

-- to issues that the director finds are material to the determination of whether the disposal proposed will best serve the interests of the state; and

-- (3) under subparagraph (1)(C), give consideration to the disposal by phases if the proposed disposal involves a multiphased development when the department determines that each of the contingencies set out for phased consideration are present.

AS 38.05.035(g) sets additional parameters on the making of a written best interest finding. Under bill section 2, in addition to providing the summary of comments and the explanation for the basis of the decision as that subsection currently requires, AS 38.05.035(g) would be amended so that the director must set out in the finding a discussion of (1) facts material to issues raised during the period of public comment, whether those facts are also material to a matter identified in subparagraph (B), so long as those material facts were within the scope of the administrative review as defined by the director under (e)(1), and (2) facts that are material to the matters that are currently specified in AS 38.05.035(g)(1)(A) - (K).

*

Consistency determinations: Coastal Management Program --

Like considerations motivate the proposed modification of the consistency determination process under the Alaska coastal management program.

"Consistency determinations" are administrative reviews intended to ascertain whether or not "uses and activities" proposed to be conducted in the coastal area are consistent with the standards that have been adopted by the state and its coastal resource districts. AS 46.40.100; 6 AAC 80.010(b). When required for a federal project, or when the proposed use or activity involves the permits of two or more state agencies, the division of governmental coordination is the agency responsible for making the consistency determination. When the only permits required are all to be issued by one agency, and that is almost always one of the three "resource agencies," the Departments of Environmental Conservation, Fish and Game, and Natural Resources, that single agency becomes the party responsible for making the consistency determination.

Senator Drue Pearce

February 24, 1994

Page 4

The addition of AS 46.40.094 by bill section 3 replicates the principles outlined for Department of Natural Resources by bill section 1, and makes them applicable in the context of coastal management consistency determinations **when those determinations involve uses or activities "authorized or developed in discrete phases."** The material being added authorizes consistency determinations on a phased basis by allowing the agency responsible for making the consistency determination to limit that review to a particular phase when each of the contingencies identified in (a)(1) is present, and requiring the completed consistency determination to be based on the factors set out in (a)(2).

*

Section 4 of the bill gives it an immediate effective date.

JBC:pl

94-157.plm

INSIDE: Oil and gas leasing legislation

SB-308, HB-474 — preserving Alaska's oil and gas leasing program

Editor's note: The following is based on interviews with Dept. of Natural Resources officials, and on testimony by the department before legislative committees.

Q: Why is the legislation proposed in Senate Bill 308 and House Bill 474 needed?

A. In a series of decisions, the Alaska Supreme Court has ordered changes in the state Best Interest Finding document for oil and gas lease sales, and, more recently, the granting of offshore prospecting permits for minerals. These decisions have resulted in substantial delays in the state's leasing program, which is needed to insure a continuous pace of oil exploration, and hopefully, new discoveries. In its decisions, the court indicates that the current method of preparing for land dispositions is insufficient to meet its criteria. But that criteria is unknown. It is being spelled out on a decision-by-decision basis.

Unless this problem is remedied, either through more explicit legislative direction such as proposed in SB-308 and HB-474, or through the state's adoption of a costly and voluminous federal-type EIS system, it is unlikely that any future oil and gas lease sale or other land action requiring a Best Interest Finding will survive legal challenge.

Q: What is a Best Interest Finding?

A. The Best Interest Finding is the administrative record of a decision by the Commissioner that a proposed land disposition is in the best interest of the state. The document shows that the Commissioner has looked at the pros and cons of an action and carefully considered, and analyzed, all issues raised in the required public review process.

Q: How would SB-308 or HB-474 change it?

A. Not by much, really. What the legislation does is give clarification to the way the Commissioner reviews issues that are raised. By more clearly defining in statute what is required, the courts will be able to see that the Commissioner has, indeed, followed the legislature's intent.

Q: Critics of this legislation charge that it would "narrow" the Commissioner's review, so that consideration of some issues might be excluded.

A. That's not so. In fact, the legislation actually strengthens requirements that the Commissioner review all issues brought up. What the legislation does, however, is give

more direction to the Commissioner to consider foreseeable, direct effects. This directive is already in the statute for oil and gas lease sales ("reasonably foreseeable" effects must now be assessed) but the words are apparently not strong enough for the court. SB-308 and HB-474 adds two words, so that the statute will read "reasonable foreseeable, significant, direct...".

Parties who challenge lease sales may continue, of course, to raise speculative and indirect effects, but the court will be able to look to a stronger enabling statute in support of the Commissioner's decision.

SB-308 and HB-474 actually *strengthen* the review process by *requiring* the Commissioner to review all pertinent issues raised in public hearings or public comments. That is not now in the law. The intent is to make a more thorough, balanced decision document.

Q: But people worry about the discretion given the Commissioner of Natural Resources to decide whether an issue is "substantial" or irrelevant.

A. Some public official has to make that decision. If we are to engage in review of endless speculative issues, we wind up with volumes of documents and the probability that the decision will be made, in any event, on the basis of significant, foreseeable, and direct effects. The point is our laws now give that authority, and discretion, to the executive branch Commissioner of Natural Resources. SB-308 and HB-474 clarifies the authority. If the legislature wishes some other official, or agency, to make the best interest decision, it could delegate it to another office in the executive branch, or the legislature can make these decisions itself on a case-by-case basis. If we leave it as it is, we effectively delegate this decision to the *courts*, who are now deciding when a Best Interest Finding is appropriate.

Q: Does the legislation enable the Commissioner to approve projects in phases, thereby avoiding consideration of long-term cumulative effects?

A. The law now implicitly allows the Commissioner to approve phases of development, through the sequential approvals required for a lease sale and any subsequent activity, such as development of a discovery. The legislation would make that implicit authority explicit. Current law also requires a review of cumulative effects of development and

INSIDE: SB-308, HB-474

subsequent transportation of oil and gas on wildlife populations and habitat. SB-308 and HB-474 doesn't change that. The bills do state more clearly that projects can be approved in phases, but also that future phases will be subject to separate review. That clearly puts a lessee on notice that should some unforeseen effect come to light, the Commissioner has the authority to alter or halt development. In two occasions in recent years — development of the Point McIntyre and Niakuk offshore fields on the North Slope — the Commissioner ordered changes in development plans to avoid environmental impacts.

Q. But once the state issues a lease, doesn't it open itself to liabilities if development of that lease is subsequently blocked?

A. Ever since the Kachemak Bay state oil and gas leases were repurchased in the mid-1970s, the state has included in its leases clear language that addresses this point. The state does assume some financial liability, but that is spelled out in the lease to remove any uncertainty. Since this language was inserted in lease forms, 40 competitive state lease sales have been held, with 1,758 leases issued. There have been no problems. In total, about four million acres of state lands are covered by oil and gas leases with this provision. The Kachemak Bay lease sale also stimulated the state legislature to establish the present five-year leasing schedule, so that sales planned in sensitive areas would be known to the public well in advance, in time for policy decisions to be made.

Q: Would the legislation conflict with federal Coastal Zone Management law?

A. DNR doesn't think it does. The only section of SB-308 and HB-474 that addresses coastal zone management is the part that deals with decisions on phases of development. Since the federal CZM program allows for phasing of development, there wouldn't seem to be a problem.

Q: Absent this legislation, the Supreme Court seems to be encouraging the state to adopt a full-blown federal Environmental Impact Statement process. What's wrong with that?

A. It is very costly, a matter of some concern when state revenues are declining. And, it is unnecessary if the significant issues can be addressed under the current procedure, with state law modified by SB-308 or HB-474.

DNR's Best Interest Findings are prepared by a staff of

five, and cost an average of \$105,000 each. The federal Minerals Management Service spends an average of \$500,000 on each EIS under the federal Outer Continental Shelf leasing program. MMS employs 53 people in its leasing section, which is responsible for producing the EIS. DNR would have to greatly increase its operating budget and staffing levels to fund the necessary environmental studies and prepare an EIS-type document. To date, MMS has spent \$72.6 million for environmental studies within the Cook Inlet region.

Q. Would the number of lease sales decrease?

A. Yes. In 14 years of leasing since 1979, DNR has held 42 lease sales, averaging three sales a year. MMS has held only 15 Alaska OCS lease sales since the program began in 1976. Preparing an EIS is costly, and with the increased funding requirement, DNR would be able to hold only one sale every 18 months, a major reduction in its leasing program.

Q. Would an EIS-type approach prevent lawsuits?

A. No. Lawsuits were filed against half of the MMS sales, resulting in two sales being enjoined and two sales postponed.

AOGA's position on the legislation

The Alaska Oil and Gas Association (AOGA) supports a full analysis of all issues and concerns through the best interest finding process for each lease sale. The Association feels that the current statutes and regulations were designed to do just that.

However, AOGA is concerned by the uncertainty that has been created by recent rulings of the courts interpreting the current law.

AOGA supports certainty in the process so that DNR's scope of review can be defined during the administrative review process and not by the courts. The only question is how to define that scope of review.

- Through review of the information available, the Director of the Division of Oil and Gas should determine those issues that should be addressed during the review.

- All public comments should be considered in determining what that scope of review should be.

- All concerns required by legislation should continue to be part of the scope of review.

AOGA supports SB-308/HB-474.

STATE OF ALASKA

DEPT. OF NATURAL RESOURCES**DIVISION OF OIL AND GAS**

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April 12, 1994

The Honorable Drue Pearce
Alaska State Legislature
State Capitol, Room 508
Juneau, Alaska 99801-1182

via fax 465-3872 and mail

Subject: Amendments to CSSB 308

Dear Senator Pearce:

By memorandum dated April 9, 1994 I discussed the amendments reflected in version U of CSSB 308. In addition, I described two amendments which were, at that time, being drafted in response to comments which had been received during and after the Senate Finance Committee hearing on April 8.

In addition to the two amendments which were being drafted at the time, eight additional amendments have now been drafted for consideration by the Finance Committee. I have summarized below the purpose for each of those amendments.

- o Amendment #3 clarifies that persons may meaningfully participate in an administrative review by presenting oral testimony or by affirmatively adopting the testimony of others by submitting a written statement to that effect during the period allowed for receipt of public comment or during the public hearing.
- o Amendment #4 was drafted in response to public comments indicating concern that comments on proposed disposals or projects would be summarily dismissed if determined by the director to be non-material. The amendment clarifies that the director will discuss, in writing, the reasons for any determination of non-materiality, as well as discussing, in writing, those issues which he finds material to a proposed disposal or project.
- o Amendment #5 clarifies that the determinations of the state's best interest are those rendered under Title 38; specifically, AS 38.05.
- o Amendment #6 clarifies that it is the Legislature's intent that the public have an opportunity to timely and meaningfully participate in the director's determination of the scope of review appropriate to a specific finding.

The Honorable Drue Pearce


April 12, 1994

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- o Amendment #7 simply adds economic effects to environmental or sociological effects in finding #11 of CSSB 308.
- o Amendment #8: The language of this amendment is designed to reinforce legislative intent that a director should not "artificially divide or segment" proposed projects simply to avoid a thorough review of the project.
- o Amendment #9 clarifies that both Oil and Gas Preliminary and Final Best Interest Findings will include a summary of agency and public comments received as of the time of each finding, as well as the department's responses to those comments. In addition, this amendment codifies the requirement that all written findings issued under AS 38.05.035 (e) will include a summary of agency and public comments, as well as the department's response to those comments.
- o Amendment #10 establishes a requirement that when a consistency review is limited to consideration of a specific phase, the director or the responsible agency will prepare and issue a statement describing its bases for making a consistency determination in phases.

If you have any additional questions, please feel free to call.


Sincerely,


James E. Eason
Director

04/12/94

MEMORANDUM

TO: Senator Drue Pearce

FROM:  Jim Eason, Director
Division of Oil and Gas, DNR

RE: CSSB 308

DATE: April 9, 1994

You have asked that I respond to the concerns raised in the "Coastal Districts' Briefing Paper on CSSB 308" dated April 7, 1994, which was addressed to members of the Senate Finance Committee. My comments below address the issues raised in that document, and summarize briefly the responsive amendments reflected in the current CSSB 308. In addition, I have outlined certain other amendments which are currently being drafted which will respond to specific recommendations received during yesterday's hearing and subsequently.

Based upon my review, I believe there may be some confusion arising from the fact that the Districts' comments are directed to the prior version of CSSB 308, version K. The work draft of CSSB 308 which the Finance Committee adopted yesterday is version U. Version U represents DNR's response to the working groups' comments and recommendations which were raised during the five meetings between the parties since S.B. 308 arrived in the Senate Finance Committee.

Version U of CSSB 308 contains many substantive amendments which were made to address concerns of the Districts, as well as others including the federal Office of Coastal Resource Management (OCRM). The changes which were incorporated to address specific concerns identified in the Coastal Districts' Briefing Paper are summarized below.

First, in response to the groups' concerns about scope of review, language was incorporated in the Findings of Section 1 to make clear that the scope of review for findings will include a response to all

concerns raised during the public review period before a disposal. For oil and gas lease sales, for example, all factors listed under current A.S. 38.05.035 (g) must be addressed plus any other issues raised by the public.

In response to concerns about potential abuse of the right to phase consideration of projects, language was added in Findings 10 and 11 to clarify intent, and Section 8 was amended to make clear that phasing of state disposals and projects would occur only under the same circumstances as federal regulations now provide.

Under both federal and state law, as amended by Version K of CSSB 308, phasing would be appropriate when not enough is known about the potential future aspects of a development project to issue just one conclusive consistency determination. If the specifics of a proposed project can be sufficiently defined in the beginning, phasing cannot be allowed.

To further strengthen this concept, Finding 11 provides explicit guidance to a director that "...consideration of a disposal as a phase of a development project is not intended to avoid consideration of potential future environmental or sociological effects, but rather is intended to allow for consideration of those issues when sufficient data are available upon which to make reasoned decisions."

The Briefing Paper expressed concern that "...certain portions of S.B. 308 may be disallowed by the federal government..." and referenced earlier correspondence from OCRM and an April 24, 1994 Alaska Attorney General's Opinion. However, both the OCRM letter and the Attorney General's Opinion were written in response to version K of S.B. 308.

The two provisions of version K which both of those documents questioned as potentially being disallowed were the effect of limiting the review of effects under both best interest findings and consistency determinations to "direct effects", and not defining the circumstances under which phased review of projects would be allowed.

We have addressed both concerns in the current version of CSSB 308 by deleting the references to "direct" in Sections 2 and 8 and, as mentioned above, by adopting the standard applied under the