

ALASKA LEGISLATURE

2610

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

176

Virginia: If an order is already established, it will generally be reduced to our state minimum amount, which is \$65.

Washington: Modification of the order must be based on a substantial change of circumstances. If the NCP becomes incarcerated after an order was established, the order may be modified based on the NCP's current income. The same standards apply as for order establishment. See answer #2.

Wisconsin: Minimum amount.

5. If your state establishes obligations for past due support, do you assess the NCP for periods of incarceration?

Alabama: Yes, unless the court orders otherwise.

Arkansas: Yes, if the court did not abate support for periods of incarceration.

California: There is no provision in either regulation or statute that would take into account periods of past incarceration in establishing a child support obligation for past due child support. Section 17402 of the Family Code provides for the establishment of retroactive child support. This period is limited to a one year retroactive time period

Colorado: Yes

Connecticut: Not at the present time, unless NCP had assets, or other income.

D.C. Arrears accrue under a pre-existing child support order until a modification takes effect.

Florida: Florida law limits the establishment of retroactive support to a period not to exceed 24 months prior to the date of filing. In situations where the noncustodial parent is incarcerated during this period, the court will make the determination of whether the noncustodial parent had the ability to pay during those periods.

Guam: Yes, for a period of 3 years, and if he/she is a participant in a work release program.

Illinois: Yes

Indiana: Yes

Kentucky: We do not establish obligations for past due support.

Louisiana: No, the court can order the suspension of collection for the duration of the incarceration however, arrears accrue in these situations.

Maine: No, however, if the NCP has income through the correctional facility we could base an obligation on that amount. Rarely happens that NCP has such income.

Maryland: N/A

Massachusetts: Not generally.

Minnesota: N/A

Montana: We may, but it is unlikely given our policy as discussed at Question 1 above. Our statutes allow establishment of a support obligation from the date of birth of the child at issue or the parties separation. Liability due to the payment of public assistance may only extend to the two year period preceding commencement of the action. Common commencement dates are the date the application or interstate referral was received for non-public assistance cases and the date public assistance benefits began in public assistance cases. Caseworkers have some discretion in alleging a commencement date based on the facts of the case.

Nebraska: Yes, but it is at the discretion of the court. We can establish orders for retro child support in paternity establishment cases back to the date of the child's birth.

New Hampshire: In public assistance cases we do not pursue past due support. We establish prospective child support orders, generally from the date of the hearing forward. In Non-TANF cases most obligees pursue child support from the date of the filing of the petition. Some have successfully pursued child support beginning at earlier dates, including the child's date of birth.

New Mexico: Yes

North Dakota: We do not pursue support for prior periods. In TANF cases we go back to the date of assignment or birth of the child, whichever is later. In non-TANF cases we go back to the date of application, which may include all or part of the time of incarceration.

Oklahoma: Minimum order.

Oregon: No, unless there is evidence of ability to pay. Our thinking on this is that if we take steps to avoid having the NCP build up a huge arrearage while incarcerated and unable to pay, we diminish the likelihood of him/her being confronted with this huge debt upon release. This huge debt could simply induce the NCF to give up and ignore the debt, or to recidivate, whereas if we prevent this from occurring, then having a manageable child support obligation upon release will foster a greater likelihood of support order compliance.

Pennsylvania: Depends on the circumstances of the case; generally, only if there was an ability to pay based on income and assets.

Rhode Island: At the present time if the order continues to run the obligor owes all past due support even during the period of incarceration. He must file a motion to modify to get relief from the order. We are working on a program with the Corrections Dept. If the inmate, upon release, cooperates with the job training and placement program and pays support continuously we will agree to waive a portion of TANF arrears.

South Carolina: does not establish obligations for past due support. Obligations begin on the date of the initial court hearing or administrative conference.

South Dakota: Yes

Tennessee: A judgment for past due support, say, from the time a child is born until a support order is established is based upon the NCP's ability to pay during the period.

Texas: Generally, yes. Courts generally follow the same rationale as explained in 2 (above) with respect to setting retroactive support in a paternity action. The CSD petitions the court to award support, based on the obligor's income, for the retroactive period.

Utah: If this question is referring to establishing a past due support amount at the same time a first-time current support order is established, we have done this in the past, but have changed direction on the issue, particularly in paternity cases. We are more concerned with establishing paternity and prospective current support and less concerned with retro arrears.

Virginia: Working prisoner cases is clear a last priority. Having to establish a Guardian Ad Litem and pay more lawyers further penalizes the state and lowers your cost effectiveness.

Washington: Yes, DCS assesses support beginning with the date of the public assistance authorization or receipt of a non-assistance application. If the NCP was incarcerated during some or all of the arrears period DCS computes support based on the income standards as set forth in answer #2.

ADDENDUM B

PARTICIPANT LIST

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[1] A recent national study allegedly indicates that out of all incarcerated persons, approximately 10% are in Federal Jail, 33% in local or county jail, and 57% in State prison.

Ironically, inserting the word "intentionally" into AS 11.51.120 would allow many parents to avoid paying child support. In the nonsupport cases that are investigated and prosecuted, it is almost always the case that the person who owes support has something else that they would rather do with their money, and it is an impossible burden for the state to have to prove beyond a reasonable doubt that the reason they used their money in some other way was to avoid paying support. Thus, this encourages irresponsible spending by persons who owe support.

The present criminal code statute for Criminal Nonsupport in AS 11.51.120 requires that the state prove three elements beyond a reasonable doubt:

First, that the person is legally charged with the support of a child. This element is usually proven by a court order to pay support.

Second, that the person failed to provide support for the child. Although the statute does not specify a mental state for the failure to provide support, under AS 11.81.610, the prosecution must prove the mental state of "knowingly." In other words, the state must prove beyond a reasonable doubt that the person was aware that he must pay child support and aware that he was not paying.

Third, that the failure to provide support was "without lawful excuse." This element requires that the state prove beyond a reasonable doubt that the person had the ability to pay child support, or the ability to obtain gainful employment that would enable support to be paid.

These elements of the current law do not allow a person to spend all their extra money buying an expensive sport fishing boat, and then claim that they had none left to pay child support. It is sufficient if the state proves that the person was aware of his legal obligation, was aware he did not meet his obligation, and that there was no lawful excuse for not meeting his obligation.

By inserting the word "intentionally" into AS 11.51.120, the state would be required to prove that it was the person's specific intent not to pay child support, in other words, that the person's conduct was intended to avoid child support or intended to violate the law. This would, in essence, allow parents to avoid support without lawful excuse. It would allow parents to act irresponsibly, because the state could not prove that they acted intentionally.

For example, if an able-bodied man refuses to work (as many do), the state would be required to show that he refused to work with the intent to avoid paying child support. Or, if a parent spends all his money on a recreational boat, or new sports car, the state would have to prove the person bought the boat or car with the specific intent not to pay support. It would be extremely difficult for the state to prove that the person was acting with that intent.

Provided by the Dept of Law

SENATE COMMITTEE REPORT

DATE: 04/01/04

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 5/1/04

Judiciary Committee considered CS FOR HOUSE BILL NO. 514(FIN) am

HB 514 CHILD SUPPORT ENFORCEMENT/ CRIMES

"An Act relating to child support modification and enforcement, to the establishment of paternity by the child support enforcement agency, and to the crimes of criminal nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date."

and recommends:

- be replaced with S CS CS HB 514 (JUD)
- adopt previous _____ CS S CS Forthcoming (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

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

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
REV	4/15		✓		8
ADM	4/5		✓		9

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
CRT	2/25		✓		2
LAW	2/22		✓		3
ADM	3/12			✓	4
ADM	3/9			✓	5
DPS	3/12			✓	6
PEV	3/9	✓			7

APPROPRIATION - no fiscal note

Ogan
French

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

SENATE FINANCE COMMITTEE

SIGN-IN

HB 514-CHILD SUPPORT ENFORCEMENT/ CRIMES

NAME: LANDA BAILY Subject/Bill No: HB514
Co./Dept./Title: Dept Revenue Phone: 465-2302
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

SENATE FINANCE COMMITTEE

SIGN-IN

HB 514-CHILD SUPPORT ENFORCEMENT/ CRIMES

NAME: LANDA BALLY Subject/Bill No: HB514
Co./Dept./Title: Dept Revenue Phone: 465-2302
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: Anne Carpenter Subject/Bill No: HB 514
Co./Dept./Title: Dept of Law Phone: 465-4037
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

HB

515

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 515
(H) Publish Date: 3/4/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Municipal Water & Sewer Utilities RDU RCA Audits & Investigations (508)
Component RCA Audits & Investigations
Sponsor Labor & Commerce
Requester House Community & Regional Affairs Component No. 2740

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(45.7)	(61.0)	(61.0)	(61.0)	(61.0)	(61.0)

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1141)	(45.7)	(61.0)	(61.0)	(61.0)	(61.0)	(61.0)
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1141 - RCA Receipts	(45.7)	(61.0)	(61.0)	(61.0)	(61.0)	(61.0)
TOTAL	(45.7)	(61.0)	(61.0)	(61.0)	(61.0)	(61.0)

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would remove the Municipality of Anchorage d/b/a AWWU (water and sewer utilities) from Regulatory Commission of Alaska (RCA) oversight. The RCA Audits & Investigations component will see a reduced workload as a result of this legislation. The RCA's budget is funded through the Regulatory Cost Charge (RCC) mechanism and direct charge mechanisms. No general funds are allocated for support of the agency.

AWWU is expected to pay a total of approximately \$406,550 in RCCs in FY 2004. The RCA estimates \$45.7 of this reduction would occur in RCA Audits & Investigations. Some RCCs would be realized in FY 2005 if an effective date of July 1, 2004 is assumed.

Prepared by: Mark K. Johnson, Commissioner, Chair Phone (907) 276-6222
Division Regulatory Commission of Alaska Date/Time 3/3/04 5:38 PM
Approved by: Edgar Blatchford, Commissioner Date 3/3/2004
Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 515
(H) Publish Date: 3/4/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Municipal Water & Sewer Utilities RDU Regulatory Commission of Alaska (399)
Component Regulatory Commission of Alaska
Sponsor Labour & Commerce
Requester House Community & Regional Affairs Component No. 2417

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(258.8)	(345.6)	(345.6)	(345.6)	(345.6)	(345.6)

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1141)	(258.8)	(345.6)	(345.6)	(345.6)	(345.6)	(345.6)
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1141 - RCA Receipts	(258.8)	(345.6)	(345.6)	(345.6)	(345.6)	(345.6)
TOTAL	(258.8)	(345.6)	(345.6)	(345.6)	(345.6)	(345.6)

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	-2	-2	-2	-2	-2	-2
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would remove the Municipality of Anchorage d/b/a AWWU (water and sewer utilities) from Regulatory Commission of Alaska (RCA) oversight. The RCA's budget is funded through the Regulatory Cost Charge (RCC) mechanism and direct charge mechanisms. No general funds are allocated for support of the agency. The RCC is recalculated each year and allows the agency to recover its operating costs through an assessment on the revenues of the utilities and pipeline carriers it regulates.

AWWU is expected to pay a total of approximately \$406,550 in RCC's in FY 2004. The RCA estimates loss of this revenue will result in the loss of 2 positions within the agency for a total reduction of \$258.8 in this component. The precise distribution of operating expense reductions has not been determined at this time. Some RCC's would be realized in FY 2005 if an effective date of July 1, 2004 is assumed.

Prepared by: Mark K. Johnson, Commissioner, Chair Phone (907) 276-6222
Division Regulatory Commission of Alaska Date/Time 3/3/04 5:36 PM
Approved by: Edgar Blatchford, Commissioner Date 3/3/2004
Agency Department of Community & Economic Development

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 515 BY: Representative Tom Anderson

TITLE: "An Act relating to the regulation of municipal water and sewer utilities not in competition with other water and sewer utilities."

House Bill 515 would exempt Anchorage Waste Water Utility from regulation by the Regulatory Commission of Alaska (RCA). Except for the City of Pelican, no other municipal owned water/wastewater utility is regulated by the RCA. (Pelican requested regulation of its water utility by the RCA).

The Municipality of Anchorage believes the current RCA regulation processes are cumbersome, slow, expensive, and non-responsive to local needs. Ratepayers are required to pay for the expensive RCA regulatory process as a surcharge on every bill, whether or not their utility has a case pending. For example, from 1993 until 2003 AWWU never had a rate increase from the RCA or the APUC, yet ratepayers have paid a regulatory assessment to the RCA as part of every bill. In 2004 AWWU ratepayers are projected to pay about \$500,000 to the RCA to cover the costs of regulation. The greatest costs appear in the form of regulatory delay in obtaining approval of a requested change.

The MOA is directly accountable to ratepayers served by the utilities - they are voters. The Municipality has experience successfully regulating enterprise activities. The Port of Anchorage, Solid Waste Services and Merrill Field are all financially sound and provide first class customer service. Municipal public hearings are held on any proposed rate increase and the public is very involved in the hearing process.

HB 515 changes existing law by adding lines 5 thru 8 on Page 2. This language states that a water or sewer utility owned by a political subdivision not directly competing with another water or sewer utility is exempt from RCA regulation.

I would ask for your support on HB 515.

HB 515

reg munic water & sewer

no CS

FN # 1	\$	CED	<u>2740</u>	3.3.04
FN # 2	\$	CED	<u>2417</u>	3.3.04

THE
FOLLOWING
DOCUMENT(S)
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**TESTIMONY OF MARK PREMO, GENERAL MANAGER,
ANCHORAGE WATER & WASTEWATER UTILITY,
on HOUSE BILL NO. 515, before the
HOUSE FINANCE COMMITTEE on April 20, 2004.**

Mr. Chairman and distinguished committee members,

My name is Mark Premo and I am the General Manager of the Municipality of Anchorage Water and Wastewater Utility, which is commonly referred to as AWWU.

I am testifying this morning in support of HB 515.

This bill would exempt AWWU, from economic regulation by the Regulatory Commission of Alaska, and place it in the same status of every other municipally owned water/wastewater utility in Alaska, except one.

First some background.

AWWU is two separate utilities, both subject to economic and service area regulations by the RCA.

The Water Utility, a former City of Anchorage utility, has been under RCA regulation since inception of the APUC in 1970.

The Anchorage Sewer Utility, which was formerly owned by the Greater Anchorage Area Borough, was voluntarily submitted to the APUC for regulation in 1971.

An umbrella organization, AWWU, was formed in 1975, following unification of the Municipality of Anchorage.

The Municipality of Anchorage in 1991 petitioned the then APUC to exempt AWWU and its electric utility from regulation.

The Commission split evenly, by a 2-2 vote, on the question of exempting the electric utility and AWWU.

The opinion by the commissioners opposing self-regulation cited competition by the Municipality's electric utility and telephone utility with other utilities as the primary reason why AWWU should remain regulated by the state.

No commissioner suggested then or has since suggested that competition between the water and wastewater was present, nor is there any competition there today.

Why does the Municipality of Anchorage desire exemption from RCA Regulation?

1) The current RCA regulation processes and procedures are slow and expensive

From 1993 to 2003, AWWU never requested a rate increase yet AWWU ratepayers have paid approximately \$2.8 million in regulatory assessments to the RCA during this period as part of every monthly bill and are projected to pay \$485,000 in 2004 to cover the cost of regulation.

Our figures differ from the RCA because they are actual projected payments in 2004 versus billings for the State fiscal year as estimated by the RCA.

There were a number of minor relatively simple procedural tariff filings during this period of time.

However, the greater cost to AWWU and its customers is in the form of the cost of preparing filings and regulatory lag.

History shows that local regulation is faster, less structured and more economical.

2) Current RCA regulations and procedures are non-responsive to local needs.

The RCA process was designed for private utilities and is not entirely appropriate for municipal utilities.

The RCA process is very structured.

The Municipality is more responsive to local needs and is directly accountable to the ratepayers, who are served by the utilities. These customers are Municipal voters.

Public hearings are held by the Municipality on all rate matters.

I ask for the Committee's support of HB No. 515.

Self regulation has worked effectively across the nation, in other Alaskan communities, and in Anchorage.

Also, contrary to statements by the RCA, there is no fundamental regulatory philosophy for the Legislature to address in consideration of this bill. The Legislature decided years ago that public ally owned Municipal utilities did not require RCA oversight.

Anchorage has regulated its own public utilities for many more years than have state regulators.

The Municipality of Anchorage has a proven track record of effectively regulating the Port of Anchorage, Merrill Field and Solid Waste Services.

All are financially strong, highly reputable enterprises that provide excellent customer service. Rate changes have been infrequent.

AWWU has provided its customers excellent service, low, stable rates and sound finances.

For more than a decade rate payers have benefited as AWWU has reduced positions and expenses by leveraging technology and improving business processes while at the same time increasing spending on system repairs and rehabilitation,

This has all been done without direction and assistance (or value added) from the RCA.

Over the years, the mayor and assembly have made sound decisions in their oversight of AWWU and other municipally owned utilities.

The Municipality of Anchorage Administration supports the establishment of a strong independent Board to oversee and regulate AWWU in lieu of the RCA.

The rate making process would be very similar to the RCA process of developing Revenue Requirements and Cost of Service to meet the traditional "Cost causer-Cost payer" regulatory approach.

In conclusion, with the passage of HB No. 515, Municipal regulation of AWWU will balance consumer protection with the financial soundness and AWWU will continue to operate on a sound business basis.

This bill only makes a minor adjustment to the existing statute to facilitate the proper self-regulation of AWWU.

The RCA would still continue to regulate the AWWU water and wastewater service areas.

Here is an analysis of the changes we made to the house version of this bill:

1. Page 1, line 5:

We amended Section 1 to add "AS 06.50" to the list of licensees exempt from the department's ability to order compliance with federally chartered financial institutions. This was required to make Section 50 consistent with other exempt licensees.

2. Page 3, line 25:

Delete "1,200" Insert "2,000" This was changed to address Senator Bunde's requests that the bill be changed to be more "revenue neutral." Although this does not solve the entire problem, it helps.

3. Page 5, line 16 and 17:

Delete the entire last sentence starting with "Upon receipt of the license," This change was made because other sections of the bill address the return of the bond.

4. Page 8, line 17:

Insert after "\$75" "per examiner hour" Again, this was made to address the revenue concerns with the bill.

Page 12, line 7:

Delete language that reads "up to \$25 if the payment is return unpaid" and replace with "as provided in AS 09.68.115(a)(2) if the payment is returned unpaid." AND

Page 13, lines 15-18.

Delete subsection (D) completely. Change subsection (C) to read: (C) an additional fee by the licensee is not allowed, except for a NSF fee allowed by AS 09.68.115(a)(2).

These two changes were made in part to account for HB 115, which proposes to change the NSF fee to \$30. By referring to the statute instead of a specific dollar amount, this concern is removed even for future amendments to the NSF statute.

DRAFT

Anchorage Water and Wastewater Utility

SELF-REGULATION FOR MUNICIPAL WATER AND SEWER UTILITIES

Introduction

The Municipality of Anchorage and the Anchorage Assembly have designated "Regulating Anchorage's Own Water/Wastewater Utilities" as an important municipal legislative priority for 2004. This bill would exempt AWWU from regulation by the Regulatory Commission of Alaska (RCA), the same status that every other municipally owned water/wastewater utility in Alaska, except one. Anchorage as the largest, most highly sophisticated city in the state, is fully capable of properly regulating its own municipally owned utilities. Self-regulating Anchorage's water/wastewater utility will save rate-payers money and enhance local control.

Why is the MOA requesting exemption from RCA Regulation?

Except for the City of Pelican, no other municipally owned water/wastewater utility is regulated by the RCA. (Pelican requested regulation of its water utility by the RCA.)

AWWU has provided its customers excellent service, low, stable rates and sound finances, as well as continuity of management. Over the years, the mayor and assembly have made sound decisions in their oversight of municipally owned utilities. Municipal public hearings are held on any proposed rate increase. Municipal regulation will continue to balance consumer protection with the financial soundness of the public utility. It will require the utilities to continue to operate on a sound business basis. The process will be accountable to local people, more responsive, timely and economical than current RCA regulation.

Local Regulation of Municipal Water and Wastewater Utilities

The Municipality is directly accountable to the ratepayers served by the utilities. They are the voters. The Municipality is more responsive to local needs. The MOA has experience successfully regulating enterprise activities. Anchorage has extensive experience regulating other municipally owned enterprises. The Port of Anchorage, Merrill Field and Solid Waste Services are all financially sound and provide first class customer service. Actually, Anchorage has regulated its own public utilities for more years than have state regulators. Local regulation is faster, less structured and more economical. Public hearings are held by the Municipality on rate matters.

The MOA believes the current RCA regulation processes and procedures are cumbersome, slow, expensive, and non-responsive to local needs. AWWU ratepayers paid about \$350,000 in 2003, and are projected to pay about \$500,000 in 2004, to the

RCA to cover the cost of regulation. The greater cost is in the form of regulatory lag, the delay in obtaining approval of a requested rate change. It was designed for private utilities and is not entirely appropriate for municipal utilities. Despite a legislative mandate to speed up processing of regulatory filings, the commission still faces a substantial backlog of work. Ratepayers are required to pay for the expensive RCA regulatory process as a surcharge on every bill, whether or not their utility has a case pending. For example from 1993 until 2003 AWWU never had a rate increase from the RCA or the APUC, yet ratepayers have paid a regulatory assessment to the RCA as part of every bill.

What will self regulation accomplish?

Self regulation has worked effectively in other Alaskan communities, in Anchorage with the Port of Anchorage, Merrill Field and Solid Waste Services and across the nation. The MOA has a proven track record of effectively regulating the Port of Anchorage, Merrill Field and Solid Waste Services, which are all financially strong and highly reputable enterprises. Self regulation has proven to be cost effective, timely and responsive to local needs, while protecting consumer rights.

The Municipality in 1991 petitioned the APUC (predecessor to the RCA) to exempt AWWU and the electric utility from regulation. The Commission split evenly, by a 2-2 vote, on the question of exempting the electric utility and AWWU. The opinion by the commissioners who opposed self-regulation cited competition by the electric utility and telephone utility then owned by Anchorage with other utilities as the primary reason why AWWU should remain regulated by the state. No commissioner suggested that water/wastewater competition with another utility was present. Nor is there competition here today.

Section 711 of the Alaska Public Utilities Regulatory Act was amended as recently as the year 2000 by SB 324 to protect Ketchikan's public utilities, which have been self-regulated for 50 years, from the risk of regulatory takeover by the RCA in light of possible telephone competition. This bill expands that municipal exemption to any municipally owned water or wastewater utility that is not directly competing with another utility. AWWU fits this bill.

History of Regulation of AWWU

AWWU is two separate utilities, both subject to economic and service area regulation by the Regulatory Commission of Alaska (RCA). The Water Utility (AWU), a former City of Anchorage utility, has been under RCA regulation since inception of the Alaska Public Utilities Commission (APUC) in 1970. Anchorage Sewer Utility (ASU), which was formerly owned by the Greater Anchorage Area Borough, was voluntarily submitted to the APUC for regulation in 1971. The umbrella organization, Anchorage Water and Wastewater Utility (AWWU), was formed in 1975, following unification; however, the two utilities continue to be separate enterprise funds and to be regulated as separate utilities with separate certificates and tariffs by the RCA (formerly APUC).

Local Regulation of Municipal Water and Wastewater Utilities

The Municipality of Anchorage (MOA) owns Anchorage Water and Wastewater Utilities. HB 515 would provide the MOA the same regulatory responsibility over these utilities as state law provides to every other municipally owned water/sewer utility in Alaska except Pelican. Local regulation of these utilities is overdue because:

- 1) The Municipality is directly accountable to the ratepayers served by the utilities. They are the voters.
- 2) The Municipality is more responsive to local needs.
- 3) The MOA has experience successfully regulating enterprise activities. They are financially sound.
- 4) With a single exception, no other municipally owned water and wastewater utility in the state is economically regulated.
- 5) Local regulation is faster, less structured and more economical.
- 6) Public hearings are held by the Municipality on rate matters.

The Regulatory Commission of Alaska (RCA) process is lengthy, costly and inflexible. It was designed for private utilities and is not totally appropriate for our municipal utilities.

Ratepayers are required to pay for the expensive RCA regulatory process as a surcharge on every bill, whether or not their utility has a case pending. For example from 1993 until 2004 AWWU never had a rate increase from the RCA or the APUC, yet ratepayers must pay a regulatory assessment to the RCA as part of every bill. (There was a slight rate reduction for wastewater in 2001.)

Despite a legislative mandate to speed up processing of regulatory filings, the commission still faces a substantial backlog of work.

Last year the agency was controversial. The battle over its sunset extension required a special session to resolve.

RCA commissioners turn over frequently and often lack experience in utility regulation before their appointment.

The process is generally not responsive to local needs and differences.

The rates, services and practices of Solid Waste Services are under the local control of the Mayor and Assembly.



Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 343-4431 • Fax: (907) 343-4499 <http://www.muni.org>


Mayor Mark Begich

Office of the Mayor

MEMORANDUM

DATE: February 3, 2004

TO: The Honorable Tom Anderson, Chair
House Labor & Commerce Committee

FROM: Anchorage Mayor Mark Begich 

SUBJECT: Self-regulation of Anchorage Water and Wastewater Utilities

The Municipality of Anchorage and the Anchorage Assembly have designated "Regulating Anchorage's Own Water/wastewater Utilities" as a top municipal legislative priority for 2004. This would require an exemption from regulation by the Regulatory Commission of Alaska (RCA), something that every other municipally owned utility in Alaska, except one, already enjoys.* Anchorage as the largest, most highly sophisticated city in the state, is fully capable of soundly regulating its own municipally owned utilities. Self-regulating Anchorage's water utility would save rate-payers money and enhance local control.

AWWU has provided its customers excellent service, low, stable rates and sound finances, as well as continuity of management. Over the years, the mayor and assembly have made sound decisions in their oversight of municipally owned utilities. Municipal public hearings are held on any proposed rate increase. Municipal regulation will continue to balance consumer protection with the financial soundness of the public utility. It will allow the utilities to continue to operate on a sound business basis. The process will be accountable to local people, more responsive, timely and economical than current RCA regulation.

Anchorage has extensive experience regulating other municipally owned enterprises. The Port of Anchorage, Merrill Field and Solid Waster Services are all financially sound and provide first class customer service. Actually, Anchorage has self-regulated its public utilities for more years than have state regulators.

RCA regulation is slow, expensive and partially duplicates the review process that the municipal administration and assembly already apply. AWWU ratepayers pay in excess of \$500,000 per year to the RCA to cover the cost of regulation. The greater cost is in the form of regulatory lag, the delay in obtaining approval of a requested rate change.

* The City of Pelican requested continued RCA regulation of its water utility when it was sold.

Community, Security, Prosperity

The Municipality in 1991 petitioned the APUC (predecessor to the RCA) to exempt AWWU and the electric utility from regulation. The Commission denied the request for self-regulation of the electric utility. By a 2-2 vote, the commission split on the question of exempting AWWU. The opinion by the commissioners who opposed self-regulation cited competition by the electric utility with other electric utilities as the reason why AWWU should remain regulated by the state.

To accomplish the exemption from RCA regulation a new section is needed in AS 42.05.711:

“A water/wastewater utility owned by and serving a first class or home rule municipality is exempt from regulation by the Commission, other than AS 42.05.221 - 42.05.281 and 42.05.385.”

This section was amended as recently as the year 2000 by SB 324 to protect Ketchikan's public utilities, which have been self-regulated for 50 years, from the risk of regulatory takeover by the RCA in light of possible telephone competition.

Gina Anderson 1
Renee Romo - says ASleeps

2004 STATE LEGISLATIVE PROGRAM
MUNICIPAL PRIORITY ISSUES
LEGISLATION

ISSUE/PROJECT NAME: Regulating our own utilities
ISSUE/IMPROVEMENT TYPE: Legislation- Utility
STATE GRANT REQUEST: None
LOCAL MATCH: N/A
PRIORITY: 1

ISSUE/PROJECT DESCRIPTION:

We support state legislation that would include the Municipality of Anchorage utilities in the existing exemption from regulation by the Regulatory Commission of Alaska (RCA) already provided to other municipally owned utilities.

Anchorage utilities are the only municipal utilities in Alaska subjected to state regulation. The sole exception is the City of Pelican's water utility, where Pelican requested to be regulated by the RCA. Anchorage ratepayers pay higher rates for this state "service" but these regulatory charges are not imposed on any other municipal utility, except Pelican. Currently Anchorage ratepayers pay \$930,000 per year.

Municipal regulation would continue to balance consumer protection with the financial soundness of the utilities. It would be:

Directly accountable to local people
More responsive
More timely
More economical
Simpler

The Municipality has extensive experience regulating other municipally owned enterprises. They are all financially sound and also provide first class customer service. For example, the Solid Waste Services Collection Utility has been regulated by the Municipality for many years. Its customers enjoy among the lowest refuse collection rates in the country. The rates for residential and commercial refuse collection have not increased in the past thirteen years.

Voters in the Municipality would hold the Mayor and Assembly members, those elected officials who would set and approve utility rates, fully accountable – and they do vote.

During the recent California energy crisis the utilities regulated by the state public utilities commission got in trouble, with the largest gas and electric utility having to file bankruptcy. On the other hand, municipally owned utilities fared very well.

POLITICAL SUBDIVISIONS:

Community Council: Anchorage
Assembly Section: 9
Legislative District(s):
House: 16-32
Senate: I-P
CONTACT PERSON: Robert Lohr, Management Systems Officer, 343-4467

ANCHORAGE WATER UTILITY
 RATE HISTORY
 1992 THROUGH 2004

Docket/Order	Type of Rate Increase	Rate Increase Received	Effective Date of Increase	Single Family Rate	Commercial Metered Rate
per U-90-64(4)	Permanent	6.00%	3-Jun-92	\$24.75	\$3.14
per U-94-89(5) COSS	Cost of Service ⁽¹⁾	0.00%	1-Jun-95	\$25.80	\$2.64
per U-04-023(1)	Interim	13.61%	23-Feb-04	\$29.35	\$3.00

⁽¹⁾ Cost of Service rates reallocate costs to customer classes without changing the total revenue to the Utility

ANCHORAGE WASTEWATER UTILITY
 RATE HISTORY
 1992 THROUGH 2004

Docket/Order	Type of Rate Increase	Rate Increase Received	Effective Date of Increase	Single Family Rate
per U-90-64()	Permanent	14.89%	8-Jun-92	\$21.65
per U-94-88(5)COSS Cost of Service ⁽¹⁾		0.00%	1-Jun-95	\$21.80
per LO# L0001127	Permanent	-2.75%	1-Jan-01	\$21.20
per U-04-022(1)	Interim	8.06%	23-Feb-04	\$22.90

⁽¹⁾ Cost of Service rates reallocate costs to customer classes without changing the total revenue to the Utility

HB

531

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title: Conventional & Non-conventional Gas Leasing RDU: Resource Development
Component: Oil and Gas Development
Sponsor: House Resources
Requester: House Oil and Gas Component No. 439

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This bill would eliminate the current over-the-counter shallow natural gas program. HB 531 would create a new gas only option under the competitive leasing and exploration licensing programs.

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

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

ALASKA STATE HOUSE OF REPRESENTATIVES

Co-Chair
Representative Beverly L. Masek
State Capital, Rm. #403
Juneau, AK. 99801-1182
(907) 465-2679



Co-Chair
Representative Nancy A. Dahlstrom
State Capital, Rm. #126
Juneau, AK. 99801-1182
(907) 465-3783

HOUSE COMMITTEE ON RESOURCES

SPONSOR STATEMENT

HB 531 – Conventional / Non-Conventional Gas Leases

The intent of original shallow gas leasing legislation in 1995, HB 394, was to expand development of our state's marketable natural gas resources, as well as to promote private-sector employment, generate less expensive energy alternatives for rural Alaskan consumers, and enhance local tax bases for municipalities. Shallow gas legislation was inspired by the need to tailor the particular economies of this resource opportunity to available market opportunities. This type of gas extraction does not conform to the same economies of scale as conventional deep-hole oil and gas drilling.

Original legislation provided for leasing on a first-come, first-served basis so that development of the resource in areas away from the energy grid could take place. With a well-known shortage of natural gas development opportunities in South Central Alaska, prospects of leasing on-shore fields in the Cook Inlet Basin became very attractive. Two unintended consequences of this sudden interest materialized. One, it sparked leasing of the state-owned subsurface mineral estate in uneconomic areas, and two, it encouraged leasing in areas where divergent interests between gas development and established local residential and business activities came into conflict.

Without HB 531, a subsequent gas development entity could immediately lease land relinquished by the original lessee. In addition, land not currently leased remains subject to current over-the-counter standards. This bill initiates a permanent solution to these problems. It has been brought forward in response to strong citizen interest in the Mat-Su Valley and on the Kenai Peninsula, with input from several public meetings held at one time or another by the Alaska Department of Natural Resources (DNR), and the Senate Resources Committee.

Legislation Highlights

Eliminates over-the-counter, first-come, first-served shallow gas leases and replaces it with area-wide leasing or exploration licensing.

Requires a best-interest finding before any oil and gas leasing or exploration licensing. This will give DNR control of what land is leased, avoiding unnecessary surface-owner conflicts. Best-interest finds are a time-tested public process.

Creates a gas-only section of area-wide leasing and exploration licensing identified in a best-interest finding by DNR.

- 2 Differentiates conventional and non-conventional gas resources for the purposes of lease rentals.
- 2 Defines conventional and non-conventional gas development, and treats each distinctly. Recognizes that lease rights should not be determined by a depth criteria only. Enhances production opportunities.
- 2 Encourages exploration licenses with a best-interest finding as the method for non-conventional gas exploration outside of the area-wide leasing in rural Alaska.
- 2 Makes leasing and regulatory criteria fit the appropriate activity.
- 2 Ensures competitive processes, thereby maximizing the state's interests.

HB 531 / House Resources Committee / Rp. Beverly Masek / staff: Eleanor Wolfe / 465-6585

withdrawn 4/27/04

AMENDMENT 1

OFFERED IN THE HOUSE
TO: CSHB 531(RES)

BY REPRESENTATIVE ~~XXXXXXXXXX~~ FATE

1 Page 20, lines 9 - 10:

2 Delete "[EXCEPT AS PROVIDED BY AS 38.05.177(a)(2)(C),]"

3 Insert "except as provided by AS 38.05.180(ff)(4) [AS 38.05.177(a)(2)(C)],"

4

5 Page 20, line 23:

6 Delete "A [NOTWITHSTANDING AS 38.05.177, A]"

7 Insert "Notwithstanding AS 38.05.180(ff) [AS 38.05.177], a"

8

9 Page 40, line 11, following "property":

10 Insert ";

11 (4) the provisions of this subsection do not apply to authorize a lease
12 for the recovery of nonconventional gas on land that is held under a coal lease entered
13 into under AS 38.05.150 unless the lessee under this subsection is also the lessee
14 under AS 38.05.150 of that land"

OFFERED IN THE HOUSE
FINANCE COMMITTEE
TO: CSHB 531(RES), Draft Version "V"

BY REPRESENTATIVE CROFT 4-4

1 Page 39, Line 31-Page 40, Line 11;

2 Delete all material and insert:

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

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

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

15 (ii) a covenant running with the land;

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

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

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

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

4/27/04

Adopted

AMENDMENT

3 n/obj

OFFERED IN THE HOUSE

TO: CSIB 531 (RES)

- 1 Page 40, line 2:
- 2 Delete "(A)"
- 3
- 4 Page 40, line 8:
- 5 Delete "subparagraph; and"
- 6 Insert "paragraph."
- 7
- 8 Page 40, lines 9 - 11:
- 9 Delete all material.

4/27/04

AMENDMENT

4

Adopted
no obj

OFFERED IN THE HOUSE
TO: CSHB 531(RES)

1 Page 48, following line 12:

2 Insert a new bill section to read:

3 **** Sec. 60.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 **CONVERSION OF EXISTING SHALLOW NATURAL GAS LEASE**
6 **APPLICATIONS.** (a) The applicant for a shallow natural gas lease under AS 38.05.177
7 whose application was received by the Department of Natural Resources before the effective
8 date of this section may, not later than August 31, 2004, or 60 days after the effective date of
9 this Act, whichever is later, convert the application to an exploration license and lease
10 application under AS 38.05.131(a), as amended by sec. 14 of this Act. An applicant
11 converting an application under this subsection

12 (1) may apply for as few as 3,000 acres, notwithstanding the minimum
13 limitation of acreage set out in AS 38.05.132(c)(2);

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

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

18 (4) may, subject to (b) of this section, convert an exploration license to a lease
19 under AS 38.05.134, as amended by sec. 22 of this Act.

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

22 (c) For an application made under (a) of this section, the director of the division of
23 lands shall remit to the applicant the application fee paid by the applicant under

- 1 AS 38.05.177(b)(2)."
- 2
- 3 Renumber the following bill section accordingly.

THE
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Alaska Oil and Gas Association



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Phone: (907)272-1481 Fax: (907)279-8114
Email: brady@aoga.org
Judith Brady, Executive Director

April 22, 2004

Via Facsimile: (907)465-3793

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

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

Dear Representative Williams:

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

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

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

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

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

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

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

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

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

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

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

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

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

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Page 3

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

Recommendations for CSHB 531

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

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

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

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

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

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

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

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

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

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

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neglects to settle the damages, the developer may enter upon the land after posting a surety bond determined by the Department of Natural Resources using a procedure similar to the procedure used to administer AS 38 05.130, including notice and an opportunity to be heard. The bond must be sufficient as to form, amount, and security to secure the surface owner payment for damages. The surface owner may institute legal proceedings in a court where the land is located as may be necessary to determine the damages that the surface owner may suffer.

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

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

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

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

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

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

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

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Page 5

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

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

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

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

Recommendations on CSHB 395

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

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

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

April 22, 2004

Page 6

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

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

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

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

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

Sincerely,


JUDITH BRADY
Executive Director

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title: Conventional & Non-conventional Gas Leasing RDU: Resource Development
Component: Oil and Gas Development
Sponsor: House Resources
Requester: House Oil and Gas Component No.: 439

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1004 GF) + ****Indeterminate Positive Amount****

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This bill would eliminate the current over-the-counter shallow natural gas program. HB 531 would create a new gas only option under the competitive leasing and exploration licensing programs.

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

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

HB

531

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
MAY 05 2004
SENATE FINANCE
COMMITTEE

DATE: 5/5/04

FURTHER:

DATE TURNED IN TO OFFICE: 5 May 2004

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

HB 531 CONVENTIONAL & NONCONVENTIONAL GAS LEASES

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

and recommends:

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

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DNR	4/29/04	2526			#2
Admin	5/1/04	20.0			#3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>[Signature]</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>[Signature]</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
COCHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
COCHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

REPORTED OUT

MAY 05 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: B
Bill Version: SCS CSHB 531(RES)
(S) Publish Date: 5/5/04

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	20.0	5.0	5.0	5.0	5.0	5.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	20.0	5.0	5.0	5.0	5.0	5.0

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

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

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

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

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

REPORTED OUT
MAY 05 2004
SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

Revision Date/Time (Note if correction): 4/29/2004 Dept. Affected: Natural Resources
Title: Conventional & Non-conventional Gas Leasing RDU: Resource Development
Component: Oil and Gas Development
Sponsor: House Resources
Requester: House Rules Component No. 439

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	80.0					
Travel	4.0					
Contractual	165.5					
Supplies	3.1					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	252.6	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	**Indeterminate Amount**					
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary	1					

ANALYSIS: (Attach a separate page if necessary)

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

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

Prepared by: Mark D. Myers
Division: Oil and Gas
Approved by: Thomas Irwin, Commissioner
Agency: Natural Resources

Phone 269-8800
Date/Time 4/29/04
Date 4/29/04

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 531(FIN)

ANALYSIS CONTINUATION

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

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

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

Expenditures:

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

Travel for public hearings: \$4,000.

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

Expenses Associated with public notice and printing best interest findings:

Printing findings: \$1,400

Postage \$1,600

Envelopes: \$69

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

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

Display ad in the Anchorage Daily News = $\$614.70 \times 3 = \$1,844.10$. Display ad in a local paper = $\$242.00 \times 3 = \726)

AMENDMENT

by Sen. GREEN

OFFERED IN THE SENATE

TO: SC CSHB 531(RES)

1 Page 20, line 10:

2 Delete "AS 38.05.180(ff)(4)"

3 Insert "AS 38.05.180(ff)(3)"

5 Page 40, lines 6 - 12:

6 Delete all material.

8 Renumber the following paragraph accordingly.

10 Page 40, line 18:

11 Delete "Before"

12 Insert "For an activity or operation related to the extraction of coal bed methane,

13 (1) for which the department by regulation requires submission and
14 approval of a plan of operations before activities or operations may be undertaken, the
15 director shall, as a condition for determining a bond requested under AS 38.05.130,
16 after notice and an opportunity to be heard, review the plan of operations to determine
17 if use of the owner's land is reasonably necessary to extract the coal bed methane; a
18 bond determined under AS 38.05.130 and this paragraph may, at the discretion of the
19 director, be imposed against a statewide bond that has been posted by the person
20 initiating the request for determination of the bond if the statewide bond remains in
21 effect, and an additional bond is not required;

22 (2) before"

23

1 Page 40, line 21:

2 Delete "(1)"

3 Insert "(A)"

4

5 Page 40, line 22:

6 Delete "paragraph"

7 Insert "subparagraph"

8

9 Page 40, line 25:

10 Delete "(2)"

11 Insert "(B)"

12

13 Page 40, line 27:

14 Delete "paragraph"

15 Insert "subparagraph"

SENATE FINANCE COMMITTEE
5/5/2004 COMMITTEE ACTION

Bill Number	HB 531		
Amendment	#1		
Motion	supt		
<u>Motion by</u>	Green		
<u>Objection by</u>	Wilken		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stevens			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		



Alaska State Senate

Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 5 May 2004 TIME: 5:35 pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 1

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: Final Please

SCS CS ~~HB~~ 531 (FIN)

23-LS1818 \ C

Plus 1 amendment: \ C.2

Thanks

Mandy

Shelf &
Kelly
Jane

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

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

27 (3) is land

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

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

1 (4) is subject to

2 (A) an oil, gas, or coal lease, or coal prospecting permit;

3 (B) a mining claim, offshore prospecting permit, a prospecting
4 site, an upland mining lease, or a mining leasehold location;

5 (5) is necessary to carry out the purpose of an interagency land
6 management agreement; or

7 (6) is subject to conveyance under a land exchange or land settlement
8 agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (A) Coldfoot:

16 Township 28 North, Range 12 West, Fairbanks Meridian

17 Sections 3 - 4

18 Sections 9 - 10

19 Sections 15 - 16

20 Sections 20 - 22

21 (B) Yukon River Crossing:

22 Township 12 North, Range 10 West, Fairbanks Meridian

23 Sections 6 - 7

24 Township 12 North, Range 11 West, Fairbanks Meridian

25 Sections 1 - 2

26 Section 12

27 Township 13 North, Range 10 West, Fairbanks Meridian

28 Sections 29 - 32

29 Township 13 North, Range 11 West, Fairbanks Meridian

30 Section 22

31 Sections 25 - 27

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Sections 34 - 36

(3) for nonresidential development within the following development

nodes:

(A) Deadhorse:

Township 10 North, Range 14 East, Umiat Meridian

Township 10 North, Range 15 East, Umiat Meridian

Section 8

Sections 17 - 20

Section 30

(B) Coldfoot:

Township 28 North, Range 12 West, Fairbanks Meridian

Sections 3 - 4

Sections 9 - 10

Sections 15 - 16

Sections 20 - 22

Township 29 North, Range 12 West, Fairbanks Meridian

Sections 23 - 27

Sections 34 - 35

(C) Franklin Bluffs:

Township 4 North, Range 14 East, Umiat Meridian

Sections 3 - 4

Sections 9 - 10

Sections 15 - 16

(D) Happy Valley:

Township 3 South, Range 14 East, Umiat Meridian

Sections 19 - 20

Sections 29 - 30

(E) Yukon River Crossing:

Township 12 North, Range 10 West, Fairbanks Meridian

Sections 6 - 7

Township 12 North, Range 11 West, Fairbanks Meridian

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Sections 1 - 2

Section 12

Township 13 North, Range 10 West, Fairbanks Meridian

Sections 29 - 32

Township 13 North, Range 11 West, Fairbanks Meridian

Section 22

Sections 25 - 27

Sections 34 - 36; or

(4) necessary for

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

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

(C) a state lease or materials sale for

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

(ii) reconstruction or maintenance of state highways; or

(iii) construction or maintenance of airports.

* Sec. 4. AS 31.05.030(j) is amended to read:

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

(1) may not

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

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

(2) shall

(A) regulate hydraulic fracturing in nonconventional gas

1 wells to assure protection of drinking water quality;

2 (B) regulate the disposal of wastes produced from the
 3 operations unless the disposal is otherwise subject to regulation by the
 4 Department of Environmental Conservation or the United States
 5 Environmental Protection Agency;

6 (C) for the purposes of AS 46.04.030(b), [THE
 7 COMMISSION SHALL] determine whether a well drilled for
 8 nonconventional [SHALLOW NATURAL] gas may penetrate a formation
 9 capable of flowing oil and, if so, whether the volume of oil encountered will be
 10 of such quantities that an oil discharge prevention and contingency plan will be
 11 required; and

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

17 * Sec. 5. AS 31.05.060(c) is amended to read:

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

26 (1) the commission may approve the variance if

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

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

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

5 (A) the nature of the operation involved;

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

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

10 * Sec. 6. AS 31.05.170 is amended by adding a new paragraph to read:

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

12 * Sec. 7. AS 36.30.850(b)(25) is amended to read:

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

15 * Sec. 8. AS 36.30.850(b)(33) is amended to read:

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

22 * Sec. 9. AS 38.04.065(i) is amended to read:

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

26 * Sec. 10. AS 38.05.035(e) is amended to read:

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

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

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

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

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

15 (i) applicable statutes and regulations;

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

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

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

31 (i) the only uses to be authorized by the proposed

1 disposal are part of that phase;

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

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

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

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

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

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

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

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

30 (5) public notice requirements relating to the sale, lease, or other
 31 disposal of available land or an interest in land for oil and gas, or for gas only,

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

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

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

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

31 (A) a contract for a negotiated sale authorized under

1 AS 38.05.115;

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

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

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

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

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

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

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

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

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

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

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

3 (7) the director shall include in

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

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

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

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

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

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

22 (B) material to the following matters:

23 (i) property descriptions and locations;

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

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

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

30 (v) the governmental powers to regulate the [OIL AND
31 GAS] exploration, development, production, and transportation of oil

and gas or of gas only;

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

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

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

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

* Sec. 12. AS 38.05.036(a) is amended to read:

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

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

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

5 * Sec. 13. AS 38.05.127(e) is amended to read:

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

9 * Sec. 14. AS 38.05.131(a) is amended to read:

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

15 * Sec. 15. AS 38.05.132(a) is amended to read:

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

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

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

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

31 (2) unless the exploration license is terminated under (d)(1) of this

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

6 * Sec. 17. AS 38.05.132(c) is amended to read:

7 (c) An exploration license awarded under this section

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

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

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

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

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

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

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

28 (B) the annual bond or other security shall be calculated as the
 29 entire work commitment expressed in dollars, less the cumulative direct
 30 exploration expenditures of the licensee as of the last day of the most recent
 31 project year, divided by the number of years remaining in the term of the

1 exploration license;

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

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

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

10 * Sec. 18. AS 38.05.132(f) is amended to read:

11 (f) In this section,

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

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

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

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

1 * Sec. 19. AS 38.05.133(a) is amended to read:

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

4 * Sec. 20. AS 38.05.133(f) is amended to read:

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

18 * Sec. 21. AS 38.05.133(h) is amended to read:

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

1 successful bidder is the prospective licensee who submits the highest bid in terms of
2 the minimum work commitment dollar amount.

3 * **Sec. 22.** AS 38.05.134 is amended to read:

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

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

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

13 (3) must be conditioned upon a royalty in amount or value of not less
14 than 12.5 percent of production, except that the lessee who, proceeding under
15 AS 38.05.131 - 38.05.134, under a lease issued in the Cook Inlet sedimentary basin
16 who is the first to file with the commissioner a nonconfidential sworn statement
17 claiming to be the first to have drilled a well discovering oil or gas in a previously
18 undiscovered oil or gas pool and who is certified by the commissioner within one year
19 of completion of that discovery well to have drilled a well in that pool that is capable
20 of producing in paying quantities shall pay a royalty of five percent on all production
21 of oil or gas from that pool attributable to that lease for a period of 10 years following
22 the date of discovery of that pool, and thereafter the royalty payable on all production
23 of oil or gas from the pool attributable to that lease shall be determined and payable as
24 specified in the lease; the payment of the five percent royalty under this paragraph is
25 authorized only to a holder of a lease who meets the requirements of
26 AS 38.05.180(f)(4);

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

31 (5) is subject to other conditions and obligations that are specified in

1 the lease.

2 * Sec. 23. AS 38.05.140(a) is amended to read:

3 (a) A person may not take or hold coal leases or permits during the life of coal
4 leases on state land exceeding an aggregate of 92,160 acres, except that a person may
5 apply for coal leases or permits for acreage in addition to 92,160 acres, not exceeding
6 a total of 5,120 additional acres of state land. The additional area applied for shall be
7 in multiples of 40 acres, and the application shall contain a statement that the granting
8 of a lease for additional land is necessary for the person to carry on business
9 economically and is in the public interest. On the filing of the application, except as
10 provided by AS 38.05.180(ff)(3) or 38.05.180(gg) [AS 38.05.177(a)(2)(C)], the coal
11 deposits in the land covered by the application shall be temporarily set aside and
12 withdrawn from all other forms of disposal provided under AS 38.05.135 - 38.05.181.

13 * Sec. 24. AS 38.05.140(f) is amended to read:

14 (f) The submerged and shoreland lying north of 57 degrees, 30 minutes, North
15 [NORTH] latitude and east of 159 degrees, 49 minutes, West [WEST] longitude
16 within the Bristol Bay drainage are designated as the Bristol Bay Fisheries Reserve.
17 Within the Bristol Bay Fisheries Reserve, a [NO] surface entry permit to develop an
18 oil or gas lease or an [OIL AND GAS] exploration license under AS 38.05.131 -
19 38.05.134 may not be issued on state owned or controlled land until the legislature by
20 appropriate resolution specifically finds that the entry will not constitute danger to the
21 fishery.

22 * Sec. 25. AS 38.05.150(f) is amended to read:

23 (f) Notwithstanding AS 38.05.132(a), 38.05.180(ff), or 38.05.180(gg)
24 [AS 38.05.177], a lease entered into under this section gives the lessee the right to vent
25 or remove methane and other gas held in association with the coal in the land covered
26 by the lease to ensure safe coal mining operations.

27 * Sec. 26. AS 38.05.177(a) is amended to read:

28 (a) The provisions of this section

29 [(1)] apply to nonconventional gas [, WHETHER METHANE
30 ASSOCIATED WITH AND DERIVED FROM COAL DEPOSITS OR
31 OTHERWISE, FROM A FIELD IF A PART OF THE FIELD IS WITHIN 3,000

Amend
#1

1 FEET OF THE SURFACE; AND

2 (2) DO NOT APPLY TO AUTHORIZE LEASE OF

3 (A) LAND

4 (i) THAT IS SUBJECT TO AN OIL AND GAS
5 EXPLORATION LICENSE OR LEASE ISSUED UNDER
6 AS 38.05.131 - 38.05.134; OR

7 (ii) THAT IS LEASED UNDER AS 38.05.180;

8 (B) THE LAND (i) THAT IS PROPOSED TO BE SUBJECT
9 TO AN OIL AND GAS EXPLORATION LICENSE OR LEASE ISSUED
10 UNDER AS 38.05.131 - 38.05.134; OR (ii) THAT IS DESCRIBED IN AND
11 PART OF A PROPOSED OIL AND GAS LEASING PROGRAM
12 PREPARED UNDER AS 38.05.180(b); HOWEVER, THE COMMISSIONER
13 MAY WAIVE THE LIMITATIONS OF THIS SUBPARAGRAPH;

14 (C) THE LAND THAT IS HELD UNDER A COAL LEASE
15 ENTERED INTO UNDER AS 38.05.150, UNLESS THE APPLICANT FOR
16 A SHALLOW NATURAL GAS LEASE IS ALSO THE LESSEE UNDER
17 AS 38.05.150 OF THAT LAND; OR

18 (D) THE VALID EXISTING SELECTIONS OF THE
19 ALASKA MENTAL HEALTH TRUST AUTHORITY MADE FOR THE
20 PURPOSE OF RECONSTITUTING THE MENTAL HEALTH TRUST
21 ESTABLISHED UNDER THE ALASKA MENTAL HEALTH ENABLING
22 ACT, P.L. 84-830, 70 STAT. 709 (1956), THAT BECOME SUBJECT TO
23 MANAGEMENT UNDER AS 38.05.801, OR OF LAND THAT HAS BEEN
24 DESIGNATED BY LAW FOR OR IS SUBJECT TO DESIGNATION FOR
25 CONVEYANCE TO THE ALASKA MENTAL HEALTH TRUST
26 AUTHORITY; HOWEVER, AFTER CONSULTATION WITH THE
27 ALASKA MENTAL HEALTH TRUST AUTHORITY, THE
28 COMMISSIONER MAY WAIVE THE LIMITATIONS OF THIS
29 SUBPARAGRAPH].

30 * Sec. 27. AS 38.05.177(d) is amended to read:

31 (d) A lease

1 (1) shall be automatically extended if and for so long thereafter as gas
 2 is produced in paying quantities from the lease and the lessee continues to meet all
 3 requirements of the lease; a [. A] lease issued under this section covering land on
 4 which there is a well capable of producing gas in paying quantities does not expire
 5 because the lessee fails to produce gas unless the lessee is allowed reasonable time to
 6 place the well on a producing status; if [. IF] drilling has commenced on the
 7 expiration date of the primary term of the lease and is continued with reasonable
 8 diligence, including such operations as redrilling, sidetracking, or other means
 9 necessary to reach the originally proposed bottom hole location, the lease is extended
 10 for one year and for so long thereafter as gas is produced in paying quantities; a [. A]
 11 gas lease issued under this section that is subject to termination by reason of cessation
 12 of production does not terminate if, within 90 days after production ceases or a longer
 13 period determined at the discretion of the director, reworking or drilling operations are
 14 commenced on the land under lease and are thereafter conducted with reasonable
 15 diligence during the period of nonproduction; on application by the lessee, the
 16 director may extend the lease issued under this section for a period of not more
 17 than 10 years if the gas produced from the lease is to be used by the lessee solely
 18 for its mining operations;

19 (2) issued under former (c) of this section before January 1, 2004,
 20 may be extended at the discretion of the director; a lease may be extended under
 21 this paragraph [. IN ADDITION,] upon application by the lessee; [,] the director
 22 may once extend the [A] lease [ISSUED UNDER (c) OF THIS SECTION] for a
 23 period of not more than three years; in exercising discretion to extend a lease under
 24 this paragraph, the director may not extend the lease unless the director
 25 considers

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

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

31 (C) whether extension of the lease's primary term will