

SCOMM

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LEGAL SERVICES

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MEMORANDUM

February 16, 2004

SUBJECT: CSHB 395(O&G) and CSHB 420(O&G), measures relating to shallow natural gas leasing and the regulation of shallow natural gas operations -- sectional analyses (Work Order No. 23-LS1314V)

TO: Representative Vic Kohring, Chair
House Special Oil and Gas Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes

Eric Musser has requested preparation of a sectional analysis for each of the above-captioned bills. The text of the two committee substitutes provided to your committee is identical.

Changes to the section authorizing shallow natural gas leasing (AS 38.05.177) --

Bill section 5 amends AS 38.05.177(c) relating to requirements of notice. The first insertion (page 4, lines 14 - 18) modifies the minimal public notice requirements when a lease application has been received. The second (page 4, lines 19 and 20) acknowledges that the director of the division of land should actually consider public comment that may be received. The substitution of "may" for "shall" at page 4, line 22, alters the scope of the director's authority to act, changing it from an act that is mandatory if the standard is met to one as to which the director may exercise discretion. Finally, at page 4, lines 25 - 30, the director is barred from issuing the lease unless the director follows up with public notice of intent to award, the minimum requirements of which are spelled out.

Bill section 6 amends AS 38.05.177(f) to add a series of additional requirements that must be inserted in a shallow natural gas lease, to include (in paragraph (2)) a requirement that the lessee conduct certain water well tests; (in paragraph (3)) required setbacks applicable to compressor stations that are appropriate to the lease; (in paragraph (4)) appropriate noise mitigation measures; and (in paragraph (5)) surface restoration requirements, if the surface is disturbed by exploration or development operations.

Bill section 8: This bill section amends AS 38.05.177(k). In instances in which an owner and a lessee cannot reach agreement for the latter's entry on to property to explore for and develop shallow natural gas and the lessee seeks to post a bond to permit entry, the first amendment (page 7, lines 16 - 24) adds a further requirement that the lessee demonstrate "that access and entry upon the land of the owner is reasonably necessary or convenient" to secure the lessee's rights, and the second amendment (page 7, lines 25 -

27) requires the lessee to provide 30 days' advance notice of initial entry on to an owner's property.

Bill section 9 adds three new subsections.

The language of subsection (p) expands upon the procedures currently applicable to securing protection against damages insofar as those procedures relate to shallow natural gas exploration and development activities:

-- Under paragraph (1), if the owner and lessee come to an agreement as to the lessee's entry, the terms of the agreement are to incorporate the requirements spelled out in AS 38.05.177(f), amended earlier in the bill.

-- Under paragraph (2), if the parties can't agree and the lessee seeks determination of the amount of a surety bond in order to proceed, in conjunction with the director's determination, the owner may provide comments about the appropriate location of improvements to be made on the owner's property.

Subsection (q) adds material to protect private water well sources through reimbursement for costs of correcting contamination or alteration of a water well or digging a new well. The source of the reimbursement is an exaction described below, with the sums received accounted for and separately held. To secure payment of a claim, there are two conditions that must be met. The owner must maintain the record of the tests initiated by the lessee to measure well water purity and flow. Thereafter, if the lessee initiates operations on the owner's property or adjacent property within 1500 feet of the owner's well and the owner suffers damage or injury to the well based on "activities [that] appear to be probable hydrologic consequences of the lessee's activities on the lease," the owner may file a claim with the commissioner of natural resources to recover against the damages or injuries. The subsection authorizes the commissioner to remit amounts to the lessee that were paid by the lessee if no claim is filed against the lessee for activities while operations are active or during the five year period following the shallow natural gas well's closure.

Subsection (r) supplies a definition for "owner" for relevant subsections in which the term is used.

Changes relating to shallow natural gas activity oversight by the Alaska Oil and Gas Conservation Commission --

Bill section 1: The addition to AS 31.05.030(e) by this bill section adds to the authority of the Alaska Oil and Gas Conservation Commission the ability to regulate hydraulic fracturing associated with exploration for and recovery of shallow natural gas to assure that reinjected water does not contaminate supplies of potable water or water for agricultural purposes.

Bill section 2: In conjunction with shallow natural gas exploration and recovery, this section adds a new provision directing the Alaska Oil and Gas Conservation Commission to initiate a public forum process to resolve informally of public health, safety, welfare, and environmental complaints. The provision sets out the minimal procedural requirements for informal resolution of complaints. The committee added language (page 2, lines 23 and 24) requiring the informal resolution of complaints within 60 days of the filing of the complaints. If informal resolution of a complaint is unsuccessful, the commission may schedule and act on petition concerning the complaint under procedures in place for commission review of matters subject to its jurisdiction.

Standardized references --

Bill section 7: The amendment language standardizes reference to allowable depths from which shallow natural gas may be recovered, setting a presumptive maximum of 3,000 feet but allowing the commissioner of natural resources to exercise discretion to allow recovery at depths of not more than 4,000 feet. Recovery at greater depths requires treatment of the operation under conventional oil and gas lease requirements.

Bill sections 3, 4, 5 (language added at page 5, lines 3 and 4), **12, 13, and 14:** The amendments made in each of these sections are conforming changes that reflect the change described in the paragraph above. They eliminate, in the respective definitions of or references to "shallow natural gas," the reference to recovery of natural gas from a depth of up to 4,000 feet and replace it with a reference to 3,000 feet, subject to the commissioner's discretion to allow recovery from a greater depth under AS 38.05.177(j), as described above.

Other matters --

Bill section 10: This new bill section imposes an exaction against producers of one cent per thousand cubic feet of produced shallow natural gas removed from a lease, not including production of state royalty gas. The maximum amount authorized for collection is \$250,000. If the balance in the account to which the exaction is deposited exceeds \$250,000, levy and collection of the exaction is suspended. Thereafter, if claims paid out under AS 38.05.177(q), added in bill section 9, reduce the account balance to less than \$250,000, levy and collection of the exaction begins again until the account balance is restored to \$250,000. The exaction is subject to standard enforcement and collection procedures under AS 43.

Bill section 11: The amendment shown is a conforming change necessitated by renumbering of provisions in bill section 1.

Bill section 15 gives the measure a July 1, 2004, effective date.



ALASKA STATE LEGISLATURE

REPRESENTATIVE JOHN HARRIS

STATE CAPITOL 505 JUNEAU, ALASKA 99801-1182 (907)465-4859

House Bill 395 Sponsor Statement

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

Many concerns have been raised recently by residents of the Mat-Su Borough and Homer area through a series of public forums. All sponsors worked diligently, listening to public input from numerous community hearings, while drafting this legislation. It is the responsibility of the State to find a balance, where possible, between the rights of property owners and responsible resource development.

This bill requires that:

- 1) Public comment and other routes of access be considered prior to executing a lease.
- 2) The integrity of the affected water supply is protected.
- 3) Public notice be given prior to the award of a lease.
- 4) Monthly fees are paid to the owner per wellhead/compressor.
- 5) The owner's surface property be restored in the event of damage.
- 6) Noise from field operation is mitigated.

Finally, language is proposed to close current regulatory loopholes allowing the operators to extract natural gas deeper than the 3,000 foot definition of shallow natural gas. This clarification is necessary to provide Alaskans the guarantee that conventional natural gas resources will not be extracted without going through the competitive bid process.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB395-DNR-O&G-02-04-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title: Shallow Natural Gas RDU: Resource Development
Component: Oil and Gas Development
Sponsor: Harris, Gatto, Stoltze, Seaton
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	9.4	9.4	9.4	9.4	9.4	9.4
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	9.4	9.4	9.4	9.4	9.4	9.4

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	9.4	9.4	9.4	9.4	9.4	9.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	9.4	9.4	9.4	9.4	9.4	9.4

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 395 would make a number of changes to the state's shallow natural gas leasing program including additional public notice requirements; required surface use fees; setbacks, noise mitigation, and reclamation requirements; and a special provision for damages.

Under Section 4 of the bill, additional public notification beyond that already carried out by DNR would be required. Specifically, this would require DNR to publish notice in papers of general circulation in the affected area two additional times beyond what is currently done when giving notice of a shallow natural gas application and calling for public comments. In addition, the bill would require DNR to publish notice of intent to award the lease at least three times in at least two papers of general circulation in the area of the proposed action at intervals of not less than five days between publications.

Prepared by: Mark D. Myers Phone: 269-8800
Division: Oil and Gas Date/Time: 2/4/04
Approved by: Thomas Irwin, Commissioner Date: 2/4/04
Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB395-DNR-O&G-02-04-04

ANALYSIS CONTINUATION

Total number of additional publications of notice: 5 x 2 papers.

The Anchorage Daily News has general circulation in all areas of the state. The cost for a legal notice is \$404 per day (weekday).
 $5 \times \$404 = \$2020$

Publication cost in a local paper is estimated at \$225 (Frontiersman was used as an estimate) per day. $5 \times \$225 = \$1125$

Combined total: \$3145

Last year, DNR processed three groups of applications in calendar year 2003 (DNR tries to group applications to cut down on noticing costs). $3 \times \$3145 = \$9435$

** Indeterminate Negative Amount: The wording in Section 9 may make the state liable for any damages that may occur to the surface owners property. If this is the case, it is impossible at this time to determine the negative fiscal impact to the state.

HB 395 Sectional Analysis

Section 1: The addition to AS 31.05.030(e) by this section adds to the authority of the Alaska Oil and Gas Conservation Commission the ability to regulate hydraulic fracturing associated with exploration for and recovery of shallow natural gas to assure that reinjected water does not contaminate supplies of drinking water or water for agricultural purposes.

Section 2: In conjunction with shallow natural gas exploration and recovery, this section adds a new provision directing the Alaska Oil and Gas Conservation Commission to initiate a public forum process to informally resolve issues of public health, safety, welfare, and environmental complaints.

The provision sets out the minimal procedural requirements for a resolution of complaints. If the resolution of a complaint is unsuccessful, the commission may schedule and act on petition concerning the complaint under procedures in place for commission review of matters subject to its jurisdiction.

Sections 3 & 9: The amendments made in each of these sections eliminate, in the respective definitions of "shallow natural gas", the reference to recovery of natural gas from a depth of up to 4,000 feet and replace it with a reference to 3,000 feet. The amendment standardizes references to depth of recovery.

Section 4: Amends AS 38.05.177(c). The first insertion (page 3, lines 10 – 14) modifies the minimal public notice requirements when a lease application has been received. The second (page 3, lines 15 – 16) acknowledges that the director of the division of land should consider public comment that may be received. The substitution of "may" for "shall" at line 17 alters the scope of the director's authority to act, changing it from an act that is mandatory if the standard is met to one where the director may exercise discretion.

Finally at page 3, lines 21 – 26, the director is barred from issuing the lease unless the director *follows up* with public notice of intent to award.

Section 5: Amends AS 38.05.177(f) to add a series of additional requirements that must be inserted in a shallow natural gas lease, to include (in paragraph (2)) required payments of fees by a lessee to an owner; (3) setbacks applicable to compressor stations that are appropriate to the lease; (4) appropriate noise mitigation measures; and (5) surface restoration requirements, if the surface is disturbed by exploration or development operations.

Section 6: Adds language to clarify that gas recoverable from a depth of more than 3,000 feet may occur only under a conventional lease issued under AS 38.05.180.

Section 7: In instances in which an owner and a lessee cannot reach agreement for the latter's entry on to property to explore for and develop shallow natural gas and the lessee

seeks to post a bond to permit entry, the amendment (page 6, lines 9 – 17) adds a further requirement that the lessee demonstrate “that access and entry upon the land of the owner is reasonable, necessary or convenient” to secure the lessee’s rights.

Section 8: Adds two new subsections.

The language of subsection (p) expands upon the procedures currently applicable to securing protection against damages insofar as those procedures relate to shallow natural gas exploration and development activities:

Under subparagraph (1)(A), if the owner and lessee come to an agreement as to the lessee’s entry, the terms of the agreement are to incorporate the requirements spelled out in AS 38.05.177(f), amended earlier in this bill.

Under (1)(B), if the parties can’t agree and the lessee seeks determination of the amount of a surety bond in order to proceed, in conjunction with the director’s determination, the owner may provide comments about the appropriate location of improvements to be made on the owner’s property.

Under subparagraph (2)(A), if the owner and lessee come to an agreement as to the lessee’s entry, the terms of the agreement should make provision for damages in the event of injury to the owner’s water sources.

Under (2)(B), if the parties can’t agree and the lessee seeks determination of the amount of a surety bond in order to proceed, in conjunction with the director’s determination, the terms of the agreement should make provision for damages in the event of injury to the owner’s water sources, as the director determines, but may not be less than \$25,000.

Subsection (q) supplies a definition for “owner” for relevant subsections in which the term is used.

Sections 10 & 11: AS 31.05.125 and AS 38.05.177(n), added in 2003, authorized the commissioner of natural resources to approve a waiver of local planning authority approval and requirements relating to compliance with local ordinances and regulations if the Department of Natural Resources clearly demonstrates an overriding state interest. These provisions are proposed for repeal. In the same 2003 vehicle that added these provisions, language adding section 7 to the bill’s legislative findings was inserted. The amendment made in bill section 10 reverses that addition.