

SCOMM

148:9



LEGISLATIVE BUDGET & AUDIT COMMITTEE

Representative Ralph Samuels, Chairman

SPONSOR STATEMENT

CS for HOUSE BILL 183

"An Act relating to the regulation and permitting of drilling and other operations by the Alaska Oil and Gas Conservation Commission, to civil penalties assessed by the commission, to reconsideration and appeal of decisions and the allocation of costs in investigations and hearings before the commission, and to information filed with and fees of the commission; and providing for an effective date."

The Alaska Oil and Gas Conservation Commission (AOGCC) requested legislation that would make several needed updates and improvements to Title 31, its governing statute.

CS for House Bill 183 would accomplish the following:

1. Clarify the Commission's authority to regulate underground storage of natural gas. Gas storage is a way of dealing with seasonal variations in demand. Although the Commission clearly has statutory authority to regulate other types of underground injection related to oil & gas operations, the statute is unclear as to the Commission's authority with respect to gas storage.
2. Clarify that the Commission's existing authority to regulate various types of oil and gas operations, such as drilling and plugging wells and disposing of oil field wastes, may be for public health and safety purposes as well as conservation purposes. Currently, the statute uses the phrase "for conservation purposes." While this is a broad concept, there are aspects of the Commission's mission, such as preventing well blowouts or explosions that clearly impact public health and safety. There should be no question that the latter are appropriate goals of Commission oversight of oil field operations, and the bill would make this explicit.

3. Make a "mid-course correction" in a regulatory program concerning nonconventional gas, in particular, coal bed methane. One of the new requirements is for the operator of a well used for production **or production testing** of coal bed methane "to design and implement a water well testing program to provide baseline data on water quality and quantity." However, production testing is a short-term activity that would not have a significant impact on aquifers. Moreover, production testing often occurs during exploratory activities and is very low risk to the environment, before an operator has any idea whether a prospect may ultimately be developed and put in production. Requiring an operator to design and implement a water well testing program at this early stage is an unnecessary burden that will discourage exploration without providing an offsetting public benefit. The bill would therefore modify this requirement to apply only to regular production of coal bed methane, not production testing.

4. Update the reconsideration and appeals provision. There is a conflict between the judicial appeal provisions of the Alaska Oil and Gas Conservation Act, which date essentially unchanged from a territorial enactment in 1955, and the more modern and streamlined uniform appeal provisions of the judiciary statute. The Commission has taken the position that the judiciary statute superseded the earlier territorial enactment, and the Supreme Court recently upheld that position in *Allen v. Alaska Oil and Gas Conservation Commission*, 139 P3d 564 (Alaska 2006). This bill would eliminate the outmoded territorial provisions and leave appeals from Commission decisions to be governed by the uniform procedures of the judiciary statute and Rules of Appellate Procedure.

5. Deletes the requirement that an applicant pay a \$100 fee for a permit to drill a well in this state. For some years the Commission has been fully funded by the regulated industry through a regulatory cost charge. The costs associated with permitting are more efficiently collected as part of the overall regulatory cost charge rather than by subtracting an **estimate** of the fees that might be generated in the coming year.

6. Narrows the data that would be subject to a 24-month period of confidentiality to only the data from "exploratory" and "stratigraphic test" wells; and, to those portions of applications for permits to drill such wells that the commission determines contain proprietary information. This change is consistent with the regulatory practice in most other oil and gas producing states that does not afford confidentiality to well data in established oil and gas fields.

7. Adds a new subsection (f) to clarify that information "voluntarily" provided under subsection (d) of this section does not apply to information submitted in connection with a petition for a Commission order or in connection with a hearing. This is consistent with Commission practice which requires the applicant to make a showing that the information is entitled to confidentiality under another provision of law as one would, for example, for proprietary information or trade secrets.

8. Updates the penalty section by increasing the penalty amounts available to the Commission and adds a specific list of criteria for the Commission to consider in determining the amount of a penalty. The bill would change the maximum amount of a penalty from \$5,000 a day for each day of violation, to provide for a civil penalty of ***no more than \$100,000 for an initial violation, and, no more than \$10,000 a day for each day thereafter on which the violation continues.*** It also increases the civil penalty for natural gas that is flared, vented or otherwise determined to be waste from the fair market value to two times the fair market value. It also adds a new subsection setting out factors to be used in determining the amount of a penalty.

9. Makes a few housekeeping changes like substituting the Commission for an outdated reference to the Department of Natural Resources (the Department of Natural Resources has independent authority in Title 38), updating the classification of wells, and substituting ***for which a permit to drill has been issued by the commission*** where it is more efficient than listing each type of well subject to the Commission's authority.



LEGISLATIVE BUDGET & AUDIT COMMITTEE

Representative Ralph Samuels, Chairman

SECTIONAL ANALYSIS

CS for House Bill 183

Section 1. Statement of intent

- (a) Confirms that AS 22.10.020(d), or court rules, have superseded inconsistent appeal provisions of AS 31.05.080; and
- (b) Confirms that civil penalties may be administratively assessed by the Commission.

Section 2. Substitutes the language "for which a permit to drill has been issued by the commission" to capture all wells under the commission's regulatory authority rather than listing each type of well in (d)(2) and substitutes the word commission for an outdated reference to the Department of Natural Resources in (d)(7).

Section 3. Clarifies that the commission may regulate drilling and other oil and gas operations not only for conservation purposes but, as in the case of preventing blowouts or explosions, for public health and safety purposes under (e)(l).

(e)(l)(B) substitutes more precise terminology for the term "shooting."

(e)(l)(G) clarifies the commission's authority to regulate underground natural gas storage.

Section 4. Updates the various classifications of wells regulated by the Commission, to allow the Commission to more precisely classify each well and to reflect the increasing complexity of oil and gas drilling operations.

Section 5. Slightly narrows a requirement enacted in 2004 relating to coal bed methane operations. The 2004 enactment requires a water well testing program whenever a well is drilled for production **or production testing** of coal bed methane. Production testing is a short-term operation that may occur during the exploration phase and presents minimal risk to the environment. Requiring a water well testing program in such circumstances may discourage exploration with no significant offsetting benefit to the public. The bill therefore would modify the requirement to apply only where a well will be used for regular production of coal bed methane.

Section 6. Substitutes the language "for which a permit to drill has been issued by the commission" to capture all wells under the commission's regulatory authority rather than listing each type of well.

Section 7. Narrows the data that would be subject to a 24-month period of confidentiality to only the data from "exploratory" and "stratigraphic test" wells; and, to those portions of applications for permits to drill such wells that the commission determines contain proprietary information. This change is consistent with the regulatory practice in most other oil and gas producing states that does not afford confidentiality to well data in established oil and gas fields.

Section 8. Adds a new subsection (f) to clarify that information "voluntarily" provided under subsection (d) of this section does not apply to information submitted in connection with a petition for a Commission order or in connection with a hearing. This is consistent with Commission practice which requires the applicant to make a showing that the information is entitled to confidentiality under another provision of law as one would, for example, for proprietary information or trade secrets.

Section 9. The current statute uses the term "rehearing" and in accordance with more modern usage, the bill substitutes the term "reconsideration" for "rehearing."

Section 10. Clarifies that a person who has applied for reconsideration and who is dissatisfied with the disposition of the application for reconsideration may appeal to the Superior Court. The questions reviewed on appeal are limited to the questions presented to the Commission by the application for reconsideration. This section and section 15 update the appeal provisions of the existing statute by eliminating outmoded procedures that were enacted before statehood and clarifying that appeals from the Commission decisions are subject to the uniform procedures established in the judiciary statute, AS 22.10.020(d), and the Rules of Appellate Procedure.

Section 11. Allows the Commission to allocate costs of time incurred by Commission staff for investigation or hearings.

Section 12. Deletes the requirement that an applicant pay a \$100 fee for a permit to drill a well in this state. The Commission has been fully funded by the regulated industry through a regulatory cost charge. The costs associated with permitting are more efficiently collected as part of the overall regulatory cost charge rather than by subtracting an estimate of the fees that might be generated in the coming year.

This section also clarifies the types of wells that require a permit from the Commission and requires the Commission to consider the nature and magnitude of violations by an applicant if a permit is denied.

Section 13. Deletes the reference to the \$100 fee for the permit to drill from the regulatory cost charge formula.

Section 14. Updates the penalty section by increasing the penalty amounts available to the Commission. This section would change the penalty from \$5,000 a day for each day of violation to ***no more than a \$100,000 for the initial violation, and, no more than \$10,000 a day for each day thereafter on which the violation continues.***

Makes clear that civil penalties may be administratively assessed by the Commission and if not paid are recoverable by a lawsuit filed by the attorney general on behalf of the Commission.

Increases the civil penalties for natural gas that is flared, vented, or otherwise determined to be waste from the fair market value to two times the fair market value.

Adds a new subsection setting out the factors to be used in determining the amount of a penalty.

Section 15. AS 31.05.080(c), and AS 31.05.080(d) are repealed to eliminate outmoded procedures that were enacted before statehood.

Section 16. Adds a revisors' instruction to change the heading of AS 31.05.080 from "Rehearings and appeals" to "Reconsiderations and appeals."

Section 17. Provides for an immediate effective date under AS 01.01.070(c).

CS FOR HOUSE BILL NO. 183(O&G)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the regulation and permitting of drilling and other operations by the**
2 **Alaska Oil and Gas Conservation Commission, to civil penalties assessed by the**
3 **commission, to reconsideration and appeal of decisions and the allocation of costs in**
4 **investigations and hearings before the commission, and to information filed with and**
5 **fees of the commission; and providing for an effective date."**

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

7 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 LEGISLATIVE INTENT OF SECS. 10, 14, AND 15 OF THIS ACT. (a) It is the
10 intent of the legislature through secs. 10 and 15 of this Act to confirm by clarification that
11 AS 22.10.020(d), or court rules, have superseded inconsistent provisions of AS 31.05.080(b)
12 as they existed the day before the effective date of this Act.

13 (b) It is the intent of the legislature through the enactment of AS 31.05.150(f) in sec.

1 14 of this Act to confirm by clarification the long-standing interpretation of AS 31.05.150(d),
2 as that section read before the effective date of this Act, by the Alaska Oil and Gas
3 Conservation Commission that civil penalties may be administratively assessed by the
4 commission and if not paid are recoverable by suit in the appropriate superior court as
5 determined by court rules.

6 * **Sec. 2.** AS 31.05.030(d) is repealed and reenacted to read:

7 (d) The commission may require

8 (1) identification of ownership of wells, producing leases, tanks,
9 plants, and drilling structures;

10 (2) the making and filing of reports, well logs, drilling logs, electric
11 logs, lithologic logs, directional surveys, and all other subsurface information on a
12 well for which a permit to drill has been issued by the commission, subject to the
13 following:

14 (A) the reports required to be filed by the commission under
15 this paragraph shall be filed within 30 days after the completion, abandonment,
16 or suspension of the well; and

17 (B) the well logs, drilling logs, electric logs, lithologic logs,
18 directional surveys, and all other information required to be filed by the
19 commission under this paragraph shall be filed within 90 days after the
20 completion, abandonment, or suspension of the well, unless extended by the
21 commission on request;

22 (3) the drilling, casing and plugging of wells in a manner that will
23 prevent the escape of oil or gas out of one stratum into another, the intrusion of water
24 into an oil or gas stratum, the pollution of fresh water supplies by oil, gas or salt water,
25 and prevent blowouts, cavings, seepages and fires;

26 (4) the furnishing of a reasonable bond with sufficient surety
27 conditions for the performance of the duty to plug each dry or abandoned well or the
28 repair of wells causing waste;

29 (5) the operation of wells with efficient gas-oil and water-oil ratios,
30 and may fix these ratios;

31 (6) the gauging or other measuring of oil and gas to determine the

1 quality and quantity of oil and gas;

2 (7) every person who produces oil or gas in the state to keep and
3 maintain for a period of five years in the state complete and accurate records of the
4 quantities of oil and gas produced, which shall be available for examination by the
5 commission at all reasonable times;

6 (8) the measuring and monitoring of oil and gas pool pressures;

7 (9) the filing and approval of a plan of development and operation for
8 a field or pool to prevent waste, ensure a greater ultimate recovery of oil and gas, and
9 protect the correlative rights of persons owning interests in the tracts of land affected.

10 * Sec. 3. AS 31.05.030(e) is amended to read:

11 (e) The commission may regulate

12 (1) for conservation purposes and, to the extent not in conflict with
13 regulation by the Department of Labor and Workforce Development or the
14 Department of Environmental Conservation, for public health and safety
15 purposes,

16 (A) the drilling, producing, and plugging of wells;

17 (B) the perforating, fracture simulation, [SHOOTING] and
18 chemical treatment of wells;

19 (C) the spacing of wells;

20 (D) the disposal of salt water, nonpotable water, and oil field
21 wastes;

22 (E) the contamination or waste of underground water;

23 (F) the quantity and rate of the production of oil and gas from a
24 well or property; this authority shall also apply to a well or property in a
25 voluntary cooperative or unit plan of development or operation entered into in
26 accordance with AS 38.05.180(p);

27 (G) the underground injection of gas for purposes of
28 storage;

29 (2) the disposal of drilling mud, cuttings, and nonhazardous drilling
30 operation wastes in the annular space of a [AN OIL OR GAS] well for which a
31 permit to drill has been issued by the commission [OR IN THE ANNULAR

1 SPACE OF A WATER WELL ASSOCIATED WITH OIL OR GAS
 2 EXPLORATION AND PRODUCTION]; in this paragraph, a "nonhazardous drilling
 3 operation waste" means a waste, other than a hazardous waste identified by the
 4 Environmental Protection Agency in 40 C.F.R., Part 261, its regulation identifying and
 5 listing hazardous wastes, associated with the act of drilling a [AN OIL OR GAS] well
 6 for exploratory or production purposes.

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

8 (f) The commission may classify a well or a specific portion of a well
 9 [WELLS] as an exploratory, development, service, or stratigraphic test well and
 10 may classify a development well as an oil or gas well [WELLS] for purposes
 11 material to the interpretation or enforcement of this chapter.

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

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

15 (1) may not

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

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

23 (2) shall

24 (A) regulate hydraulic fracturing in nonconventional gas wells
 25 to ensure [ASSURE] protection of drinking water quality;

26 (B) regulate the disposal of wastes produced from the
 27 operations unless the disposal is otherwise subject to regulation by the
 28 Department of Environmental Conservation or the United States
 29 Environmental Protection Agency;

30 (C) [REPEALED

31 (D)] as a condition of approval of a permit to drill a well for

1 regular production [OR PRODUCTION TESTING] of coal bed methane,
 2 require the operator to design and implement a water well testing program to
 3 provide baseline data on water quality and quantity; the commission shall
 4 make the results of the water well testing program available to the public.

5 * **Sec. 6.** AS 31.05.035(a) is amended to read:

6 (a) For all wells for which a permit to drill has been issued by the commission
 7 [SINCE JANUARY 3, 1959], the commission may require:

8 (1) the making and filing of reports, well logs, drilling logs, electric
 9 logs, lithologic logs, directional surveys, and all other subsurface information on a
 10 well for which a permit to drill has been issued by the commission [DRILLED
 11 FOR OIL OR GAS, OR FOR THE DISCOVERY OF OIL OR GAS, OR FOR
 12 GEOLOGIC INFORMATION];

13 (2) the filing of flow test information and all logs, except experimental
 14 logs and velocity surveys run on a well and not required by (1) of this subsection; and

15 (3) the operator to make available for copying the digitized log
 16 information, if it is available, on any log required to be filed under (1) or (2) of this
 17 subsection.

18 * **Sec. 7.** AS 31.05.035(c) is amended to read:

19 (c) The reports and information required in (a) of this section that relate to an
 20 exploratory or stratigraphic test well and those portions of an application for a
 21 permit to drill an exploratory or stratigraphic test well that the commission
 22 determines contain proprietary engineering or geotechnical information shall be
 23 kept confidential for 24 months following the 30-day filing period unless the owner of
 24 the well gives written permission to release the application and reports and
 25 information at an earlier date. If the commissioner of natural resources finds that the
 26 required reports and information contain significant information relating to the
 27 valuation of unleased land in the same vicinity, the commissioner shall keep the
 28 reports and information confidential for a reasonable time after the disposition of all
 29 affected unleased land, unless the owner of the well gives written permission to
 30 release the reports and information at an earlier date. Well surface and bottom hole
 31 locations [LOCATION], well depth, well status, [AND] production data, and

1 production reports required by the commission to be filed subsequent to the 30-day
 2 filing period shall be considered public information and may not be classified
 3 confidential. Production data, as used in this subsection, means volume, gravity and
 4 gas-oil ratio of all production of oil or gas after the well begins regular production.

5 * **Sec. 8.** AS 31.05.035 is amended by adding a new subsection to read:

6 (f) Confidentiality under (d) of this section is not applicable to information
 7 submitted with or as part of a petition for a commission order or to information
 8 submitted for or as part of a hearing before the commission.

9 * **Sec. 9.** AS 31.05.080(a) is amended to read:

10 (a) Within 20 days after written notice of the entry of an order or decision of
 11 the commission, or such further time as the commission grants for good cause shown,
 12 a person affected by it may file with the commission an application for
 13 reconsideration [THE REHEARING IN RESPECT] of the matter determined by the
 14 order or decision, setting out [FORTH] the respect in which the order or decision is
 15 believed to be erroneous. The commission shall grant or refuse the application in
 16 whole or in part within 10 days after it is filed, and failure to act on it within this
 17 period is a refusal of it and a final disposition of the application. If reconsideration
 18 [THE HEARING] is granted, the commission may enter a new order or decision after
 19 reconsideration [REHEARING] as may be required under the circumstances.

20 * **Sec. 10.** AS 31.05.080(b) is repealed and reenacted to read:

21 (b) A person who has applied for reconsideration and is dissatisfied with the
 22 disposition of the application for reconsideration may appeal to the superior court. The
 23 questions reviewed on appeal are limited to the questions presented to the commission
 24 by the application for reconsideration.

25 * **Sec. 11.** AS 31.05.085(a) is amended to read:

26 (a) During a hearing or investigation held under this chapter, the commission
 27 may allocate the costs of the hearing or investigation among the parties, including the
 28 commission, as is just under the circumstances. In allocating costs, the commission
 29 shall consider the regulatory cost charge paid by a person under AS 31.05.093 and
 30 may consider the results, evidence of good faith, other relevant factors, and mitigating
 31 circumstances. The costs allocated may include

(1) the costs of any time devoted to the investigation or hearing by hired consultants, whether or not the consultants appear as witnesses or participants; [AND]

(2) any out-of-pocket expenses incurred by the commission in the particular proceeding; and

(3) when the investigation or hearing relates to a violation of a provision of this chapter, a regulation adopted under this chapter, or an order, stipulation, or term of a permit issued by the commission, the costs of any time devoted to the investigation or hearing by the commission staff.

* **Sec. 12.** AS 31.05.090 is repealed and reenacted to read:

Sec. 31.05.090. Permits to drill wells. (a) A person must apply for and receive a permit from the commission before drilling

(1) a well in search of oil or gas;

(2) a well in support of the recovery or production of oil or gas;

(3) an underground injection well for the purpose of gas storage; or

(4) an underground injection well for which the state has acquired primary enforcement responsibility under AS 31.05.030(h).

(b) A person must submit a separate permit application for each well. The permit application must be in the form required by the commission and include all information required by the commission.

(c) After receiving an application under (b) of this section, the commission shall promptly approve or deny the application for a permit to drill.

(d) In making a determination under (c) of this section, the commissioner shall consider whether the

(1) proposed well is contrary to law, a provision of this chapter, a regulation adopted under this chapter, or an order, stipulation, or term of a permit issued by the commission; or

(2) applicant is in violation of a provision of this chapter, a regulation adopted under this chapter, or an order, stipulation, or term of a permit issued by the commission and the magnitude of such violation.

* **Sec. 13.** AS 31.05.093(c) is amended to read:

(c) The commission shall determine the regulatory cost charges levied under this section so that the total amount to be collected approximately equals the appropriations made for the operating costs of the commission under this chapter for the fiscal year [, LESS THE ESTIMATED TOTAL OF THE FEES TO BE COLLECTED UNDER AS 31.05.090. IF THE AMOUNT THE COMMISSION EXPECTS TO COLLECT UNDER THIS SECTION AND UNDER AS 31.05.090 EXCEEDS THE APPROPRIATIONS MADE FOR THE OPERATING COSTS OF THE COMMISSION UNDER THIS CHAPTER, THE COMMISSION SHALL, BY ORDER, ADJUST THE REGULATORY COST CHARGES SO THAT THE TOTAL AMOUNT OF THE REGULATORY COST CHARGES AND FEES THAT ARE COLLECTED APPROXIMATELY EQUALS THE APPROPRIATIONS MADE FOR THE OPERATING COSTS OF THE COMMISSION UNDER THIS CHAPTER FOR THE FISCAL YEAR].

* **Sec. 14.** AS 31.05.150 is repealed and reenacted to read:

Sec. 31.05.150. Penalties. (a) In addition to the penalties in (b) - (e) of this section, a person who violates a provision of this chapter, a regulation adopted under this chapter, or an order, stipulation, or term of a permit issued by the commission is liable for a civil penalty of not more than \$100,000 for the initial violation and not more than \$10,000 for each day thereafter on which the violation continues.

(b) A person who knowingly commits an act specified in AS 11.46.630(a) for the purpose of evading a provision of this chapter, a regulation adopted under this chapter, or an order, stipulation, or term of a permit issued by the commission, is guilty of a class A misdemeanor.

(c) A person who knowingly aids or abets another person in the violation of a provision of this chapter, a regulation adopted under this chapter, or an order, stipulation, or term of a permit issued by the commission, is subject to the same penalty as that prescribed in this chapter for the violation by the other person.

(d) In addition to the penalties in (a) - (c) and (e) of this section, the commission may impose a civil penalty for each 1,000 cubic feet of natural gas flared, vented, or otherwise determined to be waste as defined in AS 31.05.170. The penalty shall be twice the fair market value of the natural gas at the point of waste.

1 (e) A person who knowingly violates a provision of this chapter, a regulation
2 adopted under this chapter, or an order, stipulation, or term of a permit issued by the
3 commission is guilty of a misdemeanor punishable by a fine of not more than \$10,000
4 a day for each day of violation.

5 (f) The commission may assess the civil penalties provided in this section and,
6 if not paid, the penalties are recoverable by suit filed by the attorney general in the
7 name and on behalf of the commission in the superior court. The payment of a penalty
8 does not relieve a person on whom the penalty is imposed from liability to any other
9 person for damages arising out of the violation.

10 (g) In determining the amount of a penalty assessed under (a) of this section,
11 the commission shall consider

12 (1) the extent to which the person committing the violation was acting
13 in good faith in attempting to comply;

14 (2) the extent to which the person committing the violation acted in a
15 wilful or knowing manner;

16 (3) the extent and seriousness of the violation and the actual or
17 potential threat to public health or the environment;

18 (4) the injury to the public resulting from the violation;

19 (5) the benefits derived by the person committing the violation from
20 the violation;

21 (6) the history of compliance or noncompliance by the person
22 committing the violation with the provisions of this chapter, the regulations adopted
23 under this chapter, and the orders, stipulations, or terms of permits issued by the
24 commission;

25 (7) the need to deter similar behavior by the person committing the
26 violation and others similarly situated at the time of the violation or in the future;

27 (8) the effort made by the person committing the violation to correct
28 the violation and prevent future violations; and

29 (9) other factors considered relevant to the assessment that are adopted
30 by the commission in regulation.

31 * **Sec. 15.** AS 31.05.080(c) and 31.05.080(d) are repealed.

1 *** Sec. 16.** The uncoded law of the State of Alaska is amended by adding a new section to
2 read:

3 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the
4 heading of AS 31.05.080 from "Rehearings and appeals" to "Reconsiderations and appeals."

5 *** Sec. 17.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB183-DOA-AOGCC 3-7-07
 Bill Version: HB183
 () Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Administration

Title Oil and Gas Conservation Commission

RDU AOGCC

Component AOGCC

Sponsor Rules by Request of Leg Budget & Audit

Requester House Oil & Gas

Component No. 2010

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1162 AOGCC Receipts	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is not anticipated to have any fiscal impact on the Alaska Oil and Gas Conservation Commission (AOGCC).

The majority of the amendments are technical revisions involving responsibilities that are already under the purview of the AOGCC. The bill deletes the requirement that an applicant pay a \$100 fee for a permit to drill a well. Since the Commission is fully funded through a regulatory cost charge, it is more efficient to collect these fees as part of the overall regulatory cost charge rather than by subtracting an estimate of the fees to be generated in the coming year and then collecting by individual application. This will also streamline the process for permitting as the Commission moves towards implementing e-permitting.

Prepared by: Jody J. Colombie, Special Assistant I

Division: Alaska Oil and Gas Conservation Commission

Approved by: Rachael Petro, Deputy Commissioner

Agency: Department of Administration

Phone 793-1221

Date/Time 3/7/07 2:00 PM

Date 3/7/07

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Date Referred to Committee: March 7, 2007

Judiciary

Date of Committee Action: April 12, 2007

HB 183

OIL & GAS CONSERVATION COMMISSION

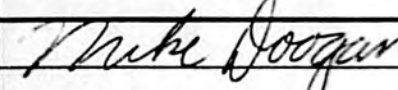
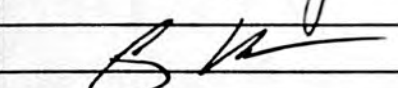
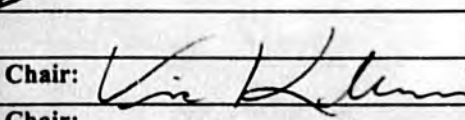
"An Act relating to the regulation and permitting of drilling and other operations by the Alaska Oil and Gas Conservation Commission, to civil penalties assessed by the commission, to reconsideration and appeal of decisions and the allocation of costs in investigations and hearings before the commission, and to information filed with and fees of the commission; and providing for an effective date."

Recommends it be replaced with ☐ HCS or ☒ CS for HB 183 (O+G)
For Senate Bills with new title: ☐ Technical Title ☐ New Title: HCR ☐ Same Title ☐ New Title

[] attach amendments
[] add new referral to _____ Committee
[] Letter of Intent _____ Committee

*List of
Abbrev
for
Depts.:*
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

[illegible][illegible]

Signing with recommendations		Printed Last Name	DP	DNP	NR	AM
		DOOGAN			✓	
		R. AMUNDSON	X			
		Owen KAWA	✓			
					X	
Chair:		Keleny	X			
Chair:						



LEGISLATIVE BUDGET & AUDIT COMMITTEE

Representative Ralph Samuels, Chairman

SPONSOR STATEMENT

HOUSE BILL 193

"An Act relating to the regulation and permitting of drilling and other operations by the Alaska Oil and Gas Conservation Commission, to civil penalties assessed by the commission, to reconsideration and appeal of decisions and the allocation of costs in investigations and hearings before the commission, and to information filed with and fees of the commission; and providing for an effective date."

The Alaska Oil and Gas Conservation Commission (AOGCC) requested legislation that would make several needed updates and improvements to Title 31, its governing statute.

House Bill 183 would accomplish the following:

1. Clarify the Commission's authority to regulate underground storage of natural gas. Gas storage is a way of dealing with seasonal variations in demand. Although the Commission clearly has statutory authority to regulate other types of underground injection related to oil & gas operations, the statute is unclear as to the Commission's authority with respect to gas storage injection.
2. Clarify that the Commission's existing authority to regulate various types of oil and gas operations, such as drilling and plugging wells and disposing of oil field wastes, may be for public health and safety purposes as well as conservation purposes. Currently, the statute uses the phrase "for conservation purposes." While this is a broad concept, there are aspects of the Commission's mission, such as preventing well blowouts or explosions that clearly impact public health and safety. There should be no question that the latter are appropriate goals of Commission oversight of oil field operations, and the bill would make this explicit.

3. Make a "mid-course correction" in a regulatory program concerning nonconventional gas, in particular, coal bed methane. One of the new requirements is for the operator of a well used for production **or production testing** of coal bed methane "to design and implement a water well testing program to provide baseline data on water quality and quantity." However, production testing is a short-term activity that would not have a significant impact on aquifers. Moreover, production testing often occurs during exploratory activities and is very low risk to the environment, before an operator has any idea whether a prospect may ultimately be developed and put in production. Requiring an operator to design and implement a water well testing program at this early stage is an unnecessary burden that will discourage exploration without providing an offsetting public benefit. The bill would therefore modify this requirement to apply only to regular production of coal bed methane, not production testing.

4. Update the reconsideration & appeals provision. There is a conflict between the judicial appeal provisions of the Alaska Oil and Gas Conservation Act, which date essentially unchanged from a territorial enactment in 1955, and the more modern and streamlined uniform appeal provisions of the judiciary statute. The Commission has taken the position that the judiciary statute superseded the earlier territorial enactment, and the Supreme Court recently upheld that position in *Allen v. Alaska Oil and Gas Conservation Commission*, 139 P3d 564 (Alaska 2006). This bill would eliminate the outmoded territorial provisions and leave appeals from Commission decisions to be governed by the uniform procedures of the judiciary statute and court rules.

5. Delete the requirement that an applicant pay a \$1 00 fee for a permit to drill a well in this state. For some years the Commission has been fully funded by the regulated industry through a regulatory cost charge. The costs associated with permitting are more efficiently collected as part of the overall regulatory cost charge rather than by subtracting an **estimate** of the fees that might be generated in the coming year.

6. Specify that only data from "exploratory" and "stratigraphic test" wells is subject to a 24-month period of confidentiality. This change is consistent with the regulatory practice in most other oil and gas producing states that does not afford confidentiality well data in established oil and gas fields. The Commission recognizes that some wells that are drilled within the boundaries of an existing oil and gas field would be entitled to confidentiality because they are drilled to delineate a pool or are drilled near a lease boundary. The Commission believes that protection can be provided through regulation.

Sponsor Statement

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House Bill 183

7. Add a new subsection that makes clear that information submitted in connection with a petition for a Commission order or in connection with a hearing will not be held confidential solely on the claim that it is being provided "voluntarily" to the Commission. This amendment is consistent with Commission practice which requires the applicant to make a showing that the information is entitled to confidentiality under another provision of law or as one would, for example, for proprietary information or trade secrets.

8. Update the penalty section by increasing the penalty amounts available to the Commission and adds a specific list of criteria for the Commission to consider in determining the amount of a penalty. The bill would change the maximum amount of a penalty from \$5,000 a day for each day of violation, to provide for a civil penalty of **no more than \$1 00,000 for a single violation, or in the Commission's discretion, no more than \$25,000 a day for each day of violation**. It also increases the civil penalty for gas that is flared, vented or otherwise determined to be waste from the fair market value to two times the fair market value. This amendment essentially shifts the penalty previously imposed by the Department of Revenue for flared gas to the Commission. Prior to the recent legislative changes to the oil and gas tax laws, the Department of Revenue also imposed a penalty equal to the fair market value of the flared gas whenever the Commission determined it was waste.

9. Make a few housekeeping changes like substituting the Commission for an outdated reference to the Department of Natural Resources (the Department of Natural Resources has independent authority in Title 38), updating the classification of wells, and substituting **for which a permit to drill has been issued by the commission** where it is more efficient than listing each type of well subject to the Commission's authority.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB183-DOA-AOGCC 3-7-07
Bill Version: HB183
() Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Administration

Title: Oil and Gas Conservation Commission

RDU: AOGCC

Component: AOGCC

Sponsor: Rules by Request of Leg Budget & Audit

Requester: House Oil & Gas

Component No. 2010

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1162 AOGCC Receipts	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is not anticipated to have any fiscal impact on the Alaska Oil and Gas Conservation Commission (AOGCC).

The majority of the amendments are technical revisions involving responsibilities that are already under the purview of the AOGCC. The bill deletes the requirement that an applicant pay a \$100 fee for a permit to drill a well. Since the Commission is fully funded through a regulatory cost charge, it is more efficient to collect these fees as part of the overall regulatory cost charge rather than by subtracting an estimate of the fees to be generated in the coming year and then collecting by individual application. This will also streamline the process for permitting as the Commission moves towards implementing e-permitting.

Prepared by: Josy J. Colombie, Special Assistant I

Phone 793-1221

Division: Alaska Oil and Gas Conservation Commission

Date/Time 3/7/07 2:00 PM

Approved by: Rachael Petro, Deputy Commissioner

Date 3/7/07

Agency: Department of Administration



LEGISLATIVE BUDGET & AUDIT COMMITTEE

Representative Ralph Samuels, Chairman

SECTIONAL ANALYSIS

House Bill 183

Section 1. Statement of intent

(a) Confirms that AS 22.1 0.020(d), or court rules, have superseded inconsistent appeal provisions of AS 31.05.080; and

(b) Confirms that civil penalties may be administratively assessed by the Commission.

Section 2. Substitutes the language "for which a permit to drill has been issued by the commission" to capture all wells under the commission's regulatory authority rather than listing each type of well in (d)(2) and substitutes the word commission for an outdated reference to the Department of Natural Resources in (d) (7).

Section 3. Clarifies that the commission may regulate drilling and other oil and gas operations not only for conservation purposes but, as in the case of preventing blowouts or explosions, for public health and safety purposes under (e) (l).

(e)(l)(B) substitutes more precise terminology for the term "shooting"

(e)(l)(G) clarifies the commission's authority to regulate underground natural gas storage.

Section 4. Updates the various classifications of wells regulated by the commission.

Section 5. Slightly narrows a requirement enacted in 2004 relating to coal bed methane operations. The 2004 enactment requires a water well testing program whenever a well is drilled for production **or production testing** of coal bed methane. Production testing is a short-term operation that may occur during the exploration phase and is very low risk to the environment. Requiring a water well testing program in such circumstances may discourage exploration with no significant offsetting benefit to the public. The bill therefore would modify the requirement to apply only where a well will be used for regular production of coal bed methane.

Section 6. Substitutes the language "for which a permit to drill has been issued by the commission" to capture all wells under the commission's regulatory authority rather than listing each type of well.

Section 7. Narrows the data that would be subject to a 24-month period of confidentiality to only the data from "exploratory" and "stratigraphic test" wells. This change is consistent with the regulatory practice in most other oil and gas producing states that does not afford confidentiality to well data in established oil and gas fields.

Section 8. Adds a new subsection (f) to clarify that information "voluntarily" provided under subsection (d) of this section does not apply to information submitted in connection with a petition for a Commission order or in connection with a hearing. This is consistent with Commission practice which requires the applicant to make a showing that the information is entitled to confidentiality under another provision of law as one would, for example, for proprietary information or trade secrets.

Section 9. The current statute uses the term "rehearing" and in accordance with more modern usage, the bill substitutes the term "reconsideration" for "rehearing."

Section 10. Clarifies that a person who has applied for reconsideration and who is dissatisfied with the disposition of the application for reconsideration may appeal to the Superior Court. The questions reviewed on appeal are limited to the questions presented to the Commission by the application for reconsideration. This section and section 19 update the appeal provisions of the existing statute by eliminating outmoded procedures that were enacted before statehood and clarifying that appeals from the Commission decisions are subject to the uniform procedures established in the judiciary statute, AS 22.10.020(d), and the Rules of Appellate Procedure.

Section 11. Allows the commission to allocate costs incurred by Commission staff for investigation or hearings.

Section 12. Deletes the requirement that an applicant pay a \$100 fee for a permit to drill a well in this state. The Commission has been fully funded by the regulated industry through a regulatory cost charge. The costs associated with permitting are more efficiently collected as part of the overall regulatory cost charge rather than by subtracting an estimate of the fees that might be generated in the coming year.

Section 13. Deletes the reference to the \$100 fee for the permit to drill from the regulatory cost charge formula.

Section 14. Updates the penalty section by increasing the penalty amounts available to the Commission. This section would change the penalty from \$5,000 a day for each day of violation to ***no more than a \$1 00,000 for a single violation, or in the commission's discretion, no more than \$25,000 a day for each day of violation.***

Section 15. Makes clear that civil penalties may be administratively assessed by the Commission and if not paid are recoverable by a lawsuit filed by the attorney general on behalf of the Commission.

Section 16. Increases the civil penalties for gas that is flared, vented, or otherwise determined to be waste from the fair market value to two times the fair market value. This amendment essentially shifts the penalty previously imposed by the Department of Revenue for flared gas to the Commission.

Section 17. Adds a new subsection setting out the factors to be used in determining the amount of a penalty.

Section 18. AS 31.05.080(c), and AS 31.05.080(d) are repealed to eliminate outmoded procedures that were enacted before statehood.

Section 19. Adds a revisors' instruction to change the heading of AS 31.05.080 from "Rehearings and appeals" to "Reconsiderations and appeals."

Section 20. Provides for an immediate effective date under AS 01 .01.070(c).

WITNESS LIST – HOUSE BILL 183

Commissioner John Norman, Alaska Oil and Gas Conservation Commission

Judy Brady, Alaska Oil & Gas Association

Cheryl Sutton, Staff, Legislative Budget and Audit Committee – 465-2705