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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB389

Revision Date: Original Dept Affected Natural Resources
 Title: An Act relating to best-interest findings BRU: Resource Development
for oil and gas leases. Component: Oil & Gas Development
 Sponsor: Representative(s) Rokeberg, B. Davis
 Requestor: House Oil & Gas Component Serial No. 439

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*	*	*	*	*	*

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						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY96) cost: \$ _____

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

* Fiscal impact associated with implementation of this legislation is impossible to assess at this time and will be provided upon clarification of the bill.

Prepared by: Ken Boyd, Director Phone: 269-8800
 Division: Oil & Gas Date: 1-Feb-96
 Approved by Commissioner: [Signature] Date: 1-Feb-96
 Agency: Natural Resources

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

ALASKA STATE LEGISLATURE

House of Representatives

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Representative Norman Rokeberg

Sponsor Statement HB 389

"An act relating to 'best-interest findings' for oil and gas leases"

A best-interest finding is a written determination by the Commissioner of the Department of Natural Resources on whether the "interests of the state will be best served" by leasing the area under consideration for proposed oil and gas activities. Best interest findings take into consideration all facts pertaining to the land, resources, property or interest in them and can take from six months to one or more years to complete. The period of time that a BIF is valid is unclear in statute.

HB 389 allows the Division of Oil and Gas to revise existing best interest findings when substantial new information is presented to the department. Currently, if there is new information, the division must spend the resources and time to revise the BIF. HB 389 calls for a revision only when the new information is substantial -- new information which is essential and critical in regards to the best interests of the state, and calls for a revision only when the new information will significantly impact the leasing tract. HB 389 also establishes a period of public comment on revised BIFs and provides for an extension on the life of a BIF.

HB 389 will reduce the time, effort, and funding required by the Division of Oil and Gas to meet its statutory mandate. It streamlines the leasing process.

I urge your support on HB 389.

Sec. 38.05.945. Notice. (a) This section establishes the requirements for notice given by the department for the following actions:

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

(2) zoning of land under applicable law;

(3) issuance of a

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

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

(C) written finding for the sale, lease, or disposal of an interest in state land or resources under AS 38.05.035(e)(6);

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

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

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

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

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

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

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

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

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

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

(D) one or more of the following methods:

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

(ii) notification of parties known or likely to be affected by the action; or

(iii) another method calculated to reach affected parties;

(3) if the notice is of an action described in (a) of this section, other than notice of an action under (a)(3)(A) of this section, the department

shall give notice at least 30 days before the action by publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action and one or more of the following methods:

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

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

(C) notification of parties known or likely to be affected by the action; or

(D) another method calculated to reach affected persons.

(c) Notice at least 30 days before action under (a) of this section shall also be given to the following:

(1) to a municipality if the land is within the boundaries of the municipality, to a coordinating body established by community councils in a municipality if the coordinating body or a community council within the area served by a coordinating body requests notice in writing; if there is no coordinating body within the municipality, notice shall be provided to each community council established by the charter or ordinance of the municipality if the land is located within the boundaries of the municipality and if the community council requests notice in writing;

(2) to a regional corporation if the boundaries of the corporation as established by sec. 7(a) of the Alaska Native Claims Settlement Act encompass the land and the land is outside a municipality;

(3) to a village corporation organized under sec. 8(a) of the Alaska Native Claims Settlement Act if the land is within 25 miles of the village for which the corporation was established and the land is located outside a municipality;

(4) to the postmaster of a permanent settlement of more than 25 persons located within 25 miles of the land if the land is located outside a municipality, with a request that the notice be posted in a conspicuous location;

(5) to a nonprofit community organization or a governing body that has requested notification in writing and provided a map of its boundaries, if the land is within the boundaries.

(d) Notice at least 30 days before action under (a)(5) or (6) of this section shall be given to appropriate

(1) regional fish and game councils established under AS 16.05.260; and

(2) coastal resource service areas organized under AS 46.40.110 — 46.40.210.

(e) Notice is not required under this section for a permit or other authorization revocable by the department.

(f) The provisions of this section do not apply to a lease issued under AS 38.05.205.

(g) The provisions of this section do not apply to a production license issued under AS 38.05.207.

(h) Failure to give notice under this section to a community council, a coordinating body established by community council, or an organization listed in (c)(5) of this section does not constitute a legal basis for invalidation or delay of the action. (§ 10 art III ch 169 SLA 1959; am § 8 ch 61 SLA 1960; am § 2 ch 74 SLA 1961; am § 3 ch 117 SLA 1976; am § 14 ch 257 SLA 1976; am §§ 39, 40 ch 85 SLA 1979; am § 4 ch 108 SLA 1981; am § 36 ch 113 SLA 1981; am § 3 ch 87 SLA 1982; am §§ 44 — 46 ch 152 SLA 1984; am §§ 6, 7 ch 100 SLA 1988; am §§ 15, 16 ch 145 SLA 1988; am § 5 ch 124 SLA 1990; am § 7 ch 35 SLA 1994; am §§ 6, 7 ch 38 SLA 1994)

Revisor's notes. — Formerly AS 38.05.345. Renumbered in 1984. In 1994, paragraph (a)(7) was added to give effect to the amendment to (a)(3) made by § 7, ch. 35, SLA 1994, which paragraph was also amended by § 6, ch. 38, SLA 1994.

Cross references. — For legislative findings in connection with the 1994 amendments to this section, see § 1, ch. 38, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1990 amendment deleted "Except for oil and gas leasing under AS 38.05.180 and geothermal leasing under AS 38.05.181" from the beginning of subsection (c).

The first 1994 amendment, effective

August 7, 1994, inserted a section reference in paragraph (a)(7).

The second 1994 amendment, effective August 7, 1994, in paragraph (a)(3), added "issuance of a" at the beginning, added present subparagraphs (A) and (B), designated the former provisions of the paragraph as subparagraph (C), and, in subparagraph (C), substituted "written finding for" for "A decision under AS 38.05.035(e) regarding" at the beginning and added "under AS 38.05.035(e)(6)" at the end; and, in subsection (b), added present paragraphs (1) and (2) and rewrote the former provisions of the subsection and redesignated those as paragraph (3).

NOTES TO DECISIONS

Quoted in Trustees for Alaska v. State, Dep't of Natural Resources, 795 P.2d 805 (Alaska 1990).

Cited in Kuitsarak Corp. v. Swope, 870 P.2d 387 (Alaska 1994).

Sec. 38.05.965. Definitions. In this chapter, unless the context otherwise requires,

(1) "acquired land" means land belonging to the state including tide, submerged and shoreland which has been obtained by escheat, purchase, or any means other than by general land grant;

(2) "agricultural land" means land chiefly valuable for agricultural purposes;

(3) "commissioner" means the commissioner of natural resources;

(4) "department" means the Department of Natural Resources;

(5) "director" means the director of the division of lands of the Department of Natural Resources;

(6) "geothermal resources" means the natural heat of the earth at temperatures greater than 120 degrees Celsius, measured at the point

where the highest-temperature resources encountered enter or contact a well or other resource extraction device, and includes

(A) the energy, including pressure, in whatever form present in, resulting from, created by, or that may be extracted from that natural heat;

(B) the material medium, including the geothermal fluid naturally present, as well as substances artificially introduced to serve as a heat transfer medium; and

(C) all dissolved or entrained minerals and gases that may be obtained from the material medium, but excluding hydrocarbon substances and helium;

(7) "grazing land" means land chiefly valuable for grazing purposes;

(8) "industrial and commercial land" means land chiefly valuable for industrial trade, manufacturing or business use;

(9) "lieu and indemnity land" means land which the state is entitled to select under the provisions of 38 Stat. 1214, as amended (48 USC 353) or a similar statute to compensate for land in place of surveyed rectangulars, which have been lost to the state by reason of deficient sections, prior rights, claims, withdrawals, reservations and other appropriations;

(10) "material" includes sand, stone, gravel, pumice, and common clay.

(11) "mineral land" means land prospectively valuable for mineral deposits;

(12) "multiple use" has the meaning given in AS 38.04.910;

(13) "navigable water" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes;

(14) "park and recreation land" means land chiefly valuable for public park and recreation use;

(15) "preference right forest lease" means a lease granted to a lessee whose United States Forest Service term special use permit was cancelled to allow the land under permit to be selected by the state;

(16) "preference right grazing lease" means a grazing lease granted to a lessee whose federal grazing lease was cancelled to allow the land under lease to be selected by the state;

(17) "public water" means navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a

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Chenoweth
2/6/96

CS FOR HOUSE BILL NO. 389()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ROKEBERG, B.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to 'best interest findings' for oil and gas leases."

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

3 * **Section 1.** AS 38.05.035(e)(6) is amended to read:

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

13 (A) a contract for a negotiated sale authorized under
14 AS 38.05.115;

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

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

(D) a mineral claim located under AS 38.05.195;

(E) a mineral lease issued under AS 38.05.205;

(F) a production license issued under AS 38.05.207;

(G) an exempt oil and gas sale under AS 38.05.180(d) of acreage offered

(i) in a sale that was held within the previous five years if the sale was subject to a written best interest finding, unless the commissioner determines that substantial new information has become available that justifies a revision of the best interest finding; or

(ii) in a sale that was subject to the exemption set out in (i) of this subparagraph, for sale acreage that was previously subject to a written best interest finding; however, if the commissioner determines that substantial new information has become available that justifies a revision of the last best interest finding, the commissioner shall prepare a revised best interest finding under (g)(2) of this section; or

(H) a lease sale under AS 38.05.180(w) of acreage offered

(i) in a sale that was held within the previous five years if the sale was subject to a best interest finding, unless the commissioner determines that substantial new information has become available that justifies a revision of the best interest finding; or

(ii) in a sale that was subject to the exemption set out in (i) of this subparagraph, for sale acreage that was previously subject to a written best interest finding; however, if the commissioner determines that substantial new information has become available that justifies a revision of the last best interest finding, the commissioner shall prepare a revised best interest finding under (g)(2) of this section;

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

(g) Notwithstanding (e)(1)(A) and (B) of this section, when the director

1 prepares a written finding required under (e) of this section for an oil and gas lease
2 sale scheduled under AS 38.05.180, the director shall consider and discuss

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

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

9 (B) material to the following matters:

10 (i) property descriptions and locations;

11 (ii) the petroleum potential of the sale area, in general
12 terms;

13 (iii) fish and wildlife species and their habitats in the
14 area;

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

17 (v) the governmental powers to regulate oil and gas
18 exploration, development, production, and transportation;

19 (vi) the reasonably foreseeable cumulative effects of oil
20 and gas exploration, development, production, and transportation on the
21 sale area, including effects on subsistence uses, fish and wildlife habitat
22 and populations and their uses, and historic and cultural resources;

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

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

30 (ix) the reasonably foreseeable fiscal effects of the lease
31 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 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) in a preliminary or final written finding that is revised as required by (e)(6)(G) or (H) of this section, facts that are known to the director at the time of preparation of the revised finding and that require discussion under (1) of this subsection; however, in making the revised finding, the director shall consider and discuss facts described in (1) of this subsection as to which substantial new information has become available that justifies a revision and need not consider and discuss facts described in (1) of this subsection for which substantial new information has not become available; and

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

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

(w) Notwithstanding any other provisions of this section, land that [WHICH] has been offered for lease [WITHIN THE PREVIOUS FIVE YEARS] and that [WHICH] received no bids at competitive sale or for which no bid was accepted may be, at the discretion of the commissioner, immediately offered for lease, under regulations adopted by the commissioner, upon terms appearing most advantageous to the state; however, noncompetitive leasing is prohibited. The commissioner shall establish a royalty determined to be in the public interest but not less than 12 1/2 percent. A lease must provide for payment to the state of rental but need not adhere to the rental schedule in (n) of this section nor to the 5,760-acres-per-lease limitation in (m) of this section. The lease term may not exceed 10 years, except as provided in (o) of this section.

* Sec. 4. AS 38.05.945(a) is amended to read:

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

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

5 (2) zoning of land under applicable law;

6 (3) issuance of a

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

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

13 (C) written finding for the sale, lease, or disposal of an interest
14 in state land or resources under AS 38.05.035(e)(6), including a preliminary or
15 final written finding that is revised as required by AS 38.05.035(e)(6)(G) or
16 (H) when preparation of the revised best interest finding is required by
17 AS 38.05.035(g)(2);

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

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

21 (6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c)
22 concerning sites for aquatic farms and related hatcheries;

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