

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8736 HOUSE RESOURCES

compliance, fails to work out a new schedule with the department. Because the compliance schedule is negotiated with the permittee based on the timelines they can meet, it is not common for these penalty sections to be invoked. But the ability to levy the penalty is a critical part of the "quid pro quo" that allows the public and the courts to view these arrangements as fair to both sides. They are also extremely effective in helping to achieve compliance with the laws.

The department questions why the legislature would want to remove the department's ability to negotiate these kinds of agreements with permittees. There is no requirement to sign a COBC or a Consent Order - they represent a mutual agreement, and can allow a company the time and flexibility they need to come into compliance while at the same time assure the public that action is being taken to achieve that compliance.

Only if an agreement cannot be reached does going to court become a viable option. But if this bill were passed, going to court would be the only option.

STATE OF ALASKA

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

COMMISSIONER'S OFFICE

Michele Brown, Commissioner

Kurt Fredriksson, Acting Deputy Commissioner

410 Willoughby Avenue, Suite 105

Juneau, Alaska 99801-1795

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|-------------------|---------------|-----------------------------------|
| T SHARON McCauley | Date: 2/16/96 | No of pages: (including cover) |
|-------------------|---------------|-----------------------------------|

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From: Michele Brown Kurt Fredriksson Gennie French Santé Lesh
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MESSAGE: JANICE ADAMS TESTIMONY

Fax transmission only Hard Copy Sent: ___ by regular mail ___ by overnight mail/courier

HEB

386

Alaska State Legislature

REPRESENTATIVE
BEN GRUSSENDORF
1221 HALIBUT POINT ROAD
SITKA, ALASKA 99836
(907) 747-8458

FINANCE COMMITTEE

DISTRICT 2
KUPREANOF
PETERSBURG
SITKA
WRANGELL



WHILE IN JUNEAU
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3824

House of Representatives

MEMO

TO: House Resources Committee Members

FROM: Representative ~~Grussendorf~~ Grussendorf

DATE: February 13, 1995

RE: Proposed CSHB 386 "An Act relating to cruelty to animals and to the power of first and second class boroughs to prohibit cruelty to animals."

Please find in this packet additional information for your consideration of the proposed committee substitute for HB 386. If you have any questions please do not hesitate to contact my office.

Sec. 11.61.140. Cruelty to animals. (a) A person commits the crime of cruelty to animals if the person

(1) intentionally inflicts severe and prolonged physical pain or suffering on an animal;

(2) recklessly neglects an animal and, as a result of that neglect, causes the death of the animal or causes severe pain or suffering to the animal; or

(3) kills an animal by the use of a decompression chamber.

(b) It is a defense to a prosecution under (a)(1) or (2) of this section that the conduct of the defendant

(1) conformed to accepted veterinary practice;

(2) was part of scientific research governed by accepted standards; or

(3) was necessarily incident to lawful hunting or trapping activities.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Cruelty to animals is a class A misdemeanor. (§ 7 ch 166 SLA 1978; am § 1 ch 78 SLA 1980; am § 20 ch 59 SLA 1982)

Editor's notes. — The provisions of paragraphs (2) and (3) of subsection (a) as it existed prior to the 1980 amendment may now be found in AS 11.61.145.

Collateral references. — 4 Am. Jur. 2d, Animals, §§ 27-30.

3A C.J.S., Animals, §§ 99-112.

Cruelty in trapping animals, 79 ALR 1308.

What constitutes statutory offense of cruelty, 82 ALR2d 794.

Sec. 11.81.620. Effect of ignorance or mistake upon liability.

NOTES TO DECISIONS

Applied in *Russell v. State*, 793 P.2d 1085 (Alaska Ct. App. 1990).

Quoted in *De Nardo v. State*, 819 P.2d 903 (Alaska Ct. App. 1991).

Sec. 11.81.640. Application of AS 11.81.600 — 11.81.630.

NOTES TO DECISIONS

Cited in *Cole v. State*, 828 P.2d 175 (Alaska Ct. App. 1992).

Article 6. Definitions.**Section
900. Definitions**

Sec. 11.81.900. Definitions. (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Article 3. Additional Powers.

Section

200. First class borough powers

210. Second class borough powers

Sec. 29.35.200. First class borough powers. (a) A first class borough may exercise by ordinance on a nonareawide basis any power not otherwise prohibited by law.

(b) A first class borough may by ordinance exercise the following powers on an areawide basis:

- (1) provide transportation systems;
- (2) provide water pollution control;
- (3) provide air pollution control in accordance with AS 46.14.400;
- (4) license day care facilities;
- (5) license, impound, and dispose of animals.

(c) In addition to powers conferred by (b) of this section, a first class borough may, on an areawide basis, exercise a power not otherwise prohibited by law if the power has been acquired in accordance with AS 29.35.300.

(d) A first class borough that exercises power necessary to contain, clean up, or prevent a release or threatened release of oil or a hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08, or AS 46.09 shall exercise its authority in a manner that is consistent with a regional master plan prepared by the Department of Environmental Conservation under AS 46.04.210. (§ 10 ch 74 SLA 1985; am § 4 ch 83 SLA 1991; am § 7 ch 74 SLA 1993)

Effect of amendments. — The 1993 amendment made a section reference substitution in paragraph (b)(3), effective June 26, 1993.

NOTES TO DECISIONS

Cited in *Keane v. Local Boundary Comm'n*, 893 P.2d 1239 (Alaska 1995).

Sec. 29.35.210. Second class borough powers. (a) A second class borough may by ordinance exercise the following powers on a nonareawide basis:

- (1) provide transportation systems;
- (2) regulate the offering for sale, exposure for sale, sale, use, or explosion of fireworks;
- (3) license, impound, and dispose of animals;
- (4) subject to AS 29.35.050, provide garbage, solid waste, and septic waste collection and disposal;
- (5) provide air pollution control under AS 46.14.400;
- (6) provide water pollution control;
- (7) participate in federal or state loan programs for housing rehabilitation and improvement for energy conservation;
- (8) provide for economic development;
- (9) provide for the acquisition and construction of local service roads and trails under AS 19.30.111 — 19.30.251;

--continued

(10) establish an emergency services communication center under AS 29.35.130;

(11) subject to AS 28.01.010, regulate the licensing and operation of motor vehicles and operators;

(12) engage in activities authorized under AS 29.47.460;

(13) contain, clean up, or prevent a release or threatened release of oil or a hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08, or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is consistent with a regional master plan prepared by the Department of Environmental Conservation under AS 46.04.210.

(b) A second class borough may by ordinance exercise the following powers on an areawide basis:

(1) provide transportation systems;

(2) license, impound, and dispose of animals;

(3) provide air pollution control under AS 46.14.400;

(4) provide water pollution control;

(5) license day care facilities.

(c) In addition to powers conferred by (a) of this section, a second class borough may, on a nonareawide basis, exercise a power not otherwise prohibited by law if the exercise of the power has been approved at an election by a majority of voters living in the borough but outside all cities in the borough.

(d) In addition to powers conferred by (b) of this section, a second class borough may, on an areawide basis, exercise a power not otherwise prohibited by law if the power has been acquired in accordance with AS 29.35.300. (§ 10 ch 74 SLA 1985; am § 1 ch 118 SLA 1988; am § 39 ch 21 SLA 1991; am § 5 ch 83 SLA 1991; am §§ 8, 9 ch 74 SLA 1993)

Effect of amendments. — The 1993 amendment, effective June 26, 1993, made section reference substitutions in paragraphs (a)(5) and (b)(3).

NOTES TO DECISIONS

Cited in *Keane v. Local Boundary*
Comm'n, 893 P.2d 1239 (Alaska 1995).

Article 3. Classification of Offenses.

Section

250. Classification of offenses

Collateral references. — What constitutes lesser offenses "necessarily included" in offense charged, under Rule 31(c) of Federal Rules of Criminal Procedure, 11 ALR Fed. 173.

Sec. 11.81.250. Classification of offenses. (a) For purposes of sentencing under AS 12.55, all offenses defined in this title, except murder in the first and second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, are classified on the basis of their seriousness, according to the type of injury characteristically caused or risked by commission of the offense and the culpability of the offender. Except for murder in the first and second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person;

(2) class B felonies, which characteristically involve conduct resulting in less severe violence against a person than class A felonies, aggravated offenses against property interests, or aggravated offenses against public administration or order;

(3) class C felonies, which characteristically involve conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public health and decency than felonies;

(5) class B misdemeanors, which characteristically involve a minor risk or physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency;

(6) violations, which characteristically involve conduct inappropriate to an orderly society but which do not denote criminality in their commission.

(b) The classification of each felony defined in this title, except murder in the first and second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, is designated in the section defining it. A felony under Alaska law defined outside this title for which no penalty is specifically provided is a class C felony.

(c) The classification of each misdemeanor defined in this title is designated in the section defining it. A misdemeanor under Alaska law defined outside this title for which no penalty is provided is a class A misdemeanor. (§ 10 ch 166 SLA 1978; am §§ 9, 10 ch 143 SLA 1982; am §§ 17, 18 ch 37 SLA 1986; am §§ 2, 3 ch 59 SLA 1988)

ORGANIZED BOROUGHS - UNIFIED MUNICIPALITIES

| | <u>Classification</u> |
|------------------------------|-----------------------|
| Aleutians East Borough | Second Class |
| Municipality of Anchorage | Unified Home Rule |
| Bristol Bay Borough | Second Class |
| Denali Borough | Home Rule |
| Fairbanks North Star Borough | Second Class |
| Haines Borough | Third Class |
| City and Borough of Juneau | Unified Home Rule |
| Kenai Peninsula Borough | Second Class |
| Ketchikan Gateway Borough | Second Class |
| Kodiak Island Borough | Second Class |
| Lake and Peninsula Borough | Home Rule |
| Matanuska-Susitna Borough | Second Class |
| North Slope Borough | Home Rule |
| Northwest Arctic Borough | Home Rule |
| City and Borough of Sitka | Unified Home Rule |
| City and Borough of Yakutat | Home Rule |

Borough of Yakutat. Each of the other home rule boroughs have cities within their boundaries.

First class boroughs gain their powers from State laws; they have no charters. Alaska has no first class boroughs. That may be largely due to voter preferences with respect to the substantial authority of the assembly of a first class borough to assume nonareawide powers and service area powers.

State law permits a first class borough to exercise by ordinance on a nonareawide basis any power not otherwise prohibited by law. [AS 29.35.200] Further, the assembly of a first class borough may by ordinance establish, operate, alter or abolish a service area to exercise any power granted a first class city or any power that a first class borough can exercise on a nonareawide basis. [AS 29.35.480] As is the case for first class cities, most of the laws governing first class boroughs are codified in Title 29 of the Alaska Statutes.

Second class boroughs are distinguished from first class boroughs principally in that voter approval is required to assume many nonareawide powers. Voter approval is also required for a second class borough to assume any power on a service area basis, except if the service area is uninhabited. In that case, all real property owners must consent to the assumption of the service area power.

Seven of Alaska's 16 organized boroughs are second class boroughs. They include the Bristol Bay Borough, which was incorporated in 1962 as Alaska's first organized borough. The Bristol Bay Bor-

ough, like the City and Borough of Yakutat, has no cities within its boundaries. However, it is technically possible for one of the three communities within the Bristol Bay Borough to form a city.

Five of the seven second class boroughs were formed directly or indirectly under the 1963 Mandatory Borough Act. Those five are: the Matanuska-Susitna Borough, Kodiak Island Borough, Ketchikan Gateway Borough, Kenai Peninsula Borough and Fairbanks North Star Borough.⁵

The Aleutians East Borough is the other second class borough. It was formed in 1987.

Third class boroughs are distinguished from other organized boroughs in a number of ways. First, State law limits the areawide powers of a third class borough to education, and assessment and collection of



Haines Borough, Alaska's only third class borough

taxes. [AS 29.35.220] While planning, platting and land use regulation are required areawide functions for all other organized boroughs, they are not required (or even permitted on an areawide basis) for a third class borough.

⁵ Three other boroughs were formed under the Mandatory Borough Act. These were the Greater Anchorage Area Borough, the Greater Sitka Borough and the Greater Juneau Borough.

**Fairbanks North Star Borough
Division of Animal Control**

2408 Davls Road
P.O. Box 71267
Fairbanks, AK 99707

Fax Cover Sheet

DATE: January 8, 1996 TIME: ~~11:00 AM~~ 4:29 PM
TO: Rep. Grussendorf PHONE: (907) 465-3824
attn: Terri FAX: (907) 465-2278
FROM: Laura Hood, Manager *LH* PHONE: (907) 459-1451
FAX: (907) 459-1120
RE: State Statute 29.35.210, Cruelty to Animals

Number of pages including cover sheet: 4

Message

The Fairbanks North Star Borough employs a Division of Animal Control responsible for enforcing borough code with regard to domestic animals. We have a complete ordinance, giving us the authority to impound animals, control rabies, regulate animals which bite, and up until recently to prosecute persons who committed the crime of cruelty to animals. In June, 1995, District Court Judge Pengilly ruled that we did not have the authority to prosecute anyone for the crime of cruelty to any animal other than a dog.

Although, there is a state statute prohibiting cruelty, it has been problematic for the troopers to enforce. While we have the expertise, the tools, the budget and the reputation for taking care of these animals, the troopers do not. Nor do they have the time to take on starving turkey cases when they can barely handle burglaries.

The fix to this problem for us would be to amend the state statute which imparts the authorities to second class boroughs. Sections 29.35.210 (a) (3) and (b) (2) state that second class boroughs may exercise by ordinance the power to license, impound, and dispose of animals. If these sections could be amended to include "prohibit cruelty to animals" it would solve our problem, and take the burden off the state troopers.

This problem has been recognized in our community to the extent that petitions have been circulated and the Fairbanks North Star Borough Assembly passed a resolution urging the legislature to take some action to rectify this problem and provide protection for domestic animals other than dogs. I am sending along a copy of this resolution.

We would appreciate any assistance you can give us. I will be happy to help in any way I can. Thank you.



Fairbanks North Star Borough

100 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

Assembly

907 459-1000

Fax 907 459-1224

February 13, 1996

The Honorable Ben Grussendorf
Alaska State House Of Representatives

Dear Representative Grussendorf,

This letter concerns the proposed committee substitute for House Bill 386, relating to "Cruelty to Animals" which you pre-filed for the Second Session of the Nineteenth Legislature.

On October 12, 1995, the Fairbanks North Star Borough Assembly adopted Resolution 95-052; "A Resolution Relating To Cruelty To Animals." The resolution requests a member (s) of the Legislature to "introduce legislation which would allow municipalities, by ordinance, to exercise the power of preventing cruelty to animals and to be able to prosecute those guilty of animal cruelty." Your legislation satisfies that request and I sincerely appreciate the introduction of the bill.

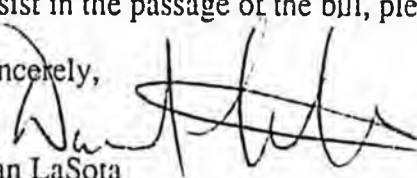
I'm sure you are aware of the resistance by municipalities throughout the state to have mandated responsibilities without state monetary assistance. I know that I normally would not be in favor of such legislation. This matter is different! A municipality does not have to accept this responsibility except by ordinance. Other provisions in the bill help clarify the definition of animal cruelty.

The prevention of cruelty to animals is important to the Fairbanks North Star Borough. It had been enforcing animal cruelty prevention powers and punishment for violations until the summer of 1995 when the court determined that the borough only had the power to practice the prevention of canine cruelty. The borough has trained staff and equipment in place which would allow it to exercise the broader animal cruelty prevention powers at little or no additional cost to our taxpayers.

The extent of legal animal control powers that the Fairbanks North Star Borough has exercised in recent years is varied. Attached, you will find a memo from the borough's legal department detailing the changes over the years.

In closing, I applaud your introduction of HB 386 and I believe it is the best vehicle to fulfill the Fairbanks North Star Borough's needs in this area. If there is any way I can assist in the passage of the bill, please let me know.

Sincerely,


Dan LaSota

Fairbanks North Star Borough Assembly Member



THE ALASKA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, INC.

SPCA State Headquarters and Spay Clinic • 549 W. International Airport Road • Anchorage, Alaska 99518
Phone: 562-2999

Representative Grussendorf:

The Alaska SPCA (Society For the Prevention of Cruelty to Animals) is in strong support of CSAB 386, enacting stronger legislation for cases of animal cruelty and abuse.

During the past years a very evident need for clarified statutes was and is obvious. There have been cases in the past that took as long as one and one-half (1 1/2) years to prosecute because the District Attorneys did not have laws to base their obvious abuse cases upon. This type of legislation is the tool needed to help stop cruelty.

Statistics have shown a strong link between animal abuse and child/spousal abuse. Perhaps this bill can work twofold in ending cruelty with in the home.

Again, we strongly urge the committee to look very seriously at signing the very important piece of legislation.

Sincerely,

Diane Zurfoss, SPCA

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: HB 386

Revision Date: 2/13/96 Dept. Affected: Community & Regional Affairs
 Title: An Act relating to cruelty to animals and the BRU: none
provision of food and water to confined... Component: none
 Sponsor: Rep. Grussendorf
 Requestor: Rep. Grussendorf COMPONENT SERIAL NO. _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

| (OPERATING | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|----------|----------|----------|----------|----------|----------|
| PERSONAL SERVICES | 00 | 0 | 0 | 0 | 0 | 0 |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |

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

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
| Revenue Code | | | | | | |

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 95) impact: \$ none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This legislation would have no fiscal impact on the department

Prepared By: Remond Henderson *Remond Henderson* Phone: 465-4708
 Division: Director, Administrative Services Date: 2/13/96
 Approved by Commissioner: Mike Irwin *Mike Irwin* Date: 2/13/96
 Agency: Mike Irwin, Dept. of Community & Reg. Affairs

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350 EAST DAHLIA AVENUE, PALMER, ALASKA 99645-6488

BOROUGH ATTORNEY'S OFFICE

MICHAEL GATTI
BOROUGH ATTORNEY

PHONE (907) 45-9600

February 13, 1996

Rep. Ben Grussendorf
Room 415 State Capitol
Juneau, AK 99801-1182
Transmitted by Fax:
1-907-465-2278

Rep. Scot Ogan
Room 409 State Capitol
Juneau, AK 99801-1182
Transmitted by Fax:
1-907-465-3265

Re: CSHB 386 (Work Draft)

Gentlemen:

In reviewing the work draft for committee substitute for House Bill 386, an act pertaining to cruelty to animals and the power of the first and second class boroughs to prohibit cruelty to animals, I have some suggestions for language you may wish to consider in your deliberations on the bill. In section 2, amending AS 29.35.200(b)(5), 29.35.210(a)(3) and 29.35.210(b), the phrase "prohibit cruelty to" is inserted in the draft in each of the relevant sections. In reviewing this language, in my opinion, it is unduly restrictive of a municipality's ability to regulate animal control matters. My rationale for this conclusion is found in Article 10 §1 and AS 29.35.400-420, which expressly provide that the powers of municipalities are liberally construed. *See Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978). A liberal construction of municipal powers means not only that which is expressly mentioned, but that which is necessarily implied or fairly incident to the purpose or exercise of the power is permissible. By including a specific phrase related to a specific type of conduct, the constitutional requirement that municipal powers be liberally construed could be undermined. As you know, there is always an argument when interpreting legislation that, if something is not specifically mentioned, it is intended to be excluded from the requirements of the statute. The phrase "prohibit cruelty to" raises this concern.

The borough's suggestion is to delete the phrase "prohibit cruelty to" and substitute the word "regulate" in all relevant sections. Inserting the word "regulate"

February 13, 1996

Page 2

in the statute in all relevant places will allow municipalities to broadly exercise their animal control powers and to engage in those activities they believe, in their discretion, are appropriate for their respective jurisdictions. Such flexibility is, of course, required because of the constitutional and statutory directive to liberally construe municipal powers and because animal control in the rural areas may be handled differently from animal control in suburban or urban areas. I believe the borough's proposed language accomplishes this objective.

CSHB 386 also amends AS 29.35.200 and 210 by adding new subsections (e) containing language that prohibits a municipality from enacting an ordinance which is inconsistent with state laws prohibiting cruelty to animals.

A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with the state statute. The question rests on whether the exercise of authority has been prohibited to municipalities. The prohibition must be either by express terms or by implication, such as where the statute and ordinance are substantially irreconcilable that one can not be given its substantive effect if the other is to be accorded the weight of law. *Gilman v. Martin*, 662 P.2d 120, 124 (Alaska 1983); *Jefferson v. State*, 527 P.2d 37 (Alaska 1974).

The above rule, of course, states that municipal ordinances are not necessarily inconsistent with state statute unless the legislature says so. This principle is to allow municipalities broad flexibility in the implementation of rules protecting the public's health, safety, and welfare. In this case, the proposed additional subsections (e) to AS 29.35.200 and 210 do not promote this principle.

A municipality may wish to adopt an offense for cruelty that is not a misdemeanor criminal penalty. In fact, the Matanuska-Susitna Borough treats cruelty as an infraction rather than a misdemeanor. See MSB 24.40.050(A).

Another question is whether municipalities would be required to amend existing animal control codes to conform to state law. Municipalities literally applying the language of the bill would only be authorized to prohibit cruelty to animals if their ordinances were consistent with state law.

Municipalities already have limitations on their authority to prescribe penalties for violations of an ordinance. AS 29.25.070 establishes a maximum penalty for ordinance violation at \$1,000 or 90 days in jail. A municipality may, of course, adopt lesser penalties.

In summary, the borough requests the committee to delete the phrase "prohibit cruelty to" in all places it is proposed and insert the word "regulate" in its

February 13, 1996

Page 3

place. The borough also recommends the deletion of AS 29.35.200(e) and 210(e), because they are unduly restrictive of municipal authority and do not promote the principles of the Alaska Constitution and the associated statutes pertaining to the liberal construction of municipal powers.

I will be available at the teleconference scheduled for February 14, 1996, at 8:00 a.m. should you have any questions on the borough's comments.

Very truly yours,

MATANUSKA-SUSITNA BOROUGH
Michael Gatti, Borough Attorney

Michael Gatti

MG:drm

cc: Donald Moore, Borough Manager
Kevin Koechlein, Public Safety Director

Originals to follow by U.S. Mail

W:\DOCS\DEBRAM\PUBSAFE\REPS.LTR

By: Dan LaSota
Valerie Therrien
Introduced: 09/28/95
Referred to Unfinished
Business: 09/28/95
Amended: 10/12/95
Adopted: 10/12/95

RESOLUTION NO. 95-062

A RESOLUTION RELATING TO CRUELTY TO ANIMALS

WHEREAS, in the 1960's, borough voters approved the exercise of "dog control" powers and the Legislature subsequently authorized boroughs the power to "license, impound and dispose of" animals by ordinance; and

WHEREAS, under a Fairbanks North Star Borough voter approved power, the borough has the power to prohibit cruelty to dogs but not to other animals and the legislative act only allows a borough the power to license, impound, and dispose of animals by ordinance; and

WHEREAS, the Fairbanks North Star Borough desires and should have the ability to prohibit cruelty to any animal and to prosecute those who are cruel to animals; and

WHEREAS, agriculture is an important part of the Fairbanks economy and there are numerous farms and farmers in the Fairbanks North Star Borough; and

WHEREAS, the Fairbanks North Star Borough Assembly does not consider the animal care and handling that normally occurs at a farm to be animal cruelty; and

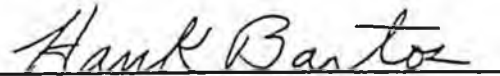
WHEREAS, a second class borough can exercise powers that are approved by the voters or authorized by the legislature.

NOW, THEREFORE, BE IT RESOLVED that the Fairbanks North Star Borough respectfully requests the Interior Delegation to introduce legislation which would allow boroughs, by ordinance, to exercise the power of prevention of cruelty to all animals and to prosecute those guilty of animal cruelty.

BE IT FURTHER RESOLVED that the Fairbanks North Star Borough respectfully requests the full legislature to approve the prevention of cruelty to animals legislation.

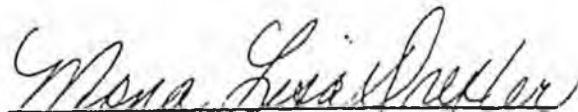
BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Tony Knowles, Governor, State of Alaska, the Honorable Drue Pearce, President of the Senate, the Honorable Gail Phillips, Speaker of the House, and all members of the Interior Delegation.

PASSED AND APPROVED THIS 12TH DAY OF OCTOBER, 1995.



Hank Bartos
Presiding Officer

ATTEST:



Mona Lisa Drexler, CMC/AAE
Municipal Borough Clerk

Ayes: Hove, Therrien, LaSota, St. John, Parr, Kilgore and Bartos
Noes: Hackenmiller, Logan and Gillam

PLEASE send TO sites
BU FOR TC # 60339

9-LS1203\c
Luckhaupt
2/1/96

CS FOR HOUSE BILL NO. 386()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GRUSSENDORF, Finkelstein, B.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to cruelty to animals and to the power of first and second
2 class boroughs to prohibit cruelty to animals."

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

4 * Section 1. AS 11.61.140(a) is amended to read:

5 (a) A person commits the crime of cruelty to animals if the person

6 (1) knowingly [INTENTIONALLY] inflicts severe [AND
7 PROLONGED] physical pain or prolonged suffering on an animal;

8 (2) with criminal negligence, [RECKLESSLY] neglects an animal and,
9 as a result of that neglect, causes the death of the animal or causes severe physical
10 pain or prolonged suffering to the animal; or

11 (3) kills an animal by the use of a decompression chamber.

12 * Sec. 2. AS 29.35.200(b) is amended to read:

13 (b) A first class borough may by ordinance exercise the following powers on an
14 areawide basis:

- 1 (1) provide transportation systems;
2 (2) provide water pollution control;
3 (3) provide air pollution control in accordance with AS 46.14.400;
4 (4) license day care facilities;
5 (5) license, impound, prohibit cruelty to, and dispose of animals.

6 * Sec. 3. AS 29.35.200 is amended by adding a new subsection to read:

7 (e) Notwithstanding (b)(5) of this section, a first class borough may not enact
8 an ordinance prohibiting cruelty to animals that is inconsistent with state laws prohibiting
9 cruelty to animals.

10 * Sec. 4. AS 29.35.210(a)(3) is amended to read:

11 (3) license, impound, prohibit cruelty to, and dispose of animals;

12 * Sec. 5. AS 29.35.210(b) is amended to read:

13 (b) A second class borough may by ordinance exercise the following powers on
14 an areawide basis:

- 15 (1) provide transportation systems;
16 (2) license, impound, prohibit cruelty to, and dispose of animals;
17 (3) provide air pollution control under AS 46.14.400;
18 (4) provide water pollution control;
19 (5) license day care facilities.

20 * Sec. 6. AS 29.35.210 is amended by adding a new subsection to read:

21 (e) Notwithstanding (a)(3) and (b)(2) of this section, a second class borough may
22 not enact an ordinance prohibiting cruelty to animals that is inconsistent with state laws
23 prohibiting cruelty to animals.

Bu For 60339

9-LS1203C.1 ✓
Luckhaupt
2/13/96

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUSSENDORF

TO: CSHB 386(), "C" version, draft dated 2/1/96

1 Page 2, line 8:

2 Delete "inconsistent with"

3 Insert "more stringent than"

4 Page 2, line 22:

5 Delete "inconsistent with"

6 Insert "more stringent than"

Alaska State Legislature

REPRESENTATIVE
BEN GRUSSENDORF
1221 HALIBUT POINT ROAD
SITKA, ALASKA 99836
(907) 747-6488

FINANCE COMMITTEE

DISTRICT 2
KUPREANOF
PETERSBURG
SITKA
WRANOELL

WHILE IN JUNEAU
STATE CAPITOL
JUNEAU, ALASKA 99801-1102
(907) 486-3024



House of Representatives

MEMORANDUM

TO: Representative Bill Williams
Co-Chairman, House Resources Committee

Representative Joe Green
Co-Chairman, House Resources Committee

FROM: Representative Ben Grussendorf

DATE: February 5, 1996

RE: House Bill 386, "An act relating to cruelty to animals and to the power of first and second class boroughs to prohibit cruelty to animals."

I would appreciate your consideration in scheduling a hearing for House Bill 386 in your committee. I am submitting for your consideration a work draft of a committee substitute for House Bill 386. After the original version was introduced, our office received numerous responses which addressed several points in the original bill. This proposed committee substitute offers changes which address these concerns:

The original bill would have allowed a person to enter a place where an animal is confined and supply the animal with necessary food and water. I received many responses from animal control officers, state troopers, and district attorneys who stated that allowing private citizens to enter another's property could result in serious problems with constitutionality, liability, potential for bodily conflict, and misuse of the provision for, say, burglars, intruders, etc. Based on the concerns of these professionals it is my recommendation that the committee eliminate Section 1 of the original bill.

I would also like to provide for the committee's consideration the following changes, also based on responses to the original bill.

Section 1.

Regarding the criminal intent language, change "intentionally" to "knowingly." This lowers the standard of mental intent by which an

accused can be charged. Prosecutors have stated that the language as it exists in statute makes it very difficult to bring about a conviction.

Regarding the definition of cruelty, change "inflicts severe and prolonged physical pain or suffering on an animal" to "inflicts severe physical pain or prolonged suffering on an animal." This change was suggested to me by prosecutors who believe the language as it exists now makes the act of cruelty "unprosecutable." The change offers prosecutors more options under which to prosecute and lessens the difficult standard which currently exists under statute.

Regarding the criminal intent language, change "recklessly" to "with criminal negligence." This change lowers the criminal standard to a level which, again, makes it easier to prosecute. Recklessness is indicated by an awareness and conscious disregard, whereas criminal negligence is indicated by a failure to perceive. In most animal neglect and abuse cases, the latter is usually the intent, according to officials who deal with animal control issues. Yet abusers are rarely brought to conviction because the law requires a higher standard.

Sections 2, 3, 4, 5, 6.

Regarding the change to statute adding to the powers of 1st and 2nd boroughs. Many of the responses my office received addressed the need for boroughs to have the option to adopt ordinances to prohibit cruelty to animals. Without this authority, boroughs must turn over these cases to state troopers who consider them a low priority. Most cities and boroughs in the state already have animal control systems which deal with impounding, licensing, and disposing of animals. This provision simply adds to the borough's options the ability to prohibit cruelty if they choose.

I appreciate your consideration in scheduling a hearing for this bill at your earliest convenience.

Alaska State Legislature

REPRESENTATIVE
BEN GRUSSENDORF
1221 HALIBUT POINT ROAD
SITKA, ALASKA 99835
(907) 747-8468

FINANCE COMMITTEE

DISTRICT 2
KUPREANOF
PETERSBURG
SITKA
WRANGELL



WHILE IN JUNEAU
STATE CAPITOL
JUNEAU, ALASKA 99801-1102
(907) 465-3824

House of Representatives

SPONSOR STATEMENT CSHB 386

"An act relating to cruelty to animals and to the power of first and second class boroughs to prohibit cruelty to animals."

This bill was introduced in response to concerns expressed by constituents regarding the difficulty of prosecuting cases which involve cruelty to animals. The bill also addresses the difficulty some boroughs are facing regarding their ability to enact ordinances to prohibit cruelty to animals.

There have been many acts of obvious neglect and cruelty across the state which courts have been unable to prosecute because the language in the statute is too difficult to prove. One district attorney has testified that the current language which reads "intentionally inflicts severe and prolonged physical pain or suffering on an animal," is "unprosecutable." He said, "a dead animal is your only evidence."

The proposed changes in CSHB 386 offer prosecutors a more workable statute. Changing "intentionally" to "knowingly" lowers the state of mind the state must prove in prosecuting a case. Changing the wording which describes the animal's level of suffering offers more options under which to prosecute and lowers the difficult standard which exists.

In order to prove cruelty through neglect, current law requires that the accused acted "recklessly" which means "a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur..." Criminal negligence is defined in our law to mean:

"a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation for the standard of care that a reasonable person would observe in the situation."

Criminal negligence is a lower state of mind than recklessness.

→

CSHB 386 (continued)

CS House Bill 386 also gives first and second class boroughs the option to adopt an ordinance to prohibit cruelty to animals. As state law reads now, these entities may only license, impound, and dispose of animals. Without the authority to deal with neglect or abuse issues, borough cases are often turned over to state troopers who consider them a low priority. One animal control officer said, "unless the animal is dead or unable to get up, troopers won't even investigate."

Without this legislation, boroughs need an expensive vote of the people to enact an ordinance to prohibit cruelty to animals. The proposed changes do not mandate boroughs to enact animal cruelty ordinances, but merely gives them the option if they choose to do so.

Existing law designates that cruelty to animals is a class A misdemeanor. This remains unchanged.

FISCAL NOTE

Work Draft
2/1/96

BILL NO. CSHB 386 ()

STATE OF ALASKA
1996 LEGISLATIVE SESSION

| | |
|---|--|
| Revision Date: _____ | Dept. Affected: <u>Department of Law</u> |
| Title: <u>"...cruelty to animals and the provision of food and water to confined or impounded animals."</u> | BRU: <u>Criminal Division</u> |
| Sponsor: <u>Representative Grussendorf</u> | Component: <u>Criminal Division</u> |
| Requester: <u>Representative Grussendorf</u> | COMPONENT SERIAL NO. <u>2085</u> |

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|-------|-------|-------|-------|-------|-------|
| 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 () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This bill amends Alaska laws relating to cruelty to animals in two ways. First, the bill amends AS 11.61.140 to lower the legal standard of conduct from one who acts intentionally to one who acts knowingly and inflicts severe physical pain or prolonged suffering on an animal. Similarly, the bill lowers the legal standard of conduct from one who acts recklessly to one who acts with criminal negligence and neglects an animal and, as a result of that neglect, causes the death of the animal or causes severe physical pain or prolonged suffering of the animal. These changes have the effect of making cruelty to animal cases easier to prove and, consequently, they will not have a fiscal impact.

Second, the bill amends AS 29.35 to authorize first and second class boroughs to enact ordinances prohibiting cruelty to animals. Providing this authority will allow local governments to deal with a problem that is primarily one of local concern.

Richard I. Peques

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 2/7/96
 Date: 2/7/96

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Fairbanks North Star Borough

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907/459-1000

MEMORANDUM

TO: Dan LaSota, Assemblymember
FROM: Ardith Lynch, Borough Attorney *Ardith Lynch*
DATE: September 7, 1995
SUBJECT: Authority to Prosecute Cruelty To Animals

This memo is in response to your request regarding the borough's animal control powers and ordinance. A second-class borough can exercise powers that are approved by the voters or authorized by the legislature. Following is a chronology of the borough's animal control powers:

| Year | Method | Power |
|------|---------------------------|---|
| 1965 | Voter approval | dog control |
| 1966 | AS 07.15.360 | dog control (by ordinance, without voter approval) |
| 1972 | AS 29.48.035(a)(5) | to regulate licensing, impounding and disposition of animals (by ordinance, without voter approval) |
| 1978 | BOROUGH ORDINANCE ENACTED | |
| 1985 | AS 29.35.210 | to license, impound and dispose of animals by ordinance (without voter approval) |

In 1978, the borough enacted FNSB 6.24.040, which classifies as a misdemeanor the failure to provide adequate food, water, shelter or veterinary care to prevent suffering of an animal. The court ruled that the borough has the power to prohibit cruelty to dogs only; the borough's powers with respect to other animals are limited to "licensing, impounding, and disposing." In order to cure the problem with the Borough's animal cruelty ordinance, the voters or the legislature would need to authorize additional animal control powers

If you need any additional information, do not hesitate to contact me.

HB

388

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 388(O&G)

1 Page 1, line 5:

2 Delete ", or adjacent land,"

3 Page 5, lines 6 - 9:

4 Delete ", together with any tract for which a written best interest finding has not
5 been prepared if the tract is located within and is entirely surrounded by acreage
6 described in this subparagraph for which a best interest finding was issued"

7 Page 5, line 13:

8 Delete " ,"

9 Insert "and"

10 Page 5, line 14:

11 Delete ", and for the included tracts"

12 Page 6, lines 23 - 24:

13 Delete "or that is adjacent to and surrounded by state land that has been the
14 subject of a best interest finding"

AMENDMENT

OFFERED IN THE HOUSE
TO: CSHB 388(O&G)

1 Page 6, lines 27 - 30:

2 Delete

3 "(1) may annually offer to issue oil and gas leases of the acreage
4 described in AS 38.05.035(e)(6)(G) unless the commissioner determines that
5 substantial new information has become available that justifies preparation of a
6 supplement to the best interest finding for the area proposed to be leased;"

7 Insert

8 "(1) may annually offer to issue oil and gas leases of the acreage
9 described in AS 38.05.035(e)(6)(G) that is subject to a written best interest
10 finding issued within the previous 10 years unless, under that subparagraph, the
11 commissioner determines that preparation of a supplement to the best interest
12 finding for the acreage proposed to be leased is justified;"

EMPHASIZE INTENT TO FACILITATE AREAWIDE LEASE SALES P.1, P.6

DELETE UNNECESSARY REFERENCES TO ADJACENT/INHOLDING AGREEMENT P.1, P.5, P.6

9-LS1341\K

DELETE REFERENCES TO SUPPLEMENTAL BIF AT LOCATIONS THAT COULD REQUIRE REPEATED APPEARANCES ON 5-YEAR LEASING SCHEDULE P.1, P.6

ADDITION TO CLARIFY PROCEDURAL REQUIREMENTS P.3, P.6

CS FOR HOUSE BILL NO. 388(O&G)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Offered: 3/13/96

Referred: Resources, Finance

Sponsor(s): REPRESENTATIVES ROKEBERG, B.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act revising laws relating to oil and gas leasing as related to land
 2 previously the subject of a written best interest finding; amending provisions
 3 setting out exceptions to sales, leases, or other disposals for which a revised
 4 written best interest finding is not required; ^{encouraging} ~~authorizing~~ annual offer of land for
 5 oil and gas leases if the land, ~~or adjacent land,~~ was the subject of a best
 6 interest finding ~~and if preparation of a supplement to the best interest finding~~
 7 ~~for that land is not justified;~~ and modifying the statement of purpose in the
 8 Alaska Land Act as it applies to oil and gas leasing." ^{to provide for annual areawide}
 lease sales

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

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

11 (e) Upon a written finding that the interests of the state will be best served, the
 12 director may, with the consent of the commissioner, approve contracts for the sale, lease,
 13 or other disposal of available land, resources, property, or interests in them. In [, AND,

1 IN] addition to the conditions and limitations imposed by law, the director may impose
 2 additional conditions or limitations in the contracts as the director determines, with the
 3 consent of the commissioner, will best serve the interests of the state. The preparation
 4 and issuance of the written finding by the director is subject to 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 finding
 10 supporting that determination; the scope of the review and finding may address
 11 only reasonably foreseeable, significant effects of the uses proposed to be
 12 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 property,
 17 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 the director finds are material to the determination of whether the
 24 proposed disposal will best serve the interests of the state; and

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

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

32 (ii) the department's approval is required before the next

1 phase of the project may proceed; and

2 (iii) the department describes its reasons for a decision to

3 phase and conditions its approval to ensure that any additional uses or

4 activities proposed for that or any later phase of the project will serve the

5 best interests of the state;

6 (2) the director shall discuss in the written finding prepared and issued

7 under this subsection the reasons that each of the following was not material to the

8 director's determination that the interests of the state will be best served:

9 (A) facts pertaining to the land, resources, or property, or an

10 interest in them other than those that the director finds material under (1)(B)(ii)

11 of this subsection; and

12 (B) issues based on the statutes and regulations referred to in

13 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this

14 subsection;

15 (3) a written finding for an oil and gas lease sale under AS 38.05.180 is

16 subject to (g) of this section;

17 (4) a contract for the sale, lease, or other disposal of available land or an

18 interest in land is not legally binding on the state until the commissioner approves the

19 contract but if the appraised value is not greater than \$50,000 in the case of the sale of

20 land or an interest in land, or \$5,000 in the case of the annual rental of land or interest

21 in land, the director may execute the contract without the approval of the commissioner;

22 (5) public notice requirements relating to the sale, lease, or other disposal

23 of available land or an interest in land for oil and gas proposed to be scheduled in the

24 five-year oil and gas leasing program under AS 38.05.180(b) ^{except for a sale under (G)(6) of this subsection} are as follows:

25 (A) before a public hearing, if held, or in any case not less than

26 180 days before the sale, lease, or other disposal of available land or an interest

27 in land, the director shall make available to the public a preliminary written

28 finding that states the scope of the review established under (1)(A) of this

29 subsection and includes the applicable statutes and regulations, the material facts

30 and issues in accordance with (1)(B) of this subsection, and information required

31 by (g) of this section, upon which the determination that the sale, lease, or other

32 disposal will serve the best interests of the state will be based; the director shall

1 provide opportunity for public comment on the preliminary written finding for
2 a period of not less than 60 days;

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

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

21 (A) a contract for a negotiated sale authorized under
22 AS 38.05.115;

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

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

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

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

28 (F) a production license issued under AS 38.05.207; or

29 (G) an exempt oil and gas lease sale under AS 38.05.180(d) of
30 acreage subject to a best interest finding issued [OFFERED IN A SALE
31 THAT WAS HELD] within the previous 10 [FIVE] years [IF THE SALE WAS
32 SUBJECT TO A WRITTEN BEST INTEREST FINDING, UNLESS THE

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COMMISSIONER DETERMINES THAT NEW INFORMATION HAS BECOME AVAILABLE THAT JUSTIFIES A REVISION OF THE BEST INTEREST FINDING;] or

[(H)] a reoffer oil and gas lease sale under AS 38.05.180(w) of acreage subject to a best interest finding issued [OFFERED IN A SALE THAT WAS HELD] within the previous 10 [FIVE] years, ~~together with any~~

~~tract for which a written best interest finding has not been prepared if the tract is located within and is entirely surrounded by acreage described in this subparagraph for which a best interest finding was issued~~ [(I) THE

SALE WAS SUBJECT TO A BEST INTEREST FINDING], unless the commissioner determines that substantial new information has become available that justifies a supplement to [REVISION OF] the most recent best interest finding for the exempt oil and gas lease sale acreage, for the reoffer oil and gas lease sale acreage, and for the included tracts; however, for each oil and gas lease sale described in this subparagraph, the director shall call for comments from the public; the director's call for public comments must provide opportunity for public comment for a period of not less than 30 days; if the director determines that a supplement to the most recent best interest finding for the acreage is required under this subparagraph.

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

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

(iii) the supplement has the status of a final written best interest finding for purposes of AS 38.05.035(i) and (l);

(7) the director shall include in

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

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

3 * Sec. 2. AS 38.05.180(a) is amended to read:

4 (a) The legislature finds that

5 (1) the people of Alaska have an interest in the development of the
6 state's oil and gas resources to

7 (A) maximize the economic and physical recovery of the
8 resources;

9 (B) maximize competition among parties seeking to explore and
10 develop the resources;

11 (C) maximize use of Alaska's human resources in the
12 development of the resources;

13 (2) it is in the best interests of the state

14 (A) to encourage an assessment of its oil and gas resources and
15 to allow the maximum flexibility in the methods of issuing leases to

16 (i) [(A)] recognize the many varied geographical regions
17 of the state and the different costs of exploring for oil and gas in these
18 regions;

19 (ii) [(B)] minimize the adverse impact of exploration,
20 development, production, and transportation activity; and

21 (B) to offer acreage for oil and gas leases on an annual basis,
22 specifically including annual areawide leases of state land that has been the
23 subject of a best interest finding or that is adjacent to and surrounded by
24 state land that has been the subject of a best interest finding and those lands which are eligible as exempt sales as authorized
by AS38.05.180(d).

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

26 (d) The commissioner

27 (1) may annually offer ^{at areawide lease sales} to issue oil and gas leases of the acreage

28 described in AS 38.05.035(e)(6)(G) unless the commissioner determines that
29 substantial new information has become available that justifies preparation of a
30 supplement to the best interest finding for the area proposed to be leased;

31 (2) may issue oil and gas leases in an area that has not been included
32 in a leasing program submitted, in accordance with (b) of this section, to the legislature

1 if the land to be leased

2 (A) [(1)] was previously subject to a valid state or federal oil
3 and gas lease;

4 (B) [(2)] is contiguous to land already under state, federal or
5 private lease and the commissioner makes a written finding, after hearing, that
6 leasing of the land would result in a substantial probability of early evaluation
7 and development of the land to be leased;

8 (C) [(3)] is adjacent to land owned or controlled by another
9 party on which a discovery of commercial quantities of oil or gas has been
10 made, and the commissioner finds, after hearing, that there is a reasonable
11 probability that the land to be leased contains oil or gas in communication with
12 the oil or gas discovered on the land of the other party;

13 (D) [(4)] is adjacent to land included in the federal five-year
14 Outer Continental Shelf leasing program under 43 U.S.C. 1344, and the
15 commissioner makes a written finding, after hearing, that coordinated or
16 simultaneous leasing with the federal government is in the public interest; or

17 (E) [(5)] is the subject of an oil and gas exploration license
18 issued under AS 38.05.131 - 38.05.134.

19 * Sec. 4. AS 38.05.180(w) is amended to read:

20 (w) Notwithstanding any other provisions of this section, land that was subject
21 to a best interest finding issued within the previous 10 years [WHICH HAS BEEN
22 OFFERED FOR LEASE WITHIN THE PREVIOUS FIVE YEARS AND WHICH
23 RECEIVED NO BIDS AT COMPETITIVE SALE OR FOR WHICH NO BID WAS
24 ACCEPTED] may be, at the discretion of the commissioner, immediately offered for
25 lease, under regulations adopted by the commissioner, upon terms appearing most
26 advantageous to the state; however, noncompetitive leasing is prohibited. The
27 commissioner shall establish a royalty determined to be in the public interest but not less
28 than 12 1/2 percent. A lease must provide for payment to the state of rental but need
29 not adhere to the rental schedule in (n) of this section nor to the 5,760-acres-per-lease
30 limitation in (m) of this section. The lease term may not exceed 10 years, except as
31 provided in (o) of this section.

32 * Sec. 5. 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(c)(6), except an oil or gas lease
- 15 sale described in AS 38.05.035(e)(6)(G) for which the director must provide
- 16 opportunity for public comment under the provisions of that subparagraph;
- 17 (4) a competitive disposal of an interest in state land or resources after
- 18 final decision under AS 38.05.035(e);
- 19 (5) a public hearing under AS 38.05.856(b);
- 20 (6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c)
- 21 concerning sites for aquatic farms and related hatcheries;
- 22 (7) a decision under AS 38.05.132 - 38.05.134 regarding the sale, lease,
- 23 or disposal of an interest in state land or resources.

9-LS1341\G
Chenoweth
3/12/96

CS FOR HOUSE BILL NO. 388()

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 revising laws relating to oil and gas leasing as related to land
 2 previously the subject of a written best interest finding; amending provisions
 3 setting out exceptions to sales, leases, or other disposals for which a revised
 4 written best interest finding is not required; authorizing annual offer of land for
 5 oil and gas leases if the land, or adjacent land, was the subject of a best
 6 interest finding and if preparation of a supplement to the best interest finding
 7 for that land is not justified; and modifying the statement of purpose in the
 8 Alaska Land Act as it applies to oil and gas leasing."

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

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

11 (e) Upon a written finding that the interests of the state will be best served, the
 12 director may, with the consent of the commissioner, approve contracts for the sale, lease,
 13 or other disposal of available land, resources, property, or interests in them. In [, AND,

1 [IN] addition to the conditions and limitations imposed by law, the director may impose
2 additional conditions or limitations in the contracts as the director determines, with the
3 consent of the commissioner, will best serve the interests of the state. The preparation
4 and issuance of the written finding by the director is subject to 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 finding
10 supporting that determination; the scope of the review and finding may address only
11 reasonably foreseeable, significant effects of the uses proposed to be authorized by the
12 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 property,
17 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 the director finds are material to the determination of whether the
24 proposed disposal will best serve the interests of the state; and

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

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

32 (ii) the department's approval is required before the next

1 phase of the project may proceed; and

2 (iii) the department describes its reasons for a decision to
3 phase and conditions its approval to ensure that any additional uses or
4 activities proposed for that or any later phase of the project will serve the
5 best interests of the state;

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

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

12 (B) issues based on the statutes and regulations referred to in
13 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
14 subsection;

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

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

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

25 (A) before a public hearing, if held, or in any case not less than
26 180 days before the sale, lease, or other disposal of available land or an interest
27 in land, the director shall make available to the public a preliminary written
28 finding that states the scope of the review established under (1)(A) of this
29 subsection and includes the applicable statutes and regulations, the material facts
30 and issues in accordance with (1)(B) of this subsection, and information required
31 by (g) of this section, upon which the determination that the sale, lease, or other
32 disposal will serve the best interests of the state will be based; the director shall

1 provide opportunity for public comment on the preliminary written finding for
2 a period of not less than 60 days;

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

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

21 (A) a contract for a negotiated sale authorized under
22 AS 38.05.115;

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

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

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

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

28 (F) a production license issued under AS 38.05.207; or

29 (G) an exempt oil and gas lease sale under AS 38.05.180(d) of
30 acreage subject to a best interest finding issued [OFFERED IN A SALE
31 THAT WAS HELD] within the previous 10 [FIVE] years [IF THE SALE WAS
32 SUBJECT TO A WRITTEN BEST INTEREST FINDING, UNLESS THE

1 COMMISSIONER DETERMINES THAT NEW INFORMATION HAS
2 BECOME AVAILABLE THAT JUSTIFIES A REVISION OF THE BEST
3 INTEREST FINDING;] or

4 [(H)] a reoffer oil and gas lease sale under AS 38.05.180(w) of
5 acreage subject to a best interest finding issued [OFFERED IN A SALE
6 THAT WAS HELD] within the previous 10 [FIVE] years, together with any
7 tract for which a written best interest finding has not been prepared if the
8 tract is located within and is entirely surrounded by acreage described in
9 this subparagraph for which a best interest finding was issued [IF THE
10 SALE WAS SUBJECT TO A BEST INTEREST FINDING], unless the
11 commissioner determines that substantial new information has become available
12 that justifies a supplement to [REVISION OF] the most recent best interest
13 finding for the exempt oil and gas lease sale acreage, for the reoffer oil and
14 gas lease sale acreage, and for the included tracts; however, for each oil and
15 gas lease sale described in this subparagraph, the director shall call for
16 comments from the public; the director's call for public comments must
17 provide opportunity for public comment for a period of not less than 30
18 days; if the director determines that a supplement to the most recent best
19 interest finding for the acreage is required under this subparagraph,

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

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

25 (iii) the supplement has the status of a final written
26 best interest finding for purposes of AS 38.05.035(i) and (l);

27 (7) the director shall include in

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

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

3 * Sec. 2. AS 38.05.180(a) is amended to read:

4 (a) The legislature finds that

5 (1) the people of Alaska have an interest in the development of the
6 state's oil and gas resources to

7 (A) maximize the economic and physical recovery of the
8 resources;

9 (B) maximize competition among parties seeking to explore and
10 develop the resources;

11 (C) maximize use of Alaska's human resources in the
12 development of the resources;

13 (2) it is in the best interests of the state

14 (A) to encourage an assessment of its oil and gas resources and
15 to allow the maximum flexibility in the methods of issuing leases to

16 (i) [(A)] recognize the many varied geographical regions
17 of the state and the different costs of exploring for oil and gas in these
18 regions;

19 (ii) [(B)] minimize the adverse impact of exploration,
20 development, production, and transportation activity; and

21 (B) to offer acreage for oil and gas lease sales on an annual
22 basis, specifically including annual areawide lease sales of state land that has
23 been the subject of a best interest finding or that is adjacent to and
24 surrounded by state land that has been the subject of a best interest finding.

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

26 (d) The commissioner

27 (1) may annually offer to issue oil and gas leases of the acreage
28 described in AS 38.05.035(e)(6)(G) unless the commissioner determines that new
29 information has become available that justifies preparation of a supplement to the
30 best interest finding for the area proposed to be leased;

31 (2) may issue oil and gas leases in an area that has not been included
32 in a leasing program submitted, in accordance with (b) of this section, to the legislature

1 if the land to be leased

2 (A) [(1)] was previously subject to a valid state or federal oil
3 and gas lease;

4 (B) [(2)] is contiguous to land already under state, federal or
5 private lease and the commissioner makes a written finding, after hearing, that
6 leasing of the land would result in a substantial probability of early evaluation
7 and development of the land to be leased;

8 (C) [(3)] is adjacent to land owned or controlled by another
9 party on which a discovery of commercial quantities of oil or gas has been
10 made, and the commissioner finds, after hearing, that there is a reasonable
11 probability that the land to be leased contains oil or gas in communication with
12 the oil or gas discovered on the land of the other party;

13 (D) [(4)] is adjacent to land included in the federal five-year
14 Outer Continental Shelf leasing program under 43 U.S.C. 1344, and the
15 commissioner makes a written finding, after hearing, that coordinated or
16 simultaneous leasing with the federal government is in the public interest; or

17 (E) [(5)] is the subject of an oil and gas exploration license
18 issued under AS 38.05.131 - 38.05.134.

19 * Sec. 4. AS 38.05.180(w) is amended to read:

20 (w) Notwithstanding any other provisions of this section, land that was subject
21 to a best interest finding issued within the previous 10 years [WHICH HAS BEEN
22 OFFERED FOR LEASE WITHIN THE PREVIOUS FIVE YEARS AND WHICH
23 RECEIVED NO BIDS AT COMPETITIVE SALE OR FOR WHICH NO BID WAS
24 ACCEPTED] may be, at the discretion of the commissioner, immediately offered for
25 lease, under regulations adopted by the commissioner, upon terms appearing most
26 advantageous to the state; however, noncompetitive leasing is prohibited. The
27 commissioner shall establish a royalty determined to be in the public interest but not less
28 than 12 1/2 percent. A lease must provide for payment to the state of rental but need
29 not adhere to the rental schedule in (n) of this section nor to the 5,760-acres-per-lease
30 limitation in (m) of this section. The lease term may not exceed 10 years, except as
31 provided in (o) of this section.

32 * Sec. 5. 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), except an oil or gas lease
15 sale described in AS 38.05.035(e)(6)(G) for which the director must provide
16 opportunity for public comment under the provisions of that subparagraph;

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

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

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

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

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 401

Amendment 1: Clarification in the bond cap language.

Page 2, lines 14 - 15:

Following "revenue bonds"

Insert "under AS 37.15.560 - 37.15.605"

Page 2, line 15:

Following "total"

Insert "unpaid principal"

Page 2, line 16:

Following "bonds"

Delete "outstanding at any one time"

Insert ", including refunding bonds, but excluding
refunded bonds, issued under the provisions of AS
37.15.560 - 37.15.605,"

Page 2, lines 16-17

Following \$150,000,000

Delete "including principal and interest owed on the
bonds"

Amendment 2: grammatical clarification (limit scope of term 'money and revenue')

Page 4, lines 8-9:

Following "pledge of"

Insert "such"

Amendment 3: grammatical clarification (singular to plural).

Page 5, line 12

Following "default to"

Delete "the"

Insert "any"

Amendment 4: correct typographical omission.

Page 6, line 28

Following "refunding"

Insert "bonds"

Amendment 5: CSHB 401 allows municipalities and state agencies to access the Alaska Clean Water Fund for bond insurance and other collateral security for local obligations. "Other qualified entities" should also have access to the Fund for this purpose.

Page 9, line 26:

Following "municipal"

Delete "or"

Insert ", "

Following "state agency"

Insert ", or other qualified entity"

HB 388
3/20/96
Version M

AMENDMENT

OFFERED IN HOUSE RESOURCES

BY REPRESENTATIVE JOHN DAVIES

TO: CSHB 388 (RES):

Page 6, Line 27:

Following 'may'

Insert: ', for state land north of the Umiat baseline'

9-LS1341M
Chenoweth
3/19/96

Jeff's Copy

CS FOR HOUSE BILL NO. 388(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES ROKEBERG, B.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act revising laws relating to oil and gas leasing as related to land
2 previously the subject of a written best interest finding; amending provisions
3 setting out exceptions to sales, leases, or other disposals for which a revised
4 written best interest finding is not required; encouraging annual offer of land for
5 oil and gas leases if the land was the subject of a best interest finding; and
6 modifying the statement of purpose in the Alaska Land Act as it applies to oil
7 and gas leasing to provide for annual areawide lease sales."

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

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

10 (e) Upon a written finding that the interests of the state will be best served, the
11 director may, with the consent of the commissioner, approve contracts for the sale, lease,
12 or other disposal of available land, resources, property, or interests in them. In [, AND,
13 IN] addition to the conditions and limitations imposed by law, the director may impose

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

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

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

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

14 (i) applicable statutes and regulations;

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

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

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

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

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

- 1 (iii) the department describes its reasons for a decision to
2 phase and conditions its approval to ensure that any additional uses or
3 activities proposed for that or any later phase of the project will serve the
4 best interests of the state;
- 5 (2) the director shall discuss in the written finding prepared and issued
6 under this subsection the reasons that each of the following was not material to the
7 director's determination that the interests of the state will be best served:
- 8 (A) facts pertaining to the land, resources, or property, or an
9 interest in them other than those that the director finds material under (1)(B)(ii)
10 of this subsection; and
- 11 (B) issues based on the statutes and regulations referred to in
12 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
13 subsection;
- 14 (3) a written finding for an oil and gas lease sale under AS 38.05.180 is
15 subject to (g) of this section;
- 16 (4) a contract for the sale, lease, or other disposal of available land or an
17 interest in land is not legally binding on the state until the commissioner approves the
18 contract but if the appraised value is not greater than \$50,000 in the case of the sale of
19 land or an interest in land, or \$5,000 in the case of the annual rental of land or interest
20 in land, the director may execute the contract without the approval of the commissioner;
- 21 (5) public notice requirements relating to the sale, lease, or other disposal
22 of available land or an interest in land for oil and gas proposed to be scheduled in the
23 five-year oil and gas leasing program under AS 38.05.180(b), except for a sale under
24 (6)(G) of this subsection, are as follows:
- 25 (A) before a public hearing, if held, or in any case not less than
26 180 days before the sale, lease, or other disposal of available land or an interest
27 in land, the director shall make available to the public a preliminary written
28 finding that states the scope of the review established under (1)(A) of this
29 subsection and includes the applicable statutes and regulations, the material facts
30 and issues in accordance with (1)(B) of this subsection, and information required
31 by (g) of this section, upon which the determination that the sale, lease, or other
32 disposal will serve the best interests of the state will be based; the director shall

1 provide opportunity for public comment on the preliminary written finding for
2 a period of not less than 60 days;

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

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

21 (A) a contract for a negotiated sale authorized under
22 AS 38.05.115;

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

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

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

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

28 (F) a production license issued under AS 38.05.207; or

29 (G) an exempt oil and gas lease sale under AS 38.05.180(d) of
30 acreage subject to a best interest finding issued [OFFERED IN A SALE
31 THAT WAS HELD] within the previous 10 [FIVE] years [IF THE SALE WAS
32 SUBJECT TO A WRITTEN BEST INTEREST FINDING, UNLESS THE

1 COMMISSIONER DETERMINES THAT NEW INFORMATION HAS
2 BECOME AVAILABLE THAT JUSTIFIES A REVISION OF THE BEST
3 INTEREST FINDING;] or

4 [(H)] a reoffer oil and gas lease sale under AS 38.05.180(w) of
5 acreage subject to a best interest finding issued [OFFERED IN A SALE
6 THAT WAS HELD] within the previous 10 [FIVE] years [IF THE SALE WAS
7 SUBJECT TO A BEST INTEREST FINDING], unless the commissioner
8 determines that substantial new information has become available that justifies
9 a supplement to [REVISION OF] the most recent best interest finding for the
10 exempt oil and gas lease sale acreage and for the reoffer oil and gas lease
11 sale acreage; however, for each oil and gas lease sale described in this
12 subparagraph, the director shall call for comments from the public; the
13 director's call for public comments must provide opportunity for public
14 comment for a period of not less than 30 days; if the director determines
15 that a supplement to the most recent best interest finding for the acreage is
16 required under this subparagraph,

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

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

22 (iii) the supplement has the status of a final written
23 best interest finding for purposes of AS 38.05.035(i) and (l);

24 (7) the director shall include in

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

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

32 * Sec. 2. AS 38.05.180(a) is amended to read:

- 1 (a) The legislature finds that
- 2 (1) the people of Alaska have an interest in the development of the state's
- 3 oil and gas resources to
- 4 (A) maximize the economic and physical recovery of the
- 5 resources;
- 6 (B) maximize competition among parties seeking to explore and
- 7 develop the resources;
- 8 (C) maximize use of Alaska's human resources in the
- 9 development of the resources;
- 10 (2) it is in the best interests of the state
- 11 (A) to encourage an assessment of its oil and gas resources and
- 12 to allow the maximum flexibility in the methods of issuing leases to
- 13 (i) [(A)] recognize the many varied geographical regions
- 14 of the state and the different costs of exploring for oil and gas in these
- 15 regions;
- 16 (ii) [(B)] minimize the adverse impact of exploration,
- 17 development, production, and transportation activity; and
- 18 (B) to offer acreage for oil and gas leases on an annual basis,
- 19 specifically including
- 20 (i) [annual areawide leases of] state land that has been
- 21 the subject of a best interest finding; and
- 22 (ii) land in areas that, under (d) of this section, may
- 23 be leased without having been included in the leasing program
- 24 prepared and submitted under (b) of this section.
- 25 * Sec. 3. AS 38.05.180(d) is amended to read:
- 26 (d) The commissioner
- 27 (1) may annually offer at areawide lease sales to issue oil and gas
- 28 leases of the acreage described in AS 38.05.035(e)(6)(G);
- 29 (2) may issue oil and gas leases in an area that has not been included
- 30 in a leasing program submitted, in accordance with (b) of this section, to the legislature
- 31 if the land to be leased
- 32 (A) [(1)] was previously subject to a valid state or federal oil

1 and gas lease;

2 (B) [(2)] is contiguous to land already under state, federal or
3 private lease and the commissioner makes a written finding, after hearing, that
4 leasing of the land would result in a substantial probability of early evaluation
5 and development of the land to be leased;

6 (C) [(3)] is adjacent to land owned or controlled by another
7 party on which a discovery of commercial quantities of oil or gas has been
8 made, and the commissioner finds, after hearing, that there is a reasonable
9 probability that the land to be leased contains oil or gas in communication with
10 the oil or gas discovered on the land of the other party;

11 (D) [(4)] is adjacent to land included in the federal five-year
12 Outer Continental Shelf leasing program under 43 U.S.C. 1344, and the
13 commissioner makes a written finding, after hearing, that coordinated or
14 simultaneous leasing with the federal government is in the public interest; or

15 (E) [(5)] is the subject of an oil and gas exploration license
16 issued under AS 38.05.131 - 38.05.134.

17 * Sec. 4. AS 38.05.180(w) is amended to read:

18 (w) Notwithstanding any other provisions of this section, land that was subject
19 to a best interest finding issued within the previous 10 years [WHICH HAS BEEN
20 OFFERED FOR LEASE WITHIN THE PREVIOUS FIVE YEARS AND WHICH
21 RECEIVED NO BIDS AT COMPETITIVE SALE OR FOR WHICH NO BID WAS
22 ACCEPTED] may be, at the discretion of the commissioner, immediately offered for
23 lease, under regulations adopted by the commissioner, upon terms appearing most
24 advantageous to the state; however, noncompetitive leasing is prohibited. The
25 commissioner shall establish a royalty determined to be in the public interest but not less
26 than 12 1/2 percent. A lease must provide for payment to the state of rental but need
27 not adhere to the rental schedule in (n) of this section nor to the 5,760-acres-per-lease
28 limitation in (m) of this section. The lease term may not exceed 10 years, except as
29 provided in (o) of this section.

30 * Sec. 5. AS 38.05.945(a) is amended to read:

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

- 1 (1) classification or reclassification of state land under AS 38.05.300 and
2 the closing of land to mineral leasing or entry under AS 38.05.185;
- 3 (2) zoning of land under applicable law;
- 4 (3) issuance of a
- 5 (A) preliminary written finding under AS 38.05.035(e)(5)(A)
6 regarding the sale, lease, or disposal of an interest in state land or resources for
7 oil and gas subject to AS 38.05.180(b);
- 8 (B) final written finding under AS 38.05.035(e)(5)(B) regarding
9 the sale, lease, or disposal of an interest in state land or resources for oil and gas
10 subject to AS 38.05.180(b);
- 11 (C) written finding for the sale, lease, or disposal of an interest
12 in state land or resources under AS 38.05.035(e)(6), except an oil or gas lease
13 sale described in AS 38.05.035(e)(6)(G) for which the director must provide
14 opportunity for public comment under the provisions of that subparagraph;
- 15 (4) a competitive disposal of an interest in state land or resources after
16 final decision under AS 38.05.035(e);
- 17 (5) a public hearing under AS 38.05.856(b);
- 18 (6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c)
19 concerning sites for aquatic farms and related hatcheries;
- 20 (7) a decision under AS 38.05.132 - 38.05.134 regarding the sale, lease,
21 or disposal of an interest in state land or resources.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 388

Revision Date: Original Dept Affected Natural Resources
 Title: An Act revising laws relating to oil and BRU: Resource Development
gas leasing to authorize a program of... Component: Oil & Gas Development
 Sponsor: Representative Rokeberg, B. Davis
 Requestor: _____ Component Serial No. 439

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY97 | FY98 | FY99 | FY00 | FY01 | FY02 |
|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES | 230.0 | 238.1 | 246.4 | 255.0 | 263.9 | 273.2 |
| TRAVEL | 8.0 | 8.3 | 8.6 | 8.9 | 9.2 | 9.5 |
| CONTRACTUAL | 5.5 | 5.7 | 5.9 | 6.1 | 6.3 | 6.5 |
| SUPPLIES | 9.0 | 9.3 | 9.6 | 10.0 | 10.3 | 10.7 |
| EQUIPMENT | 37.5 | 15.0 | 15.5 | 16.1 | 16.6 | 17.2 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 290.0 | 276.3 | 286.0 | 296.0 | 306.4 | 317.1 |

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

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

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 290.0 | 276.3 | 286.0 | 296.0 | 306.4 | 317.1 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 290.0 | 276.3 | 286.0 | 296.0 | 306.4 | 317.1 |

Estimate of any current year (FY96) cost: \$ none

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 5 | 5 | 5 | 5 | 5 | 5 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary)

Five additional positions within DO&G will be require to implement the areawide oil and gas leasing program:

One Natural resources Officer II , to determine land ownership, title conflicts, correct title faults, and prepare detailed land title reports, prepare and issue public notices under AS 38.05.945-.946, prepare and organize the annual oil and gas lease sale offerings, and to adjudicate bids and determine successful bidders for lease issuance.

One Natural resources Officer II to perform the land title and status reviews, assist in determining land and ownership boundaries, determine tract acreages, prepare lease sale tract maps and plats.

At least one Natural Resource Officer II will be required if one area is authorized for areawide leasing. If more than one area is authorized, additional Natural Resource Officer II positions would be required. This fiscal note assumes that two Natural resources Officer II positions are needed. These personnel would research, write, and regularly revise areawide best interest findings.

One Natural resources Officer I to assist with research and minor writing tasks in support of best interest findings and responding to public concerns.

THERE ARE UNCERTAINTIES IN THE BILL WHICH MAY CHANGE THE FISCAL IMPACT ONCE CLARIFIED WITH THE SPONSOR.

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

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB 388 (O&G)

1996 LEGISLATIVE SESSION

| | | | |
|----------------|--|------------------------|----------------------------------|
| Revision Date: | <u>Original</u> | Dept Affected | <u>Natural Resources</u> |
| Title: | <u>An Act revising laws relating to oil and gas leasing to authorize a program of...</u> | BRU: | <u>Resource Development</u> |
| Sponsor: | <u>Representative Rokeberg, B. Davis</u> | Component: | <u>Oil & Gas Development</u> |
| Requestor: | <u>House Resources</u> | Component Serial No. ~ | <u>439</u> |

| Expenditures/Revenues | (Thousands of Dollars) | | | | | |
|-------------------------------|------------------------|------------|------------|------------|------------|------------|
| OPERATING EXPENDITURES | FY97 | FY98 | FY99 | FY00 | FY01 | FY02 |
| PERSONAL SERVICES | | | | | | |
| TRAVEL | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| CONTRACTUAL | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 8.0 | 8.0 | 8.0 | 8.0 | 8.0 | 8.0 |
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| FUND SOURCE | (Thousands of Dollars) | | | | | |
|--------------------------|------------------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 8.0 | 8.0 | 8.0 | 8.0 | 8.0 | 8.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 8.0 | 8.0 | 8.0 | 8.0 | 8.0 | 8.0 |

Estimate of any current year (FY96) cost: \$ none

| POSITIONS | FY97 | FY98 | FY99 | FY00 | FY01 | FY02 |
|-----------|------|------|------|------|------|------|
| 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)

The fiscal impact will depend on the number of sales that will be held in any one year, these cost are mainly administrative. More sales will mean more advertising for public notices and travel for public hearings. There may be additional printing costs for any supplements to the Final Finding. The \$8.0 is an merely an estimate.

If there are substantial revisions necessary to supplement the finding there may be some additional personnel requirements, but this fiscal note assumes the use of existing staff the fulfill the requirements of the bill.

| | | | |
|---------------------------|---------------------------|--------|------------------|
| Prepared by: | <u>Ken Boyd, Director</u> | Phone: | <u>269-8800</u> |
| Division: | <u>Oil & Gas</u> | Date: | <u>15-Mar-96</u> |
| Approved by Commissioner: | <i>[Signature]</i> | Date: | <u>15-Mar-96</u> |
| Agency: | <u>Natural Resources</u> | | |

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ALASKA STATE LEGISLATURE
House of Representatives

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LABOR & COMMERCE, VICE CHAIRMAN
ADMINISTRATIVE REGULATION REVIEW, VICE CHAIRMAN
HEALTH, EDUCATION & SOCIAL SERVICES, MEMBER
ECONOMIC DEVELOPMENT, MEMBER



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SESSION:
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

MEMORANDUM

TO: Representative Joe Green, Co-Chair
Representative Bill Williams, Co. Chair
House Resources Committee

FROM: Representative Norman Rokeberg 

DATE: March 14, 1996

SUBJECT: CSHB 388 (O&G) - An Act relating to oil and gas leasing and best interest findings

I respectfully request that a committee hearing be scheduled for CSHB 388(O&G) for the week of March 18th.

We will prepare a committee packet for CSHB 388(O&G) as soon as we receive the additional information our office has requested. If you have any further questions regarding this bill, please contact myself or Shirley Armstrong at 465-4968.

Attachments

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 388(O&G)

1 Page 1, line 5:

2 Delete ", or adjacent land,"

3 Page 5, lines 6 - 9:

4 Delete "together with any tract for which a written best interest finding has not
5 been prepared if the tract is located within and is entirely surrounded by acreage
6 described in this subparagraph for which a best interest finding was issued"

7 Page 5, line 13:

8 Delete " ; "

9 Insert "and"

10 Page 5, line 14:

11 Delete "and for the included tracts"

12 Page 6, lines 23 - 24:

13 Delete "or that is adjacent to and surrounded by state land that has been the
14 subject of a best interest finding"

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 8, 1996

FURTHER REFERRALS:

Resources
Finance

Date of Committee Action: 3/12/96

The HOUSE SPECIAL COMMITTEE ON OIL AND GAS Committee considered:

HB 388

HOUSE BILL NO. 388

AREAWIDE OIL & GAS LEASING

"An Act revising laws relating to oil and gas leasing to authorize a program of areawide leasing."

recommends it be replaced with the following committee substitute HSAB 388 (D+G) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) DNR fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) _____

| SIGNING WITH RECOMMENDATIONS | DP | DNP | NR | AM |
|------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|----|
| <i>[Signature]</i> | | | <input checked="" type="checkbox"/> | |
| <i>[Signature]</i> | | | <input checked="" type="checkbox"/> | |
| <i>[Signature]</i> | <input checked="" type="checkbox"/> | | | |
| <i>[Signature]</i> | <input checked="" type="checkbox"/> | | | |
| <i>[Signature]</i> | | | <input checked="" type="checkbox"/> | |
| <i>[Signature]</i> | | <input checked="" type="checkbox"/> | | |
| <i>[Signature]</i> | | | <input checked="" type="checkbox"/> | |
| <i>[Signature]</i> | | | | |
| <i>[Signature]</i> | | | | |

CHAIR'S SIGNATURE *[Signature]* 3/12/96

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

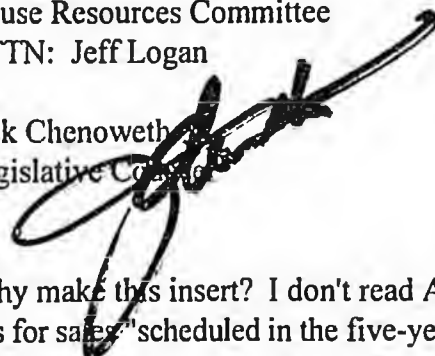
MEMORANDUM

March 19, 1996

SUBJECT: Draft CSHB 388 (Res) (Work Order No. 9-LS1341\M)

TO: Representative Joe Green, Co-Chair
House Resources Committee
ATTN: Jeff Logan

FROM: Jack Chenoweth
Legislative Counsel



On page 3, at line 24: Why make this insert? I don't read AS 38.05.035(e)(5), setting out public notice requirements for sales "scheduled in the five-year oil and gas leasing program under AS 38.05.180(b)" as covering these exempt oil and gas lease sales. If it does not, then this additional reference adding an exemption of something that is already not covered or exempt seems to me to be unnecessary.

On page 5, line 11, before "however," I deleted a reference to "included tracts" that your mark-up had not addressed. Is this change okay?

We revise, on page 6, AS 38.05.180(a)(2)(B) to say that the best interests of the state are served if land described in AS 38.05.180(d) is "offer[ed] . . . for oil and gas leases on an annual basis" but nowhere is the commissioner told, or authorized, to do that. It seems to me that, in bill section 3, AS 38.05.180(d)(2) should be amended to say that the commissioner "may annually issue . . ." or something to that effect. Without something substantive, the revised statement of policy of subsection (a) is little more than a legislative expression with nothing to carry it into effect.

In AS 38.05.180(a)(2)(B), the simple reference was to "exempt sales." You and I both know what "exempt" sales makes reference to, but to be clear about it, I revised (a)(2)(B)(ii) to be more specific. I hope this meets with the committee's approval.

JBC:klb
96-211.klb

ALASKA STATE LEGISLATURE

House of Representatives

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ADMINISTRATIVE REGULATION REVIEW, VICE CHAIRMAN
HEALTH, EDUCATION & SOCIAL SERVICES, MEMBER
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FAX: (907) 465-2040

Representative Norman Rokeberg

Sponsor Statement

HB 388 - An act relating to oil and gas leases and best interest findings

The current Oil and Gas Committee Substitute for HB 388 incorporates sections of HB 389 that extend the life of a best interest finding from 5 years to 10 years. This new version is a compromise between the Alaska Oil and Gas Association, the Department of Natural Resources and the sponsor. The oil industry requested that the original bill be modified to eliminate the creation of a new oil and gas leasing process as well as the language mandating annual lease sales.

CSHB 388(O&G) achieves the industry and state's objectives without creating a new program which would require creation of implementing regulations. By amending existing statutes there will be no delay in the current schedule of lease sales and also, eliminates the large fiscal note.

CSHB 388(O&G) contains language that changes the mandated annual leasing to annual leasing at the commissioner's discretion. The oil industry indicates that there are assurances by the department that annual lease sales will take place in cases where there are no significant problems preventing the sales, such as, poor market conditions. The new committee substitute includes language that would encourage the commissioner to follow through with annual sales.

In addition, I would like to emphasize that the goal of this legislation is to make more land available to the industry for leasing on a predictable schedule. This in turn benefits the State of Alaska by increasing the amount of oil produced. Thus, providing increased royalty revenues to fund programs critical to the people of the State of Alaska.

Simply stated the bill:

- (1) Is in the best interest of the State of Alaska to conduct annual areawide sales;
- (2) Provides the industry with some certainty about the timeline and location of lands being made available oil & gas leasing;
- (3) Accommodates the concerns expressed by the administration as well as the problems associated with setting up a new program of leasing for the State of Alaska;
- (4) Establishes a clear streamlined process for processing a "supplement" to an existing areawide Best Interest Finding (BIF) which includes a reasonable time period for public notice and comment;
- (5) The AOGA member companies have endorsed the current concepts.

ARCO Alaska, Inc.



George R. Findling
ATO-1920
Anchorage, Alaska
Phone (907) 263-4174

3 21 96

Representative Joe Green (by fax to Juneau)

Re: CS for House Bill No. 388 (Res) 9-LS1341\M

This note is to establish, for the record, that ARCO Alaska, Inc. supports the above referenced bill.

In particular, we believe that this bill in no way circumvents an appropriate public process to determine if area wide lease sales are in the best interests of the state. Each year, prior to the sale, a notification and analysis process is used to determine if any significant new information exists which bears on the BIF and hence requires that a supplement to the existing BIF be prepared. It is because this process protects public participation, that we concur (with the current version of the bill) that there should be no artificial geographic restrictions in where area wide lease sales can occur.

Mr. Chairman, my thanks to you and the sponsor for the opportunity to provide comments on this important and strong piece of legislation.

George

CC: Representative Norm Rokeberg

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907)272-1481 Direct: (907)272-7424 Fax: (907)279-8114
L. A. (Ardie) Gray, Public Affairs Manager

March 18, 1996

To: Jeff Logan
House Resources Committee

From: Ardie Gray

Subject: CSHB 388 (K)

Jeff:

Attached is a corrected AOGA letter of comment on CSHB 388 (K) for the file, and for future distribution as you deem appropriate.

(FYI: Some words were inadvertently excluded from the original letter of comment on page 3 under Section 3.)

Attached also is a corrected page 3 of the bill. (Line 24 should read "five-year oil and gas leasing program under AS 38.05.180(b), except for a sale under (6)(G) of this subsection, are as follows:"

I will call you if we want additional changes to page 6.

Thanks for all your efforts Jeff.

Ardie

Attachments (2)

| | | |
|--|---------------------|-----------------|
| Post-It™ brand fax transmittal memo 7671 | | # of pages ▶ 12 |
| To <i>J. LOGAN</i> | From <i>A. GRAY</i> | |
| Co. | Co. | |
| Dept. | Phone # | |
| Fax # | Fax # | |

Alaska Oil and Gas Association

121 West Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114

March 12, 1996

Representative Norm Rokeberg, Chair
House Special Committee on Oil and Gas
State Capitol
Juneau, Alaska

CSHB 388. Areawide Leasing

Dear Representative Rokeberg:

The Alaska Oil and Gas Association (AOGA) is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska. AOGA supports the new Committee Substitute to House Bill 388 (CSHB 388 9-LS1341NF), subject only to a few minor suggested changes which are described below.

Background

The AOGA members encourage a predictable and regular oil and gas leasing program. We view Areawide Leasing as a viable method to allow timely access to the most prospective areas of the State. Annual Areawide Leasing would provide efficiencies and reduce costs associated with the preparation of Best Interest Findings. We advocate a program of Annual Areawide Leasing in all areas of the State where competitive leases are regularly offered. We believe that this can be implemented with simple clarifications to existing authority.

Over the past months AOGA members have offered many ideas to your Oil and Gas Committee regarding Areawide Leasing. Legislative language has also been offered for your consideration. As the AOGA members considered the various alternative Areawide Leasing proposals, we became concerned that earlier concepts created a new and arguably different lease sale program that could ultimately require regulations. The necessity to promulgate regulations poses an unnecessary threat to the Industry's and State's desired time schedule. These earlier Areawide Leasing proposals also created a cumbersome review process that has been streamlined in the new Committee Substitute to House Bill 388.

Suggested Modifications to CSHB 388

AOGA does have a few specific recommendations regarding the new Committee Substitute to House Bill 388. First, we would suggest that language be added to the title which specifically uses the words, "annual Areawide Lease Sales. We would modify Page one at line 5 to read, "purpose of the Alaska Land Act as it applies to oil and gas leasing, to provide for annual Areawide Lease Sales."

Representative Norm Rokeberg

March 12, 1996

Page 2

Second, we would encourage you to consider AOGA's past recommendation to clarify that Exempt and Reoffer Sales are exempt from certain public notice requirements. This could be accomplished by modifying the language of Section 1 on page 3 such that line 20 reads, "five year oil and gas leasing program under AS 30.05.180(b), except for a sale under (6)(G) of this subsection, are as follows:".

And finally, the language of Section 2 on page 6 at line 11 is awkward, and we suggest the word "sale" be deleted. Acreage is offered for "lease", not for "lease sales".

CSHB 388 Brief Analysis

The most recent Committee Substitute for House Bill 388 after the incorporation of the above suggested changes:

- 1) Clarifies that Reoffer and Exempt Sales need not follow the full preliminary and final Best Interest Finding process [this is accomplished by amending AS 38.05.035(e)(5)];
- 2) Expands eligible Exempt and Reoffer Sale lands to include lands subject to a Best Interest Finding issued within the last 10 years, unless substantial new information necessitates a supplement to the most recent Best Interest Finding and establishes public notice and supplemental Best Interest Finding procedures for Exempt and Reoffer Sales [this is accomplished by amending AS 38.05.035(e) (6)(G) and eliminating AS 38.035(e)(6)(H)];
- 3) States that the Legislature finds that it is in the best interests of the State to make annual Areawide offerings of all State acreage subject to a Best Interest Finding [this is accomplished by adding NEW subsection (AS 38.05.180(a)(2)(B))];
- 4) Modifies Reoffer Sale criteria to allow leasing of areas which are subject to a Best Interest Finding issued within the last 10 years [this is accomplished by amending AS 38.05.180(w)]; and
- 5) Clarifies that Reoffer and Exempt Sales need not follow the full public notice requirements of other oil and gas Lease Sales [this is accomplished by amending AS 38.05.945(a)].

Leases issued at an Areawide Lease Sale would be subject to all existing statutes and regulations now applicable to oil and gas leasing, including; the Best Interest Finding process, appeal procedures, royalty share restrictions; lease size restrictions; annual rental payments; work commitments if they are appropriate; exploration incentive credits; royalty reduction; Unitization; and individual chargeable acreage ownership restrictions.

Future Lease Sales Accommodate Areawide Concept

The Director of the Division of Oil and Gas has advised that he intends to re-design scheduled Sales 85, 86, and 87 to include the lands of critical interest to the Industry. The accompanying Best Interest Findings will be drafted in a manner consistent with the Areawide Leasing concept. Sale 85 is proposed to include the majority of the Cook Inlet lands, Sale 86 includes the Beaufort Sea State waters between the Colville and the Canning Rivers, and Sale 87 includes the State uplands between the Colville and the Canning Rivers, lying north of the Umiat baseline. Copies of the proposed Sale Area maps are attached for your convenience.

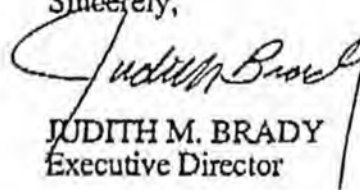
AOGA members have engaged in lengthy discussions on the topics of whether the legislation should mandate annual Areawide Lease Sales and whether the legislation should specify the lands to be offered in Areawide Lease Sales. The nineteen member companies unanimously voted to approve the Areawide Leasing concept embodied by the subject CSHB 388. The most recent Committee Substitute for House Bill 388 does not create a new Lease Sale program, nor does it mandate annual Areawide Lease Sales, it does; however, provide the necessary changes of law to allow Areawide Lease Sales and gives specific guidance and direction to the Division of Oil and Gas to expeditiously make lands of critical interest to the Industry available at annual Areawide Lease Sales. We are confident and hopeful that the Commissioner of Natural Resources and the Director of Oil and Gas

Representative Norm Rokøberg
March 12, 1996
Page 3

will, upon passage of this legislation, quickly move to adopt this concept and implement annual Areawide Lease Sales which offer all State acreage which is the subject of an effective Best Interest Finding.

Thank you for the opportunity to offer comments and suggestion on this vital legislation. We are hopeful that CSHB 388 will proceed with speed through both the House and the Senate and will be fully embraced by the Knowles' Administration.

Sincerely,



JUDITH M. BRADY
Executive Director

Alaska Oil and Gas Association



121 West Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114

March 15, 1996

The Honorable Joe Green, Co-Chairman
Resources Committee
Alaska State House of Representatives
State Capitol
Juneau, Alaska

CSHB 388 (K), Areawide Leasing

Dear Representative Green:

The Alaska Oil and Gas Association (AOGA) is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska. AOGA members unanimously support the Areawide Leasing concept and have actively participated in the continuing evolution of House bill 388. We have recently provided written comment to Representative Rokeberg by letter dated March 12, 1996, relative to CSHB 388 9-LS1341\F. A copy of the letter is attached for your reference.

We applaud the efforts of Representative Rokeberg and of the Oil and Gas Committee to forward a bill AOGA members unanimously support with some modifications. Following are modifications AOGA recommends to CSHB 388 K, along with a brief rationale for each suggested change.

Title

1. We advocate a program of Annual Areawide Leasing in all areas of the state where competitive leases are regularly offered. We believe that this can be implemented with simple clarifications to existing authority. Version K has introduced language which "authorizes" annual Areawide Lease Sales. We believe no such authorization is necessary. The suggestion that it is may bring into question the Division of Oil and Gas' past and future ability to hold such sales in the absence of HB 388. **We recommend that the word "authorizing" on Page 1, line 4 be replaced with "encouraging".**

Representative Green
March 15, 1996
Page 2

2. **We suggest that the language on page 1 at line 5, which reads "or adjacent land," be deleted.** A detailed description of our rationale for this change appears in item 2 under Section 1 below.
3. **We suggest language on page 1, beginning at line 6, which reads "and if preparation..." and ending on line 7 with the words, "...not justified," be deleted.** A detailed description of our rationale for this change appears in item 2, Section 1.
4. Nowhere in the title of the bill does the language "annual Areawide Lease Sales" appear. While we understand that the title of a bill has no continuing legal effect, it should accurately portray both the content and the spirit of the legislation. **We recommend that Page 1, line 8 be modified to read, "Alaska Land Act as it applies to oil and gas leasing, to provide for annual Areawide Lease Sales."**

Section 1

1. We encourage you to consider a recommendation AOGA made previously to add language clarifying that since specific procedures apply to Exempt and Reoffer Sales, those sales are exempt from certain generic public notice requirements. This could be accomplished by modifying the language of Section 1 on page 3, line 24 to read, "five year oil and gas leasing program under AS 30.05.180(b), except for a sale under (6)(G) of this subsection, are as follows:".
2. In Section 1, beginning on page 5, line 6, new language has been added which acts to exempt certain lands from the Best Interest Finding process, if such tract is entirely surrounded by acreage which is the subject of an existing Best Interest Finding. On the face, this would seem to benefit both the state and the industry, however, we are concerned that this language could have unintended results. Two examples come to mind.

First, a Best Interest Finding might, hypothetically, be prepared which covers all of the Cook Inlet Uplands and all Tide and Submerged Lands south of the Forelands. Under this scenario, the entire upper portion of the Cook Inlet offshore would be exempt from the Best Interest Finding process. It is unlikely that this was the intention of the drafter.

Second, a parcel of land might be specifically excluded from a Best Interest Finding because it has been determined that it is, for whatever reason, not in the best interest of the state to offer such tract at that time. Under this language, the tract could later be

offered and would be exempt from the Best Interest Finding process. This also was probably not the intention of the drafter.

We suggest that the language beginning on page 5, line 6, which reads, "together with any" and ending with the language appearing on page 5, line 9 which reads, "this subparagraph for which a best interest finding is issued", be deleted in its entirety.

Note: We recognize that the design of the area which is reviewed in the Best Interest Finding is critical to the smooth implementation of annual Areawide Leasing. We are confident the industry and the Division of Oil and Gas will work cooperatively during the scoping phase of the Best Interest Finding process to ensure appropriate coverage. The areas to be reviewed in association Sales 85, 86 and 87 are those areas of critical interest to the industry. Copies of the proposed Sale Area maps are attached for your reference.

Section 2

1. The concern raised in item 2, Section 1 above also is applicable to language in Section 2, page 6, beginning on line 23, which reads, "or that is adjacent to and surrounded by state land that has been the subject of a best interest finding." Perhaps the solution here would be to replace this language with **"and those lands which are eligible as exempt sales as authorized by AS 38.05.180(d)."**

Section 3

1. The concern raised in item 1 (under Title) also is applicable to language in Section 3 which begins on page 6, beginning on line 27 which reads, "(1) may annually offer to issue oil and gas leases" and ends on page 6, line 30 "best interest finding for the area proposed to be leased." **We suggest this be deleted.**

However, if there is a compelling reason to codify the authority being granted the commissioner to conduct annual sales, we suggest that the language in Section 3 on page 6, beginning on line 27 and ending on line 30 be replaced with **"may annually offer to issue oil and gas leases of the acreage described in AS 38.05.035(e)(6)(G)."**

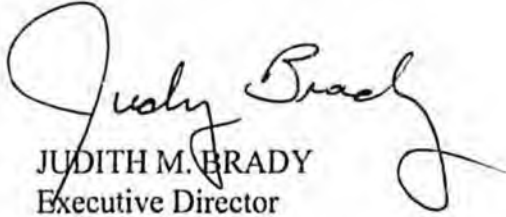
AS 38.05.180 (d) describes oil and gas lease sales that are exempt from the 5 year leasing schedule that is presented to the legislature by the commissioner on a biennial basis. AS 38.05.035 (e)(6)(G), as modified by this CSHB 388, sets forth procedures for the conduct of a best interest finding review. Under the language of CSHB 388, version K, a sale

Representative Green
March 15, 1996
Page 4

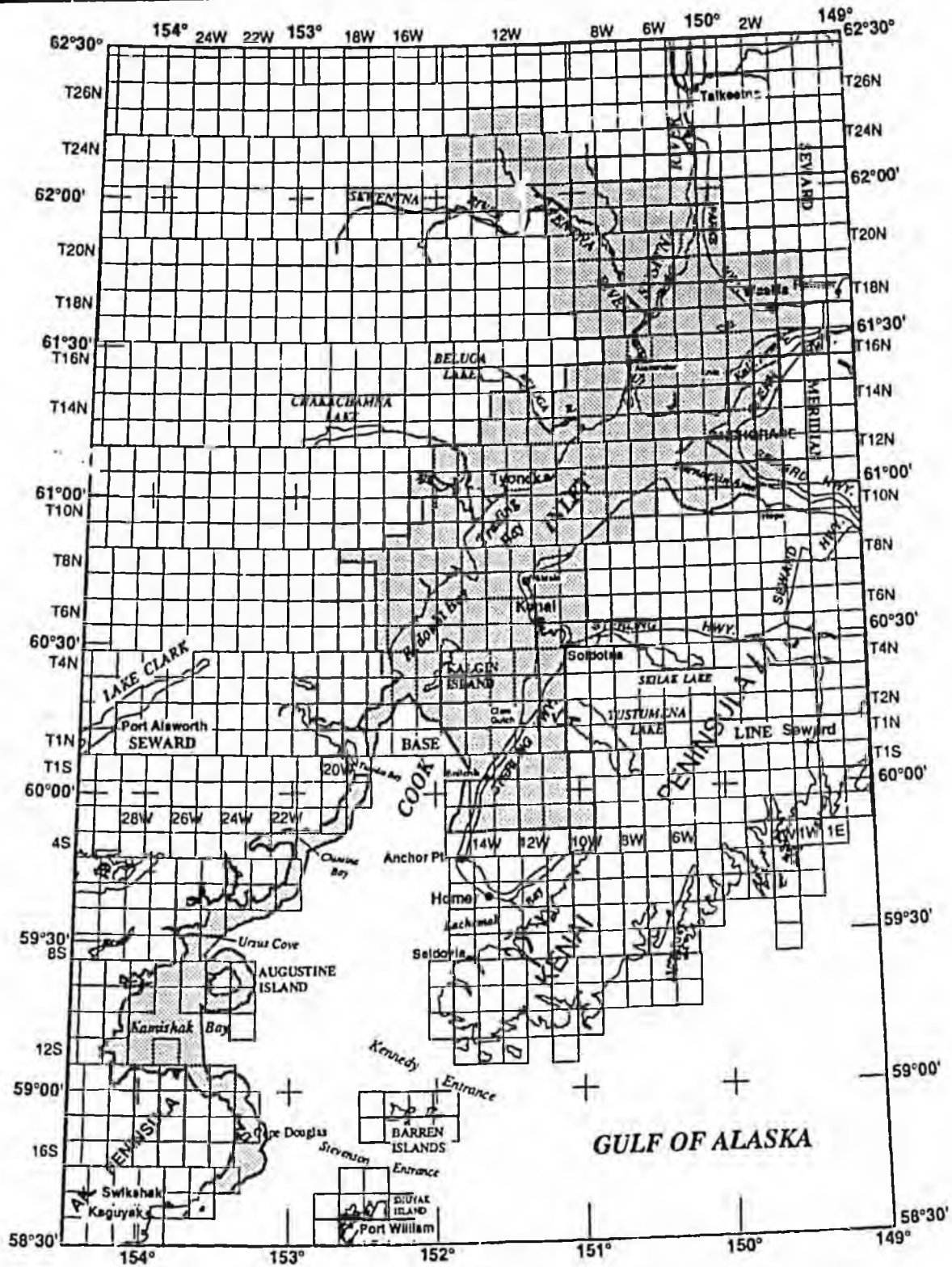
requiring a supplemental best interest finding could have to be delayed until satisfaction of the 5 year leasing schedule requirements.

Thank you for the opportunity to offer comments and suggestions on CSHB 388. We are eager to provide assistance throughout your Committee's consideration of this legislation.

Sincerely,


JUDITH M. BRADY
Executive Director

cc: Representative Norm Rokeberg



STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

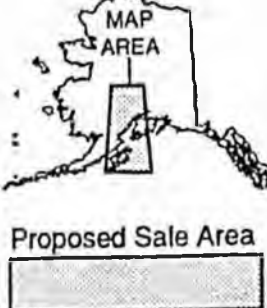
PROPOSED OIL AND GAS LEASE SALE 85 COOK INLET / KAMISHAK BAY

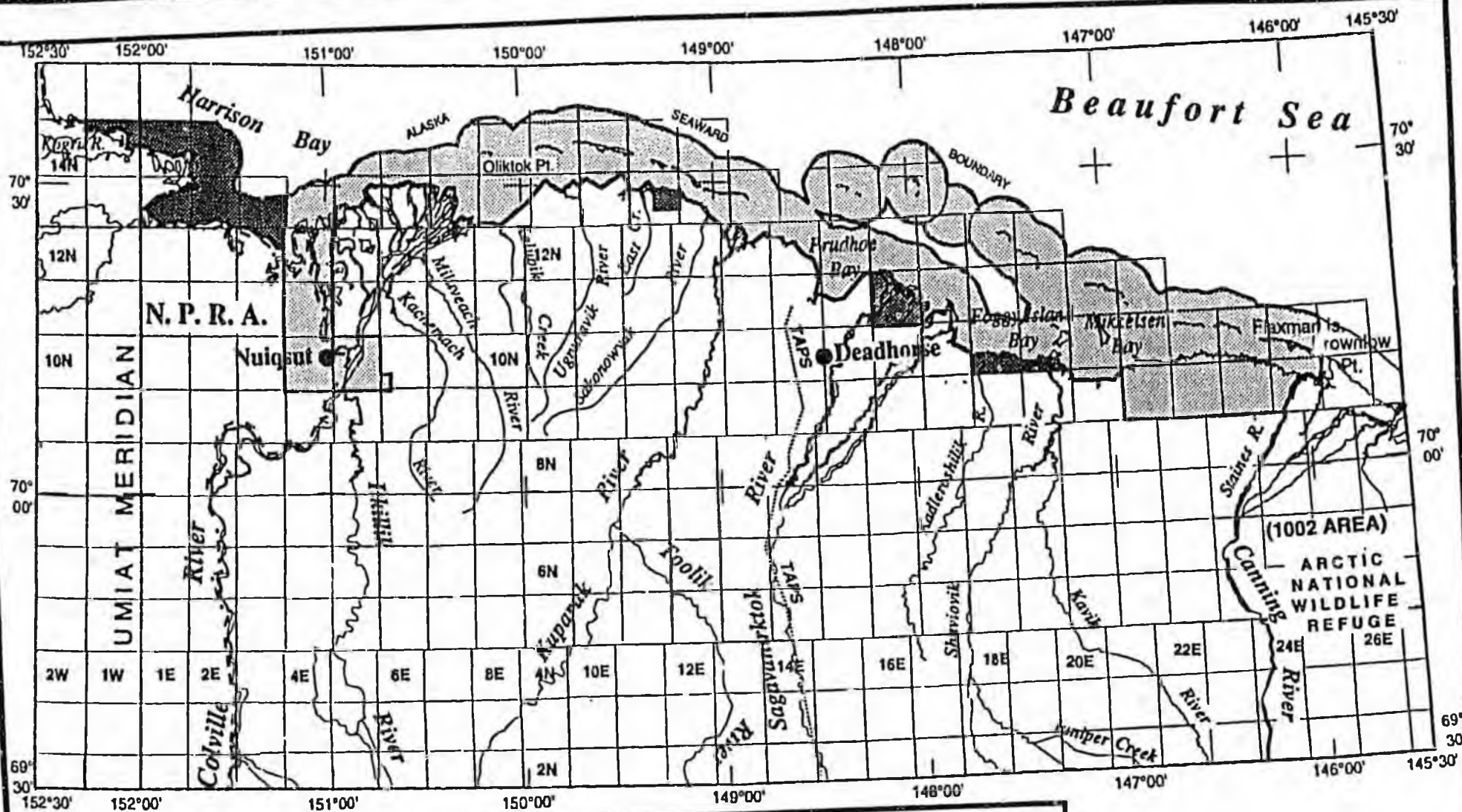
SCALE 1: 2,400,000 ONE INCH = 38 MILES approx.

0
50
100
200 Miles

| | |
|--|---|
| DIRECTOR, DIVISION OF OIL AND GAS JAMES E. EASON | DRAWN BY: M.P. & O.D.S. DATE APPROVED: 01-09-95 |
| PETRO. GEOPHYSICIST, JAMES HANSEN | BASE MAP: TRANSPOSED FROM U.T.M. PROJECTIONS BY U.S.G.S. REDRAWN IN AUTOCAD AND CLARIS CAD. |

NOTE: NO DECISION HAS YET BEEN MADE ON WHETHER THE STATE WILL HOLD THIS LEASE SALE. THE STATE IS GATHERING SOCIAL ENVIRONMENTAL & ECONOMIC INFORMATION ON WHICH TO BASE A DECISION.





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STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

PROPOSED OIL AND GAS LEASE SALE 86 CENTRAL BEAUFORT SEA

SCALE 1:1,100,000 ONE INCH = 18 MILES approx.

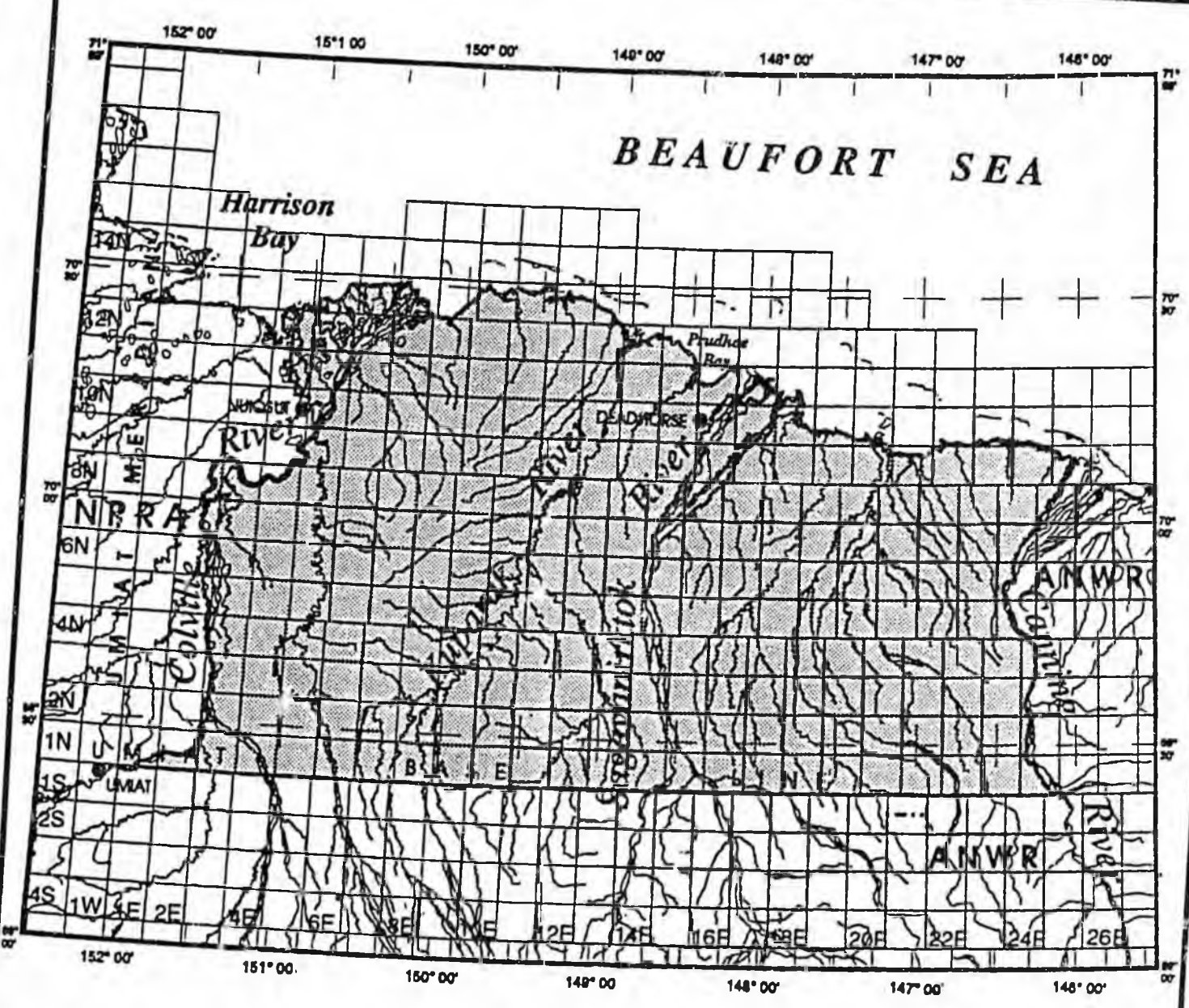
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| DIRECTOR, DIVISION OF OIL AND GAS KENNETH A. BOYD | DRAWN BY: <i>M.P.A. Dds.</i> DATE APPROVED: 2-13-96 |
| PETRO. GEOPHYSICIST, JAMES HANSEN | CHECKED BY: <i>[Signature]</i> BASE MAP: TRANSPOSED FROM U.T.M. PROJECTIONS BY U.S.G.S. REDRAWN IN AUTOCAD AND CLARIS CAD. |

ORIGINALLY PROPOSED SALE AREA



PROPOSED ADDITION





Proposed Sale 87 Area



STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS
PROPOSED OIL AND GAS LEASE SALE 87
NORTH SLOPE

SCALE 1:1,500,000 ONE INCH = 34 MILES APPROX

| | | |
|--|---|--|
| DIRECTOR, DIV. OF OIL & GAS KENNETH A. BOYD PETROLEUM GEOLOGIST | DRAWN BY: <i>[Signature]</i> O.D.S. & M.P. CHECKED BY: <i>[Signature]</i> | DATE APPROVED: 1/11/96 <small>Albers Equal-Area Conic Projection Based On The Clark 1856 Ellipsoid Central Meridian: -150.00 Origin Latitude: 50.00</small> |
|--|---|--|

NOTE: NO DECISION HAS YET BEEN MADE ON WHETHER THE STATE WILL HOLD THIS LEASE SALE. THE STATE IS GATHERING SOCIAL, ENVIRONMENTAL & ECONOMIC INFORMATION ON WHICH TO BASE A DECISION.

Alaska Oil and Gas Association

121 West Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114

March 12, 1996

Representative Norm Rokeberg, Chair
House Special Committee on Oil and Gas
State Capitol
Juneau, Alaska

CSHB 388, Areawide Leasing

Dear Representative Rokeberg:

The Alaska Oil and Gas Association (AOGA) is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska. AOGA supports the new Committee Substitute to House Bill 388 (CSHB 388 9-LS1341F), subject only to a few minor suggested changes which are described below.

Background

The AOGA members encourage a predictable and regular oil and gas leasing program. We view Areawide Leasing as a viable method to allow timely access to the most prospective areas of the State. Annual Areawide Leasing would provide efficiencies and reduce costs associated with the preparation of Best Interest Findings. We advocate a program of Annual Areawide Leasing in all areas of the State where competitive leases are regularly offered. We believe that this can be implemented with simple clarifications to existing authority.

Over the past months AOGA members have offered many ideas to your Oil and Gas Committee regarding Areawide Leasing. Legislative language has also been offered for your consideration. As the AOGA members considered the various alternative Areawide Leasing proposals, we became concerned that earlier concepts created a new and arguably different lease sale program that could ultimately require regulations. The necessity to promulgate regulations poses an unnecessary threat to the Industry's and State's desired time schedule. These earlier Areawide Leasing proposals also created a cumbersome review process that has been streamlined in the new Committee Substitute to House Bill 388.

Suggested Modifications to CSHB 388

AOGA does have a few specific recommendations regarding the new Committee Substitute to House Bill 388. First, we would suggest that language be added to the title which specifically uses the words, "annual Areawide Lease Sales. We would modify Page one at line 5 to read, "purpose of the Alaska Land Act as it applies to oil and gas leasing, to provide for annual Areawide Lease Sales."

Second, we would encourage you to consider AOGA's past recommendation to clarify that Exempt and Reoffer Sales are exempt from certain public notice requirements. This could be accomplished by modifying the language of Section 1 on page 3 such that line 20 reads, "five year oil and gas leasing program under AS 30.05.180(b), except for a sale under (6)(G) of this subsection, are as follows:".

And finally, the language of Section 2 on page 6 at line 11 is awkward, and we suggest the word "sale" be deleted. Acreage is offered for "lease", not for "lease sales".

CSHB 388 Brief Analysis

The most recent Committee Substitute for House Bill 388 after the incorporation of the above suggested changes:

- 1) Clarifies that Reoffer and Exempt Sales need not follow the full preliminary and final Best Interest Finding process [this is accomplished by amending AS 38.05.035(e)(5)];
- 2) Expands eligible Exempt and Reoffer Sale lands to include lands subject to a Best Interest Finding issued within the last 10 years, unless substantial new information necessitates a supplement to the most recent Best Interest Finding and establishes public notice and supplemental Best Interest Finding procedures for Exempt and Reoffer Sales [this is accomplished by amending AS 38.05.035(e) (6)(G) and eliminating AS 38.035(e)(6)(H)];
- 3) States that the Legislature finds that it is in the best interests of the State to make **annual** Areawide offerings of all State acreage subject to a Best Interest Finding [this is accomplished by adding NEW subsection (AS 38.05.180(a)(2)(B))];
- 4) Modifies Reoffer Sale criteria to allow leasing of areas which are subject to a Best Interest Finding issued within the last 10 years [this is accomplished by amending AS 38.05.180(w)]; and
- 5) Clarifies that Reoffer and Exempt Sales need not follow the full public notice requirements of other oil and gas Lease Sales [this is accomplished by amending AS 38.05.945(a)].

Leases issued at an Areawide Lease Sale would be subject to all existing statutes and regulations now applicable to oil and gas leasing, including; the Best Interest Finding process, appeal procedures, royalty share restrictions; lease size restrictions; annual rental payments; work commitments if they are appropriate; exploration incentive credits; royalty reduction; Unitization; and individual chargeable acreage ownership restrictions.

Future Lease Sales Accommodate Areawide Concept

The Director of the Division of Oil and Gas has advised that he intends to re-design scheduled Sales 85, 86, and 87 to include the lands of critical interest to the Industry. The accompanying Best Interest Findings will be drafted in a manner consistent with the Areawide Leasing concept. Sale 85 is proposed to include the majority of the Cook Inlet lands, Sale 86 includes the Beaufort Sea State waters between the Colville and the Canning Rivers, and Sale 87 includes the State uplands between the Colville and the Canning Rivers, lying north of the Umiat baseline. Copies of the proposed Sale Area maps are attached for your convenience.

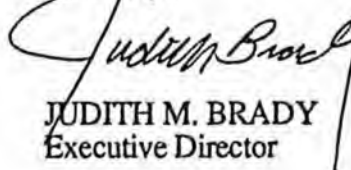
AOGA members have engaged in lengthy discussions on the topics of whether the legislation should mandate annual Areawide Lease Sales and whether the legislation should specify the lands to be offered in Areawide Lease Sales. The nineteen member companies unanimously voted to approve the Areawide Leasing concept embodied by the subject CSHB 388. The most recent Committee Substitute for House Bill 388 does not create a new Lease Sale program, nor does it mandate annual Areawide Lease Sales, it does; however, provide the necessary changes of law to allow Areawide Lease Sales and gives specific guidance and direction to the Division of Oil and Gas to expeditiously make lands of critical interest to the Industry available at annual Areawide Lease Sales. We are confident and hopeful that the Commissioner of Natural Resources and the Director of Oil and Gas

Representative Norm Rokeberg
March 12, 1996
Page 3

will, upon passage of this legislation, quickly move to adopt this concept and implement **annual** Areawide Lease Sales which offer **all** State acreage which is the subject of an effective Best Interest Finding.

Thank you for the opportunity to offer comments and suggestion on this vital legislation. We are hopeful that CSHB 388 will proceed with speed through both the House and the Senate and will be fully embraced by the Knowles' Administration.

Sincerely,



JUDITH M. BRADY
Executive Director

TRUSTEES FOR ALASKA v. STATE, DNR

Alaska 745

Cite as 863 P.2d 745 (Alaska 1993)

...ing ordinances to provide economic protection for existing businesses."); Sun-Brite Oil Wash, Inc. v. Board of Zoning & Appeals, 69 N.Y.2d 406, 615 N.Y.S.2d 418, 423, 808 N.E.2d 130, 135 (1997) ("Zoning laws do not exist to insure limited business competition.")

The second rationale courts use to support denying business competitors standing is a "vested rights" argument. Courts reason that "no person has a vested right to engage in business without competition.... Never having been possessed of a right to conduct a business free of competition, the landowner has lost nothing and cannot be said to have been aggrieved." 3 Arden H. Rathkopf & Daron A. Rathkopf, The Law of Zoning and Planning § 43.07, at 43-53 (1992). The Appellate Court of Illinois noted that "[a] person can have no vested or special property right in either the monopoly or competitive advantage accorded by zoning restrictions at a given time." Swain, 250 N.E.2d at 444.

We think both theories have merit. In the area of land use law, we thus adopt the majority rule and deny standing to a business competitor whose only alleged injury results from competition." Earth Movers argues that "[n]o one other than those with interests in lawfully operated gravel pits have greater interests in preserving the laws of gravel pits than those similarly situated to Earth Movers and Earth Movers itself." In terms of Earth Movers' interest in limiting competition in gravel sales, this may be correct. That interest is, however, irrelevant because it is not an interest meant to be protected by the zoning ordinance.

III. CONCLUSION

We interpret the applicable statutes and ordinance to require that a person be "aggrieved" in order to appeal a decision by a zoning board. We adopt the majority interpretation of "aggrieved" to deny standing in land use cases to a business competitor whose only alleged injury is potential increased competition. Therefore we AFFIRM the decision of the superior court which affirmed the decision of the Board of

5. Of course, a business competitor who can show other injury, such as a deleterious effect on traf-

Adjustment denying Earth Movers standing to challenge the Department's holding.



TRUSTEES FOR ALASKA, City of Kaktovik, American Wilderness Alliance, Northern Alaska Environmental Center, Alaska Wildlife Alliance, The Sierra Club, The Wilderness Society, Alaska Center for the Environment, Appellants,

v.

STATE of Alaska, DEPARTMENT OF NATURAL RESOURCES; Judy Brady, Commissioner, State of Alaska Department of Natural Resources, and James Eason, Director, Division of Oil and Gas, State of Alaska, Department of Natural Resources, Appellees.

Arco Alaska, Inc., Chevron U.S.A. Inc., Phillips Petroleum Co., and Standard Alaska Petroleum Co., Intervenor-Appellees.

No. S-5275.

Supreme Court of Alaska.

Dec. 23, 1993.

Environmental groups and city challenged state's sale of offshore oil and gas lease, contending that Department of Natural Resources (DNR) failed to give adequate consideration to several issues when it determined that sale was in "best interests" of state. The Superior Court, Third Judicial District, Anchorage, Rene J. Gonzalez, J., affirmed DNR's best-interest determination and its decision to proceed with sale. Environmental groups and city appealed. The Supreme Court, Compton, J., held that DNR gave inadequate consideration to methods

lic permits, parking, etc., should not be denied standing simply because he is also a competitor.

Peel-It brand fax transmission memo 7571 # of pages 3. Includes fields for TO (ARDEC), FROM (SRP), CC (AAI), PHONE (265-6329), and FAX (265-6948).

"Supplemental finding"

SALE 55

750 Alaska

866 PACIFIC REPORTER, 2d SERIES

copied—without alteration—from the Sale 50 Finding. More importantly, the Sale 66 Finding deals with transportation issues in a similar cursory manner.

Given the similarity between the Sale 60 and Sale 55 locations,⁴ as well as the two Findings' treatment of the transportation issue, this court's decision in *Camden Bay* is controlling.⁵ The best-interest Finding for Sale 66 failed to adequately address the methods and risks of transporting oil from the sale area to market. Accordingly, we reverse the decision of the superior court, and remand the case to DNR for a supplemental finding addressing this issue.

B. THE PORCUPINE CARIBOU HERD

[5] Trustees further argue that the Porcupine Caribou Herd is susceptible to adverse impacts from oil and gas development off the shore of ANWR, and that DNR must consider this impact in making its best-interest determination.⁶ Trustees contend that the caribou use areas within, and immediately adjacent to, the Sale 55 area as calving grounds and for insect relief. Trustees raise concerns that oil development may cause the caribou to avoid this important area. Further, caribou may be subject to oil spills. Accordingly, Trustees argue that DNR's best-interest Finding was deficient because it failed to consider the impact of Sale 55 on the caribou herd.

In response, DNR argues that it adequately addressed any impact development would have on the herd. DNR notes that Sale 55 is an offshore lease sale, and that Trustees have presented no evidence that "offshore activities themselves can interfere with cari-

4. Remarkably, the Sale 55 area is considerably farther away from conventional land-based transportation facilities on the North Slope (80 miles) than the Camden Bay sale area (50 miles).

5. DNR attempts to limit the precedential value of *Camden Bay* by suggesting that this court's holding as to the transportation issue was "perhaps" a result of incomplete briefing.

6. Trustees argue that the herd is important to the State because (1) it has been recognized by the United States and Canada as "a unique and irreplaceable resource of great value," (2) many

Alaska Natives utilize the herd for subsistence purposes, and (3) the herd is used for recreation, aesthetic and sport hunting purposes by Alaskans.

Alaska Natives utilize the herd for subsistence purposes, and (3) the herd is used for recreation, aesthetic and sport hunting purposes by Alaskans.

Further, DNR contends that in formulating its final finding, it "considered volumes of information on caribou including general biological information, information regarding caribou in ANWR, and information concerning the minimal effects of current onshore development in Prudhoe Bay on the caribou herds." Because of this, DNR concludes that it adequately considered any potential effects of the sale on the caribou herd.

Despite DNR's contentions that it "considered volumes of information on caribou," the Finding does not suggest this level of consideration. In contrast to DNR's extensive discussion detailing the effects of the sale on whales, seals, polar bears, fish and birds, the Finding simply does not discuss the effects on caribou. DNR is required to take a "hard look" at the salient problems involved with a lease sale, and must engage in reasoned decision making. *Camden Bay*, 795 P.2d at 809. DNR's Finding indicates that it did not give the same level of consideration to the caribou herd that it gave to other wildlife.

In fact, DNR's Finding consists of little more than an assumption that, since Sale 55 is an offshore oil lease, it will not affect ANWR or the caribou that use ANWR.⁷ DNR's Finding states:

Sale 55 thus should not have a direct effect on ANWR lands themselves, although exploration and production activity within the sale area may be visible from ANWR.

Although DNR asserts that development "should not" affect ANWR or the caribou that utilize ANWR, DNR has made no finding to this effect. Rather, it has simply made the unsupported assumption that off-

Alaska Natives utilize the herd for subsistence purposes, and (3) the herd is used for recreation, aesthetic and sport hunting purposes by Alaskans.

7. If DNR had given this issue the same level of attention in its Finding that it gave the issue in the briefing before this court and the superior court, the Finding may have been sufficient. Nevertheless, the best-interest determination required by statute must take place before the lease decision is made, not as an after-the-fact exercise.

TRUSTEES FOR ALASKA v. STATE, DNR

Alaska 751

Cite as 663 P.2d 745 (Alaska 1993)

shore development cannot affect caribou.⁴ This approach is evident in the following language of the Finding:

(W)hile the Department recognizes the intent behind the creation of ANWR, the department does not believe it is necessary to establish yet another undeveloped area, or buffer zone, around the refuge to achieve an acceptable level of protection for fish and wildlife within ANWR. Regulatory agencies have designed lease terms, permit requirements and field monitoring to control industry exploration and production activities. The protection of ANWR lands will be a consideration when granting approval of design, siting and construction of exploration and production facilities.... [T]he department does not expect significant or permanent degradation to refuge wildlife, the environment, or the wilderness character of the refuge to occur.

Although DNR attempts to argue that it "carefully considered caribou-related issues," the Finding language indicates otherwise. What DNR is really arguing is that offshore development cannot affect onshore caribou. I.e., that the sale's effect on the Porcupine Caribou Herd does not represent a "salient problem" for purposes of AS 38.05.035(e). See *Camden Bay*, 795 P.2d at 809 (DNR must take a hard look at any salient prob-

8. Although DNR did not find it necessary to study the impact of the sale on adjacent ANWR lands, it did think it appropriate to cite ANWR's petroleum potential as a factor supporting its decision to lease the Sale 55 area. The Finding states:

Petroleum industry interest in the [surrounding] region is significant.... Members of the oil industry as well as the U.S. Department of the Interior and State of Alaska have assessed the petroleum potential of the coastal plain of the Arctic National Wildlife Refuge (ANWR)

lems associated with sale). This argument is equally unpersuasive. The caribou herd is an important resource for the State of Alaska and the Natives that rely on the caribou for subsistence. Since the State has a substantial interest in the continued health and viability of the herd, the impact of the sale on the herd is an important factor which DNR must consider when making its best-interest determination.

DNR failed to take a hard look at the impact of Sale 55 on the Porcupine Caribou Herd, and on the subsistence users of this herd. Accordingly, we reverse the superior court, and remand the case to DNR for a supplemental finding addressing these issues.

WMM

867

III. CONCLUSION

Trustees did not abandon or waive the transportation issue before the superior court. Since DNR failed to adequately consider the issue in making its best-interest finding, we REVERSE the decision of the superior court and REMAND the case for a supplemental finding.

DNR failed to consider the effect of Sale 55 on the "important factor" of the Porcupine Caribou Herd. Accordingly, we also REVERSE and REMAND for a consideration of this issue.

adjacent to the sale areas and indicated that it may be the most prospective unexplored region in North America. These facts in conjunction with the imminent decline of production from other North Slope oil fields... support the decision to lease now state lands in Sale 55.

DNR cannot use the surrounding ANWR lands as a factor justifying development, and at the same time refuse to consider the impact of the sale on these lands.

809

WHY DOES THE STATE NEED AREAWIDE LEASING AND BIF EXEMPTIONS FOR THE ONSHORE AREAS OF COOK INLET AND THE NORTH SLOPE?

1. Under the current system, companies typically must wait five years before sale areas they nominate are offered for lease. The DNR can place new areas on the sale schedule sooner; however, the State must review these new areas under the best interest requirements of S.B. 308. This process can take two to three years before the DNR can conduct a lease sale over the new area. The areas selected often represent a hodgepodge of individual tracts specifically identified by companies and rarely represent the underlying regional geology for the area (see attached plat showing Sales 80 and 86). New participants in the State have two choices when it comes to lease sales: (1) accept what's been nominated by other companies at least two years before the lease sale, or (2) wait two to five years until their own prospects get nominated and offered for sale. Independent oil companies will generally not wait that long.

2. With the exception of the last three years, the State has conducted lease sales on the North Slope and in the Cook Inlet on almost an annual basis. The 1994 legislative amendments were intended to get the leasing program back on track. Unfortunately, while the amendments do not guarantee lease sales will be upheld by the courts, they do guarantee that DNR must follow a long, costly process in order to have a lease sale. The requirements of S.B. 308 do not distinguish between areas within the State where oil and gas activities are an ongoing, daily activity, and where there has been little or no oil and gas activity. The DNR must conduct the same thorough best interest finding for lease sales in the "core" areas of onshore Cook Inlet and the North Slope as they must do in areas such as offshore Cook Inlet or the Beaufort Sea. By exempting these core onshore areas from the BIF requirements and incorporating annual areawide leasing, the DNR would have more time to do their work in areas where a best interest finding is actually needed. Industry could also count on a predictable lease sale process for onshore areas on the North Slope and Cook Inlet

3. Before 1983, the MMS conducted lease sales in the Gulf of Mexico using a procedure similar to what the State of Alaska now uses. In 1983 the MMS changed their procedure and adopted an areawide lease sale program. They divided the gulf into three planning areas, Eastern, Western, and Central. They have annually conducted areawide sales in the Central and Western Planning Areas and have sales in the Eastern Planning Area once every two years. Because of wide fluctuations in the price of crude oil, it is hard to identify precisely the impact areawide leasing had on the Gulf in terms of increasing drilling activity and royalty payments. However, this program apparently had an impact on the leasing activity in the Gulf. Bonuses and the number of bids increased dramatically within the first two years of areawide leasing (see attached).

4. While areawide leasing will make it easier for DNR to conduct sales in the core areas onshore North Slope and Cook Inlet, and make the sale process more predictable, areawide leasing will not cause a land rush on these areas. Existing

minimum bid requirements, escalating lease rentals, and statutory limits on chargeable acreage will prevent sale participants from tying up all the prospective acreage offered under areawide leasing.

5. In the last ten years, the DNR has offered for lease almost the entirety of the two core areas proposed for areawide leasing (onshore North Slope and onshore Cook Inlet). There has been little or no opposition to the State conducting sales in these two areas. It is only when offshore areas are included with these onshore sale areas that special interest groups have raised opposition to lease sales. Having only onshore areas included under areawide leasing should reduce the likelihood of third party intervention and greatly enhance the predictability of the lease sale process within these two core areas.