

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 00/2

10974 HOUSE RESOURCES

# Alaskans for Responsible Mining

P.O. Box 100660, Anchorage, AK 99501 ♦ (907) 258-6148 (907) 258-6177, fax ♦ [www.reformakmines.org](http://www.reformakmines.org)

## ALASKA MINING REVENUE FACT SHEET

Mines operating in Alaska are required to pay a **Mining License Tax** to the State; they must also pay, as must all corporations that derive income from sources within Alaska, a **Corporate Net Income Tax**. Additionally, if the mine is located on State land, a **3% net income royalty** is assessed by the State. Like revenue generated by oil and gas royalties, 50% of mineral royalties collected are allocated to the Alaska Permanent Dividend Fund.

The **Mining License Tax** is a graduated tax levied on mining net income (not gross) and royalties generated in connection with mining properties and activities in Alaska (AS 43.65). The tax rate for net income over \$100,000 is \$4,000 plus 7% over \$100,000. All revenue, except for payments after a tax assessment, is deposited in the General Fund. New mining operations are exempt from this tax for three and a half years after production begins. Taxpayers may also take tax credits if they make contributions for educational purposes to accredited Alaskan colleges and universities, up to a maximum credit of \$150,000 per tax year. Additionally, there is a Minerals Exploration Incentive credit of up to \$20 million applied against 50% of mining license liabilities over 15 years, and a Special Industrial Incentive Investment credit for investment in mining projects in Alaska.

The Mining License Tax contributes **less than one percent in any given year to the General Fund**. In FY 2002, revenues from the mining license tax, after credit and incentive deductions, amounted to \$446,430, for a zero percent contribution to the General Fund. FY 2001 was a better year for the mineral industry, which realized over \$ 3 million in tax credits on a \$5.3 million tax bill, for a total tax paid to the General Fund of \$1,729,156. This added up to just 0.1% of the contributions to the General Fund.

The **Corporate Net Income Tax** is based on federal taxable income, with Alaska adjustments (AS 43.20). Multistate corporations, such as large mining companies, apportion income to Alaska under a "water's edge" apportionment method, whereas oil and gas corporations apportion income through a worldwide method. Like the Mining License Tax, the Corporate Income Tax contains exploration incentives. Industry contributions to the Alaska General Fund are unknown, since law prohibits disclosure of any corporation's specific tax information; however, it can be deduced from corporate balance sheets that there is little, if any, contribution. For example, in FY 2002, Fairbanks Gold Mining, Inc., operator of the Fort Knox mine, declared a taxable income of negative \$17,470,149. Thus, no Corporate Net Income Tax was paid.

Metals removed from State land are assessed a **3% net income royalty**. Mining companies are allowed to deduct the costs of developing and operating the mine, overhead, investments in upgrades, as well as a percentage depletion (a non-cost accounting for the depreciation in mine value as ore is removed). As a result of these extensive deductions, many mines pay no royalties to the State.

The State also assesses a flat 3% royalty on royalty interest holders. These are underlying claim holders that lease their mining claims to a mine operator, and, as a condition of the contract, have established separate royalty payments and schedules. In these arrangements, which are very common, royalties are assessed on metal value not net income, which yields bigger payments. For example, Fairbanks Gold Mining, Inc., a wholly owned subsidiary of Kinross Gold Corporation, pays another Kinross company, Kinam Gold, royalties on claims Kinam holds for the Fort Knox mine. In FY 2002, FGMI paid \$205,685 in royalties to Kinam, but just \$61,007 to the State. Aside from these small flat royalty interest payments, **FGMI has paid no royalties for Fort Knox gold to the State of Alaska – despite having produced and sold over 2.6 million ounces of gold – worth over 8.5 billion dollars at today's gold prices.**

Thus, in practice, because the Corporate Net Income Tax, the Mining License Tax and the royalty calculation are based upon a net income calculation with high write-offs, little money flows from the mining industry to the State of Alaska, though the companies still bring in healthy profits. And to date, there have been no contributions from mineral royalties to the Alaska Permanent Dividend Fund.

# Alaskans for Responsible Mining

P.O. Box 100660, Anchorage, AK 99501 ♦ (907) 258-6148 (907) 258-6177, fax ♦ [www.reformakmines.org](http://www.reformakmines.org)

## RECLAMATION BONDING Fact Sheet

Mine bankruptcies are rarely predicted and frequently have significant financial, social and environmental impacts. State law presently limits the amount of reclamation bond that can be required of a mine operator by state regulatory agencies. This raises the issue of who should bear the burden and risk of mine failure – the public or the company seeking to make a profit? Present Alaska law does not protect the State from incurring mine reclamation costs, and therefore does not ensure that mines will be adequately reclaimed. To ensure adequate reclamation and financial protection, Alaska law should be revised according to the following provisions:

### **1. Reclamation bonds and financial assurances must cover the full cost of reclamation.**

Alaska is the only state, other than Idaho, which places a "per acre" limit on the reclamation bond. Rather than requiring the reclamation bond to cover the full cost of reclamation, Alaska's law limits the reclamation bond to \$750 per acre of disturbed land.<sup>1</sup> The company may *voluntarily* provide a bond for more than the amount required, and most large mines do. However, not all of them do. And, in cases where the company volunteers a higher bond amount, the \$750 per acre limit essentially compels the State to accept the original cost estimate of the company regardless of the full cost of reclamation. The \$750 per acre is simply not adequate to complete reclamation, particularly if water treatment is needed. For comparison, the average bond amount for major mines in western states is approximately \$4,400 per acre, however the range of cost varies from less than \$1,000 per acre to greater than \$50,000 per acre.<sup>2</sup> In order to protect the State from liability and ensure adequate reclamation, Alaska law should be revised to require full cost bonding.

### **2. Reclamation costs should be calculated by the regulatory agency, and those costs should be based on the cost to the agency, or a third party contracted by the agency, for performing the necessary reclamation activities.**

In the event of a bankruptcy or other financial difficulty, it will probably be necessary for the State to assume reclamation responsibilities. These costs are significantly higher (20%-100%) than if the company were to complete reclamation. Alaska statutes should be revised to require that the Division of Mining and Water Management determine and set the bond amount. The estimation should be based on the cost to the agency, or a third party contracted by the agency, to perform the necessary reclamation and post-closure activities. The amount should include the following indirect costs: (1) agency investigation and oversight of reclamation and closure activities; (2) contractor mobilization/ demobilization costs; (3) cost of final reclamation and closure engineering, procurement and construction management activities; (4) contractor insurance, performance bonding and profit; (5) contingency; and, (6) cost inflation.

---

<sup>1</sup> 11 AAC 97.420

<sup>2</sup> Hardrock Reclamation Bonding Practices in the Western United States, James R. Kuipers, Feb 2000, ES, p.3.

**3. Mine inspections and bond reviews must occur on a regular basis to ensure that bond amounts accurately reflect on-site conditions.**

Alaska law allows regulatory agencies to conduct mine inspections, but it is not mandatory. Inspections for large mines should occur on a quarterly basis and bond amounts should be reviewed annually to ensure that they accurately reflect on-site conditions. Mandatory timelines should be incorporated into state law to ensure that bond amounts are increased in a timely manner to reflect changes that develop on site. Bonds must be increased at the first indication that adverse environmental conditions are developing (e.g., acid mine drainage, metals leaching, reduction in stream flows, etc.).

**4. Reclamation bonds and financial assurance instruments should be independently guaranteed and liquid. The bond must provide for interim actions by the State.**

In the event of a bankruptcy or other financial difficulty, funds must be immediately available to the State to ensure that it may act to protect human health and the environment. The State should not have to wage legal battles to protect the reclamation bond from mine creditors, to obtain the bond from surety companies, or to spend the bond as necessary. Present Alaska law also allows the State to accept a "corporate guarantee" as a financial assurance.<sup>3</sup> Recovering money from a company in bankruptcy poses obvious risks, and the option of utilizing corporate guarantees as instruments of financial assurance in case of bankruptcy should be eliminated.

**5. The public must have the right to comment on the adequacy of reclamation plans, bond amounts, and bond releases.**

No specific provisions for public participation are provided in the Alaska Reclamation Act. Since the public runs the risk of bearing the environmental and financial costs of inadequate or prematurely released bonds, they should have the ability to comment on all aspects of reclamation bonding. State law should provide for public participation, including the critical right to request an investigation of potential violations, the right to request an adjustment of the performance bond, and the right to challenge a bond release.

**6. Reclamation bonds should not be released until the regulatory agency has inspected the site to ensure compliance with all applicable laws.**

Alaska's Reclamation Act allows for bond release once the miner has examined the requirements of the approved reclamation plan, has investigated the nature and extent of reclamation and certifies that all applicable reclamation responsibilities have been completed. Inspections by the agency are not required.<sup>4</sup> ADNR should be required to certify that reclamation has been successfully completed, and the public should be allowed to comment on this certification.

**7. The State must have the authority to modify or extend the bond agreement to fulfill post-reclamation activities.**

No provisions are included in Alaska law that allows the State to modify or extend the surety agreement to fulfill closure/post-closure requirements. This is particularly a problem for mines which develop acid mine drainage that may require long-term water treatment. In Alaska, the Red Dog Mine will require water treatment in perpetuity, and the Greens Creek Mine requires water treatment during operation, and for at least a period of years after closure. Water treatment, especially if it is required in perpetuity, poses a significant risk to the State since the company will probably not be present to help fix any unanticipated problems, or bear any

---

<sup>3</sup> 11 AAC 97.400

<sup>4</sup> 11 AAC 97.435

unanticipated costs. State agencies must have the authority to extend the bond agreement to address problems that persist.

**8. The Alaska Reclamation Act lacks substance in terms of comprehensive and specific reclamation standards and other requirements.**

The Alaska Reclamation Regulations lack substance in terms of comprehensive and specific reclamation standards. The regulations contain general provisions addressing recontouring, stability, and hydrology and geochemical-acid mine drainage. However, there are limited provisions pertaining to topsoil, revegetation and public safety. Furthermore, the regulations do not include direct provisions for water quality and do not address wildlife habitat and aesthetics. Water quality is particularly a concern. If water treatment is required as part of operation or reclamation, reclamation costs can increase significantly, and typically double the required bond amount. Reclamation bonds cannot provide adequate protection for Alaska's natural resources if the reclamation standards are inadequate.

**9. Small hardrock mines must be required to reclaim, and to post a reclamation bond that covers the full cost of reclamation.**

Alaska law currently exempts mining operations less than 5 acres in size from reclamation and bonding requirements, regardless of their impact.<sup>5</sup> In many cases, small mines, particularly those located adjacent to rivers and streams, may cause significant environmental harm. Alaska law should provide a small mine reclamation scheme that provides for the reclamation and adequate bonding of these mines.

**10. Alaska law should specify that the State must certify that bonds which are held by another entity must be sufficient to meet the amount and form of financial requirements of Alaska reclamation regulations.**

The Department of Natural Resources can also enter into a "cooperative management agreement" with another state agency, a municipal government, or the federal government.<sup>6</sup> However, federal bonding requirements in some cases may not provide for full-cost bonding. In entering into an agreement where the federal government or a municipal government actually holds the bond, the State must make sure that the amount of the bond and the form of financial surety meet its regulatory criteria, and protect Alaska taxpayers from potential financial, social and environmental liability.

**11. Exploration activities, regardless of size, should be required to submit an exploration plan of operations, agree to reclaim any surface disturbance created by exploration activities, and submit a reclamation bond to cover the full cost of reclamation.**

Exploration activities may cause significant environmental impacts due to road construction, drilling and other associated activities. State law should include a provision to ensure that these impacts are reclaimed if exploration does not lead to full-scale mining.

---

<sup>5</sup> AS 27.19.050

<sup>6</sup> AS 27.19.060; 11 AAC 97.700

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400  
FAX: (907) 465-3886

550 WEST 7<sup>TH</sup> AVENUE, SUITE 1400  
ANCHORAGE, ALASKA 99501-3650  
PHONE: (907) 269-8431  
FAX: (907) 269-8918

February 24, 2004

The Honorable Nancy Dahlstrom, Co-Chair  
The Honorable Beverly Masek, Co-Chair  
House Resources Committee  
Alaska State Legislature  
Juneau, AK 99802

RE: HB 486, Mining Reclamation Bonding

Dear Representatives Dahlstrom and Masek:

I am writing to request a hearing next week for HB 486, a bill that relates to reclaiming bonding and financial assurance. This bill amends mining law at AS 27.19.

The bill makes three changes to existing law. First, it removes "lode mines," sometimes referred to as "hard-rock mines," from the current bonding "cap" of \$750 per acre for mine reclamation responsibilities; the cap remains in effect for placer mines. Second, it replaces the term "performance bond" with the term "financial assurance," and lists various ways to provide that assurance. Replacing this term provides mining companies and the state the flexibility to employ a variety of financial assurance vehicles. Last, it creates a mine reclamation trust fund, which allows the build-up of an adequate reclamation fund through payments made over time and through the earnings on that fund. I have enclosed a copy of the Governor's Transmittal letter for your information.

I appreciate your consideration in scheduling this bill. Please contact Janet Burleson Baxter at (907)465-4730 if have any questions. You may also contact Bob Loeffler, Director of the Division of Mining, Land and Water at (907)269-8600.

Sincerely,



Thomas E. Irwin  
Commissioner

Enclosure

cc: Bob Loeffler, Director, ML&W  
Janet Burleson-Baxter, Special Assistant, DNR

*"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."*

**HB**

**498**

# ALASKA STATE LEGISLATURE

*Chair*  
FISHERIES

*Vice-Chair*  
EDUCATION

*Member*  
HEALTH, EDUCATION AND SOCIAL SERVICES

*Member*  
STATE AFFAIRS



**REPRESENTATIVE PAUL SEATON**  
House District 35

*Session:*  
State Capitol Building  
Juneau, Alaska 99801  
Phone 907-465-2689  
Fax 907-465-3472  
1-800-665-2689  
Rep.Paul.Seaton@legis.state.ak.us

*Interim:*  
345 W. Sterling Highway  
Suite 102B  
Homer, Alaska 99603  
Phone 907-235-2921  
Fax 907-235-4008

## Sponsor Statement

### HB 498

#### "An Act requiring the sale or trade of state land."

The State of Alaska often acquires, or is asked to acquire for public purposes, special parcels of private lands that have exceptional beauty, recreational access, development and conservation potential. Acquired lands can be critical to maintaining or expanding the economy for local communities. Acquiring special lands for public purposes is difficult in part to the potentiality of lost tax revenues garnered from private lands. Acquiring special lands also removes land from an already limited pool of private disposable lands. House Bill 498 attempts to remove opposition to private land acquired for public purposes.

HB 498 expedites the acquisition of special land for public purposes by requiring the commissioner of the Dept. of Natural Resources to review the State's land holdings, and expedite for sale or trade state land. The land that will be sold or traded may be of equal value, size and proximity; the state land to be sold or traded can only be selected from settlement, agriculture, or reclassified land from other development land categories. Under the bill, other developmental classifications may be reviewed and reclassified as settlement lands in order to expedite the sale or trade of state lands during an acquisition of special lands.

In the Kenai Peninsula, spruce bark beetles have ravaged most of the lands designated for forestry purposes. With little timber left for harvest, the state's categorization of forestry lands maybe outdated. Under HB 498, acquisition of special lands could be made easier, if land could be reclassified and sold or traded during the special land's acquisition process.

If the commissioner is unable to locate proximate land, or if the commissioner is unable to reclassify land and make it available for sale or trade, then special land acquisitions could still go forward. HB 498 promotes responsible land management in our State by providing for the acquisition of special private land parcels to meet the changing needs of Alaskan residents and local communities.



23-LS1230\Q  
Bullock  
3/31/04

**CS FOR HOUSE BILL NO. 498( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVE SEATON**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act requiring the sale or trade of state land."**

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

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

5 **LEGISLATIVE FINDINGS.** The legislature finds that

6 (1) as a general policy, the state benefits from the private ownership and  
7 development of property;

8 (2) less than one percent of land in the state is privately owned, and less than  
9 ten percent is owned by Alaska Native Corporations;

10 (3) with changing populations and economics, it is sometimes in the best  
11 interest of the state to acquire private lands for specific public benefits; and

12 (4) conflicting state interests can be resolved by requiring that equal and  
13 comparable lands be sold or traded into private ownership every time private lands are  
14 acquired by the state through purchase or eminent domain.

15 **\* Sec. 2.** AS 38.05.050 is amended to by adding new subsections to read:

1 (b) Except as provided in (c) and (d) of this section, the commissioner shall  
2 sell for private use an amount of settlement or agricultural land equal to or greater than  
3 the total acreage acquired by the state from private landowners through purchase or  
4 eminent domain. The settlement or agricultural land sold shall be reasonably  
5 proximate in location to the land acquired, shall be of equal or greater value, and shall  
6 demonstrate similar economic development potential. If sufficient settlement or  
7 agricultural land reasonably proximate in location to the land acquired by the state is  
8 not available, the commissioner shall review other proximate state land to determine if  
9 that land may be reclassified as settlement or agricultural land, except that land  
10 classified by the commissioner as public recreation, heritage, transportation, water  
11 resources, or wildlife habitat, may not be reclassified under this subsection. If, after  
12 reviewing proximate state land for reclassification, the commissioner finds that there  
13 is no proximate settlement or agricultural land available, the requirement to sell  
14 settlement or agricultural land under this subsection to offset an acquisition of private  
15 land does not apply to that acquisition. The sale of settlement or agricultural land  
16 under this subsection shall be close in time to the acquisition by the state from a  
17 private landowner, but is not required to be simultaneous. If a single parcel is not  
18 available, multiple parcels of land may be combined to meet the requirements of this  
19 subsection.

20 (c) The commissioner may trade settlement or agricultural land with the owner  
21 of the land the state is acquiring to satisfy the sale requirements of (b) of this section.  
22 Land traded by the state under this subsection is not subject to the proximity, value, or  
23 acreage requirements of (b) of this section and does not need to demonstrate economic  
24 development potential that is similar to the potential of the private land acquired.

25 (d) The provisions of (b) of this section do not apply to land acquired by the  
26 state solely for a roadway, right-of-way, or easement.

27 (e) In this section, "settlement land" means

28 (1) upland that is, by reason of its physical qualities and location,  
29 suitable for year-round or seasonal residential or private recreational use or for  
30 commercial or industrial development;

31 (2) tideland, submerged land, or shoreland that is suitable for float

1 homes; or

2 (3) land that is immediately adjacent to upland with existing or  
3 proposed settlement and that will be managed to support the existing or proposed  
4 upland settlement uses.

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

7 APPLICABILITY. AS 38.05.050(b), added by sec. 2 of this Act, applies to acreage  
8 acquired by the state from private landowners by purchase or eminent domain on or after the  
9 effective date of this Act.

10

# Fact Sheet

## Title: Land Ownership In Alaska



Alaska Department of  
**NATURAL  
RESOURCES**

Division of Mining, Land & Water  
March 2000

Current land ownership in Alaska can be traced back to three main events in the state's history.

- ◆ Russian traders arrived in Alaska in the mid-1700's and established small, scattered trading posts and settlements. Alaska Natives (the Eskimo, Indian, and Aleut peoples) continued as the primary "landowners" during this period of Russian occupation.

On October 18, 1867, Russia sold Alaska to the United States government. As a result, the federal government owned the Alaska Territory, approximately 375 million acres (about one-fifth the size of the continental U.S.).

- ◆ Alaska became a state in 1959. The federal government granted the new state 28% ownership of its total area. Approximately 103,350,000 acres were selected under three types of grants: Community (400,000 acres), National Forest Community (400,000 acres), and General (102,550,000 acres). Additional territorial grants, for schools, university and mental health trust lands, totaling 1.2 million acres were confirmed with statehood. All grants combined gave the State of Alaska approximately 105 million acres.
- ◆ In 1971 Congress passed the Alaska Native Claims Settlement Act (ANSCA). This law granted 44 million acres and 1 billion dollars to village and native corporations created under the act. Generally, ANSCA gave Native selections priority over state land selections.

### State Land

To date, the state has received patent to approximately 85% (90 million acres) of its total land selections. The state was permitted to select lands, from any federal land not already reserved for other uses, to provide:

1. Land and resources to support the state's economy for road construction, economic development, and building houses, schools, and other public and private facilities.
2. A reduction in federal control over state internal affairs by giving the state ownership and jurisdiction over its own land.

The state chose land to meet three specific needs - settlement, resources and recreation.

**Settlement** – The State of Alaska selected land to encourage development and settlement. Land for public facilities, road construction and other public needs were included. Once owned, the state transfers large tracts of land to local governments, and leases and disposes of land to the private sector. There are approximately 580,000 acres currently in the state's land disposal bank for eventual lease or sale.

**Resources** - The Alaskan economy is based on exploration for and the development of natural resources. Lands were selected for agriculture, forestry, commercial fisheries, mining potential, oil and gas development, and wildlife habitat.

**Recreation** – Lands for wildlife, back-country recreation, and varying degrees and types of developed recreation were chosen and reserved to provide a variety of experiences for Alaskans and the tourist industry.

Once land is selected, land planners develop state land use plans. Planners consider laws and policies set by the Governor and state legislature, the character of the land itself, recommendations made by resource experts and public input to determine the most appropriate management of currently owned or selected state land. Plans are developed for land in selected status in anticipation of its conveyance to the state.

#### Federal Land

The federal government is still the largest landowner in Alaska with 60% of the total area (222 million acres). This acreage includes national parks, wildlife refuges, national forests, military reservations and the North Slope National Petroleum Reserve. More than a dozen federal agencies manage federal lands in Alaska.

The majority of federally owned lands have been set aside for public use (approximately 80 million acres). These are designated as follows:

The National Park Service and Fish and Wildlife Service manage about 119.3 acres (48.3 and 71.0 million acres respectively) for primary uses of resource protection and fish and wildlife conservation.

The Forest Service and Bureau of Land Management manage about 97.7 million acres (19.8 and 77.9 million acres respectively) for multiple use purposes including timber production, fish and wildlife, recreation, water and mining. Management of these lands is based on priorities and compatibility among various uses.

The remaining federal land is designated for special purposes, such as military reservations, the National Petroleum Reserve and U.S. Postal Service lands.

#### Native Lands

Native lands are private lands. The Alaska Native Claims Settlement Act, passed by Congress in 1971, mandated the creation of regional and village Native corporations for the disbursement of the 44 million acres and payment of one billion dollars mandated to Native ownership.

Thirteen regional corporations were created for the distribution of ANSCA land and money. Twelve of those shared in selection of 16 million acres, the thirteenth corporation, based in Seattle, received a cash settlement only. 224 village corporations, of 25 or more residents, shared 26 million acres. The remaining acres, which include historical sites and existing native-owned lands, went into a land pool to provide land to small villages of less than 25 people.

#### Other Private Land

Land in private ownership (other than Native land) comprises less than one percent of the total land in Alaska. Much of the best land for development around Alaska's communities is, or will be, privately owned. Private land development meets people's needs by providing places to live, work, shop and recreate. It also provides a tax base for cities and communities to help support public services.

# ALASKA STATE LEGISLATURE

Chair  
FISHERIES

Vice-Chair  
EDUCATION

Member  
HEALTH, EDUCATION AND SOCIAL SERVICES

Member  
STATE AFFAIRS



**REPRESENTATIVE PAUL SEATON**  
House District 35

*Session:*  
State Capitol Building  
Juneau, Alaska 99801  
Phone 907-465-2689  
Fax 907-465-3472  
1-800-665-2689  
Rep.Paul.Seaton@legis.state.ak.us

*Interim:*  
345 W. Sterling Highway  
Suite 102B  
Homer, Alaska 99603  
Phone 907-235-2921  
Fax 907-235-4008

## Sectional Analysis

### HB 498

#### "An Act requiring the sale or trade of state land."

**\*Section 1.** Legislative findings as related to the intent of the bill.

**\*Section 2.** Amends Alaska Statute 38.05.050 regarding Article 2, Sale of Land for private ownership, by adding a new subsection (b).

(b) The new subsection provides the commissioner of natural resources with statutory authority to sell state land in the event that land is taken from private individuals for the purposes of conservation. The commissioner must attempt to sell land proximate in size, value, and location with regards to the land purchased for conservation. Under this subsection, land may be reclassified to meet the requirements of land to be sold.

(c) To meet the requirements set out in (b) of this act, the commissioner may trade state land.

(d) The requirements set out in (b) of this act, do not apply to roadways, right-of-ways or easements.

(e, 1-3) Defines settlement land into the statutes.

**\*Section 3.** Amends codified law relating to applicability, stating that only land acquired from private landowners by purchase or eminent domain would be affected after the enactment of the bill.





# HomerNews.com



Thursday, December 11, 2003

## Power Search

- Our Stories
- Web
- Yellow Pages
- Classifieds

(Go To Best Hit)

Story last updated at 2:00 p.m. Thursday, June 19, 2003

HOMER NEWS

## Gov. vetoes federal grant for KHLT

by Chris Bernard  
Staff Writer

### Search

- Home
- News
- Sports
- Arts
- Letters
- Business
- Opinion
- Town Crier
- Churches
- Circulation
- Classifieds

### Features

- Seawatch
- Neighbors
- Forum

It seems to be a matter of philosophy, not economy, that led the governor to veto nearly \$15 million in federal grants for Kodiak and Homer, including \$450,000 for the Kachemak Heritage Land Trust's purchase of the Baycrest Ski Trails.

Homer's representatives and project supporters are scratching their heads.

"I don't quite know what to say about that," said Barb Seaman, executive director of the KHLT.

"I was very disappointed, and a little disturbed," said Rep. Paul Seaton, R-Homer.

The \$450,000 was to cover 75 percent of the costs of purchasing a 160-acre Diamond Creek parcel that includes more than 25 kilometers of Nordic ski trails, and the 7-mile Homestead Trail.

Originally homestead land, the area has been popular with hikers and Nordic skiers for nearly 20 years, Seaman said. The land recently sold, and when the new landowners announced plans to subdivide, KHLT and the Kachemak Nordic Ski Club began seeking a way to protect the trails and the surrounding area.

The group applied for Forest Legacy Funding, and was prioritized No. 1 on the list for Alaska projects for 2004, she said.

However, the grants would have to be received by the state. And the state said no. Murkowski's administration said it planned to deny receipt authority for all federal funding for land acquisition in 2004.

On the final day of the state legislative session, on which the House and Senate were scheduled to vote on the capital budget, the project's outlook improved. Seaton managed to add an 11th-hour amendment giving the state's authorization.

Hopes were high that, as the governor vetoed budget items to cut costs, the Kodiak and Homer projects would be spared since they would not cost the state a dime.

But when the governor unveiled his budget cuts last week, both were on

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

the list.

"This is poor policy. We need to maximize the amount of land in private ownership," Murkowski said in his veto statement.

"That was a philosophical difference," said Seaton. "The Murkowski administration is opposed to taking private land and putting it into government hands. Even though KHLT is a little different than that, it got lumped in.

Sen. Gary Stevens, R-Kodiak, expressed similar sentiments. "I thought we had a pretty good plan worked out," he said. "But, the governor has some ideological concerns."

The Kodiak project would have accepted about \$14.5 million in federal funding for the creation of elk habitat on Afognak Island, he said. The Afognak purchase had the support of local government, the Native corporations who owned some of the land, and conservationists.

"It's really a shame. Both projects were really important, and I'm just really concerned and upset about it," Stevens said.

The KHLT project had the support of the Homer City Council, the Chamber of Commerce and a wide range of groups from the Homer Soil and Water Conservation District to Homer Community School.

"We had an immense amount of community support for this," Seaman said. "It's disappointing to me to have everything lined up and then have it disappear for no obvious reason."

Seaton said he's not given up hope. "I'm still working on alternate ways of getting there. I'll be working on this with the governor," he said.

Stevens agreed that this is not the end of either project.

"Both have broad-reaching economical possibilities," he said. "The Afognak Island one would bring in revenues from lodges, guides, all kinds of things. And for Homer, the KHLT land would raise property values and help bring tourism money to town. There is definitely an economic side of this that maybe hasn't been looked at closely enough."

Comments or questions?

For questions about the website contact the web master at [HomerNews.com](http://HomerNews.com)  
For questions or comments about the news Homer News Editorial and Newsroom Content

Homer News 3482 Landings St. Homer, Alaska 99603 907 235-7767  
Copyrighted by Homer News, a Division of Morris Communications  
Privacy and terms of use.

P.O. Box 2400  
Homer, AK 99603  
Ph: (907) 235-5263, Fax: (907) 235-1503  
E-mail: khltkbr@xyz.net  
www.kachemaklandtrust.org

## Kachemak Heritage Land Trust

Preserving, for public benefit, land with significant natural, recreational or cultural values by working with willing landowners.

April 9, 2003

Representative Paul Seaton  
State Capitol, Room 428  
Juneau, Alaska 99801

Dear Representative Seaton,

The Diamond Creek Project is a rare opportunity to purchase a key parcel of land containing valuable recreational trails for the long-term benefit of our community. Acquisition of the 160-acre Fowler property has been recommended for approval by the national Forest Legacy Program and the U.S. Forest Service for federal funding in 2004. If Forest Legacy Program funding continues nationally, it has already committed 75% of the purchase price for this parcel, or \$450,000. The purchase price has been established by a qualified appraisal and almost \$70,000 of the 25% private match has already been raised in pledges without actually having begun a capital campaign yet.

Kachemak Heritage Land Trust has established a Diamond Creek Acquisition Fund to accept private contributions toward the purchase of this keystone property. Well-loved trails run on three sides and through the middle of this regionally significant parcel. As you know, Diamond Creek is a significant recreation area with maintained hiking and ski trails. This watershed includes the 7-mile Homestead Trail - by far the most popular and accessible summertime hiking trail on the north side of Kachemak Bay, which is maintained for public use by Kachemak Heritage Land Trust. In the winter, the Kachemak Bay Nordic Ski Club maintains more than 90 kilometers of groomed ski trails within the Diamond Creek watershed, which is the largest non-motorized area maintained for cross country skiers locally.

Located 3.5 miles from Homer, the Diamond Creek area was historically homestead land. Until a 160 acre parcel at the heart of the area was recently sold and slated for subdivision, many people did not understand that almost half the winter and summer recreational trails crisscrossing the watershed exist by permission only. For over 60 years this has been Homer's favorite recreational area. This Diamond

*Working with Willing Landowners on  
Alaska's Kenai Peninsula*

.....

FROM : KHLT

PHONE NO. : 9072355263

Apr. 07 2003 09:42PM P3

April 9, 2003

Page 2

Creek corridor serves thousands of resident and visiting hikers, equestrians, skiers and students annually.

The trail system in the Diamond Creek area is valuable both to our quality of life and to our local economy and provides unparalleled recreational opportunities for thousands of residents and visitors. Homer's City Council will vote on a resolution of support, sponsored by Mayor Cushing, urging receipt authority for Forest Legacy Program funds at their meeting on April 14, 2003. Local support for this project is such that we anticipate unanimous approval from the City Council for this resolution. I will provide you with a copy as soon as it is available.

We are pleased to have a project that stands on its own merits as valuable to our community's economic future. We also have a proclaimed willing seller, significant community support and the federal part (75%) of the funding all but guaranteed by the Forest Legacy Program and the US Forest Service, and a large portion of the non-federal match already raised. We respectfully request that acceptance of this funding be included as a capital budget item for 2004. Thank you very much for your time, assistance and attention!

Sincerely,

Barbara Seaman  
Executive Director

enc.: 2 Diamond Creek area maps, letters of support from Kachemak Nordic Ski Club, Homer Chamber of Commerce, Homer High School, Homer Community School, Homer Soil and Water Conservation District, letter expressing willingness to sell by landowner, the Homer Demonstration Forest's management plan, and the Forest Legacy Program Projects, Fiscal Year 2004 Recommendations

cc: Steve Bush, Federal Forest Legacy Coordinator  
Kathryn Reid, State Forest Legacy Coordinator  
Ted Stevens, U.S. Senator  
Gary Stevens, Alaska State Senator  
John Fowler, landowner  
David Banks, The Nature Conservancy of Alaska  
Roger Hoerster, Trust for Public Land

# ALASKA STATE LEGISLATURE

*Chair*  
FISHERIES

*Vice-Chair*  
EDUCATION

*Member*  
HEALTH, EDUCATION AND SOCIAL SERVICES

*Member*  
STATE AFFAIRS



**REPRESENTATIVE PAUL SEATON**  
House District 35

*Session:*  
State Capitol Building  
Juneau, Alaska 99801  
Phone 907-465-2689  
Fax 907-465-3472  
1-800-665-2689  
Rep.Paul.Seaton@legis.state.ak.us

*Interim:*  
345 W. Sterling Highway  
Suite 102B  
Homer, Alaska 99603  
Phone 907-235-2921  
Fax 907-235-4008

June 16, 2003

Governor Frank H. Murkowski  
PO Box 110001  
Juneau AK 99801-0001

Dear Governor Murkowski,

I feel that there is a misunderstanding related to the veto of receipt authority for the federal Forest Legacy funds for the Diamond Ridge land acquisition project. The reason for this veto stated in the capital budget transmittal letter is "policy disagreement." I am also concerned with wholesale removal of private lands and the loss of associated taxes and economic potential. In fact, I have been working on legislation that would require the State to offer at public auction comparable land when the State acquires any private land, so I do not think of this as a "policy disagreement."

The Diamond Creek project is strongly supported by this community because it gives Homer the ability to generate winter economic activity. This project must be distinguished from land acquisitions that just 'tie-up' property and should be more closely compared with new roads, airports or other economic development projects.

The primary purpose of this project is to expand and improve an extensive ski trail system currently used by many residents, tourists, and school ski teams. This connected system would allow the community to host regional and national ski meets and other events that can greatly improve our sluggish winter economy. Evidence of the business community's approval of this project is seen in the Homer Chamber of Commerce's supporting letter (see attached). Also, the City of Homer is willing to forego the taxable basis of the property for the economic opportunity of winter tourism and has passed a resolution in support of the project.



In 2006, the Arctic Winter Games will be hosted on the Kenai Peninsula. Thousands of athletes, international officials, and spectators will be coming to the region for this event. Our well-developed ski trails were instrumental in the Arctic Winter Games Site Committee's choice (see attached). However, this particular parcel is needed to legally connect and preserve this existing trail system.

With your approval, I would like to pursue receipt authorization for these funds through the Revised Program for Unanticipated Federal Receipts with the Legislative Budget and Audit Committee.

Sincerely,



Representative Paul K. Seaton  
House District 35

Attachments: Homer Chamber of Commerce letter  
Arctic Winter Games Site Committee document  
City of Homer resolution

cc: Cheryl Frasca and Jay Hogan, OMB  
Rep. Ralph Samuels, LB&A

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB498(RES)werkdraftVerC  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
 Title Sale or Trade of State Land RDU Resource Development  
 Component Land Sales/Municipal Entitlements  
 Sponsor Rep. Seaton  
 Requester (H) RES Component No. 2456

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	95.3	95.3	95.3	95.3	95.3	95.3
Travel	10.0	10.0	10.0	10.0	10.0	10.0
Contractual	15.0	15.0	15.0	15.0	15.0	15.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>120.3</b>	<b>120.3</b>	<b>120.3</b>	<b>120.3</b>	<b>120.3</b>	<b>120.3</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	120.3	120.3	120.3	120.3	120.3	120.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
University Endow./PS trust fund						
1153 Land Disposal Income Fund						
<b>TOTAL</b>	<b>120.3</b>	<b>120.3</b>	<b>120.3</b>	<b>120.3</b>	<b>120.3</b>	<b>120.3</b>

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

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time	2	2	2	2	2	2
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 HB 498 requires the department to sell an amount of settlement or agricultural land equal to or greater than the acreage acquired by the state from private individuals either through purchase or eminent domain. The legislation stipulates that the land sold under this section shall be of equal or greater value, reasonably proximate in location, close in time to the acquisition, and demonstrate similar economic development potential to the land acquired by the state.  
  
 The legislation also requires that the commissioner consider reclassifying certain lands as settlement land or agricultural land in order to satisfy the requirements of the section.  
  
 cont.

Prepared by: Bob Loeffler, Director Phone 269-8600  
 Division: Mining, Land and Water Date/Time 4/15/04  
 Approved by: Thomas Irwin, Commissioner Date 4/15/04  
 Agency: Natural Resources

## FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB498(RES)workdraftVerC

### ANALYSIS CONTINUATION

This legislation would require DNR to track all state acquisitions of private land to determine those that fit the standards set, identify and assess suitable replacement lands and sell or trade these lands to replace the lands acquired from the private domain. DNR would need to track all acquisitions originating within DNR (including State Parks and ADF&G acquisitions which are done by DNR), as well as those qualifying acquisitions made by the Departments of Education, Administration, Transportation and Public Facilities (when acquired for airports, ports, public facilities), the University of Alaska, the Mental Health Trust Unit, or the Alaska Railroad. Lands acquired for easements or rights-of-way by the DNR (for EVOS purposes) or DOT&PF would be exempt.

Though the amount of land acquired by the state through purchase or eminent domain varies from year to year, based on historic records, DNR anticipates that approximately 4,800 acres of land acquisitions annually would qualify for disposal under this proposal. These lands would be contained in any number of tract sizes and number from scores to hundreds of individual parcels.

The state land acquisition tracking efforts would require:

1 NRS I – @\$52.0 for six (6) months = \$26.0

The state land replacement assessment, including reclassifying lands to settlement status would require:

1 NRS II – @\$59.0 for six (6) months = \$29.5

1 NRS I – @\$52.0 for six (6) months = \$26.0

1 Appraiser I – @\$55.0 for three (3) months = \$13.8

In addition, DNR estimates that it would require at least \$10.0 in travel costs to examine subject properties and \$15.0 in contractual costs for appraisal services.

Once the land has been identified, preparing for and conducting the land sale will be handled by existing Land Sales staff. Land sale costs such as public notice, brochures and contract issuance will be assumed as part of the existing land sale program. The bill will not result in increased land sales as the amount of land currently offered for sale (over 23,000 acres currently available over-the-counter, plus new offerings) exceeds the amount of acquisitions (estimated at 4,800 acres). No additional revenue is anticipated as DNR assumes that the acreage identified to be sold under this program will replace an equal amount of acreage that would have been sold under the existing program.

HB

522

# ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA  
STATE CAPITOL  
JUNEAU, ALASKA  
99801-1182

(907) 465-3744  
FAX (907) 465-2273

## MEMORANDUM

TO: Committee Members  
House Resources

FROM: Rep. Bruce Weyhrauch *BW*

DATE: March 5, 2004

SUBJECT: HB 522 – Small Commercial Passenger Vessels

---

In committee, Mr. Chip Thoma, a member of the public, raised concerns about the department's ability to effectively regulate the small commercial passenger vessels under the regulatory scheme outlined in HB 522. In response, we would like to offer the committee a letter from John Waterhouse, P.E.. Mr. Waterhouse is a marine engineer who has worked extensively with the marine industries. Specifically, we asked Mr. Waterhouse to explain what circumstances involving retrofitting necessitate stability testing and/or re-licensing of a vessel by the United States Coast Guard.

We'd like to emphasize to the committee that the intent of HB 522 is to enable the department and the industry to manage their wastewater issues using the tools of Best Management Practices. This legislation in no way exempts the small commercial passenger vessels from Alaska's rigorous environmental protection laws.

Thank you for the time you and your staff have taken to review this important issue, and I look forward to continuing to work with the Resources committee next week.

Attachment: Letter from Elliot Bay Design Group

Representative\_Bruce\_Weyhrauch@legis.state.ak.us  
[www.akrepublicans.org/weyhrauch/](http://www.akrepublicans.org/weyhrauch/)



## Architectural & Engineering Services for the Marine Industry

5301 Shilshole Ave NW

Suite 200

Seattle, WA 98107

tel 206 782 3082

fax 206 782 3449

www.ebdg.com

March 2, 2004

Ref: J04029-01L

Mr. Bryce Brockway  
Cruise West  
2401 4<sup>th</sup> Avenue, Suite 700  
Seattle, WA 98121

**Subject: Limitations on Modifying Small Commercial Passenger Vessels**

- References:**
- a. Alaska House Bill 522, "An Act relating to discharges from small commercial passenger vessels; and providing for an effective date."
  - b. Assessment of Cruise Ship and Ferry Wastewater Impacts in Alaska, Alaska Department of Environmental Conservation, Juneau, Alaska, February 9, 2004.

Dear Mr. Brockway,

I have read the proposed House Bill 522 relating to small commercial passenger vessels (Reference a). As you know, I am a naval architect with extensive design experience in vessels such as cruise ships and ferries, including the Alaska Marine Highway System fleet, the Inter-Island Ferry Authority ferry, the Cruise West fleet, Lindblad Expeditions fleet, and Glacier Bay Tours and Cruises fleet. I am registered in Washington State as a professional engineer in the disciplines of naval architecture and marine engineering. Based on my professional opinion, the wastewater management systems on existing vessels cannot be readily changed to meet the Alaska Department of Environmental Conservation Standards for reasons outlined below. The combination of U.S. Coast Guard regulations, licensing requirement, and vessel construction practices makes the addition of new treatment equipment and holding tanks technically infeasible.

Regulatory environment - Small commercial passenger vessels that operate under the U.S. flag are regulated by the U.S. Coast Guard and carry a certificate of inspection showing compliance with all safety requirements. To qualify as a small passenger vessel they must displace less than 100 gross tons. Please note that gross tonnage is a measure of internal volume and not weight. Their design and construction are principally regulated under Subchapter K of Chapter 46 of the Code of Federal Regulations which applies to vessels that carry 50 or more passengers in overnight service or more than 150 passengers in day service. If changes are made to a vessel

that increase its admeasurement to more than 100 gross tons, the vessel is no longer considered a small passenger vessel by the U.S. Coast Guard and is subject to a different "license" or certification.

Wastewater Management – As detailed in Reference b, small cruise ships generally meet all wastewater discharge requirements while underway. During stationary discharge, "small ship effluent may not meet Alaska Water Quality Standards for free chlorine, fecal coliform, copper and zinc in receiving water." One potential solution would be to retain all graywater and blackwater while the vessels are stationary. However, per Table 24 of the reference, most of the small passenger vessels have inadequate tankage to hold all of the graywater and blackwater produced during a 12 hour period. Adding additional volume to the existing tankage and/or new treatment equipment is not simple and, depending on the vessel, may be impossible due to space and weight constraints.

Limited Space – As evidenced by the word "small," these vessels are very limited in space. Typically their machinery, tankage, storerooms, and crew quarters are all below the main deck. For many of the vessels there are also some passenger cabins below the main deck. Space is at a premium. Increasing the capacity of wastewater tanks below the main deck will likely result in some other space being made smaller. Adding tankage above the main deck is impractical since drain lines rely upon gravity to function. Space could be added to the vessel by lengthening the hull but that is expensive and likely increase the internal volume beyond the 100 Gross Ton admeasurement limit.

Weight Limits – Per Archimedes Principle, when weight is added to a vessel, the vessel must displace more water to compensate and hence sits lower in the water. This reduces the volume of hull remaining above the water, also known as the reserve buoyancy. Reserve buoyancy is what keeps an intact, undamaged vessel from foundering in storms at sea and is what keeps the vessel afloat after damage occurs due to a grounding or a collision. USCG stability regulations for both intact and damaged stability strictly govern the amount of reserve buoyancy. Adding weight in the form of additional tankage for waste water would require that an equal amount of weight would need to be removed. The only discretionary weights that could be removed are passengers, crew members, fuel, potable water, or provisions. All of these will have an economic impact on the operator.

Even if the vessel has sufficient reserve buoyancy to handle additional weight, the fact that the weight is a liquid can cause a loss of stability due to the "free surface effect." As the vessel heels to one side, liquid is free to move over to that side, causing additional heeling force, which is destabilizing. The stability letter issued to the vessel by the U.S. Coast Guard strictly limits the number of tanks that can be "slack" or contribute to the free surface effect. Compensating changes may need to be made to cancel any additional free surface effect. Such changes could be moving weights from high in the vessel to lower in the vessel, constructing tanks with a geometry that limits the free surface effect, or keeping other tanks either full or empty. The latter is extremely difficult to manage since liquid levels in fuel oil tanks and potable water tanks are constantly in flux. In general, small passenger vessels have tight stability limits and cannot tolerate weight changes.

Cruise West  
March 2, 2004

Ref. J04029-01L

Page 3

The weight issues can be overcome by adding volume to the hull but this again can affect the admeasurement and vessel licensing.

If you desire more information regarding limits to altering a vessel, or wish to discuss a specific vessel, please let me know.

Sincerely,



EXPIRES 11/16/04

John W. Waterhouse, P.E.  
President



## Architectural & Engineering Services for the Marine Industry

March 4, 2004

Ref: J04029-02L

Mr. Bryce Brockway  
Cruise West  
2401 4<sup>th</sup> Avenue, Suite 700  
Seattle, WA 98121

Subject: **Limitations on Modifying Small Commercial Passenger Vessels**

References: a. Marine Safety Manual, COMDTINST M16000.9, United States Coast Guard,  
24 Sept 1990

Dear Mr. Brockway,

I understand that you seek clarification as to when a vessel might require additional stability testing or re-licensing. Currently, the U.S. Coast Guard requires stability testing when a new vessel is constructed prior to issuing the certificate of inspection (COI) or license that allows the vessel to be used for carrying passengers. Only if changes are made to the vessel is re-testing of the stability required. Reference (a) contains the following language as to when a re-test is required:

*Marine Safety Manual 6.D.4. Evaluation of Weight Changes to Lightship. During its service life a vessel may be modified without changing its buoyant hull form. A complete inclining is required unless the changes are minor or do not adversely impact the vessel's stability. Weight calculations are acceptable if the MSC determines they are accurate, or acceptable penalties in VCG are applied to the calculations. The nature of the weights changed is critical to the accuracy of calculations. Often, miscellaneous changes with a total weight greater than 2 percent of lightship displacement will necessitate a deadweight survey (or even a complete inclining) to verify calculations. Weight changes should be combined for the total change, when determining if a test is necessary, since the errors associated with weight additions and weight deletions are cumulative. If a deadweight survey proves the calculations to be inaccurate, a complete inclining may be necessary.*

Please note that the 2 percent value refers to the total weight change, which is the sum of weights removed, weights relocated, and weights added. Vessels typically gain weight over time due to layers of paint, accumulated engine parts, additional stores, and minor changes to the equipment

5301 Shilshole Ave. NW

Suite 200

Seattle, WA 98107

tel 206.782.3082

fax 206.782.3449

www.ebdg.com

or furnishings. This normal weight growth must be included in the total weight value. On most vessels, changes to the wastewater tankage and treatment system, combined with normal weight growth will almost certainly exceed 2% of the lightship displacement.

As noted in my previous letter, the vessel's COI is also based upon the admeasured volume of the vessel. If that volume is changed by lengthening the hull or adding sponsons to increase buoyancy then the gross tonnage must be re-measured and the stability must be re-tested. Once again, I caution that tonnage refers to volume in this case, not weight. This dates back to when vessels carried casks of wine, known as tuns, or tons, in their holds. In our modern measurements, one gross ton is equal to 100 cubic feet. If modifications to a vessel increase the admeasurement to over 100 gross tons then the vessel is no longer considered a small passenger vessel and must be re-licensed. Many of the small overnight passenger vessels have admeasurement values of 90 to 99 tons so there isn't much margin for change.

In closing, let me be clear that adding weight to a vessel can adversely impact the stability and have major consequences for an operator. As you know, the U.S. Coast Guard has strict requirements to ensure safe operation of passenger vessels. Most vessels have been designed to the limit of those requirements with little margin for change. A stability test can be the catalyst for expensive alterations to keep the stability in compliance with USCG requirements.

Sincerely,



EXPIRES 11/16/04

John W. Waterhouse, P.E.  
President

# ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA  
STATE CAPITOL  
JUNEAU, ALASKA  
99801-1182

(907) 465-3744  
FAX (907) 465-2273

STATE AFFAIRS COMMITTEE

## HB 522

Small Cruise Ship Discharge

### Sponsor Statement

In 2001, the Alaska Legislature enacted the Commercial Vessel Environmental Compliance Program via HB 260. This was a collaborative effort by the cruise ship industry, the Legislature, and the Department of Environmental Conservation that established stringent guidelines for black and grey wastewater disposal in Alaskan waters. Since passage of HB 260, most large cruise ships discharging into Alaskan waters have installed advanced wastewater treatment systems resulting in dramatically improved water quality samplings, according to a recent report authored by DEC.\*

In addition to the large cruise vessels, HB 260 also required the small cruise vessels to comply with the same standards. Even though the smaller vessels contribute approximately 3% of the wastewater discharged in Alaskan waters in 2001, the assumption was made that environmental technologies developed by the large vessels could "filter down" and be applied to the smaller vessels. HB 260 gave the industry, including the small commercial vessels until July 2004 to comply.

As it turned out, the technological advances route wasn't a simple fit for the smaller vessels and consequently, these vessels cannot feasibly comply with the Commercial Vessel Environmental Compliance Program. According to the Assessment Report, the small vessel's trouble spots are readings that exceed the Alaska Water Quality Standards (AWQS) while stationary. The discharge met the AWQS while underway due to the large dilution factor. As a consequence and in order for these vessels to continue plying Alaskan waters, an alternative regulatory scheme that takes focus on minimizing discharge is required.

Recently, such an alternative plan has been devised. The Small Commercial Vessel Association and the DEC have reached an accord that both protects Alaska waters and enables the small cruise ship industry to continue operations in the state. The plan set out in HB 522 deals in terms of "Best Management Practices" or BMPs for small vessels that currently operate in Alaskan waters. HB 522 also stipulates that new vessels constructed after January 1, 2004 be engineered to comply with the Compliance Program if they are to be used in Alaskan waters. This is an agreeable solution that will work for Alaska's environmental and business communities.

\*Assessment of Cruise Ship and Ferry Wastewater Impacts in Alaska  
Alaska Department of Environmental Conservation  
Commercial Passenger Vessel Environmental Compliance Program  
January 23, 2004

Released: 2/26/04  
Contact: Linda Sylvester  
465-4963

# 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

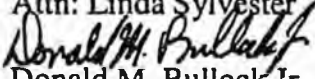
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 26, 2004

**SUBJECT:** Authority of the Department of Environmental Conservation to adopt regulations on interim protective measures for small passenger vessels (Work Order No. 23-LS1560)

**TO:** Representative Bruce Weyhrauch  
Attn: Linda Sylvester

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

You asked whether the Department of Environmental Conservation (DEC) had the authority to adopt regulations under AS 46.03.460 - 46.03.490 or ch. 1 FSSLA 2001, relating to interim protective measures applicable to discharges by the owner or operator (O/O) of a small commercial passenger vessel (SCPV). You also asked if DEC can decline to approve a plan for interim protective measures submitted by the O/O of a SCPV in the absence of regulations relating to standards for interim protective measures.

The answer to your first question is straightforward. The DEC is clearly authorized to adopt regulations to carry out the purposes of the commercial passenger vessel environmental compliance program, which would include regulations relating to interim protective measures and terms and conditions of vessel discharges. The answer to the second question is more complex. DEC must extend the time for compliance with AS 46.03.463 when the O/O of a SCPV submits a plan for interim protective measures; however, the law is not clear concerning the length of the extension and what constitutes acceptable interim protective measures.<sup>1</sup> While some procedural regulations might be helpful to the public, it is my opinion that decisions about the length of the extension and the acceptability of a plan for interim protective measures are within the authority and discretion of DEC without the adoption of regulations by the department because those decisions must be made on a case-by-case basis, not using general criteria.

### Discussion

#### *Regulatory authority of DEC*

The commercial passenger vessel environmental compliance program, AS 46.03.460 - 46.03.490, was enacted in 2001 for the purpose of regulating vessel discharges into the

---

<sup>1</sup> The use of the word "shall" in the last sentence of both AS 46.03.463(b) and (c) requires the department to extend the time for compliance with these subsections. As discussed below, however, other requirements for alternative terms and conditions still apply.

Representative Bruce Weyhrauch

January 26, 2004

Page 2

Alaska environment. The law applies to all commercial passenger vessels operating in Alaska with overnight accommodation for at least 50 passengers.<sup>2</sup>

Under AS 46.03.460(b), DEC is granted the general authority to adopt regulations to carry out the purposes of the program and is directed to use negotiated rule making procedures when appropriate. DEC is also given specific authority to adopt regulations relating to the protocols for fecal coliform (AS 46.03.463(b) and (c)); standards for other parameters for discharges (AS 46.03.463(d)); the incorporation of standards in federal and other applicable laws (AS 46.03.463(e)(3)); and the time and manner for an O/O to pay the environmental compliance fee (AS 43.03.480(d)). In addition to the regulatory authority granted within the program, DEC has the authority under AS 46.03.020(10) to adopt regulations "necessary to effectuate the purposes of [AS 46.03]."

Within the broad scope of this regulatory authority, DEC may adopt regulations relating to procedures for establishing alternative terms and conditions of vessel discharges. Through the use of the word "may" in the authorizations, the adoption of regulations is at the discretion of the department. Therefore, in response to your question concerning whether DEC has the regulatory authority to put standards for interim protective measures in place, the answer is yes. Once adopted, the regulations may continue to have effect consistent with the statutory authority and may be amended at the department's discretion.

*Authority of DEC to disapprove a plan for interim protective measures*

With regard to your question concerning whether DEC can decline to approve the plan for interim protective measures without adopting regulations, I think it is helpful to look at the special provisions for SCPVs in ch. 1 FSSLA 2001. Also, to understand the effect of the commercial passenger vessel environmental compliance program on the issues you raise, we must look at both the section you identified—AS 46.03.463—and the preceding section—AS 46.03.462. While the former section relates to prohibited discharges and limitations on discharges, the latter section describes the terms and conditions under which a vessel may discharge into the state's environment. I believe the alternative terms and conditions of vessel discharges provided for in AS 46.03.462 should be read together with the plan for interim protective measures that an O/O may submit under AS 46.03.463.<sup>3</sup>

Unlike AS 46.03.463, there are no special provisions for SCPVs in AS 46.03.462. All owners or operators are required to comply with either the standard terms of conditions

---

<sup>2</sup> Vessels in innocent passage through Alaska are exempt from the program under AS 46.03.487.

<sup>3</sup> The Alaska Supreme Court generally construes statutes *in pari materia* where two statutes were enacted at the same time, or deal with the same subject matter. *Underwater Constr., Inc. v. Shirley*, 884 P.2d 150, 155 (Alaska 1994).

provided for in AS 46.03.462(b) or the alternative terms and conditions approved by DEC under AS 43.03.462(c). Thus, SCPVs must comply with either the standard terms in or the alternative terms and conditions approved by DEC in order to discharge from vessels in Alaska.

While other standard terms and conditions in AS 46.03.462(b) relate to recordkeeping, testing, reporting, and access, AS 46.03.462(b)(1) is the only standard or condition that restricts the amount of suspended solids and coliform that may be discharged into the environment. In the case of an SCPV not capable of meeting the limitations on suspended solids and coliform in AS 46.03.463(b) and (c), the O/O of an SCPV may submit a plan for interim protective measures. Under the same subsections, DEC is required to extend the time for the vessel to comply with the limitations.

Under AS 46.03.462(c), DEC may set alternative terms and conditions of vessel discharges for an O/O who cannot practicably comply with the standard set. Under the maxim *expressio unius est exclusio alterius*,<sup>4</sup> these are the only three situations in which an exception may be permitted. Of the three situations, two do not impact the environment beyond the discharge allowances under AS 46.03.463(b) and (c).

The three situations described in AS 46.03.462(c) in which DEC may set alternative terms and conditions for an O/O who cannot practicably meet the standard set are as follows:

(1) [T]he vessel owner or operator demonstrates to the department's reasonable satisfaction that *equivalent environmental protection* can be attained through other terms or conditions appropriate for the specific configuration or operation of the vessel;

(2) the vessel owner or operator agrees to make necessary changes to the vessel to allow it to comply with the standard terms and conditions of vessel discharges under (b) of this section but demonstrates to the department's reasonable satisfaction that additional time is needed to make the necessary changes; or

(3) an experimental technology or method for pollution control of a discharge is being used or is proposed as one of the alternative terms and conditions of vessel discharges and the department determines that the experimental technology or method has a reasonable likelihood of success in providing *increased protection for the environment*. [Emphasis added.]

As you can see, the emphasized language in paragraphs (c)(1) and (c)(3) provides for equal or better protection to the environment. Only (c)(2) can be read to allow DEC to

---

<sup>4</sup> Under the principle *expressio unius est exclusio alterius*, courts presume that a statute designating only certain things or acts excludes all things or acts not designated. *Angnabooguk v. Dep't of Natural Res.*, 26 P.3d 447, 455 (Alaska 2001)

set lower standards and conditions for an O/O of an SCPV unable to meet the discharge limitations in AS 46.03.462(b) and (c).

To qualify under AS 46.03.462(c)(2), an O/O must agree to make changes necessary to implement the standard terms and conditions and demonstrate that the O/O needs additional time to do so. Reading this paragraph in conjunction with (c)(1) and (c)(3), which permit no increased environmental impact, leads to the likelihood that (c)(2) allows some greater degree of environmental impact. In other words, during the interim in which the standard terms and conditions cannot be met, DEC may permit a higher proportion of suspended solids and coliform in discharges from the vessel. This option allowing a higher level of contamination is consistent with the authority in AS 46.03.463(b) and (c) to allow an O/O of an SCPV to submit a plan for interim protective measures.

In making its determination based on the alternative in AS 46.03.462(c)(2), DEC must decide the length of time necessary for the SCPV to meet the ordinary terms and conditions and the degree to which discharges from the vessel may exceed the standard limitations. The department is directed to make these decisions on a case-by-case basis, as opposed to establishing specific criteria for interim protective measures. 41

It is clear that neither AS 46.03.462 nor AS 46.03.463 allows the O/O of an SCPV to discharge untreated sewage. It is also clear that any upward variation from the discharge standards for suspended solids and coliform is only temporary. The statutes leave the determination of pollutant levels and time for compliance to DEC.

Except in limited situations, a person may not discharge untreated sewage from a commercial passenger vessel into the marine waters of Alaska.<sup>5</sup> Thus, DEC clearly has the authority to reject a plan for interim protective measures that includes the discharge of untreated sewage. This authority is clear in the statute and needs no further interpretation by the department.

The DEC also has clear authority to reject a plan for interim protective measures that is not accompanied by an agreement by the O/O to make necessary changes to comply with the standard terms and conditions. The agreement to make necessary changes is a condition precedent to the grant of alternative terms and conditions; the violation of the agreement by the O/O can be a basis for DEC to disapprove alternatives.<sup>6</sup> Once again, this authority is statutory and requires no regulatory interpretation by the department.

---

<sup>5</sup> AS 46.03.463(a). The exception for allowing the discharge of untreated sewage is for securing the safety of the vessel or saving life at sea.

<sup>6</sup> AS 46.03.462(c)(2). The O/O also has the burden of proving, to the department's reasonable satisfaction, that additional time is needed to make the necessary changes.

Representative Bruce Weyhrauch

January 26, 2004

Page 5

Ultimately, the duration of the plan for interim protective measures and the amount of suspended solids and coliform allowed in the discharges are to be decided by DEC on a case-by-case basis. In reaching its decisions, the department should consider the intent to limit discharges into Alaska's environment while also being mindful of the concern of the legislature for SCPVs operating in Alaska.<sup>7</sup> The department has the authority to exercise its discretion and to deny plans for interim protective measures without adopting regulations. //

*Conclusion*

The DEC has the discretionary authority to adopt regulations and may adopt regulations relating to the approval of a plan for interim protective measures submitted by a small commercial passenger vessel. However, the legislature gave the department sufficient authority to approve or deny plans for interim protective measures without the need of additional regulations.<sup>8</sup>

If I may be of further assistance, please advise.

DMB:med

04-084.med

---

<sup>7</sup> At the time of enacting ch. 1 FSSLA 01, the legislature included a number of special provisions for those smaller vessels, including delaying the effective date of the fee and specifically providing for interim relief from vessel discharge limitation provisions. The effective date for those provisions was extended to January 1, 2004, by sec. 7 ch. 1 FSSLA 01.

<sup>8</sup> DEC is subject to the adjudication provisions of the Administrative Procedure Act. AS 44.62.330(a)(44). The Act provides remedies for persons denied relief by the department.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
HOUSE BILL 524

"RELATING TO THE PROTECTION OF LAND AND WATER FROM WASTE DISPOSAL"  
MARCH 3, 2004

House Bill 524 clarifies the statutory foundation for a rational water protection program. It is an integral piece of the Department of Environmental Conservation's (DEC) "Raindrops to Oceans" initiative to move the State of Alaska to a comprehensive and rational program for protecting Alaska's water as it flows through the hydrologic cycle, from raindrops to oceans.

**What the bill does:**

HB 524 replaces specific statutory references to "permits" with the broader term "authorization" and **allows DEC to select from a range of tools to authorize waste disposal activities depending on risk.** Tools include:

- **Individual permits.** This is the conventional permit issued to a specific facility for a particular disposal activity. Individual permits are used to authorize larger, more complex, larger volume, and higher risk activities.
- **General permits.** General permits are used to authorize a number of similar activities in a geographic area. Persons that wish to be covered by the general permit notify DEC of their intent to operate in compliance with the permit. General permits are used to authorize lower risk activities.
- **Permits by rule.** The "permit by rule" tool is used to authorize low-risk activities by promulgating requirements in regulation. Permits by rule are used for low-risk activities.
- **Plan approvals.** Sewerage systems and treatment works that do not discharge can be authorized by approving plans.
- **Provides for integrated waste management permits** for complex facilities requiring more than one DEC permit.

**Allows administrative extension of DEC permits.** HB 524 allows DEC to develop regulations under which the agency may extend expiring individual and general permits beyond their expiration date.

**Expands requirements for proof of financial responsibility** for harmful mining waste. Proof of financial responsibility authority is used to make sure that owners of large solid waste disposal facilities have set aside enough money to properly close the facilities. For mining activities, rather than requiring separate financial assurance, HB 524 allows DEC to accept financial assurance provided to a state or federal land management agency.

**Modifies the definition of "solid waste"** to make the term more specific and **adds a definition for "municipal solid waste"** to help distinguish municipal solid waste from industrial and other forms of solid waste. HB 524 also allows DEC to exempt small landfills that accept household hazardous waste from providing proof of financial responsibility.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB522-EC-AWQ-3-1-04  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affect: Environmental Conservation  
 Title Small Cruise Ship Discharges RDU Air and Water Quality  
 Component Water Quality  
 Sponsor House State Affairs Committee  
 Requester House Resources Committee Component No. 2062

**Expenditures/Revenues (Thousands of Dollars)**

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

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

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
-----------------------------	------------	------------	------------	------------	------------	------------

<b>CHANGE IN REVENUES ( 0 )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
---------------------------------	------------	------------	------------	------------	------------	------------

**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Commercial Passenger Environment)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

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

**ANALYSIS:** *(Attach a separate page if necessary)*  
 This bill will not have a financial impact on the Commercial Passenger Vessel Environmental Compliance Program. The cost to administer the program remains unchanged.

Prepared by: Lynn J. Tomich Kent, Water Programs Manager Phone 907-465-5312  
 Division: Air and Water Quality Date/Time 3/1/04 1:51 PM  
 Approved by: Kurt Fredriksson, Deputy Commissioner Date 3/1/2004  
 Agency: Environmental Conservation

**Ray Gillespie**

---

**From:** "Waterhouse, John" <JWaterhouse@ebdg.com>  
**To:** "'Raygillespie@ak.net'" <raygillespie@ak.net>  
**Sent:** Wednesday, March 03, 2004 8:26 AM  
**Subject:** FW: RevisedJ04029-01L.doc

-----Original Message-----

**From:** Waterhouse, John  
**Sent:** Tuesday, March 02, 2004 5:38 PM  
**To:** 'bryceb@cruisewest.com'  
**Subject:** RevisedJ04029-01L.doc

Here is a revised version per our telecon w/Ray Gillespie

---

March 2, 2004

Ref: J04029-01L

Bryce Brockway  
Cruise West  
2401 4<sup>th</sup> Avenue, Suite 700  
Seattle, WA 98121

**Subject: Limitations on Modifying Small Commercial Passenger Vessels**

- References:**
- a. Alaska House Bill 522, "An Act relating to discharges from small commercial passenger vessels; and providing for an effective date."
  - b. Assessment of Cruise Ship and Ferry Wastewater Impacts in Alaska, Alaska Department of Environmental Conservation, Juneau, Alaska, February 9, 2004.

Dear Mr. Brockway,

I have read the proposed House Bill 522 relating to small commercial passenger vessels (Reference a). As you know, I am a naval architect with extensive design experience in vessels such as cruise ships and ferries, including the Alaska Marine Highway System fleet, the Inter-Island Ferry Authority ferry, the Cruise West fleet, Lindblad Expeditions fleet, and Glacier Bay Tours and Cruises fleet. I am registered in Washington State as a professional engineer in the disciplines of naval architecture and marine engineering. Based on my professional opinion, the wastewater management systems on existing vessels cannot be readily changed to meet the Alaska Department of Environmental Conservation Standards for reasons outlined below. The combination of U.S. Coast Guard regulations, licensing requirement, and vessel construction practices makes the addition of new treatment equipment and

3/3/2004

holding tanks technically infeasible.

**Regulatory environment** - Small Commercial Passenger vessels that operate under the U.S. flag are regulated by the U.S. Coast Guard and carry a certificate of inspection showing compliance with all safety requirements. To qualify as a small passenger vessel they must admeasure less than 100 gross tons. Please note that gross tonnage is a measure of internal volume and not weight. Their design and construction are principally regulated under Subchapter K of Chapter 46 of the Code of Federal Regulations which applies to vessels that carry 50 or more passengers in overnight service or more than 150 passengers in day service. If changes are made to a vessel that increase its admeasurement to more than 100 Gross Tons, the vessel is no longer considered a small passenger vessel by the U.S. Coast Guard and is subject to a different "license" or certification.

**Wastewater Management** - As detailed in Reference b, small cruise ships generally meet all wastewater discharge requirements while underway. During stationary discharge, "small ship effluent may not meet Alaska Water Quality Standards for free chlorine, fecal coliform, copper and zinc in receiving water." One potential solution would be to retain all graywater and blackwater while the vessels are stationary. However, per Table 24 of the reference, most of the small passenger vessels have inadequate tankage to hold all of the graywater and blackwater produced during a 12 hour period. Adding additional volume to the existing tankage and/or new treatment equipment is not simple and, depending on the vessel, may be impossible due to space and weight constraints.

**Limited Space** - As evidenced by the word "small," these vessels are very limited in space. Typically their machinery, tankage, storerooms, and crew quarters are all below the main deck. For many of the vessels there are also some passenger cabins below the main deck. Space is at a premium. Increasing the capacity of waste water tanks below the main deck will likely result in some other space being made smaller. Adding tankage above the main deck is impractical since drain lines rely upon gravity to function. Space could be added to the vessel by lengthening the hull but that is expensive and likely increase the internal volume beyond the 100 gross ton admeasurement limit.

**Weight Limits** - Per Archimedes Principle, when weight is added to a vessel, the vessel must displace more water to compensate and hence sits lower in the water. This reduces the volume of hull remaining above the water, also known as the reserve buoyancy. Reserve buoyancy is what keeps an intact, undamaged vessel from foundering in storms at sea and is what keeps the vessel afloat after damage occurs due to a grounding or a collision. USCG stability regulations for both intact and damaged stability strictly govern the amount of reserve buoyancy. Adding weight in the form of additional tankage for waste water would require that an equal amount of weight would need to be removed. The only discretionary weights that could be removed are passengers, crew members, fuel, potable water, or provisions. All of these will have an economic impact on the operator.

Even if the vessel has sufficient reserve buoyancy to handle additional weight, the fact that the weight is a liquid can cause a loss of stability due to the "free surface effect." As the vessel heels to one side, liquid is free to move over to that side, causing additional heeling force, which is de-stabilizing. The stability letter issued to the vessel by the U.S. Coast Guard strictly limits the number of tanks that can be "slack" or contribute to the free surface effect. Compensating changes may need to be made to cancel any additional free surface effect. Such changes could be moving weights from high in the vessel to lower in the vessel, constructing tanks with a geometry that limits the free surface effect, or keeping other tanks either full or empty. The latter is extremely difficult to manage since liquid levels in fuel oil tanks and potable water tanks are constantly in flux. In general, small passenger vessels have tight stability limits and cannot tolerate weight changes.

The weight issues can be overcome by adding volume to the hull but this again can affect the

admeasurement and vessel licensing.

If you desire more information regarding limits to altering a vessel, or wish to discuss a specific vessel, please let me know.

Sincerely,



EXPIRES 11/16/04

## CRUISE WEST ECONOMIC IMPACT

	<u>2003</u>	<u>2002</u>
Hotel costs.....	\$ 2,690,689	\$ 2,966,745
Land Tour and Included Shorex costs... ..	\$ 2,787,648	\$ 3,259,351
Optional Shorex and Alaska POS costs.....	\$ 1,144,532	\$ 1,176,992
Optional Air Costs.....	\$ 2,866,814	\$ 2,328,588
Marketing Costs.....	\$ 2,383,166	\$ 2,158,972
Fuel Costs.....	\$ 1,293,824	\$ 1,325,019
Alaska Payroll.....	\$ 1, 250,000	\$ 1,300,000
<b>TOTAL ALASKA ECONOMIC IMPACT</b>	<b>\$ 14,416,682</b>	<b>\$ 14,515,667</b>

## LINDBLAD EXPEDITIONS ECONOMIC IMPACT

The following is a summary of what Lindblad Expeditions (LEX) will spend in Alaska in 2004:

1. Tours, transfers, entry fees, etc. To suppliers such as Sitka Tours, Princess in Juneau, various businesses and individuals in Sitka, Petersburg, and Juneau: \$270,000.
2. Options sold onboard for activities such as flight seeing in Petersburg and Juneau and fishing in Sitka and Juneau: \$80,000.
3. Docking, water, garbage removal, agency fees, laborers, miscellaneous wharfage fees, etc.: \$120,000.
4. Bunkers: \$180,000.
5. Provisions and other miscellaneous local purchases: \$50,000.
6. Guest spending ashore during voyage: \$180,000.
7. Guest independent travel in Alaska pre and post voyage: \$150,000.
8. Land costs for pre-sold extension to Anchorage and Denali national Park: \$520,000.
9. Tickets on Alaska Airlines: \$700,000. (even though this isn't a direct purchase in Alaska, there is indirect benefits as a result to employees of Alaska Airlines in Alaska and local support services)  
Total excluding Alaska Airlines tickets: \$1,550,000.  
Total including Alaska Airlines tickets: \$2,250,000.
10. In addition, LEX spends about \$500,000 promoting Alaska, mostly through direct mail to consumers.
  - 16-page Alaska brochure mailed to approximately 510,000 households. \*
  - Catalog of all LEX offerings, including 5 pages dedicated to Alaska mailed to approximately 890,000 households.\*
  - \* Figures are for 2003. 2004 will be similar

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES



M/S Nantucket Clipper • M/S Yorktown Clipper • M/S Clipper Adventurer • M/S Clipper Odyssey

20 February 2004

The State Legislature of Alaska  
Juneau, Alaska

Re: Economic Impact of the Operations of Clipper Cruise Line

Honorable Senators and Representatives:

A review of actual expenditures in Alaska for 2003 for the operations of the two small cruise ships operated by Clipper Cruise Line, the MV Yorktown Clipper and the MV Clipper Odyssey, reveals the following data:

▪ Fuel and lubricating oil purchases:	\$ 525,000
▪ Port Charges: (includes dockage, pilotage, stevedoring, trash removal, etc.)	\$ 614,000
▪ Provisions: (includes local purchases, freight & handling)	\$ 253,200
▪ Alaska Airlines tickets (includes passengers & crew)	\$ 425,000
▪ Ground Operations: (includes pre and post-cruise hotel nights, shore excursions, transfers, flight-seeing, etc.)	\$ 650,900
▪ Brochure Production : (includes all costs, printing, postage, etc . connected with promoting Alaska)	\$ 550,000
▪ Individual Cruise Passenger Expenditures Ashore: (2873 passengers in 2003 x \$350 per person)	\$1,005,600
 Grand Total	 <u>\$ 4,024,100</u>

Please feel free to contact me if I may provide any further information.

Sincerely,

Captain Gary B. Welsh  
Vice President  
Marine Operations  
New World Ship Management

HB

524

FRANK H. MURKOWSKI  
GOVERNOR  
GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

P.O. Box 110001  
JUNEAU, ALASKA 99811-0001  
(907) 465-3500  
FAX (907) 465-3532  
WWW.GOV.STATE.AK.US

February 25, 2004

The Honorable Pete Kott  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of article III, section 18, of the Alaska Constitution, and in the interest of reducing duplication in and otherwise improving regulatory processes, I am transmitting a bill relating to regulation of waste management and disposal that would:

1. reorganize and supplement existing statutory authority to provide flexibility in the regulatory tools used to control the treatment and disposal of waste;
2. streamline certain aspects of the permitting process; and
3. provide explicit statutory authority for proof of financial responsibility for certain types of municipal solid waste and mining waste treatment and disposal facilities.

Under existing state law, the Department of Environmental Conservation (DEC) regulates a broad universe of waste and wastewater disposal activities. In addition to regulating discharges to surface waters, the DEC regulates discharges to groundwater and the disposal of solid and liquid wastes on land. The existing statutory authority for these regulatory programs is drawn from several sections of AS 46.03, some providing broad, general powers and others prescribing detailed requirements. These statutory authorities do not provide adequate regulatory tools for efficient regulation of waste treatment and disposal.

This bill would change the existing statutory authority for a waste disposal permit program (AS 46.03.100) by reorganizing and supplementing it. That reorganized section would preserve the essential requirement to obtain authorization before conducting an operation that results in waste disposal. The bill would allow for the needed authorization to take one of several forms,

The Honorable Pete Kott  
February 25, 2004  
Page 2

providing flexibility to use regulatory tools other than the individual and general permits contemplated by the current law, in addition to those permits. The bill would provide for stakeholder participation in that even the simplest of the regulatory tools would include notice and comment regulation adoption.

The changes proposed to existing AS 46.03.100 would address requirements for proof of financial responsibility for certain types of waste treatment or disposal facilities. Current law explicitly requires such proof only for permits to dispose of hazardous waste. This bill would refocus the requirement on solid waste disposal facilities that accept hazardous waste and on mine waste treatment and disposal facilities that use chemical processing or have acid generation potential. For mines that do not use chemical processing or produce waste with acid generation potential, proof of financial responsibility would not be required as a condition for the waste treatment or disposal authorization, but this would not affect the separate reclamation-related financial responsibility requirements administered by the Department of Natural Resources. The bill would provide for DEC to accept proof of financial responsibility provided to the Department of Natural Resources or a federal land manager agency for mine reclamation instead of requiring duplicative bonding.

The bill would clarify that the proof of financial responsibility must cover managing and closing the facility to control or minimize the risk of release of unauthorized levels of pollutants to waters. The bill also would allow for the possibility that this financial responsibility requirement may need to be extended to some municipal solid waste disposal facilities.

The changes proposed to AS 46.03.100 would modify the requirement for a solid waste permit applicant to demonstrate consideration of all solid waste management options and consistency with the waste reduction practices and priorities of AS 46.06.021. As modified, those requirements would apply only to non-municipal solid waste disposal applicants.

The bill also would reorder the components of the waste disposal authorization provisions so that they flow from the prohibition against unauthorized waste disposal, to the basic regulatory tools available for authorizing the disposal, to provisions for plan reviews and integrated waste management permits, to the exemptions, and finally to specific requirements that must be met by certain categories of disposers.

This bill would amend some existing permit processing requirements related to application submittals, public notice and comment opportunities, the

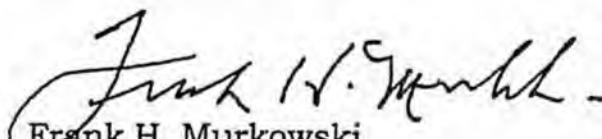
The Honorable Pete Kott  
February 25, 2004  
Page 3

maximum term of permits, and the causes for termination or modification of an authorization.

This bill would add a definition for "municipal solid waste" and would amend the definition of "solid waste." It also would repeal the plan submittal, review, and approval provisions of AS 46.03.090 and 46.03.720(a) as superfluous in light of the changes proposed to AS 46.03.100 (which makes written plan approvals one of the tools available for authorizing activities covered by the repealed sections). It also would make conforming amendments in AS 16.05.782(e), AS 44.46.025(a), and 46.03.833(a), to reflect citation or terminology changes caused by other amendments and repealers in the bill.

I urge your prompt and favorable action on this measure.

Sincerely yours,



Frank H. Murkowski  
Governor

Enclosure

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 524  
 (H) Publish Date: 2/26/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Environmental Conservation  
 Title "An Act relating to the protection of land and RDU Air & Water Quality  
water from waste disposal . . ." Component Water Quality  
 Sponsor Rules Committee by Request  
 Requester Governor Component No. 2062

**Expenditures/Revenues (Thousands of Dollars)**

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

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

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
-----------------------------	------------	------------	------------	------------	------------	------------

<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
-------------------------------	------------	------------	------------	------------	------------	------------

**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

POSITIONS	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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)*

Bill has no fiscal impact on the Department.

Prepared by: Lynn J. Tomich Kent  
 Division: Air & Water Quality  
 Approved by: Kurt Fredriksson, Deputy Commissioner  
 Agency: Department of Environmental Conservation

Phone 465-5312  
 Date/Time 2/18/04 2:41 PM  
 Date 2/18/2004



## RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

March 3, 2004

Representative Nancy Dahlstrom  
Co-Chair, House Resources Committee  
Alaska State Legislature  
State Capitol, Room 108  
Juneau, Alaska 99801-1182

Re: HB 524 — Waste Management/Disposal

Dear Representative Dahlstrom:

On behalf of the Resource Development Council for Alaska, Inc. (RDC), I am writing in support of HB 524 — Waste Management/Disposal.

RDC is a private, membership-funded, non-profit trade association. The organization represents individuals and companies from Alaska's mining, timber, oil and gas, tourism and fishing industries. Also within our ranks are local communities, Native regional and village corporations, organized labor and industry support firms. Our mission is to help grow Alaska's economy through the responsible development of the state's natural resources.

HB 524 accomplishes several objectives of importance to both the Department of Environmental Conservation (DEC) and the regulated community. The bill greatly enhances DEC's management flexibility by defining several tools the agency may use to authorize waste disposal. These tools include individual and general permits, authorizations-by-regulation, approval of plans of operation and integrated waste management and disposal authorizations.

This broad array of management options will allow the agency to more efficiently and effectively regulate waste disposal throughout the state. In turn, the regulated community will benefit from an oversight system that can be tailored to fit a variety of different operating and disposal scenarios. HB 524 allows DEC to replace a "one-size-fits-all" program with a more dynamic and practical plan.

HB 524 also clarifies the financial responsibility requirements for disposal operators. The bill defines a range of options DEC may consider when evaluating an operator's proof of financial responsibility. Individual operators will benefit from the opportunity to meet the standard by choosing the assurance mechanism most appropriate to its unique set of circumstances.

Lastly, the bill provides for DEC to prescribe in regulations the circumstances under which an expiring permit may be administratively continued. Having the option to administratively extend a permit will be another valuable tool for the department and potential benefit to the regulated community. Due to DEC's limited resources, operations under an expired permit can occur through no fault of the operator. Such occurrences increase the risk of third-party litigation and threaten to drive up the costs of doing business for DEC and the

regulated community. Defining an appropriate process for issuing administrative extensions addresses this important concern.

RDC appreciates the opportunity to comment on HB 524. Our membership strongly supports the legislation and we encourage you to hear the bill and move it forward. Thank you for your consideration and please feel free to contact me with any questions.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL  
for Alaska, Inc.

A handwritten signature in cursive script that reads "Tadd Owens".

Tadd Owens  
Executive Director

cc: Commissioner Ernesta Ballard, DEC  
Dan Easton, Director, Division of Water, DEC

**HB**

**531**

**(File 1 of 3)**

# CBM:

## The Alaska Way

The last year has seen a growing public discussion about the potential for coal bed methane gas (CBM) in South Central Alaska. Public meetings, news reports, citizen groups and elected officials have examined the benefits and the costs of CBM exploration and production.

New development always raises questions among residents. Voicing these concerns and resolving differing viewpoints is part of Alaska's history of responsible resource development and will be vital to our future. Whether it's fishing, tourism, forestry, mining, wind power, conventional oil and gas, or coal bed methane, progress will only be achieved by straight talk and informed decision making.

This is the Alaska way.

Alaska's coal resources are immense. Our coal bed methane deposits are estimated to contain enough energy to supply the entire state's household gas needs for 50 years.



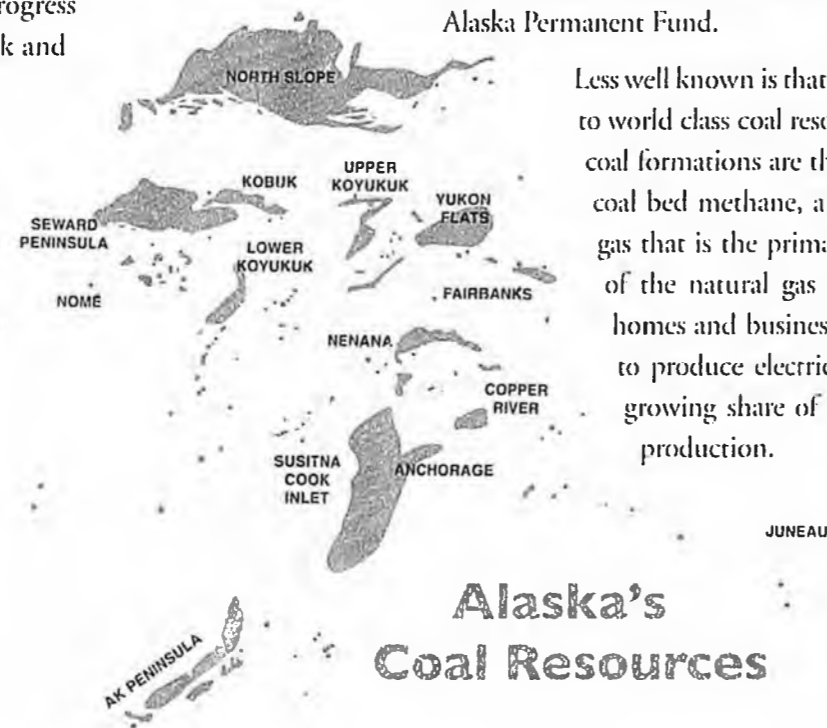
# the basics:

*Alaska was and still is a resource state.*

Alaska's abundant natural resources have been a magnet drawing people to the state for hundreds of years. Starting with gold rushes of the last century, Alaska's resource wealth has meant jobs and new opportunities.

Over the last half century, the exploration for oil and natural gas on the North Slope and in Cook Inlet produced economic changes that transformed Alaska. These industries have fueled Alaska's prosperity, helping create good-paying jobs, an improved quality of life, and providing more resources for education, roads and public facilities. Today over eighty percent of Alaska's non-federal state government spending is funded by oil and gas revenues, and this wealth led to the creation of the Alaska Permanent Fund.

Less well known is that Alaska is home to world class coal resources. Alaska's coal formations are the repository of coal bed methane, a clear, colorless gas that is the primary component of the natural gas that heats our homes and businesses and is used to produce electricity. CBM is a growing share of overall US gas production.



Post Paid  
U.S. Postage  
PAID  
Anchorage, AK  
Permit #537

Alaska Oil and Gas Association  
Resource Development Council  
121 West Fireweed Lane  
Anchorage, AK 99503

# Coal Bed Methane



The Alaska way.

clean  
affordable  
available

## CBM is here

*the benefits to Alaska are real* Coal bed methane (CBM) is stored in Alaska's deep underground coal seams in deposits spread across the state. The potential for development is substantial and initial exploration efforts have begun in the Mar-Su Valley in South Central Alaska near existing pipelines that can deliver gas directly to residential and business customers.

Alaska has the potential to reap the same benefits from CBM development that other areas Outside have, including:

- **hundreds of well-paying local jobs**
- **an available, affordable, long-term clean energy source**
- **millions of dollars in much-needed tax revenues for both local and state governments to help fund schools and government services**
- **economic growth and new business development as a result of an additional energy supply to replace the increasingly costly and declining supplies of Cook Inlet natural gas**

The presence of CBM in remote areas of Alaska potentially offers another crucial benefit: a lower cost, clean energy source to replace expensive fuel that now must be barged or flown in. Lower cost energy could help improve the quality of life and support jobs and business growth in rural areas where the cost of doing so now is prohibitive.



Under state law, CBM wells are engineered and built to protect all water. Up to three sets of steel well casing sealed with concrete from top to bottom ensure that water supplies are not contaminated, in accordance with state rules.



## CBM can be done the right way... the Alaskan way

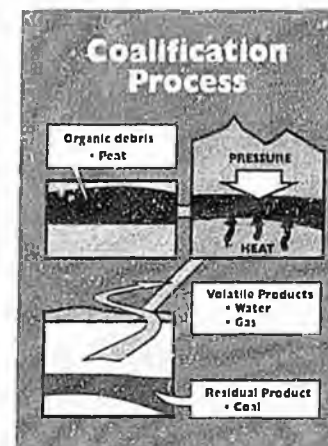
Alaska has decades of experience managing its resources for the best interest of its citizens. Governments and citizens at all levels have worked closely with oil and gas producers and their supporting companies to ensure that our resources are developed in a responsible and environmentally sound way. That approach has benefited Alaska economically through

jobs and incomes for Alaskan workers and their families, through more resources for education, through increased cultural and recreational opportunities, and through new careers for Alaskans.

Coal bed methane development holds similar potential for Alaska's communities. Working cooperatively, coal bed methane can be explored and produced the right way, the Alaskan way. And Alaska's people will share the benefits for years to come.

## What is Coal Bed Methane?

Coal bed methane is a gas that is clear, clean and lighter than air. It is found in underground coal basins across the Western United States and in Alaska. In coal bed methane production, the methane gas is tapped from coal seams by specially adapted water well drilling units. Unlike conventional gas, CBM does not generally require additional treatment or processing before use. The gas is piped from the wellhead to a commercial gas line for direct distribution to homes and businesses.



## What You Should Know

### Property Rights

- Under the Alaska Constitution, the state owns subsurface mineral rights on state selected lands. The state sells "leases" to exploration companies and the money from these sales goes to the state to pay for government services and contributes to the Permanent Fund.
- On state leases, current Alaska law requires drillers to negotiate with private property owners to secure a land use agreement or post a bond before exploration can occur.

### Water Quality Issues

- Alaska regulations do not allow CBM production in the same geologic zones used to provide drinking water. The coal seams in Alaska that would be tapped for methane gas are hundreds, even thousands, of feet below that level.
- Alaska state law strongly regulates what can and can't be done with water produced during drilling. Regulations require that this water be handled in such a way that it safeguards Alaska's water resources.

For more information visit:

[www.dnr.state.ak.us/oil](http://www.dnr.state.ak.us/oil)  
[www.cookinletollandgas.org](http://www.cookinletollandgas.org)

## Energy Costs On the Rise

Starting in January 2004, over 112,000 residential and business, natural gas customers in South Central Alaska will pay about 12% more for their monthly gas bill.

Source: Enstar

# Alaska State Legislature

Rep. Carl Gatto  
Rep. David Guttenberg  
Rep. Cheryl Heinze  
Rep. Beth Kertula  
Rep. Bob Lynn  
Rep. Nick Stepovich  
Rep. Kelly Wolf



State Capitol, Room 124  
Juneau, AK 99801-1182  
**Co-Chairs**  
**Rep. Nancy Dahlstrom**  
(907) 465-3783 fax: 465-2293  
**Rep. Beverly Masek**  
(907) 465-2679 fax: 465-4822

## House Resources Committee

### MEMORANDUM

**TO:** Senator John Cowdery, Chair  
Senate Rules Committee

**FROM:** Rep. Beverly Masek, Co-Chair  
House Resources Committee

**DATE:** April 6, 2004

**RE:** Calendaring of HB 531

I would appreciate the Rules Committee scheduling HB 531 on the Senate Calendar at its earliest convenience.

I have attached a packet of information for inclusion in the bill packet. If you have any questions, please contact my aide, Eleanor Wolfe at 6585.

Thank you for your consideration of this request.

# ALASKA STATE HOUSE OF REPRESENTATIVES

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



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

## HOUSE COMMITTEE ON RESOURCES

### SPONSOR STATEMENT

#### S CS CS HB 531 (RES) – Conventional / Non-Conventional Gas Leases

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

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

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

#### Legislation Highlights

- ~ Eliminates over-the-counter, first-come, first-served shallow gas leases and replaces it with area-wide leasing or exploration licensing.
- ~ Requires a best-interest finding before any oil and gas leasing or exploration licensing. This will give DNR control of what land is leased, avoiding unnecessary surface-owner conflicts. Best-interest finds are a time-tested public process.
- ~ Creates a gas-only section of area-wide leasing and exploration licensing identified in a best-interest finding by DNR.

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

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

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB531CS(FIN)-DNR-O&G-0  
( ) Publish Date: \_\_\_\_\_

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

**Expenditures/Revenues** (Thousands of Dollars)

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

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

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>	<b>**Indeterminate Amount**</b>					
-------------------------------	---------------------------------	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary	1					

**ANALYSIS:** (Attach a separate page if necessary)

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

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

Prepared by: Mark D. Myers Phone 269-8800  
Division: Oil and Gas Date/Time 4/29/04  
Approved by: Thomas Irwin, Commissioner Date 4/29/04  
Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HB531CS(FIN)-DNR-O&G-0

ANALYSIS CONTINUATION

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

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

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

Expenditures:

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

Travel for public hearings: \$4,000.

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

Expenses Associated with public notice and printing best interest findings:

Printing findings: \$1,400

Postage \$1,600

Envelopes: \$69

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

(The Anchorage Daily News has general circulation in all areas of the state. The cost for a legal notice in the Anchorage Daily News is \$404 per day (weekday).  $9 \times \$404 = \$3,636$ . Publication cost in a local paper is estimated at \$225.  $9 \times \$225 = \$2,025$ . Display ad in the Anchorage Daily News =  $\$614.70 \times 3 = \$1,844.10$ . Display ad in a local paper =  $\$242.00 \times 3 = \$726$ )

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB 531 (FIN)  
 () Publish Date: \_\_\_\_\_

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

**Expenditures/Revenues** (Thousands of Dollars)

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

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

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

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

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

**POSITIONS**

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

**ANALYSIS:** (Attach a separate page if necessary)

\$20.0 for hydrology training and contractual costs.

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

HB 531

- Repeals existing over the counter shallow gas leasing program and replace it with current exploration licensing and conventional competitive leasing programs.  
Both these programs require the Department of Natural Resources to do a Best Interest Finding (BIF) prior to leasing. The BIF process has extensive public noticing and public input and requires the Commissioner to balance interests prior to holding a lease sale or issuing a license.
- Includes additional ground water protections involving the production of non-conventional gas through requiring the AOGCC to regulate:
  - Hydraulic fracturing,
  - Disposal of wastes,
  - reinjection of produced water
  - prohibiting the production of gas from aquifers that serve as a source of water for human consumption or agricultural purposes unless it can be demonstrated that it will not adversely affect the aquifer
- Limits the discretion of DNR to extend the existing shallow gas leases
- Gives the Commissioner the discretion to issue either oil and gas or gas only leases
- On a gas-only-lease allows for the lessee to make a showing to DNR that can result in lower rentals and royalties if: The gas doesn't compete with other gas and the lease has only nonconventional gas potential.
- Repeals the HB 69 provisions allowing the Commissioner of DNR override authority over local zoning ordinances
- Gives a one-time opportunity for pending lease applicants to apply for a noncompetitive exploration license with a Best Interest Finding and a work commitment.
- As amended requires the DNR Commissioner to establish setbacks and noise mitigation measures for compressor stations prior to approving coalbed methane operations on any state leases.
- As amended requires the operator design and implement a water well testing program to provide baseline data on water quality and quantity as a condition for approval of a AOGCC permit to drill a coalbed methane well for production or production testing
- As amended specifies bonding requirements on gas-only-leases

# 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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

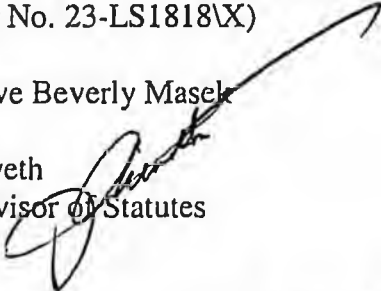
## MEMORANDUM

April 28, 2004

**SUBJECT:** Committee Substitute for House Bill 531(FIN) -- sectional analysis  
(Work Order No. 23-LS1818X)

**TO:** Representative Beverly Masek

**FROM:** Jack Chenoweth  
Assistant Revisor of Statutes



Eleanor Wolfe has asked me to prepare a sectional analysis for the above-captioned bill.

This committee substitute treats comprehensively the exploration and development of natural gas. It draws a distinction between use of the existing shallow natural gas exploration and development statutes that rely on lease applications and conversion of the shallow natural gas leasing program set out in AS 38.05.177 to the system in place for exploration and development under conventional oil and gas leases. Development of shallow natural gas -- redesignated "nonconventional gas" in this version -- would take place under the conventional oil and gas leasing program of AS 38.05.180.

\*

A key provision of this committee substitute is AS 38.05.180(ff), added by **bill section 41**. Subsection (ff) authorizes nonconventional gas leasing generally using the existing conventional oil and gas leasing procedures set out in AS 38.05.180. These nonconventional gas leases would be offered and operate as "gas only" leases (paragraph (1)) and are subject to regulation by the Alaska Oil and Gas Conservation Commission if a lessee operating under a "gas only" lease encounters oil (paragraph (2)).

Additional changes made in **bill section 41** that apply to nonconventional gas leasing include limitations on issuance of leases based on a demonstration that "the lessee has no other reasonable means of entry [to recover reserved minerals] than access and entry upon the land of the owner," with the burden of proof on the lessee" (paragraph (3)).

\*

This committee substitute also contains a series of changes that

Representative Beverly Masek

April 28, 2004

Page 2

-- convert references and substantive provisions covering shallow natural gas leasing into a leasing policy covering "nonconventional gas" and that provide a definition of that term;

-- authorize the Department of Natural Resources to lease for "gas only" under the conventional oil and gas leasing procedures, with limited reservations governing activity involving nonconventional gas leases;

-- expand the use of exploration licensing and leasing set out in AS 38.05.131 - 38.05.134 to cover "gas only" licenses and leases; and

-- amend or repeal specific parts of AS 38.05.177, the section of the Alaska Land Act (AS 38.05) that currently authorizes and guides shallow natural gas leasing.

**PROVISIONS ESTABLISHING A "NONCONVENTIONAL GAS" LEASING POLICY, SUPPLYING A DEFINITION FOR THAT TERM, AND MAKING CONFORMING CHANGES:**

**Bill section 45** supplies a definition of "nonconventional gas." The definition is added to the body of definitions that are generally applicable to the Alaska Land Act, AS 38.05. This definition replaces a pair of definitions for "shallow natural gas" and a working reference to shallow natural gas in the language of AS 38.05.177(a)(1), appearing at page 20, lines 29 - 31. The definition of "nonconventional gas" proposed in the measure is expanded to cover "coalbed methane, shales containing gas, or gas hydrates."

With the substitution of the new term and a definition for it, each of the following makes conforming changes:

-- **bill sections 5 and 6**, amending or adding to provisions in AS 31.05 (Alaska Oil and Gas Conservation Commission);

-- a reference in **bill section 26**, amending AS 38.05.177(a); and

-- **bill sections 52 - 55**, substituting "nonconventional gas" for "shallow natural gas" in various references in title 46; this title of the Alaska Statutes generally deals with environmental matters.

**AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES TO LEASE FOR "GAS ONLY" UNDER THE CONVENTIONAL OIL AND GAS LEASING PROCEDURES, WITH LIMITED RESERVATIONS GOVERNING ACTIVITY INVOLVING NONCONVENTIONAL GAS LEASES, AND MAKING CONFORMING CHANGES:**

AS 38.05.180(ff), added by **bill section 41** discussed earlier in this memo, explicitly authorizes the Department of Natural Resources to "issue leases for gas only" under the conventional oil and gas leasing program.

Representative Beverly Masek

April 28, 2004

Page 3

The following bill sections also revise or delete existing references to "oil and gas," "oil and gas lease," or substantially similar terms and references to acknowledge the alternative authorization of "gas only" leasing:

-- **bill sections 1, 3, 7 - 9, 10** (except the repeal of AS 38.05.035(e)(6)(G) [page 12, lines 23 - 25]), **11, 13, 14, 29 - 32, 33** (except the gas royalty rate adjustment authorized in AS 38.05.134(3)(B) [page 26, lines 20 - 24]), **34 - 38, 40, 42 - 44, 46 - 50, and 56.**

**AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES TO USE EXPLORATION LICENSING AND LEASING FOR "GAS ONLY" UNDER AS 38.05.131 - 38.05.134, AND MAKING CONFORMING CHANGES:**

In addition to conventional oil and gas leasing generally under AS 38.05.180, in 1994, the legislature authorized a separate program of oil and gas exploration licensing and leasing. **Bill section 14**, amending AS 38.05.131(a), explicitly authorizes the Department of Natural Resources to issue oil and gas exploration licenses and leases for "gas only." The following provisions make related conforming changes:

-- **bill sections 2, 12, 15 - 21, 22** (except the language of new subparagraph (B) [page 19, beginning at line 21]), **and 24.**

**PROVISIONS ALTERING SPECIFIC PARTS OF AS 38.05.177, ADDRESSING SHALLOW NATURAL GAS LEASING:**

These remarks principally address the content added by bill sections 26 - 28 to the existing shallow natural gas leasing section, AS 38.05.177:

-- AS 38.05.177(a) (**bill section 26**): The change limits application of the provisions that remain in this section, AS 38.05.177, to land to be leased for nonconventional gas;

-- AS 38.05.177(d) (**bill section 27**): The material added as (d)(2) sets constraints on extensions of existing shallow natural gas leases issued before January 1, 2004, for extensions permitted by former AS 38.05.177(c). Lease extensions must still be requested but, instead of allowing the director full discretion, the director's discretion is limited in that the director must first consider each of the factors enumerated in subparagraphs (A) - (C).

-- AS 38.05.177(l) (**bill section 28**): This subsection, as amended, maintains the protections for development of other mineral deposits on state land leased for recovery of nonconventional gas and the priority protection of the interests of the nonconventional gas lessee as against a subsequently acquiring coal lessee under a lease for coal issued under AS 38.05.150.

**OTHER BILL SECTIONS THAT ARE NOT ADDRESSED OR DESCRIBED ABOVE:**

**Bill section 4:** This amends the authority of the Alaska Oil and Gas Conservation Commission as that authority may be exercised with respect to nonconventional gas exploration and development. Paragraph (1) imposes a prohibition against the commission's issuing a permit to drill under AS 31.05 "if . . . operations . . . would involve producing gas from an aquifer that serves as a source of drinking water . . . or . . . for agricultural purposes" and a conditional prohibition against the reinjection of produced water. Paragraph (2) expands the authority of the commission to regulate hydraulic fracturing associated with exploration for and the disposal of wastes produced by those operations.

**Bill section 10:** The repeal of AS 38.05.035(e)(6)(G), page 12, lines 23 - 25, drops reference to shallow natural gas leases from the written best interest finding requirement of that subsection. The best interest finding, required generally for conventional oil and gas leasing under AS 38.05.180, is extended to nonconventional gas leasing.

**Bill sections 22** (page 19, beginning at line 21) **and 33** (page 26, lines 20 - 24): Existing law provides for a reduced royalty authorized for certain shallow natural gas. See AS 38.05.177(g). These two amendments retain that reduction by adding, as to both nonconventional gas exploration licensing and leasing and nonconventional gas leasing under the general leasing program of AS 38.05.180, provisions for a reduced royalty for nonconventional gas if that gas is "not produced in direct competition with gas on which a royalty at a rate of at least 12.5 percent is payable."

**Bill sections 23 and 25:** The amendments set out make conforming changes to provisions addressing coal deposits and coal leases.

**Bill section 39:** Existing law sets a rental rate of \$1 per acre for shallow natural gas. See AS 38.05.177(f). The amendment made to AS 38.05.180(n) continues that special rental rate through the exploration and development phases but only if "the potential resources underlying the lease are reasonably estimated to be only nonconventional gas."

**Bill section 51:** This amendment drops an exemption for coalbed methane from waste material/water discharge permit requirements. The change conforms the text of AS 46.03.100(f) to House-passed HB 524 am.

**Bill section 57:** With the repeal of provisions in AS 31.05 and AS 38.05.177 under which the commissioner of natural resources may, if the department clearly demonstrates an overriding state interest, approve a waiver of local planning authority approval and requirements relating to compliance with local ordinances and regulations, the amendment made at page 47, lines 20 - 23 is a conforming change. The amendment that deletes paragraph (1) -- page 46, lines 21 and 22 -- eliminates a legislative "best interest" finding covering shallow natural gas development set out in the 2003 legislation.

Representative Beverly Masek

April 28, 2004

Page 5

**Bill section 58:** The section repeals the following:

-- all of AS 38.05.177 (shallow natural gas) that is not specifically retained as amended under bill sections 26 - 28 of this Act;

-- provisions in AS 31.05 and AS 38.05.177 under which the commissioner of natural resources may, if the department clearly demonstrates an overriding state interest, approve a waiver of local planning authority approval and requirements relating to compliance with local ordinances and regulations; and

-- paragraphs setting out definitions of "shallow natural gas" in AS 31.05 and AS 46.04.

**Bill section 59:** This transitional provision directs the Department of Natural Resources to deal with the shallow natural gas leases executed and lease applications received by December 31, 2003, under the provisions of AS 38.05.177, as that section read before its amendment by this Act.

**Bill section 60:** This provision, added by House Finance, allows a shallow natural gas lease applicant to convert the application to an application for an exploration license and lease. The applicant who wants to convert must comply with the requirements of (a)(1) - (4) and is subject to a best interest review and finding under AS 38.05.035(e), referenced in subsection (b). If the applicant converts, under subsection (c), the shallow natural gas application fee is to be refunded.

**Bill section 61** gives the measure an immediate effective date.

JBC:mdr

04-201.mdr

# 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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

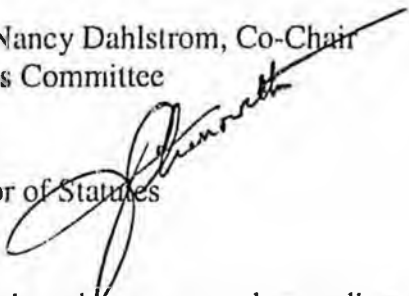
## MEMORANDUM

April 16, 2004

**SUBJECT:** CSHB 395( ), (Work Order No. 23-LS1314G) and  
CSHB 531(Res), (Work Order No. 23-LS1818V)--  
notes to accompany the bill drafts

**TO:** Representative Nancy Dahlstrom, Co-Chair  
House Resources Committee

**FROM:** Jack Chenoweth  
Assistant Revisor of Statutes



With this memo are two bill drafts based on my understanding of direction given yesterday afternoon by the working group considering differences between these two drafts.

### **CSHB 531(Resources), draft version "V":**

This is the measure that proposes to scrap the separate leasing process for shallow natural gas leasing and to treat leasing of that commodity under the conventional oil and gas leasing provisions of AS 38.05.180 as "nonconventional gas." There are only four changes to the previous draft of this bill. Rather than amend AS 31.05.125 (waiver of local planning authority, amended by former bill section 6), I repealed the section. Also repealed, per working group direction, were AS 38.05.177(n) (same subject) and paragraphs 1 and 7(c) of sec. 1, ch. 45, SLA 2003. Finally, also per working group direction, I conformed the text of AS 46.03.100(f) to match House action in passing House Bill 524 amended. This Act is given an immediate effective date.

### **CSHB 395( ), draft version "G":**

This is the measure that makes more stringent the regulation of shallow natural gas under existing AS 38.05.177. The bill draft contains multiple changes, most of them concerned with the interrelationship between this version and the one described in the previous version. In your review of the text, you will see that a number of provisions are drafted in the alternative, with these alternative provisions given contingent effect.

The title of this bill is amended by adding a clause referring to "contingently redesignating shallow natural gas as nonconventional gas, and relating to the regulation of that gas".

Representative Nancy Dahlstrom,  
Co-Chair, House Resources Committee  
April 16, 2004  
Page 2

**Bill section 1** is unchanged from the previous draft. **Bill section 2** repeals and reenacts bill section 1 **only** to change reference from "shallow natural gas" to "nonconventional gas."

**Bill section 3** is unchanged from the previous draft. **Bill section 4** repeals and reenacts bill section 3 also **only** to change reference from "shallow natural gas" to "nonconventional gas."

**Bill section 5:** Because this provision assumes that the provisions of bill sections 1 and 3 will operate if CSHB 531(RES) *does not* become law, this bill section retains the language of the previous draft.

**Bill section 6:** This supplies a definition for the text changes made in bill sections 2 and 4 in the event CSHB 531(RES) *does* become law.

**Bill section 7:** There is no change in the text of this bill section from the previous draft.

**Bill sections 8 - 11:** These provisions make changes to various subsections within AS 38.05.177 and operate on the assumption that CSHB 531(RES) *does not* become law. There is no change in the text of any of these bill sections from the previous version.

**Bill section 12:** If CSHB 531(RES) does become law, the various protections set out in the previous four bill sections would be repealed. In order to retain them, AS 38.05.180(ff), added by CSHB 531(RES), is reenacted. In that reenactment, the provisions of what is set out in bill sections 8 - 11 are reenacted as requirements in AS 38.05.180(ff) and appear here as parts of paragraphs (3), (4), and (5).

**Bill sections 13 and 14:** These amend the notice provisions, AS 38.05.945(a) and (b), generally applicable to oil and gas leasing to add provisions covering shallow natural gas leases. The text is unchanged from the last previous draft.

**Bill section 15:** If CSHB 531(RES) becomes law, this provision would operate to reenact AS 38.05.945(b) to undo what is done under bill section 14 immediately above. If CSHB 531(RES) becomes law, nonconventional gas leasing will proceed under the department-initiated/best interest finding process rather than on the basis of nomination and public comment specific to AS 38.05.177, so the changes made by bill section 14 would not be needed.

**Bill section 16** conforms the text of AS 46.03.100(f)(3), per working group instruction.

**Bill section 17** makes a conforming amendment to CSHB 46.04.030(b) in the event CSHB 531(RES) becomes law.

Representative Nancy Dahlstrom,  
Co-Chair, House Resources Committee  
April 16, 2004  
Page 3

**Bill section 18:** Because this provision assumes that the current provisions of AS 46.04.030(b) will continue to operate if CSHB 531(RES) *does not* become law, this bill section retains the language of the previous draft.

**Bill section 19:** This supplies a definition for the text changes made in bill section 17 in the event CSHB 531(RES) *does* become law.

**Bill sections 20 and 21:** These two bill sections make repeals specifically directed by the working group.

**Bill section 22:** This set of repealers would delete material found earlier in bill sections 5, 13, and 18.

**Bill section 23:** This is the contingency provision. The contingency is the enactment of a version of House Bill 531, the companion measure. Only if CSHB 531(RES) becomes law do the amendments and repeals proposed in the bill sections identified take effect.

**Bill section 24:** This is the effective date provision for the contingency. The contingently effective provisions would take effect one day after the effective date of the companion measure.

Provisions not covered by the contingency are, under **bill section 25**, proposed to take effect July 1, 2004.

\*

What, then, are the possible outcomes?

First, it is possible that both bills would not pass. I guess that means we start over in 2005.

Second: It is possible that CSHB 395( ) would not take effect and that CSHB 531(RES) would take effect. Nothing in CSHB 531(RES) is dependent on CSHB 395( ), so CSHB 531(RES) would take effect on its own terms. Shallow natural gas leasing under AS 38.05.177 would end and leasing of nonconventional gas under the conventional oil and gas leasing procedures of AS 38.05.180 would begin.

Third: It is possible that CSHB 395( ) would take effect and CSHB 531(RES) would not take effect. In that event, only the provisions of CSHB 395( ) that are **not** covered by the contingency provision would take effect, while the contingent provisions in that bill would not take effect (because the contingency, the taking effect of the companion bill, does not occur). In effect, shallow natural gas would continue to be leased under provisions of AS 38.05.177, as amended by that Act.

Representative Nancy Dahlstrom,  
Co-Chair, House Resources Committee  
April 16, 2004  
Page 4

Fourth: Both measures become law. By its terms, and assuming the necessary two-thirds vote in each house, CSHB 531(RES) would become immediately effective. The noncontingent provisions of CSHB 395( ) -- these are the provisions that are drafted on the assumption that shallow natural gas would continue to operate under AS 38.05.177 as amended -- would take effect, again assuming the necessary two-thirds vote in each house, July 1, 2004. The contingent provisions of CSHB 395( ) -- these are drafted as the superseding provisions -- would take effect one day after the later of the effective date of the companion measure or the noncontingent provisions of the Act.

It's not pretty -- but it should work!

JBC:mdr  
04-159.mdr

Enclosure

cc: Eleanor Wolfe, for Representative Beverly Masek, Co-Chair  
House Resources Committee

# 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

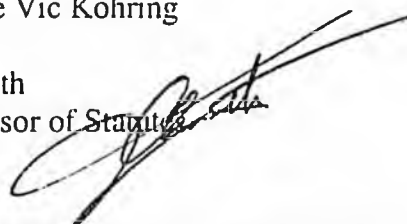
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 15, 2004

**SUBJECT:** House draft CS that duplicates version "S" of CSSB 312( ) --  
notes to accompany the draft (Work Order No. 23-LS1818\D)

**TO:** Representative Vic Kohring

**FROM:** Jack Chenoweth  
Assistant Revisor of Statutes 

The measure that is enclosed with this memo exactly duplicates the "S" version of CSSB 312( ) except that, at page 44, lines 29 and 31, following "effective date of amendments of" and "effective date of the repeal of" I have deleted "that section" and replaced those words with "those subsections". AS 38.05.177 is not entirely amended or repealed; only selected subsections of that section are amended or repealed. The change corrects our error.

JBC:med  
04-292.med

Enclosure

# ALASKA STATE HOUSE OF REPRESENTATIVES

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



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

## HOUSE COMMITTEE ON RESOURCES

### SPONSOR STATEMENT

#### HB 531 – Conventional / Non-Conventional Gas Leases

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

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

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

#### Legislation Highlights

- ~ Eliminates over-the-counter, first-come, first-served shallow gas leases and replaces it with area-wide leasing or exploration licensing.
- ~ Requires a best-interest finding before any oil and gas leasing or exploration licensing. This will give DNR control of what land is leased, avoiding unnecessary surface-owner conflicts. Best-interest finds are a time-tested public process.
- ~ Creates a gas-only section of area-wide leasing and exploration licensing identified in a best-interest finding by DNR.

~

Differentiates conventional and non-conventional gas resources for the purposes of lease rentals.

~

Defines conventional and non-conventional gas development, and treats each distinctly. Recognizes that lease rights should not be determined by a depth criteria only. Enhances production opportunities.

~

Encourages exploration licenses with a best-interest finding as the method for non-conventional gas exploration outside of the area-wide leasing in rural Alaska.

~

Makes leasing and regulatory criteria fit the appropriate activity.

~

Ensures competitive processes, thereby maximizing the state's interests.

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

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB531-DNR-O&G-03-12-04  
( ) Publish Date: \_\_\_\_\_

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

**Expenditures/Revenues** (Thousands of Dollars)

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

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

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( 1004 GF ) +</b>	<b>**Indeterminate Positive Amount**</b>					
---	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

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

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

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

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

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



[HOME](#)

[CORPORATE  
INFO](#)

[COALBED  
METHANE](#)

[ENERGY NEWS](#)

[CAREERS](#)

[CONTACT US](#)

[HOME](#)

[CORPORATE INFO](#)

[COALBED METHANE](#)

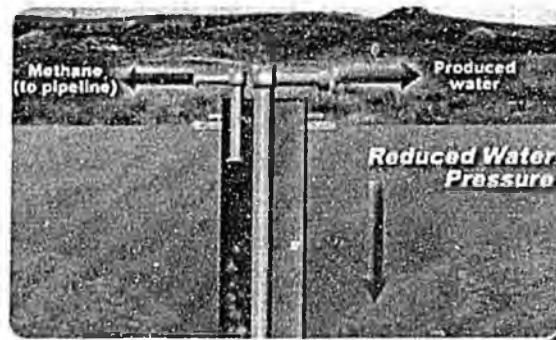
- [What Is Coalbed Methane?](#)
- [CBM Basins](#)
- [Unconventional Gas](#)

[ENERGY NEWS](#)

[CAREERS](#)

[CONTACT US](#)

## WHAT IS COALBED METHANE?



[What is coal bed methane?](#)

[Where are the coal basins in the United States?](#)

[What is the critical element in coal bed methane?](#)

[What determines permeability in coal?](#)

[What measurement is used for permeability?](#)

[How is the gas generated in coal?](#)

[How is gas measured?](#)

[How does thickness of coal affect the play?](#)

[What about the adjacent shale, do they contribute gas?](#)

[How do we complete coal bed methane wells?](#)

[What can we expect in terms of production?](#)

[How do we explore for coal bed methane?](#)

[Are there any conventional petroleum methods that will help?](#)



---

**Q:** What is coal bed methane?

**A:** It has been known since the first coal miner went underground that coal releases a deadly gas known as methane. For over 100 years the solution was to vent the methane to the atmosphere. However, deaths and mine explosions still occurred. In the 1980s the US government passed a massive energy bill allowing for tax credits for removing gas from coal to encourage using this resource as consumable product and reduce mine hazards. Thus the coal bed methane industry was born. Initially, exploration was focused on the basins where the coals were already producing, such as the San Juan in New Mexico and Colorado or areas where gas was a problem in mines such as the Warrior Basin in Alabama.

Gas is held on the coal in very unique way, it is adsorbed onto the coal molecules itself. The gas is held in place by the water pressure on the coal. Some coals contain a lot of water and it takes time for gas to desorb from the coal and examples of this are coals that produce in Powder River and Black Warrior basins. Other coals in other basins have very little water and gas production begins from day of production, such as in Eastern Kansas and Appalachian Basin. Some coals in certain basins are over saturated with gas and despite high water contents produce gas immediately upon completion and examples of this are the San Juan and Raton basins. Each basin has unique coal reservoir and production characteristics.

[Top](#)

---

**Q:** Where are the coal basins in the United States?

**A:** There are a number of coal basins in the US that have produced large or minor amounts of coal. A number of these basins have gas whereas some do not. The largest gas producing basin to date is the San Juan Basin located in New Mexico and Colorado. Other basins that have been developed and are well into producing large volumes of gas are the Black Warrior, Powder River, Piceance, Uinta and Raton basins, Green River and Alaska. Historically, the Cherokee, the Forest City, the Arkoma, and the Appalachian basins have produced gas but until recently, only minor amounts. Other basins such Illinois, Williston and Denver basins all seemed not to be able to generate gas or have been degassed.

[Top](#)

---

**Q:** What is the critical element in coal bed methane?

**A:** The critical element in all coal bed methane plays is permeability. In its simplest form, permeability is the connection between the pores of the rock. The connection can be seen as a hallway between rooms. The width of the hallway is important in terms of allowing gases and fluids to move between rooms and eventually out the front door as represented by the well bore. Coal has very little porosity so inherently it is the extent of the permeability that allows it to produce. We can imagine further that the coal is like a series of sugar cubes, the gas is adsorbed onto the sugar cubes, and it is the width of the spaces or fractures between them that constitutes permeability. In coals, the permeability is represented by a fracture system called cleats. There is the face cleat which is the main fracture system and usually perpendicular to any structural grain. The secondary fracture system is called the butt cleats. The cleat system is generally fractural in nature and is repeated on a large and small scale.

Top

---

**Q:** What determines permeability in coal?

**A:** Permeability is modified by the rank of the coal. Rank being how cooked the coal has been. Coals are formed from peat swamps and as they are buried they are subject to increasing pressures and temperatures. Added to this is the value of time. The longer coals are cooked the higher the rank. During this modification or lithification process the coals change and how they change determines their characteristics both as a coal reservoir and its permeability. As coals are subject to pressures and temperatures through time volatile matter, water and ash are either changed or driven out. Coals that are lignite, the lowest rank just above peat, tend to have ash (greater than 20%) and water (greater than 20%) contents. These types of coals have tremendous permeability but their direction and width is not very well defined. Lignite tends to have very little gas associated with them. As a coal is thermally matured it coals from lignite to subbituminous to high volatile bituminous to medium volatile bituminous to low volatile bituminous to anthracite to semi-anthracite to graphite. With each step in the change in rank increases the coals ability to hold more and more gas but the permeability decreases. As we reach anthracite, which can hold tremendous amounts of gas but because it is almost all carbon has little if any cleat system and so the gas cannot move.

In addition cleat systems will be invaded over time by meteoric waters that can either enhance or destroy permeability. An example of this is calcite deposits found in the cleat system in coals in the Illinois, Arkoma and Appalachian Basins that literally heal the cleats shut.

Top

---

**Q:** What measurement is used for permeability?

**A:** Permeability is measured in units of darcy. Named after Darcy's Law which is how an engineer calculates permeability of rock. Coal typically has a wide range of permeabilities. Coals of the Powder River Basin have higher permeability, usually over 1 darcy whereas coals of the Arkoma basin have less than 0.01 darcy or a more common it is termed microdarcies. Consequently, Powder River Basin coals flow large volumes of water and eventually gas without stimulation. Coals of the Arkoma basin have to be either fractured enhance (stimulated) or horizontally drilled to be productive. San Juan Basin coals typically have 20 to 40 millidarcies, in Appalachian Basin they have 0.01 to 40 millidarcies and in Eastern Kansas (the Cherokee and Forest City basins) they range from 0.01 to in excess of 500 millidarcies.

Top

---

**Q:** How is the gas generated in coal?

**A:** There are two types of gas found in coals, thermogenic and biogenic. Coals that produce thermogenic gas tend to have higher reserves and longer life, case in point is the San Juan, Appalachian, Raton, Arkoma, Forest City and Cherokee basins. Coals that produce biogenic gas exclusively tend to be more limited in reserves but have higher permeability and drain large areas such as the Powder River Basin. Biogenic gas is the result of bacteria having migrated with meteoric waters into a coal seam and the bacteria eats the coal. In the process of digesting the coal the bacteria generates methane along with carbon dioxide. We see certain areas in the Powder River that produce lots of gas above 1,500 feet whereas we see deeper coals where the bacteria have not been able to migrate with no gas. Coals in the Warrior Basin developed under a similar scenario even though the coals are in the high volatile rank and are of Pennsylvanian Age.

Top

---

**Q:** How is gas measured?

**A:** Gas is measure in standard cubic feet per ton (SCF). A coal with 200 scf per ton is considered a productive coal. Coals in the San Juan and Arkoma basins have typically over 500 scf per ton. Coals in Eastern Kansas and Appalachian basins range from 100 to 350 scf per ton. Coals in the Powder River Basin typically have less than 60 scf per ton. What makes the Powder River Basin work is thick coal seams (greater than 40 feet per seam) and permeability of over a darcy.

Top