

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11320 SENATE RESOURCES

Income payments should generate \$80,530 in FY06 with another \$389,176 in payments in FY07 on financed parcels.

In total, by FY07 approximately \$1,423,792 revenues can be realized "conservatively" and can justify the \$476,000/year in expenses to administer the new program. Revenues will grow substantially after the word is out.

A. Technical Issues

This bill does not repeal the current program and provides that they continue indefinitely. Therefore, this fiscal analysis assumes the existing programs continue at their present level. The existing program is **not** a more cost-effective and revenue-efficient method to offer lands to Alaskans. The new program streamlines costs and passed this function on to private enterprise.

DNR feels it will take 5 years to realize revenue. This is inaccurate. Once the application is approved, a financially secure individual could have an appraisal and a survey within 30 days, 90 days maximum. A title company needs 10 days to close. It is not that complicated to sell land in Alaska.

This is a "fast track" purchase requiring only oversight by DNR. Participation is limited to selection and specifically NOT in surveying and appraising the selected lands other than to review contractor's work. That is the problem we have today. This bill changes that substantially to generate revenue and give everyone a chance to own "a Piece of Alaska."

Prepared by James F. Dieringer, III

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HB 319 House State Affairs

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To: Members of the House State Affairs Committee
From: Matt Davidson, Legislative Director for the Alaska Conservation Voters
Date: February 2, 2004
Subject: HB 319

HB 319 establishes a new land disposal program within the Department of Natural Resources (DNR) that allows state residents the exclusive right to purchase state lands which they have three consecutive years of prior recreational use. HB 319 is very similar to HB 233, considered in the 22nd Legislature. During testimony on HB 233 (22nd), the Department of Natural Resources enumerated many concerns with the legislation. Given these and other problems with HB 319, this bill should not move from the House State Affairs Committee.

HB 319 Gives Exclusive Purchase Rights

The proposed program strays from all existing land sale programs by giving individuals the exclusive right to purchase state resources. The vast majority of existing state land sales are currently made through either an auction and/or lottery systems. (Sect 3. (a))

HB 319 Encourages Trespass

The program would encourage people to build illegal cabins and other structures to help demonstrate their use of the land, thereby qualifying for the program. (Sect 4. (g))

HB 319 Allows Misuse of Mining Claims

The existing mining law has a well established criterion for the legitimate granting of title to holders of mining claims. The program described in HB 319 (Sect 4. (g)) undercuts the current program and could make mining claims a backdoor to gain land not available to all Alaskans.

HB 319 Invites Conflict between Potential Owners, Users

HB 319 doesn't contain a mechanism to deal with conflicts between potential owners and other users of individual recreational lands. Under the bill, DNR will give a preference to the first applicant who establishes recreational use. It is not difficult to imagine a scenario where one user with three annual trips to a prime recreational location would beat out another potential owner with 30 years of use of the same parcel or a business who has a state permit to use the parcel. HB 319 contains no direction of how to settle conflict between potential owners, users.

HB 319 Is Costly/Cumbersome to the State of Alaska

The self selection provision outlined in HB 319 will result in individuals applying for isolated and scattered parcels. Under the current state land sale program, DNR groups parcels and offers them as well planned clusters. The program requires one title check, one best-interest finding and so on, proving to be more efficient than the proposed exclusive-right program.

Alaskans building a better future.

HB 319 Adversely Effects Wildlife

Fish and game resources are easily over harvested following the settlement of formerly wild lands and waters. Wildlife which attracts private development will soon be depleted with more continuous pressure to the detriment of occasional campers and private landowners alike.

HB 319 Fails to Recognize Expense and Threat of Forest Fires

HB 319 furthers the issue of increased and continuing costs of protecting scattered private cabins from forest fires. The bill adds to the burden of firefighting costs where fires are now simply monitored, but not fought.

HB 319 Conflicts with Municipality Acreage Requirements

As stated by DNR, 10 acres is what is generally considered the minimum size for onsite sewage disposal. The proposed program violates municipal platting rules in the Fairbanks North Star Borough and Kodiak Borough.

HB 319 Consents to Selling Land for Less than Market Value

The proposal program does not guarantee the state a good return on the sale of prime state land. In fact, Line 7 of Sec.1 states the commissioner may sell land by lottery for less than fair market value of the land on a determination that scarcity of land available in the area makes the market value unrealistic.

Alaskans building a better future.

Representative
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House of Representatives

Memorandum

To: House State Affairs Committee
Fm: Representative Hugh Fate
Cc: Alaska Conservation Voters (via fax)
Date: February 3, 2004
Re: Alaska Conservation Voters Memo on HB 319 & Proven High Mineral

As requested by the Committee I would like to take this opportunity to response to Alaska Conservation Voters Memo on HB 319, submitted by Matt Davidson, Legislative Director on February 2, 2004.

The H version of HB 319 is language that existed in CS for HB 232 (RES) and served as a starting point based on discussions and amendments from the 22nd Alaska Legislature. I felt that this offered a better starting point for this legislature as some of the concerns had already been answered and resolved.

As the Memo was written prior to the amendments adopted as the CS for State Affairs I believe that the issues of, or at least a definition of, Exclusive Purchase Rights, Trespass, and Misuse of Mining Claims have been addressed.

Under the reference and scenario Invites Conflict: to a certain extent that concern has also been addressed in the amendment "...and request a right of first refusal." Since it is only a request, should the scenario conflict arise, the decision will be up to the Commissioner of DNR for resolution. Business issues are already addressed in statute:

AS 38.05.035 Powers and duties of the director states:

(f) **The director shall grant a preference right** to the purchase or lease **without competitive bid** of up to five acres of state land to an individual who has erected a building on the land and used the land for **bona fide business purposes** for five or more years under a federal permit or without the need for a permit and, after selection by the state, under a state use permit or lease, if the business

produced no less than 25 percent of the total income of the applicant for the five years preceding the application to purchase or lease the land. The director shall sell or lease the land at a price determined by the director to represent the current fair market value of the unimproved land but in no event less than the cost of administration including survey if required. If the director determines in a written finding that the purchase or lease of the land would interfere with public use by residents of the area, the director may condition the purchase or lease to mitigate the adverse effects on the public use or may reject the application for the preference right. A lease granted under this subsection may not be for a period in excess of 50 years. In this subsection, "business purposes" means a purpose permitted under the classification of the land at the time the land was entered. (emphasis added)

Costly and Cumbersome to the State of Alaska

As the Fiscal note indicates, an annual cost of \$433,000. I concur that those numbers are very close to reality. What the fiscal note does not address, in part because it was generated prior to the proposed amendments, are the advantages to, and therefore the increase in interest of these remote cabin sites. Presently, the Department offers land through the lottery, auction or over the counter sale. Much of the land currently being offered is either extremely remote with very limited access, or has inherent problems to topography to include wetlands. HB 319 will change that by allowing the public to identify sites that are preferred, and are of a more practical and economical size. This preference process will assist the Department by letting them know what people want. As indicated in the fiscal note, the price per acre will increase because of a simple supply and demand scenario meaning the land will have a higher value, conservatively between \$1,000 and \$1,500 per acre or \$5,000 to \$7,500 per site. I believe that once this program is in place the annual statewide demand could exceed 1,000 sites with a higher percentage of sites actually staked. Also because of a better quality of land, there will be a decrease in defaults. Essentially, the income for the state will far exceed the costs. I have attached some scenarios for your consideration.

Adversely Effects Wildlife

The wildlife impact is negligible as the five-acre site, combined with buffer zones both in existing statutes and this bill will eliminate an urban type private development situation. Under private ownership, people traditionally treat the wildlife on their property with more, not less respect. In many cases occasional campers are not necessarily the best stewards of the land they use, leaving signs of their visit behind or are there for the specific reason of hunting and fishing.

Expense and Threat of Forest Fires

The current policy of protecting remote cabins from forest fires is to say the least a nice gesture on behalf of firefighters, when in fact there is no requirement to do so.

AS 38.04.010 Public interest in making land available for private use.

(b) State land that is located beyond the range of existing schools and other necessary public services, or that is located where development of sources of employment is improbable, may be made **available for seasonal recreational purposes or for low density settlement**. The seasonal recreation use or low-density settlement shall have sufficient separation between residences so that **public services will not be necessary or expected**. The availability of timber, firewood, and water resources shall be considered in determining separation between residences. By considering the availability of timber, firewood, and water under this subsection or in making any disposal decision, the state does not by virtue of that consideration imply any right of the person receiving the disposal to an exclusive or other right to the timber, firewood, or water, that the state will not make any other disposals in the area, or that any disposals made will be limited in type or any other manner.
(emphasis added)

Again I would suggest that occasional campers with open fires pose a more serious threat of wildfire, as they have no vested interest in the land nor do they have a permanent type structure to protect.

Conflicts with Municipality acreage

Rules and regulations restricting the size of borough land sites within a borough are applicable on borough owned land. The state presently owns millions of acres that are not within an organized borough. Eventual determination of borough issues should be left in the hands of the land experts on both sides. Should a borough chose to lose the potential property tax base, then that decision is and should be up to the local assembly.

Consents to Selling Land for less than market value

This is language already in existing language and is only referenced in this bill to increase the amount of deposit from five to 10 percent. I believe the increased deposit will serve to impede the default rate. I also reference the definition of Fair Market Value

AS 38.04.910. Definitions.

(3) "fair market value" means the price at which a willing seller and a willing buyer will trade;

Finally on what we are referencing as Amendment # 3- Page 3 line 9-12

We propose a simple solution that addresses two issues presented by the committee.

Line 10 on the H version Line 11 on the Amendment H.1 [~~delete bracketed language~~]

...for mineral values[, except for lands having a proven high mineral potential] based on geophysical survey....

Thank you for the opportunity to respond to this memo. I look forward to continuing discussion on HB 319 as I feel this is an important economic bill that will bring the Alaska dream to many of our residents who will become better stewards of the land they own than the state.

Attachments

HB 319 Revenue Assumptions

I. FINANCIAL ASSUMPTIONS

- 1) 2500 Ready Applicants
 - 2) 1000 Ready Willing Buyer
 - A) Three (3) Categories of Buyers:
 - o 20 % 100% Cash Purchase/ 0 Financed
 - o 20 % 25% Down/50% Financed
 - o 60 % 10% Down/90 % Financed
 - 3) Average Price: \$ 1,000/acre
 - 4) Investments
 - A) 5% Annual Yield
 - 5) Financing
 - A) 6% Annual Percentage Rate (Prime +2% on loans)
 - B) 10% Down Payment
 - C) 60 Month Term
-

II. PARCEL ASSUMPTIONS

1) Desirable Remote Parcels:

- a. River Frontage
- b. Ocean Frontage
- c. Lakeshore Frontage
- d. Highway Frontage
- e. View Properties

2) Land Characteristics

- a. Fee Simple Ownership
- b. 5.0 acres Parcels/Subdividable into (4) 1.25 acre lots
- c. Some Ground Trans Access (snowmobile, 4-wheeler, boat, vehicle)
- d. Contracts for Sale/Lease option to purchase
- e. No State of Alaska Fire Protection
- f. No State of Alaska "Trail construction or maintenance.

3) Purchasers bears ALL cost of acquiring Fee Simple Title

- o Appraisals
- o Surveys
- o Title Insurance
- o Recording Costs
- o Legal Expenses (documentation)

4) Purchaser will pay for all site improvements:

- a. Roads and trail access construction/maintenance
- b. Structures/Buildings
- c. Materials/Supplies
- d. Real Estate Improvements (wells, septic, power, etc.)

5) The land purchase has Value Added Benefits:

- a. Labor/Construction
- b. Materials purchases
- c. Fuel/energy consumption
- d. Future Real estate transactions(Resale/subdivision)

III. NARRATIVE DESCRIPTION

The applicant pays for ALL related expenses of the purchase transaction. They then survey, appraise and purchase the parcel. Because HB 319 opens such large areas, there will be considerable public interest regarding what land is available. There will be some conflicting claims to parcels, specifically where Native Allotments have priority. These parcels can be purchased on a 5 year "lease option" until 2009 when all selections are completed by Native corporations.

Access concerns will be borne by the purchaser. DNR will not be expected to develop or maintain access routes. This new program will place considerable demands on DNR to provide information, particularly through the DNR public information offices in Anchorage, Fairbanks, and Juneau.

DNR will need to provide the public with accurate land status information for millions of acres of state land so the public knows what land is available, including the location of existing third-party interests, mining locations, Mental Health Trust Land, Native allotment locations, and trail and access information.

Specific tasks include:

- 1) DNR develops regulations to implement this disposal of land, establish qualifications, methods for resolving conflicting claims, etc.
- 2) DNR identifies land available for entry under this program-from state and federal status plats based upon state ownership, land classifications, municipal entitlements, existing private lands, Native allotments, etc. They would need to make available existing maps of several million acres available for selection.
 - a. Produce additional maps from existing supply.
 - b. Print and distribute maps
- 3) Purchaser stakes parcel, orders and pays for: survey, appraisal, recordation and documentation.
- 4) DNR approves a list of qualified appraisors and surveyors acceptable to the State of Alaska. That list will be provided to the purchasers to choose these services. Since these individuals are already approved by DNR, a review of their work will not be necessary. Appraisals and surveys will not be accepted by the State of Alaska from any individual who has not be qualified and accepted by the State of Alaska.

FY04 and following years- staking period opens-assume staking and filing period starts summer 2004 and continues indefinitely. (1) Staff positions for Public Information Office and (1) staff position to keep land status maps current; Cartographer (Anchorage), (2) staff positions to review and process applications (Fairbanks), (1) staff position for Public Information Office in Juneau, (1) staff position to issue deeds and conduct related title searches.

- 1) DNR Public Information Office staff to field program inquires
- 2) DNR accepts applications, certifies they qualify.
- 3) DNR reviews and approves applications and land available for selection.
- 4) DNR issues title documents

The purchaser performs the remaining functions and pays for the cost of implementation and acquisition of fee simple title.

2004
COMPARABLE SALES
(Average price/acre: Remote Parcels)

I. VERY REMOTE PARCELS (fly in only)			
a. Twin Lakes (Brooks Range)			
40 acres @ \$40,000	=		\$ 1,000/acre
b. Novy River "swampy" (Nuwitna)			
80 acres @ \$75,000	=		\$ 937/acre
c. Sand Lake "swampy" (Tok)			
50 acres @ 65,000	=		\$ 1,300/acre
II. REMOTE PARCELS (limited access)			
a. Clear, Ak			
70 acres @ \$45,000	=		\$ 642/acre
b. East Twin/West Twin Lakes (Woodriver)			
5 acres @ \$20,000	=		\$ 4,000/acre
c. Kendamina (Manley Flats)			
3 acres @ \$12,000	=		\$ 3,000/acre
III. DESIRABLE PARCELS (Waterfront lots, No road access)			
a. Delta Clearwater			
7 acres @ \$20,000	=		\$2,857/acre
5 acres @ \$25,000	=		\$5,000/acre
b. Good Pasteur River			
4.19 acres @ \$30,000	=		\$7,159/acre
c. Chena Angler Subdivision			
5 acres @ \$50,000	=		\$10,000/acre
IV. HIGHLY DESIRABLE PARCELS (Lakefront, Road access)			
a. Paxson Lake			
5 acres @ \$80,000	=		\$16,000/acre
5 acres @ \$50,000 (* 2 nd Tier lots)	=		\$10,000/acre
b. Fielding Lake			
5 acres @ \$35,000	=		\$ 7,000/acre

V. NATIVE ALLOTMENTS (VERY REMOTE)

a. Salmon Trout (Porcupine River) "Steep embankments" very remote 160 acres @ \$75,000	=	\$ 468/acre
b. (Nuwitna area) 80 acres @ \$75,000	=	\$ 937/acre
c. George Lake (Tok area) 40 acres @ \$60,000 (BIA appraised)	=	\$1,500/acre
10 acres @ \$30,000 (Waterfront lots)	=	\$3,000/acre

- The average price per acre on Native Allotments is \$500/acre. These parcels are large in size and very rural. They also have very limited access. These parcels take considerable time to sell and are equivalent to parcels offered in the past by DNR. These parcel are not as desirable to the average buyer, thus a per acre price of \$500 – 1000/ acre is reflected
- The average price per acre of \$1,000 for non-native allotment parcels is low and considered to be a conservative estimate of the value per acre for the types of parcels that would be selected. Most parcels selected will appraise and sell in excess of \$2,500/acre.

Data was provided by AK-Land (Robert A. Fox)

**REVENUE PROJECTION
FY 05**

I.	SALES REVENUE (1/1/05 – 1/31/05)		
	A. CASH SALES		
	[200 Parcels x 5.0 acres/ parcel x \$1,000/acre] =		\$1,000,000
	B. 50% CASH SALES		
	[200 Parcels x 5.0 acres/parcel x \$1,000/acre] =		\$ 250,000
	C) 10% DOWN SALES		
	[600 Parcels x 5.0 acres/parcel x \$1,000/acre] =		\$ 300,000

	TOTAL FY05 SALES REVENUE		\$1,550,000
II.	INTEREST INCOME (5% return)		
	A. CASH SALES		
	[\$1,550,000; 12mo. @ 5% compound daily)		
	Interest Income FY05 =		\$ 79,300
III.	FINANCE REVENUES (1/1/05 – 12/31/05)		
	A. CASH SALES		\$ 0
	B. 25% CASH SALES/75% FINANCED		
	[200 Parcels; \$3,750 @ 6%, 60 mo.]		
	Finance Income FY05 =		\$ 41,380
	C. 10% DOWN SALES/90% FINANCED		
	[600 Parcels; \$4,500 @ 6%, 60mo		
	Finance Income FY05 =		\$ 149,016

	TOTAL FY05 FINANCE INCOME		\$ 190,396
	TOTAL PROJECTED REVENUE FY05	=	\$1,819,696

HB 319 RECREATIONAL CABIN SITES

FY05 REVENUE PROJECTIONS BACKUP

A.	CASH SALES	(1/1/05)	DEPOSIT	=	\$1,000,000
B.	25% CASH SALES	(1/1/05)	DEPOSIT	=	\$ 250,000
C.	10% DOWN SALES	(1/1/05)	DEPOSIT	=	\$ 300,000
	TOTAL DEPOSITS to PRINCIPAL			=	\$1,550,000
D.	INTEREST INCOME OF INVESTMENT (5%) 12 mo.			=	\$ 79,300
E.	FINANCE INCOME ON LOANS (6%)				
	Accrued Interest	(206.90/yr x 200,	\$(3,750 loans)	=	\$ 41,380
	Accrued Interest	(206.16/yr x 600,	\$4,500 loans)	=	\$ 149,016
	TOTAL FINANCE INCOME			=	\$ 190,396

TOTAL REVENUE PROJECTED FOR FY05 = \$1,819,696

Subject: HB 319

Date: Thu, 29 Apr 2004 14:37:36 -0800

From: "Ron Swanson" <Ron.Swanson@matsugov.us>

To: <senator_scott_ogan@legis.state.ak.us>

CC: <Linda_Hay@legis.state.ak.us>

Dear Senator Ogan:

We were recently reviewing this bill and want to express our concern on the impact it will have on local government daily operations.

This bill will allow individuals to locate remote cabin sites and eventually obtain title to the property that they have identified. While we are not opposed to the concept of placing additional public land into private hands, we are concerned that the process of the private individual obtaining title is placing an onerous burden on local platting authorities.

Our current workload is at an all time high with a backlog of between 8 - 12 months. We have a citizen volunteer platting board that meets at least twice a month and it is not unusual that each meeting lasts all day. To add a workload of each individual parcel coming before our staff and the platting board to resolve property conflicts, access issues and approve plats is more than we can currently handle and places un-real expectations on the applicant being able to see quick and timely action.

While we have some concerns about the current process that DNR uses for remote parcels, particularly concerning access, it is a much more manageable system in that areas are consolidated, property conflicts are for the most part resolved before they reach us and the surveys are in large tracts which eliminates the need to review countless individual surveys.

We would request that this issue be addressed in a way favorable to local municipalities before it is considered for loption.

Ron Swanson, Director
Community Development

P.O. Box 766
Talkeetna, AK 99676
April 29, 2004

Senator Scott Ogan
Alaska State Senate

Via Fax: 465-3265

Dear Senator Ogan:

I wish to express my strong opposition to HB 319 [CSHB 319(F::)], which, if enacted, would amend the state land disposal statutes to allow for, among other things, the nomination of parcels of state land by Alaska residents for lease and/or purchase.

The State already has several land disposal programs that, on an ongoing basis, offer we Alaskans a wide variety of purchase options. And, there are other entities that regularly dispose of land to the public, including the University, the Mat-Su and other boroughs, the Mental Health Trust, and private individuals. There are large lots, small lots, remote cabin sites, subdivisions, and agriculture lands. Land is sold by lottery, by competitive bid, and over the counter. A dearth of available land is clearly not a problem facing the residents of this state.

Given the large amount of land available to Alaskans, I am surprised that the legislature would contemplate adding an expensive twist to a program that is generally working fairly well. Administration of the provisions of this bill, should it become law, would cost the State far more than indicated in the fiscal note (component 2456) associated with this bill. The fiscal note is obviously flawed. For example, the expense calculations are based on 250 applications and the fee calculations are based on 500 applications, cost calculations assume that no appeals would be filed, the costs associated with public opposition or controversy are not even addressed. I could go on and on, but the bottom line is that the fiscal note grossly understates the expected net cost to the State of this program.

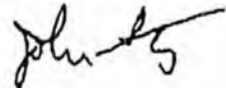
It disturbs me that the legislature, in these times of budget cuts of essential services, would consider wasting our scarce resources on an unneeded program. This, simply, is bad fiscal policy.

Furthermore, my reading of this bill is that a resident may nominate a parcel and then that individual alone may lease and/or purchase. This kind of provision is open to abuse and smacks of "good old boy" insider dealings. I surely hope that I misinterpret the language and that this bill does not provide for non-competitive sale or lease.

And finally, I believe that, should this bill become law in its present form, there will undoubtedly be parcels that evoke public opposition. Under the existing program, DNR decides where, how much, and when to dispose of land. Although there is some controversy associated with individual disposals, it is generally an orderly process that considers the broad interests of the public. Such would not be the case if parcel nominations are received willy nilly from locations scattered throughout the state. This bill has the potential for allowing disposals that are not in the public interest, and it is a formula for controversy. And my bet is that it would be an extraordinarily difficult and expensive program for DNR to administer.

This bill is bad public policy and I urge you to kill it.

Sincerely,



John Strassenburgh

5/02/04

Becky Long, Box 1088, Talkeetna, AK 99676

Dear Senator Scott Ogan and Resource Committee Members:

Re: CS HB 319. LAND DISPOSAL BILL

THIS BILL IS A DIRECT CONTRADICTION TO THE LEGISLATIVE INTENT TO CUT THE BUDGET.

IRRESPECTIVE OF WHETHER ONE SUPPORTS THIS BILL OR NOT, THE RESOURCE COMMITTEE NEEDS TO CLEAN THIS BILL UP FOR THE BEST INTEREST OF THE STATE.

This bill definitely was improved when it came out of House Finance. The process set up is similar to what occurs in the Mat Su Borough except **THERE IS NO COMPETATIVE BIDDING**. This process caters to special interest and good ole boy grabbing of land. More specifically:

1. This bill has a fiscal note of \$330,000 to \$500,000 a year. I do not believe that the state will make that same money back through land sales. And I believe, due to the unintended consequences of the bill, that the state will loose even more money through relinquishments and foreclosure. Passing a bill with this high fiscal note is not cutting the state budget.
2. This bill is unnecessary. DNR has plenty of land over the counter to sell to Alaskans along with yearly land offerings through remote recreational cabin programs and regular land sales. In FY 03, DNR sold over 700 parcels totaling over 6600 acres.
3. The Resources Committee needs to ask informative questions on how this bill will actually work. The first question should be **WHAT ARE THE UNINTENDED CONSEQUENCES OF THIS BILL?**

In Southcentral, private land is interspersed everywhere amongst state public land. People will camp out and make fires to cook food and keep warm looking for their land. They will follow trails to private residences. We people on the ground will feel the effects of this bill

4. I suggest that the Resource Committee set parameters on this bill. There needs to be language conforming to state land management plans and state mandated borough comprehensive plans.

For Southcentral, there needs to be language inserted that is in accordance with the Susitna Area Plan, the MatSu Borough Comprehensive Plans of Talkeetna, Sutton, Chase, Big Lake and the upcoming Sunshine and Trapper Creek Comprehensive Plans. Also there must be language considering special use districts and the Open Space Plan of the Borough Asset Management Plan.

A lot of public money has been spent on these plans and residents have invested much time and energy in their participation and implementation. This bill threatens to render those efforts **MEANINGLESS**.

Subject: House Bill 319

Date: Wed, 28 Apr 2004 12:08:31 -0800

From: "Richard Leo" <theridgeline@hotmail.com>

To: Senator.Scott.Ogan@legis.state.ak.us

Dear Sen. Ogan and staff,

I am writing with great concern about House Bill 319. It is in direct opposition to state budget cutting needs. It furthers no desire to acquire land since so much private land is readily available now. It will make many residents of the rural areas upset when they find out about it (it has just come to my attention). It is totally unnecessary. PLEASE don't further move the bill. I live in Trapper Creek and know that there are others like me who are not at all happy with this bill.

Thank you,

Richard Leo
Box 13227
Trapper Creek, 99683

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<http://toolbar.msn.com/go/onm00200415ave/direct/01/>

Subject: CSHB 319 RELATING TO LAND DISPOSALS

Date: Wed, 28 Apr 2004 17:46:50 +0000

From: "b. long" <issues320@hotmail.com>

To: Senator.Scott.Ogan@legis.state.ak.us

CC: Senator.Thomas.Wagoner@legis.state.ak.us

THIS BILL IS A DIRECT CONTRADICTION TO THE LEGISLATIVE INENT TO CUT STATE BUDGET

IRRESPECTIVE OF WHETHER ONE SUPPORTS THIS BILL OR NOT, THE RESOURCE COMMITTEE NEEDS TO CLEAN THIS BILL UP FOR THE BEST INTEREST OF THE STATE.

1. This bill has a fiscal note of \$330,000 to \$500,000 a year. I do not believe that the state will make that same money back through land sales. And I believe, do to the unintentional consequences of this bill, that the state will loose even more money through relinquishments and foreclosure.
2. This bill is unnecessary. DNR has plenty of land over the counter to sell to Alaskans. There are yearly reofferings and remote recreational cabin programs. Yes, some of the land that is over the counter is there because of its low quality. But the prime settlement areas have already been offered. The best settlement lands are now for the most part in private hands.
3. The Resources Committee needs to ask informative questions on how this bill will actually work and the first question should be what are the unintended consequences of this bill.

There will be private property trespass problems because private land is interspersed everywhere in south central with state land. People will camp out and make fires to cook food and keep warm looking for their land. They will follow trails to private residences. Perhaps I am wrong about this.

The Resource and Finance Committees need to set parameters on this bill. There needs to be language conforming to state management plans like the Susitna Area Plan and to state mandated borough comprehensive plans. A lot of public money has been spent on these plans and residents have invested much time and energy in their participation. This bill threatens to make those efforts meaningless.

Please consider the above comments and realize that it is your constituents will have to live with the consequences from the land use conflicts in this bill.

Becky Long
Talkeetna, AK

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Subject: House Bill 319

Date: Wed, 05 May 2004 13:33:55 -0700

From: Lou Brown and Jon Miller <loubrown@gci.net>

To: Senator_Scott_Ogan@legis.state.ak.us

Dist. 8

Dear Senator Ogan:

I am writing to urge you not to pass House Bill 319 out of the Senate Resources Committee. I am a long-time Alaskan, and like many other Alaskans, I use portions of our public, state-owned lands for a variety of subsistence and recreational purposes. I am afraid that this bill could have very detrimental impacts on our precious public lands by quickly opening new areas up for conveyance without adequate agency planning or public oversight. The use and enjoyment of public lands is an extremely important issue to me, and to many of my friends and associates in Fairbanks.

I own a homestead in south central Alaska, and I have experienced first hand both the allure of owning remote land (literally, a dream of mine since childhood!), and the mess that comes with allowing people to carve their own homestead out of valuable public recreational lands. The idea may be pretty, but the actuality often isn't. Alaska's scenic beauty, along with our magnificent fish and wildlife are truly our most precious resources and heritage; I hope you'll agree with me that safeguarding these resources for posterity should be a primary criterion that any legislation should pass. I do not believe that HB 319 does so.

In the case of our homestead area, we've lost a population of brown bears, had detrimental impacts to salmon spawning streams, curtailed hunting and other recreational access by the public, and tarnished the splendid scenery of a popular coastal recreation area, including a state marine park and National Forest lands. Poorly thought-out sanitation measures create a public health issue, and for practical purposes there is no recourse for issues such as trespass, rights of ways, and incremental degradation of critical wildlife habitat. And, please note, this is the result of a "carefully planned" DNR land disposal. These problems appear to be the rule, rather than the exception when it comes to remote land disposals. The public loses out, and the state spends more than it recovers. This is not good land or resource management.

Allowing individuals to nominate lands that they personally wish to own and, especially, granting them a right of first refusal to nominated lands is not a fair way to dispose of lands, and is likely to have the effect of pressuring DNR to open new areas without adequate planning or public review, both of which are essential for good management, I believe.

In summary, please send this bill back to the drawing board, and work with DNR to make it fair and accountable to public input.

I would appreciate hearing your views on this bill.

Sincerely,

Jon Miller
2630 Home Run
Fairbanks 99709
479-5629

Subject: HB 319

Date: Mon, 3 May 2004 17:13:34 -0800

From: "Shaune" <shaune@mosquitonet.com>

To: <Senator_Scott_Ogan@legis.state.ak.us>

Senator Ogan

I am writing to let you know that I am opposed to HB 319 as written. The bill as written will potentially allow any resident to purchase via lottery any piece of State land. I'm opposed to this because I have invested considerable amounts of money in remote parcels, just because they are remote, and surrounded by State land, and thereby will stay remote. This bill will destroy this.

Sincerely,

Shaune Grose

North Pole, Alaska

REMOTE CABIN SITE - HB. 319
FROM - Mick Moniz Committee of 50 T - 5704
907 479-

A THIS BILL IS BADLY NEEDED
DO - PASS - PLEASE

B 2 - Billion OF STATE MONEY
IS SPENT - EVERY YEAR,
EVERY - ALASKAN SHOULD
GET AT LEAST A PEICE
OF LAND TO CALL HIS
OR HER LAND - WHEN THE
STATE TAKES ALL THE
~~REVENUE~~ REVENUE FROM
THE PEOPLES OIL

C IT'S SICK WHEN THE
ALASKAN PEOPLE OWN
LESS THAN 1% OF THE
LAND

D - NATIVE LAND SELECTIONS
LOCKED UP ALL ALASKA
FROM - 68 TO 76 -

E D-2 LOCKED MUCH UP
FROM - 72 - TO 1980 -

F NATIONAL MONUMENTS LOCKED
156.000-000 ACRES FROM 78 TO 1981
ITS TIME ALASKANS GOT - LAND

5/5/2004

Alaska Fish and Trails Unlimited

Jerald D. Stansel * 1177 Shypoke Dr. * Fairbanks, AK 99709

Phone & Fax: (907) 479-7630 * (888) 409-7630

email: aktrails@alaska.com * website: <http://www.alaskafishandtrails.com>REF!

This letter is in response to Rep.
Bud FATES Bill # 319?? Regarding Remote
Cabin sites.

FOR 30 YEARS NOW I JERALD STANSEL
HAVE BEEN TRYING TO OBTAIN LAND FOR MY
6 children + 11 grandchildren plus myself
TO NO AVAIL!! IT'S ABOUT TIME WE WERE
ABLE TO GET SOME LAND FOR OUR FAMILYS
ETC. I PREFER THE BROOKS RANGE. EVERY
THING IS EITHER FEDERAL PARKS, OR SOME STATE
LAND THAT WAS OPENED UP IN THE MIDDLE OF
SOME TUNDRA SWAMP!! I AM FOR MR. FATES
BILL. IT'S ABOUT TIME SOMEONE HAD THE INTESTINAL
FORTITUDE TO INTRODUCE SUCH!!

Sincerely,
Jerald D. Stansel

Subject: HB 319-Comments

Date: Mon, 3 May 2004 15:24:17 -0800

From: Paul Costello <paulc@co.fairbanks.ak.us>

To: "Senator_Scott_Ogan@legis.state.ak.us" <Senator_Scott_Ogan@legis.state.ak.us>,
"Senator_Ralph_Seekins@legis.state.ak.us" <Senator_Ralph_Seekins@legis.state.ak.us>

CC: "linda_hay@legis.state.ak.us" <linda_hay@legis.state.ak.us>,
Jim Holt <jholt@co.fairbanks.ak.us>, 'Linda Anderson' <lindaa@gci.net>,
'Ron Swanson' <rswanson@msb.co.mat-su.ak.us>, 'bob loeffler' <bobl@dnr.state.ak.us>,
Bob Craig <bcraig@co.fairbanks.ak.us>

Senators,

I am the Director of the Department of Land Management at the Fairbanks North Star Borough. Our department is actively involved in land nominations and transfer here in the borough, support proactive transfer programs. However, we were recently made aware of the Progress of HB 319 and would like to support the comments made on this legislation by Ron Swanson, Director, Community Development. Those comments are as follows:

> Dear Senator Ogan: > > We were recently reviewing this bill and want to express our concern on the impact it will have on local government daily operations. > > This bill will allow individuals to locate remote cabin sites and eventually obtain title to the property that they have identified. While we are not opposed to the concept of placing additional public land into private hands, we are concerned that the process of the private individual obtaining title is placing an onerous burden on local platting authorities. > > Our current workload is at an all time high with a backlog of between 8 - 12 months. We have a citizen volunteer platting board that meets at least twice a month and it is not unusual that each meeting lasts all day. To add a workload of each individual parcel coming before our staff and the platting board to resolve property conflicts, access issues and approve plats is more than we can currently handle and places un-real expectations on the applicant being able to see quick and timely action. > > While we have some concerns about the current process that DNR uses for remote parcels, particularly concerning access, it is a much more manageable system in that areas are consolidated, property conflicts are for the most part resolved before they reach us and the surveys are in large tracts which eliminates the need to review countless individual surveys. > > We would request that this issue be addressed in a way favorable to local municipalities before it is considered for adoption. > > Ron Swanson, Director > Community Development >

The situation here in the Fairbanks North Star Borough is virtually identical to that found in the MatSu Borough. Our platting section is facing record numbers of plats filed by developers for the last two years with no end in site. Our platting staff and volunteer platting board are deluged with these requests, and just last week our senior platting officer retired after 30 years. Replacing his experience and getting up on step once a replacement is hired is going to take us quite a while. Our personnel issues aside, we faced this same situation a few years ago when the state planned to open areas around Fairbanks to staking. In addition to the impact on our already full staff work load, the program created significant problems with access to and within the staking areas. We were able to work with DNR to develop an orderly process of plat review by staking area that allowed the state's program to go forward, while complying with our subdivision ordinances. We encourage the Senate to carefully weight the impacts of this proposed legislation on municipalities before it is adopted.

Thank you,

Paul Costello, Director, Department of Land Management.



Fairbanks North Star Borough

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907/459-1000

www.co.fairbanks.ak.us

May 6, 2004

Senator Seekins
State Capital, Room 125
Juneau, AK 99801

Dear Senator Seekins:

The Fairbanks North Star Borough, Department of Community Planning has reservations regarding HB 319. Our department is concerned that this bill will allow individual parcel nomination and processing requirements. If this bill allows individual lot subdivisions it will severely affect our platting operations. Presently our staff is already overloaded with subdivision requests. Promoting single lot subdivisions would severely encumber and slow down our ability to process subdivision applications throughout our Borough. Moreover, this procedure will hamper our ability to ensure that adequate access is provided to parcels created through this new procedure.

Thank you for your consideration.

Sincerely,

Bernardo Hernandez
Director of Community Planning

Cc: Senator Ogan
Senator Wagner
Jim Holt, FNSB, Chief of Staff
Lori Backus, FNSB Special Assistant to the Mayor

CONTACT RECORD

Date Opened 4/26/04

Case Type (Dept)

LAST Name Nickols

FIRST Name Mike

Home Phone 733-2163

Work Phone

Aide

Mail Address PO Box 706 Talkeetna 99676

Email Address

Case Subject Re: HB 319 (remote cabin site). Sees this bill as a short term solution to a long term problem. It's another way for the state to generate revenue, but he doesn't see the government/legislature cutting the budget and overhead, especially conservative republicans. Doesn't like the fact that the government is spending more and growing, and wants to see cuts in government before taxes and controlled spending. Thinks this bill might also create a stampede-like situation with people running out to stake their claims. Since he runs a private lodge he sees this as a problem. Would like to speak with Senator if he had a chance.

Action Told him I hadn't had the chance to talk to the boss about this bill since it just passed House, but I let him know he agreed with him about cutting the government before taxes. Told him I'd pass message on to Senator.

*Spoke to
Mike
4-27-04*

Need to...

Status Open Closed Info Only Referred to Other Legislator

Closure Card/Letter Sent

District Folder Alpha file

Constituent

Yes No

[Empty box for Closure Card/Letter Sent]

[Empty box for additional notes]

POMS Main Menu

4/28/04

POMS Unviewed Message Summary for Senator Ogan

as

Denis S Ransy
Po Box 344
Po Box 344
Talkeetna AK, 99676

Email:

Constituent

BILL#: HB 319 REC.CABIN SITES/ LOTTERY SALE/RTS. RESERV

SUBJECT:

MESSAGE: This bill's cost is very expensive with no return. We need to cut the budget not increase it. There is a lot of state land for sale over the counter at all times. There is already a remote land program already in effect so it is repetative and unnecessary.

DISTRIBUTION: 12

ALASKA CONSTITUTION

Section 8.1 - Statement of Policy.

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

Section 8.2 - General Authority.

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Section 8.9 - Sales and Grants.

Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.

Section 8.10 - Public Notice.

No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

Section 8.17 - Uniform Application.

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

AS 38.04.010. Public interest in making land available for private use.

(a) The primary public interest in conveying rights to state land surface to private parties is to make them available to individuals and other persons for direct use in areas classified as suitable for these purposes. In making state land available for private use, the director shall seek to guide year-round settlement to areas where public services already exist, or can be extended with reasonable economy, or where development of a viable economic base is probable.

(b) State land that is located beyond the range of existing schools and other necessary public services, or that is located where development of sources of employment is improbable, may be made available for seasonal recreational purposes or for low density settlement. The seasonal recreation use or low density settlement shall have sufficient separation between residences so that public services will not be necessary or expected. The availability of timber, firewood, and water resources shall be considered in determining separation between residences. By considering the availability of timber, firewood, and water under this subsection or in making any disposal decision, the state does not by virtue of that consideration imply any right of the person receiving the disposal to an exclusive or other right to the timber, firewood, or water, that the state will not make any other disposals in the area, or that any disposals made will be limited in type or any other manner.

AS 38.04.015. Public interest in retaining state land in public ownership.

The primary public interests in retaining areas of state land surface in public ownership are

(1) to make them available on a sustained-yield basis for a variety of beneficial uses including subsistence, energy development, aquaculture, forestry, grazing, sport hunting and fishing, hiking, snowmobiling, skiing, and other activities of a type which can generally be made available to more people and conducted more successfully if the land is in public rather than private ownership;

(2) to facilitate mining and mineral leasing by managing appropriate public land for surface uses which are compatible with subsurface uses;

(3) to protect critical wildlife habitat and areas of special scenic, recreational, scientific, or other environmental concern;

(4) to restrict development in hazardous locations such as floodplains and avalanche zones; and

(5) to guide the location of settlement and development to minimize public costs and maximize social and economic benefits.

Article 02. LAND AVAILABILITY FOR PRIVATE USE

AS 38.04.020. Land disposal bank.

(a) The commissioner shall establish a land disposal bank containing state land classified for disposal into private ownership.

(b) The land disposal bank does not include

(1) land nominated for selection or selected by a municipality to satisfy a general grant land entitlement under AS 29.65 or former AS 29.18.201 - 29.18.213;

(2) land retained in state ownership for multiple-use management;

(3) land where less than a fee simple title has been conveyed;

(4) land retained in state ownership under an enactment of the legislature or by the governor or a state agency under authority of law.

(c) Land to be retained in state ownership may be classified by the commissioner into multiple-use management categories under AS 38.05.300. Land outside a municipality to be retained in state ownership consists of land classified for retention in

state ownership by the commissioner by July 1, 1985. Land conveyed to the state by the federal government that is to be retained in state ownership consists of land classified by the commissioner within two years of receipt of tentative approval or patent, whichever occurs first. State land not classified for retention in state ownership or selected by a municipality under this section shall be classified and included in the land disposal bank. The commissioner shall ensure that the bank includes at least 500,000 acres.

(d) By January 15 of the first session of each legislature, the commissioner shall notify the legislature that the commissioner has available a report on the status of land in the land disposal bank under the following categories:

- (1) land suitable for homestead disposal;
- (2) land suitable for subdivision disposal;
- (3) land suitable for agricultural, commercial, or industrial disposal; and
- (4) land suitable for other purposes.

(e) The commissioner shall annually submit to the governor an appropriation request for funding estimated to be necessary for the next two years to allow

- (1) survey and disposal of land proposed to be made available for homestead staking, with the general location of the land;
- (2) survey and disposal of land to be offered as agricultural, commercial, industrial, or other uses under AS 38.05.055 or 38.05.057, with the general location of the land;
- (3) the survey and disposal of land proposed to be offered as subdivisions, with the general location of the land;

(4) preliminary feasibility studies, engineering design work, right-of-way acquisition, and construction of access roads and capital improvements required by municipal subdivision ordinance or regulation of the platting authority;

(5) identification of land that will be proposed for disposal under this subsection in future fiscal years.

(f) The request of the commissioner under (e) of this section shall include an analysis and an assessment of the market demand for the land proposed for disposal.

(g) After July 1 of each year, the commissioner shall direct the expenditure of money appropriated for the disposal of land in response to requests made under (e) and (f) of this section for the following:

(1) land designated as suitable for homestead disposal shall be classified and surveyed under this chapter and AS 38.05 and made available for staking and lease under AS 38.09;

(2) land designated as suitable for subdivision and homesite disposal shall be surveyed, subdivided, classified, and disposed of under this chapter, AS 38.05, and AS 38.08;

(3) land designated commercial, industrial, or suitable for other disposal shall be sold under AS 38.05.055 or 38.05.057;

(4) land designated agricultural shall be disposed of under AS 38.05.055 - 38.05.065, except the Board of Agriculture and Conservation (AS 03.09.010) shall receive notice of each proposed disposal and be given an opportunity to comment before the final disposal decision is made.

(h) Individual parcels disposed of in subdivisions intended for private residential or recreational use may not exceed five acres unless the commissioner determines that a larger size is necessary to comply with municipal ordinances; to permit the design of a

viable subdivision because of topographical features, soil conditions, on-site sewage disposal requirements, or water drainage or supply considerations that are unique to the subdivision; to increase the return to the state from the sale of the parcels; to minimize adverse effect on wildlife, fishery, public recreation, timber, or other significant resources in the area; or to minimize adverse effect on other residential uses in the area.

(i) Nothing in this section prevents the disposal of other land by the commissioner in accordance with AS 38.05.055, 38.05.057, 38.05.070, the issuance of remote recreational cabin site leases or sales under AS 38.05.600, AS 38.08, AS 38.09, or other law.

(j) A person or an agency of the state may nominate land retained in state ownership for inclusion in the land disposal bank or may nominate land in the land disposal bank for retention in state ownership. The commissioner shall hold public hearings semiannually to take nominations under this subsection. A transfer of land from retention in state ownership to the land disposal bank or from the land disposal bank to retention in state ownership shall be accomplished through a classification order under AS 38.05.300 and with notice under AS 38.05.945. The commissioner shall make a written determination within six months after receipt of a nomination if the commissioner determines that the land nominated will not be classified or reclassified as requested.

(k) The commissioner may withdraw from the land disposal bank state land that has been offered for disposal but not conveyed within five years after the inclusion in the land disposal bank. State land withdrawn from the land disposal bank under this section must be reclassified under AS 38.04.065 .

AS 38.04.030. Land availability programs.

Programs that may be used by the director to make the state's land surface available for private use under AS 38.04.020 - 38.04.055 include sale of whole or partial rights to the fee simple estate, including conveyance of agricultural use rights; leasing; open-to-entry; homesiting; homesteading; permitting for construction and occupation of cabins in isolated locations on land retained in state ownership; and other methods as provided by law. However, agricultural use rights may be conveyed only after consulting with the Board of Agriculture and Conservation.

AS 38.05.035. Powers and duties of the director.

(2) grant preference rights for the lease or purchase of state land without competitive bid in order to correct errors or omissions of a state or federal administrative agency when inequitable detriment would otherwise result to a diligent claimant or applicant due to situations over which the claimant or applicant had no control; the exercise of this discretionary power operates only to divest the state of its title to or interests in land and may be exercised only

(A) with the express approval of the commissioner; and

(B) if the application for the preference right is filed with the director within three years from

(i) the occurrence of the error or omission;

(ii) the date of acquisition by the state of the land; or

(iii) the date of a court decision or settlement nullifying a disposal of state land;

(3) grant a preference right to a claimant who shows bona fide improvement of state land or of federal land subsequently acquired by the state and who has in good faith

sought to obtain title to the land but who, through error or omission of others occurring within the three years before (A) the application for the preference right, (B) the date of acquisition by the state of the land, or (C) the date of a court decision or settlement nullifying a disposal of state land, has been denied title to it; upon a showing satisfactory to the commissioner, the claimant may lease or purchase the land at the price set on the date of original entry on the land or, if a price was not set at that time at a price determined by the director to fairly represent the value of unimproved land at the time the claim was established, but in no event less than the cost of administration including survey; the error or omission of a predecessor in interest or an agent, administrator, or executor which has clearly prejudiced the claimant may be the basis for granting a preference right;

(5) when the director determines it is in the best interest of the state and will avoid injustice to a person or the heirs or devisees of a person, dispose of land, by direct negotiation to that person who presently uses and who used and made improvements to that land before January 3, 1959, or to the heirs or devisees of the person; the amount paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director; a parcel of land disposed of under this paragraph shall be of a size consistent with the person's prior use, but may not exceed five acres;

(10) (e) Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property, or interests in them. In approving a contract under this subsection, the director need only prepare a single written finding. In addition to the conditions and limitations imposed by law, the director may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state. The preparation and issuance of the written finding by the director are subject to the following:

(f) The director shall grant a preference right to the purchase or lease without competitive bid of up to five acres of state land to an individual who has erected a building on the land and used the land for bona fide business purposes for five or more years under a federal permit or without the need for a permit and, after selection by the state, under a state use permit or lease, if the business produced no less than 25 percent of the total income of the applicant for the five years preceding the application to purchase or lease the land. The director shall sell or lease the land at a price determined by the director to represent the current fair market value of the unimproved land but in no event less than the cost of administration including survey if required. If the director determines in a written finding that the purchase or lease of the land would interfere with public use by residents of the area, the director may condition the purchase or lease to mitigate the adverse effects on the public use or may reject the application for the preference right. A lease granted under this subsection may not be for a period in excess of 50 years. In this subsection, "business purposes" means a purpose permitted under the classification of the land at the time the land was entered.

AS 38.05.600. Remote recreational cabin sites.

(a) The commissioner may provide for the sale or lease of state land for remote recreational cabin sites. Sales under this section shall be at fair market value determined as of the time of entry, and the purchaser shall reimburse the state for the appraisal, survey, and platting costs for the recreational cabin site.

(b) The annual fee for a remote recreational cabin site lease shall be set by the commissioner so as to ensure that the state receives a fair return for the use granted by the lease for the term of the lease. The commissioner shall establish regulations that specify the application procedures for and the terms and conditions of a remote recreational cabin site lease. A lease must be for a term of not more than five years, and may be renewed for one additional five-year period. At any time during the lease, the lessee may purchase the remote recreational cabin site by having the site appraised and surveyed in a manner acceptable to the department and by paying to the state the fair market value for the site determined as of the time of entry. The lease may not be assigned by the original lessee during the term of the lease.

(c) A remote recreational cabin site lease may be terminated by the commissioner before the expiration of the term of the lease if a lessee fails to use the land under lease in the manner required by the terms of the lease. After termination of a remote recreational cabin site lease, improvements or personal property on the land subject to the lease shall be managed in the same manner as required by AS 38.05.090 .

AS 38.05.090. Removal or reversion of improvements upon termination of leases.

(a) Unless otherwise agreed to in writing by the commissioner, a lessee shall remove from a former leasehold

(1) all personal property, including above-ground tanks, transportable buildings, equipment, machinery, tools, and other goods, not belonging to the state, within 30 days after termination of the lease; and

(2) all buildings and fixtures, including gravel pads, and below-ground tanks, foundations, and slabs, not belonging to the state, within 60 days after termination of the lease.

(b) Unless otherwise agreed to in writing by the commissioner, the lessee shall restore the leasehold to a good and marketable condition, acceptable to the commissioner, within 120 days after termination of the lease.

(c) If the lessee does not remove personal property, buildings, and fixtures as required within the time specified under (a) of this section, title to the personal property, buildings, and fixtures that remain automatically vests in the state unless the commissioner elects to remove and dispose of the remaining personal property, buildings, and fixtures of the lessee. The commissioner may assess upon the lessee the cost of removing and disposing of personal property, buildings, and fixtures remaining upon the land.

Reference Statute Language in HB 319

(d) If the lessee does not restore the land within the time period specified under (b) of this section, the commissioner may have the land restored and assess the costs upon the lessee.

(e) As part of a lease agreement, and in order to protect the public interest, the commissioner may require terms for removal or reversion of improvements additional to those specified in (a) - (d) of this section.

(f) Private residential improvements of a lessee that have become fixtures of the land and that are not removed by that lessee upon termination of the lease shall be purchased by the subsequent purchaser of the land if the improvements were authorized in the former lease or by permit from the director and if they have a net value of more than \$10,000. The net value is the value of the improvements as determined by an appraisal approved by the commissioner, less all rents due the department, all costs of restoration under (d) of this section, and all department expenses estimated to be incurred in making the sale. After termination of the former lessee's lease, and at additional times as determined necessary by the commissioner, the value of the authorized residential fixtures shall be determined by an independent appraisal made at the cost of the former lessee. A notice or offer by the state to sell formerly leased land under this subsection must state (1) the appraised value of authorized residential fixtures remaining on the land that must be purchased, and (2) that that cost is included in the purchase price. Out of the proceeds of the sale, the department shall pay to the former lessee the appraised value of the residential improvements, less all rents due the department, all costs of restoration due the department under (d) of this section, and all department expenses incurred in making the sale.

(g) Personal property described in (c) of this section is not subject to AS 34.45 (Uniform Unclaimed Property Act).

AS 38.05.127. Access to navigable or public water.

(a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the commissioner shall,

(1) determine if the body of water or waterway is navigable water, public water, or neither;

(2) upon finding that the body of water or waterway is navigable or public water, provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) The department shall adopt regulations implementing this section.

(c) Nothing in this section affects valid existing rights or limits in any way the constitutional right of the public to use and have free access to the navigable or public waters of the state.

(d) Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.65 or former AS 29.18, if the commissioner determines the action is consistent with the public interest.

(e) The establishment of easements or rights-of-way for oil and gas and mineral leases under (a) of this section need not be made until the leases are ready to be developed.

(f) Rights-of-way or easements to waterways established under (a)(2) of this section shall be established approximately once each mile unless the commissioner makes a written finding that regulating or limiting access is necessary for other beneficial uses or public purposes.

(g) The commissioner may exchange land under AS 38.50 to create access to public water of the state.

Sec. 38.05.128. Obstructions to navigable water.

(a) A person may not obstruct or interfere with the free passage or use by a person of any navigable water unless the obstruction or interference is

(1) authorized by a federal agency and a state agency;

(2) authorized under a federal or state law or permit;

(3) exempt under 33 U.S.C. 1344(f) (Clean Water Act);

(4) caused by the normal operation of freight barging that is otherwise consistent with law;

or

(5) authorized by the commissioner after reasonable public notice.

(b) An unauthorized obstruction or interference is a public nuisance and is subject to abatement. The cost of abatement shall be borne by the violator and is in addition to any penalty imposed by the court.

(c) This section may not be construed to affect or abridge valid existing rights.

(d) Free passage or use of any navigable water includes the right to use land below the ordinary high water mark to the extent reasonably necessary to use the navigable water consistent with the public trust.

(e) Free passage or use of any navigable water includes the right to enter adjacent land above the ordinary high water mark as necessary to portage around obstacles or obstructions to travel on the water, provided

(1) entry is made without injury or damage to the land;

(2) entry is made in the least obtrusive manner possible;

(3) there is no reasonable alternative available to avoid the use of the adjacent land above the ordinary high water mark; and

(4) the navigable water is reentered immediately below the obstacle or obstruction at the nearest point where it is safe to do so.

(f) A violation of (a) of this section is a class B misdemeanor.

Sec. 38.04.010. Public interest in making land available for private use.

(b) State land that is located beyond the range of existing schools and other necessary public services, or that is located where development of sources of employment is improbable, may be made available for seasonal recreational purposes or for low density settlement. The seasonal recreation use or low density settlement shall have sufficient separation between residences so that public services will not be necessary or expected. The availability of timber, firewood, and water resources shall be considered in determining separation between residences. By considering the availability of timber, firewood, and water under this subsection or in making any disposal decision, the state does not by virtue of that consideration imply any right of the person receiving the disposal to an exclusive or other right to the timber, firewood, or water, that the state will not make any other disposals in the area, or that any disposals made will be limited in type or any other manner.

History

(§ 5 ch 181 SLA 1978; am § 4 ch 152 SLA 1984; am § 2 ch 91 SLA 1997)

Annotations

Administrative Code. - For remote recreational cabin sites, see 11 AAC 67, art. 8B.

Effect of amendments. The 1997 amendment, effective July 1, 1997, added the last sentence in subsection (b).

ANILCA provisions

However, § 1326 of ANILCA limits the authority of the President or the Secretary of the Interior to create large withdrawals in Alaska. Subsection (a) of that section states that a large withdrawal of public lands in Alaska terminates unless Congress extends the withdrawal by approving it in legislation enacted within one year after the withdrawal is made:

No future executive branch action which withdraws more than five thousand acres, in the aggregate, of public lands within the State of Alaska shall be effective except by compliance with this subsection. To the extent authorized by existing law, the President or the Secretary may withdraw public lands in the State of Alaska exceeding five thousand acres in the aggregate, which withdrawal shall not become effective until notice is provided in the Federal Register and to both Houses of Congress. Such withdrawal shall terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress. 10

This provision appears to limit a withdrawal to create a national monument to one year duration unless Congress legislates to "approve" the withdrawal.11 Congress has acted in the past to terminate national monuments, 12 and could terminate a new monument withdrawal in Alaska before the expiration of the one-year period. Various political considerations might affect whether Congress might affirmatively enact approval of an ANWR monument. Absent such approval, it appears the monument designation would terminate and the situation as to the coastal plain would be as it is now - - that oil and gas development in the Refuge is prohibited until Congress acts to approve development.

Another section of ANILCA also appears relevant. Section 101(d) of ANILCA stated the sentiment of Congress in 1980 that ANILCA presented a balance between conservation units and development and disposal of lands:

This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby.

Technically, this section speaks of types of conservation units other than national monuments, 13 and it is true that one Congress cannot tie the hands of another. It could also be argued that because the fate of the coastal plain was expressly left to be decided in the future after additional studies of the area, the possibility of additional protection for the coastal plain was contemplated as part of ANILCA. Also, it could be noted that the President's 1906 authority was left intact as to Alaska, and §1326 expressly recognizes that additional large withdrawals might be made. Therefore, arguably, designation of the coastal plain might not be subject to the § 101 policy. However, that policy may ensure a lively debate if Congress is faced with considering approval of an ANWR national monument.

Footnotes

1 Act of June 8, 1906, ch. 3060, 34 Stat. 225, codified at 16 U.S.C. §§431 et seq. For a discussion of monument issues, see Carol Hardy Vincent and Pamela Baldwin, National Monuments and the Antiquities Act, CRS Report RL30528, updated regularly.

2 Pub. L. No. 96-487, 94 Stat. 2374, codified in part at 16 U.S.C. §§ 3101 et seq. Section 1002 of the Act (16 U.S.C. §3142) directed studies of the coastal plain, and §1003 (16 U.S.C. §3143) precluded oil development in the Refuge unless authorized by Congress.

3 For a more complete discussion of the resources and policy considerations related to ANWR, see Lynne Corn and Pamela Baldwin, The Arctic National Wildlife Refuge: The Next Chapter, IB 10055, updated regularly.

4 The District Court for Alaska granted partial summary judgment for the United States on the issue of construction of the 1906 Act. The court concluded that, although the Act limited the authority of the President as to size and subject matter of withdrawals, the outermost parameters of that authority had not yet been articulated and the withdrawals before the court did not exceed the authority of the President. Unreported bench opinion, *Anaconda Copper Company v. Andrus*, A79-161 Civ., (D.AI. July 1, 1980).

5 Proc. 6920, September 18, 1996; 61 Fed. Reg. 50,223 (September 24, 1996).

6 Proc. 7265, January 11, 2000; 65 Fed. Reg. 2825 (January 18, 2000).

7 *Cameron v. United States*, 252 U.S. 450 (1919).

8 *Wyoming v. Franke*, 58 F. Supp. 890, 895 (D. Wyo. 1945).

9 *Cameron v. United States*, 252 U.S. 450 (1919), upheld the Grand Canyon National Monument and noted that the Grand Canyon was an object of unusual scientific interest; *Cappaert v. United States*, 426 U.S. 128, 142 (1975), upheld the Devil's Hole National Monument which protected a cave, pool and type of fish; and *United States v. California*, 436 U.S. 32 (1978), upheld Presidential action to protect fossils and examples of volcanism. See also *Wyoming v. Franke*, 58 F. Supp. 890 (D. WY. 1945), which dismissed for lack of a reviewable question (on whether the discretion given the President had been improperly exercised with regard to the size of the Jackson Hole National Monument and its protection of natural phenomena), and *Anaconda Copper*, supra.

10 16 U.S.C. § 3213. Note that the section applies to withdrawals of "public lands" in Alaska. That term can have diverse meanings and inquiry must always be made as to its meaning in any particular instance. At times, "public lands" is interpreted as meaning unreserved federal public domain lands, and hence would not include ANWR lands as subject to §1326. However, ANILCA defines public lands as federal lands (title in the U.S.) situated in Alaska, except for certain Native lands and lands subject to sections by natives or the State. Therefore, arguably even reserved lands are subject to §1326.

11 This provision seems to be a grant of temporary withdrawal authority, with the power reserved to Congress to extend or make permanent any such withdrawal through an act of Congress. (Joint resolutions are acted upon by both chambers and presented to the President and hence are laws.) As such, this does not appear to present the same constitutional issues as did the partial congressional action ("legislative veto") that was the subject of *INS v. Chadha*, 462 U.S. 919 (1983).

12 Congress has sometimes converted a national monument into a national park, but also terminated some of the Carter monuments in ANILCA and replaced them with enacted conservation units.

13 Section 102 of ANILCA defines "national conservation unit" in a manner that does not include national monuments.

Sec. 3213. - Future executive branch actions

(a)

No future executive branch action which withdraws more than five thousand acres, in the aggregate, of public lands within the State of Alaska shall be effective except by compliance with this subsection. To the extent authorized by existing law, the President or the Secretary may withdraw public lands in the State of Alaska exceeding five thousand acres in the aggregate, which withdrawal shall not become effective until notice is provided in the Federal Register and to both Houses of Congress. Such withdrawal shall terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress.

(b)

No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area, or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress

ANILCA provisions

However, § 1326 of ANILCA limits the authority of the President or the Secretary of the Interior to create large withdrawals in Alaska. Subsection (a) of that section states that a large withdrawal of public lands in Alaska terminates unless Congress extends the withdrawal by approving it in legislation enacted within one year after the withdrawal is made:

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This provision appears to limit a withdrawal to create a national monument to one year duration unless Congress legislates to "approve" the withdrawal.11 Congress has acted in the past to terminate national monuments, 12 and could terminate a new monument withdrawal in Alaska before the expiration of the one-year period. Various political considerations might affect whether Congress might affirmatively enact approval of an ANWR monument. Absent such approval, it appears the monument designation would terminate and the situation as to the coastal plain would be as it is now - - that oil and gas development in the Refuge is prohibited until Congress acts to approve development.

Another section of ANILCA also appears relevant. Section 101(d) of ANILCA stated the sentiment of Congress in 1980 that ANILCA presented a balance between conservation units and development and disposal of lands:

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people; accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby.

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Footnotes

1 Act of June 8, 1906, ch. 3060, 34 Stat. 225, codified at 16 U.S.C. §§431 etseq. For a discussion of monument issues, see Carol Hardy Vincent and Pamela Baldwin, National Monuments and the Antiquities Act, CRS Report RL30528, updated regularly.

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House District 7

House of Representatives

Memorandum

To: Senator Scott Ogan, Chair, Senate Resources Committee
Fm: Representative Hugh Fate *Hugh Fate*
Cc:

Date: April 26, 2004

Re: CSHB 319(FIN) am "REMOTE REC.CABIN SITE SALES/LOTTERY SALE"

Please accept this memo and attached documents as a request for the Senate Resources Committee to hear for CS for House Bill 319 (FIN) am, "Remote Recreational Cabin site sales/lottery sale." This legislation will help many Alaskans find their piece of the Great Land and assist local communities by moving currently tax-free state land into private hands. Thank you for your consideration in this matter.

Attached: Sponsor Statement, Sectional Analysis, CSHB 319 (FIN) am, Fiscal Note for FIN, Sponsor's Analysis of costs/income, Changes between Resources and Finance amended, CSHB 319 (RES), CSHB 319 (STA), HB 319, Fiscal Note, Journal text, House Floor, Finance, Resources and State Affairs Committee, Memo and Response to Alaska Conservation Voters, Reference Statutes, ANILCA Provisions

HB

344

SENATE COMMITTEE REPORT

DATE: 3/10/04

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 3-25-04

Resources Committee considered CS FOR HOUSE BILL NO. 344(RES)

HB 344 MINING FEES/LABOR/ROYALTIES/ABANDONMENT

"An Act relating to annual rental fees, statements of annual labor, and production royalty for mining claims; and providing a cure for abandonment."

and recommends:

- be replaced with S CS HB 344 (RES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	Indet.	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	Indet.	FN#
DOR	2/23/04	✓			2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>Frank Brown</i>	✓			
<i>Thomas H. Wagner</i>			✓	
<i>Ben Stewart</i>	✓			
<i>Kelvin Jackson</i>	✓			
CHAIR: <i>Scott Brown</i>	✓			

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 344(RES)
(H) Publish Date: 2/26/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title: Mining Fees, Rentals and Royalties RDU: Resource Development
Component: Claims, Permits and Leases
Sponsor: Rep. Fate
Requester: House Resources Component No.: 2460

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	11.0	11.0	11.0	11.0	11.0	11.0
Travel						
Contractual	3.5	0.0	0.0	0.0	0.0	0.0
Supplies	0.5	0.0	0.0	0.0	0.0	0.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	15.0	11.0	11.0	11.0	11.0	11.0

CAPITAL EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
CHANGE IN REVENUES ()	(8.8)	(8.8)	(8.8)	(8.8)	(8.8)	(8.8)

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	15.0	11.0	11.0	11.0	11.0	11.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	15.0	11.0	11.0	11.0	11.0	11.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill provides a discount of 2.5 cents per acre on annual rentals to hard rock and placer mining claimants, who meet standards provided in the bill. The bill also reduces the state royalty from three to one percent of net profits for the first three years of production. Finally, it allows any net operating losses in the first three years of production to be taken as a credit against future royalties.

Prepared by: Bob Loeffler, Director Phone 269-8600
Division: Mining, Land and Water Date/Time 2/4/04
Approved by: Thomas Irwin, Commissioner Date 2/4/04
Agency: Natural Resources

FISCAL NOTE #1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 344(RES)

ANALYSIS CONTINUATION

Rental Reduction. The bill reduces mining rent differently for owners of "placer mining claims" as opposed to those who hold a "hardrock mining claim." Federal law differentiates between placer and lode (hard-rock) claims. However, state law does not distinguish between the two. Alaskans stake a mining location that gives the rights to both the placer and hard-rock deposits. Therefore, it would not be possible to apply the provisions of this bill exactly as they are written. This fiscal note assumes that this technical issue is resolved, and the fiscal note averages the effect of the placer and hard-rock provisions of the bill. The difference is small. The amount was calculated as follows.

Placer Calculation. This bill provides that the discount may be taken by claimants who own up to 800 acres of "placer mining claims". Staff estimates that roughly 400 owners held claims that totaled less than 800 acres. The average acreage owned by these miners was 400 acres, and approximately half of the claims were owned less than five years. The rental reduction under the placer criteria would be: \$2,000 [(400 miners) x (400 acres) x (.5) x (\$0.025/acre)]

Hardrock Calculation. This bill provides that the discount may be taken by claimants who own up to 2000 acres of "hardrock mining claims". Staff estimates that 600 owners held claims that totaled less than 2000 acres. The average acreage owned by these miners was 1000 acres, and that approximately half of the claims were owned less than five years. The rental reduction under the hardrock criteria would be: \$7,500 [(600 miners) x (1,000 acres) x (.5) x (\$0.025/acre)]

Averaging the hardrock and placer criteria, the rental reduction would be approximately \$4,800. Please note that these estimates are very rough staff estimates. More precise calculations require some computer programming. This is being done by the Department but is not expected to be available for a few weeks.

Royalty Reduction — Placer Mines. From 1997 through 2002, royalty payments have been primarily from the placer industry and the six-year annual average is approximately \$10,700. Staff estimates that this bill could reduce this amount by approximately \$2,000 to \$6,000.

Royalty Reduction — Large, Hardrock Mines. The major producing mines in Alaska are not on state land. In addition, due to the recent few years of poor metal prices, these mines are not making significant profits. For these reasons, hardrock mines have not paid significant royalty. Also the state's Exploration Incentive Credit law allows a company to deduct up to \$20 million from royalty or taxes, though the deduction may not equal more than half of the royalty or taxes owed during a single year.

In the future, as more large mines are permitted on state land and operate at stable metal prices, we expect to see significant royalties. For example, the Department expects that the newly authorized Pogo Gold Mine could eventually pay multi-million dollars in royalties over the coming 10-15 years. However, that royalty will probably not begin until after the term of this fiscal note.

FISCAL NOTE #1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 344(RES)

ANALYSIS CONTINUATION

Because the state is currently receiving few royalties, this bill will not have a significant fiscal effect. In addition, large mines typically do not pay the state any royalty during the first three years after production due to capitalization and amortization of their mine construction costs. Therefore, the royalty reduction during that time will probably not have significant effect. However, the credit for the operating losses during the three years could eventually reduce the state's royalty by up to millions of dollars. The exact amount cannot be estimated. The decrease would occur after the term of this fiscal note.

Total Revenue Impact. The total revenue impact would be \$8,800 which is made up of the rough estimate of rental reduction, \$4,800, plus the mid-range of the royalty reduction estimate for the placer industry, \$4,000.

Cost to implement. Computer programming changes to the DNR's database system would be necessary to track the mining claimants who would be eligible for the rental discounts (one-time cost of \$3.5). Each year thereafter, rental accounts for claim locators eligible for the discount would have to be audited to be certain claim types, number and acreages are within the legal parameters to receive the discount. It is anticipated that this would require the equivalent of a quarter-time clerk-level position (\$11.0 personal services).

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 344(RES)
(H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title Mining Fees, Rentals and Royalties RDU Resource Development
Component Claims, Permits and Leases
Sponsor Rep. Fate
Requester House Resources Component No. 2460

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (GF 1004)	1.0	1.0	1.0	1.0	1.0	1.0
-------------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill provides a mechanism for mining claim holders to avoid accidental or inadvertent abandonment of their claims due to errors or delays in properly recording or filing of certificates of location, statements of annual labor or claim rental payments. This provides a much needed option to the existing statutes that will create a benefit to the overall mining industry and primarily to the small miners.

Current mining statutes provide a very strict framework of filing deadlines. If a deadline for filing the required information or delivering payments on rentals or royalties is missed, the claims are automatically abandoned and the miner must wait a full year until he can restake the claims. During this time they are open to staking by others. It is unfortunate that, despite the best intentions of the miners, inadvertent

Prepared by: Bob Loeffler, Director
Mining, Land and Water

Phone 269-8600
Date/Time 2/23/04

Approved by: Thomas Irwin, Commissioner
Agency Natural Resources

Date 2/23/04

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 344(RES)

ANALYSIS CONTINUATION

delays to filing do occur. This has resulted in small family operations that have been active for generations sometimes losing their claims and, in some cases, their livelihood.

This bill provides an effective option to cure abandonment by paying all accrued rents due and/or filing delinquent documents, plus paying a fine equal to the annual rent.

Total Revenue Impact. The revenue impact would be minimal, but positive, as rentals on claims that would have been abandoned would be allowed to continue and fines would be collected in an amount equal to those rentals. An approximate total \$1,000 per year is estimated.

Cost to Implement. There is essentially no cost to implementing this mechanism as it would be handled by existing staff and the additional work load would be minimal.



SENATOR SCOTT OGAN 23RD Alaska State Legislature

Senate District H Lazy Mountain * Butte * Chugiak * Peters Creek * Fairview Loop

Knik-Goose Bay * Big Lake * Houston * Willow * Talkeetna * Trapper Creek

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FACSIMILE TRANSMITTAL SHEET

TO: Leg Legal FROM: Linda Hay - Sen Res
 COMPANY: DATE: 3-25-04
 FAX NUMBER: TOTAL NO. OF PAGES INCLUDING COVER: 4
 PHONE NUMBER: RE: CS for HB 344

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

please prepare a Senate Resources
 + deliver
 Committee CS for CS HB 344 (RES).
 a copy of the proposed amend.
 that was adopted is attached -
 please call if there are
 questions -

Proposed Amendment to CSHB 344 (RES)

Page 2, Lines 10-13

10 (b)... mining claim, or leasehold location[, *or*
11 *prospecting site*] that includes all or part of the mining claim, or leasehold location [, *or*
12 *prospecting site*] abandoned under (a) of this section, or the area is closed to mineral
location under AS 38.05.185 -38.05.275. a person may cure....

The revised subsection would read as follows:

* **Sec. 2.** AS 38.05.265 is amended by adding a new subsection to read:

(b) Unless another person has located a mining claim, or leasehold location that includes all or part of the mining claim, or leasehold location abandoned under (a) of this section, or the area is closed to mineral location under AS 38.05.185 -38.05.275. a person may cure the failure to record or pay that constituted the abandonment and cure the abandonment by

(1) properly recording a certificate of location or a statement of annual labor, paying any required annual rental, and paying any required production royalty; and

(2) paying a penalty equal to the annual rent for the mining claim,⁾
or leasehold location [*or prospecting site*] that was abandoned under (a) of this section.

Why we need and what the Proposed Amendments to CS HB 344 (RES) will do.

Problem 1: The existing language would allow the unusual situation where an individual could use the proposed “cure” for an abandoned location under AS 28.05.265 in a manner that would frustrate a land exchange or a mineral closing order that might be done for economic development purposes. For example, if an area was closed to mineral staking to allow a significant economic development project, an individual could use this method to resurrect a long-abandoned claim to demand compensation.

Problem 2: The existing language includes a “cure” for unintentional abandonment of a prospecting site. However, a prospecting site has a 2-year non-renewable term and is not subject to unintentional abandonment. Therefore, including a prospecting site in the “cure” is an error that creates an unnecessary ambiguity.

Solution: The proposed amendment would eliminate this problem by making the “cure” inapplicable to areas not open to mineral location. It also, eliminates “prospecting site” in the subsection.

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House District 7

House of Representatives

To: Senator Scott Ogan, Chair, Senate Resources Committee
Fm: Jim Pound, Chief of Staff
Cc:
Date: March 10, 2004
Re: CSHB 344 - "Small Miner Incentives"

Please accept this memorandum and attached documents as a request for the Senate Resources Committee to hear CS for HB 344 (RES); "An Act relating to annual rental fees, statements of annual labor, and production royalty for mining claims; and providing a cure for abandonment." By working closely with the Department, and the Alaska Miner's Association this legislation will help Alaska's miners.

Presently mining law requires that all necessary paperwork, rents and royalties be paid on a specific date. If the packet arrives even one day late, the claim or claims are considered abandoned causing the miner to lose his or her investment. Under CSHB 344, the miner can save the claim or claims by submitting the necessary paperwork, and fees, plus a penalty of one years rent on the claim or claims.

Thank you in advance for your consideration of this request.

Attached: Sponsor Statement, CSHB 344, Fiscal Note, HB 344, Fiscal Note, Journal Text History

Representative
HUGH "BUD" FATE
Finance Committee

Energy Council- Executive Committee
119 N. Cushman St. Suite 207
Fairbanks, Alaska 99701
(907) 452-6084
Fax: (907) 452-6096

Alaska State Legislature



While in Session
State Capitol, Room 501
Juneau, Alaska 99801-1182
(907) 465-4976
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House District 7

House of Representatives CS for HB 344

“An Act relating to annual rental fees, statements of annual labor, and production royalty for mining claims; and providing a cure for abandonment.”

CS for House Bill 344 is designed to keep the small Alaska Mining Industry in business. Since the 1980's Alaska has seen the small miner disappear from the streams and hills in part because of the costs associated with the industry, but also because of a glitch in Alaska's statute. That language causes a miner to automatically lose their claims if the required paperwork is filed just one day late.

CS for HB 344 will fix the language granting an extension to that deadline. It allows a miner to keep the claims by filing the paperwork and paying a penalty equal to one years rent.

Alaska was founded on mining and long before oil was the meat and potatoes industry in the state. Mom and Pop mines brought their poke to the local community and spent it in the local community. HB 344 will be an important first step in reviving an industry that is good for the local community and the state as a whole.

HB

395

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 395(O&G)
(H) Publish Date: 3/22/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title: Shallow Natural Gas RDU: Resource Development
Component: Oil and Gas Development
Sponsor: Harris, Gatto, Stoltze, Seaton
Requester: House Resources 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	19.2	19.2	19.2	19.2	19.2	19.2
Travel						
Contractual	52.9	52.9	52.9	52.9	52.9	52.9
Supplies	3.9	0.9	0.9	0.9	0.9	0.9
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	76.0	73.0	73.0	73.0	73.0	73.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	** (Indeterminate Amount)**
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	76.0	73.0	73.0	73.0	73.0	73.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	76.0	73.0	73.0	73.0	73.0	73.0

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	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

Under Section 5 of the bill, additional public notification beyond that already carried out by DNR would be required. Specifically, this would require DNR to publish notice in papers of general circulation in the affected area one additional time beyond what is currently done when giving notice of a shallow natural gas application and calling for public comments. In addition, the bill would require DNR to publish notice of intent to award the lease at least three times in at least two papers of general circulation in the area of the proposed action at intervals of not less than five days between publications.

Prepared by: Mark D. Myers Phone 269-8800
Division: Oil and Gas Date/Time 3/15/04
Approved by: Thomas Irwin, Commissioner Date 3/16/04
Agency: Natural Resources

FISCAL NOTE #1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 395(O&G)

ANALYSIS CONTINUATION

Total number of additional publications of notice: 4 x 2 papers.

The Anchorage Daily News has general circulation in all areas of the state. The cost for a legal notice is \$404 per day (weekday).
4 x \$404 = \$1,616

Publication cost in a local paper is estimated at \$225 (Frontiersman was used as an estimate) per day. 4 x \$225 = \$900

Combined total: \$2,516

Last year, DNR processed three groups of applications in calendar year 2003 (DNR tries to group applications to cut down on noticing costs). 3 x \$2,516 = \$7,548

Section 5 would also require direct notification to each resident in the vicinity of the proposed action when lease applications are received. The bill does not specify whether or not certified mail is required. Therefore, costs are estimated below under both a certified mail and a bulk mail scenario. The figures on the first page of this fiscal note use the figures calculated for certified mail. If bulk mail used, the figures will be substantially less. For this fiscal note DNR estimated that there would be 3 groups of applications = 15,000 additional direct mailings per year.

Certified mail:

Mailing data .05

Postage 2.67

Xerox cost .02

Paper .01

Envelope .05

Total 2.80 x 15,000 pieces of mail = \$42,000 per FY (\$41,100 in contractual, \$900 in supplies)

Bulk Mail:

Bulk mail permit with returned mail service: \$625 + 1.80 per each returned piece of mail (assumes 24 pieces returned for each 1,000 mailed) = \$1,273

Estimated mail-out cost per item for bulk (1,000 pieces) mail to one zip code.

Mailing data .05

Postage .23

Xerox cost .02

Paper .01

Total .31 x 15,000 pieces of mail = \$4,650 + \$1,273 from above = \$5,923 per FY (\$5,773 in contractual, \$150 in supplies)

An additional part-time administrative clerk would be required to handle the mail-outs. Cost of \$19.2 annually is based on an estimated 20 hours/week.

Contractual \$4.3 annually for phone, office space, telecommunications, and core service charges.

Supplies - One time costs for furniture and computer - \$3.0.

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 395(RES)
 (H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): 4/19/2004 Dept. Affected: Natural Resources
 Title: Shallow Natural Gas RDU: Resource Development
 Component: Oil and Gas Development
 Sponsor: Harris, Gatto, Stoltze, Seaton
 Requester: House Resources 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	7.0	7.0	7.0	7.0	7.0	7.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	7.0	7.0	7.0	7.0	7.0	7.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	
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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	7.0	7.0	7.0	7.0	7.0	7.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	7.0	7.0	7.0	7.0	7.0	7.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 HB 395 would make a number of changes to the state's shallow natural gas leasing program including additional public notice requirements; setback guidelines, noise mitigation, and reclamation requirements; and a provision for bonding

 Under Sections 13 and 14 of the bill, additional public notification beyond that already carried out by DNR would be required. Specifically, this would require DNR to publish notice in a paper of statewide circulation and a paper in the affected area one additional time beyond what is currently done when giving notice of a shallow natural gas application and calling for public comments. In addition, the bill would require DNR to publish two display ads in at least one paper of statewide circulation and one local paper in the area of the proposed action.

Prepared by: Mark D. Myers Phone: 269-8800
 Division: Oil and Gas Date/Time: 4/19/04
 Approved by: Thomas Irwin, Commissioner Date: 4/19/04
 Agency: Natural Resources

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 395(RES)

ANALYSIS CONTINUATION

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

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

Display ad in the Anchorage Daily News = $\$614.70 \times 2 = 1,229.40$

Display ad in a local paper = $\$242.00 \times 2 = 484.00$

Combined total all additional notice: \$ 2,342.40

Last year, DNR processed three groups of applications in calendar year 2003 (DNR tries to group applications to cut down on noticing costs). $3 \times \$2,342.40 = \$7,027.20$

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 7, 2004

SUBJECT: Draft CSHB 395(), an Act relating to natural resources --
sectional analysis (Work Order No. 23-LS1314V)

TO: Representative Beverly Masek,
Co-Chair of House Resources Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes

Eleanor Wolfe has requested preparation of a sectional analysis for the above-captioned bill.

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

Bill section 5 amends AS 38.05.177(c) relating to requirements of notice. The insertions made at page 4, lines 19 and 20 and line 24 acknowledge that the director of the division of land should actually consider public comment that may be received before executing a lease. The substitution of "may" for "shall" at page 4, line 26 and again at line 27, alters the scope of the director's authority to act, changing it from an act that is mandatory if the leasing standard is met ("[if] the director determines that the discovery of a local source of natural gas would benefit the residents of an area") to one as to which the director may exercise discretion.

Bill section 6 amends AS 38.05.177(f) to add a series of additional requirements that must be inserted in a shallow natural gas lease, to include (in paragraph (2)) required water well testing requirements in an area roughly within one-quarter mile around a drill site, (in paragraph (3)) appropriate setbacks applicable to compressor stations that are appropriate to the lease; (in paragraph (4)) required and appropriate noise mitigation measures; and (in paragraph (5)), at termination or conclusion of the lease, surface restoration requirements if the surface is disturbed by exploration or development operations.

Bill section 7: This bill section amends AS 38.05.177(k). In instances in which an owner and a lessee cannot reach agreement for the latter's entry on to property to explore for and develop shallow natural gas and the lessee seeks to post a bond to permit entry, the first amendment (beginning at page 7, line 1) adds a further requirement that the lessee demonstrate "that access and entry upon the land of the owner is reasonably necessary or convenient" to secure the lessee's rights, and the second amendment (beginning at page 7, line 10) requires the lessee to provide 30 days' advance notice of initial entry on to an owner's property.

Bill section 8 adds two new subsections.

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

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

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

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

Bill sections 9 and 10: This pair of bill sections amends the notice requirements generally applicable to activities to be taken under the Alaska Land Act, AS 38.05. The amendment made to AS 38.05.945(a) in bill section 9 adds to the section's notice requirement the "receipt of a [shallow natural gas] lease application and call for [public] comments [on the application]," as required by AS 38.05.177(c). The amendment made to AS 38.05.945(b) in bill section 10 directs the department to adhere to the general notice requirements of that subsection when issuing that call for public comments for a lease application submitted under AS 38.05.177(c).

Bill sections 14 and 15: The amendment made by bill section 14 and the repealers set out in bill section 15 eliminate provisions by which the commissioner of natural resources may, if the Department of Natural Resources clearly demonstrates an overriding state interest, "approve a waiver of local planning authority approval and requirements relating to compliance with local ordinances and regulations."

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

Bill section 1: The amendment to AS 31.05.030(j) made by this bill section alters the authority of the Alaska Oil and Gas Conservation Commission as that authority may be exercised with respect to shallow natural 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.

Representative Beverly Masek
April 7, 2004
Page 3

Bill section 2: In conjunction with shallow natural gas exploration and recovery, this section adds a new provision directing the Alaska Oil and Gas Conservation Commission to initiate a public forum process to resolve informally of public health, safety, welfare, and environmental complaints. The provision sets out the minimal procedural requirements for informal resolution of complaints. Language was added (page 2, lines 21 and 22) requiring the informal resolution of complaints within 60 days of the filing of the complaints. If informal resolution of a complaint is unsuccessful, the commission may schedule and act on petition concerning the complaint under procedures in place for commission review of matters subject to its jurisdiction. The commission is to act on matters within its jurisdiction and may refer complaints not within its jurisdiction to other appropriate agencies.

Standardized references relating to maximum depth of shallow natural gas recovery --

Bill sections 3 and 13: The amendments made in each of these sections eliminate, in the respective definitions of or references to "shallow natural gas," the reference to recovery of natural gas from a depth of up to 4,000 feet and replace it with a reference to 3,000 feet. Recovery at greater depths requires treatment of the operation under conventional oil and gas lease requirements.

Other matters --

Bill section 4: The bill section adds provisions to the title in the Alaska Statutes generally dealing with Property that guide the interaction between a "developer" and a "surface owner" relating to mineral interest operations. This material would apply only to the extent the operations constitute activities that are not otherwise governed by the Alaska Land Act (AS 38.05). See page 3, lines 12 and 13 ("Except for activities governed by AS 38.05, . . .").

Bill section 11: AS 46.03.100 imposes permit requirements that relate to operations resulting in disposal of waste materials on state land and water. Existing AS 46.03.100(f)(3) exempts from the section's permit requirement certain surface water discharges that arise out of, among other activities, "coal bed methane drilling or other natural gas drilling to recover gas from a field if a part of the field is within 3,000 feet of the surface." The amendment made in this bill section deletes that exception.

Bill section 12: The amendment made is a conforming change necessitated by the renumbering of provisions in bill section 1.

Bill section 16 gives the measure a July 1, 2004, effective date.

JBC:med
04-381.med

23-LS1314U
Chenoweth
4/6/04

CS FOR HOUSE BILL NO. 395()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HARRIS, Gatto, Stoltze, Seaton, Kohring

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the recovery of shallow natural gas, to the regulation of shallow
2 natural gas or coal bed methane operations, and to oil and gas leasing operations
3 involving activities not governed under the Alaska Land Act; and providing for an
4 effective date."

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

6 * Section 1. AS 31.05.030(j) is amended to read:

7 (j) For exploration and development operations involving shallow natural
8 gas, the commission

9 (1) may not

10 (A) issue a permit to drill under this chapter if the well
11 would be used to produce gas from an aquifer that serves as a source of
12 water for human consumption or agricultural purposes unless the
13 commission finds that the well will not adversely affect the aquifer as a
14 source of water for human consumption or agricultural purposes; or

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

(2) shall

(A) regulate hydraulic fracturing in shallow natural gas wells to assure protection of drinking water quality;

(B) regulate the disposal of wastes produced from the operations unless the disposal is otherwise subject to regulation by the Department of Environmental Conservation or the Environmental Protection Agency; and

(C) for the purposes of AS 46.04.030(b), [THE COMMISSION SHALL] determine whether a well drilled for shallow natural gas may penetrate a formation capable of flowing oil and, if so, whether the volume of oil encountered will be of such quantities that an oil discharge prevention and contingency plan will be required.

* Sec. 2. AS 31.05 is amended by adding a new section to read:

Sec. 31.05.098. Public forum process concerning shallow natural gas. (a)

For the purpose of resolving public health, safety, welfare, or environmental complaints about potential or actual shallow natural gas exploration and development operations, the commission shall, by regulation, develop and implement a public forum process by which to achieve informal resolution of the complaints within 60 days of the filing of the complaints. The commission may provide that, if resolution of the complaints is not achieved through the informal process established by regulation, a party may petition the commission to take action on the complaint under AS 31.05.060 - 31.05.085 as to a matter that falls within the commission's powers and duties under AS 31.05.030. For any other matter, the commission shall refer the complaint to other federal, state, or local agencies, as appropriate.

(b) The commission's regulations adopted under this section shall provide for scheduling a public forum at a location reasonably proximate to the land that is the subject of or that is affected by the complaint and reasonable public notice and opportunity to be heard. If the public forum is not personally convened and conducted

1 by a majority of the members of the commission, the person conducting the forum
2 shall prepare and submit to the commission a report of the forum proceedings. The
3 report prepared under this subsection is a public record. The commission may modify
4 a rule or condition in a plan of development or operation for a field or pool to address
5 an issue identified by the commission or the report.

6 * Sec. 3. AS 31.05.170(14) is amended to read:

7 (14) "shallow natural gas" means coal bed methane, natural gas drilled
8 for under a lease authorized by AS 38.05.177, or natural gas drilled for in a well the
9 true vertical depth of which is 3,000 [4,000] feet or less;

10 * Sec. 4. AS 34 is amended by adding a new chapter to read:

11 **Chapter 90. Mineral Interests.**

12 **Sec. 34.90.010. Notice of operations.** (a) Except for activities governed by
13 AS 38.05, the developer shall give the surface owner written notice of the oil and gas
14 operations contemplated at least 20 days before commencement of operations. The
15 requirement of written notice may be waived by the parties.

16 (b) Unless notice has been waived by the parties, the developer shall give
17 notice to the record surface owner at the owner's address as shown by the records of
18 the state recorder at the time notice is given. The notice must sufficiently disclose the
19 plan of work and operations to enable the surface owner to evaluate the effect of oil
20 and gas operations on the surface owner's use of the property.

21 (c) If a developer fails to give notice as provided in this section, the surface
22 owner may seek any appropriate relief in the court of proper jurisdiction and may
23 receive punitive and actual damages.

24 **Sec. 34.90.020. Damages and posting of bond.** A developer may not
25 exercise a right of entry until the developer makes provision to pay the surface owner
26 full payment for all damages sustained by the surface owner by reason of entering
27 upon the land. If the surface owner, for any cause, refuses or neglects to settle the
28 damages, the developer may enter upon the land after posting a surety bond
29 determined by the Department of Natural Resources using a procedure similar to the
30 procedure used to administer AS 38.05.130, including notice and an opportunity to be
31 heard. The bond must be sufficient as to form, amount, and security to secure to the

1 surface owner payment for damages. The surface owner may institute legal
 2 proceedings in a court where the land is located as may be necessary to determine the
 3 damages that the surface owner may suffer.

4 **Sec. 34.90.095. Definitions.** In this chapter,

5 (1) "developer" means the person who acquires the mineral estate or
 6 lease for the purpose of extracting or using the minerals;

7 (2) "mineral estate" means an estate in or ownership of all or part of
 8 the minerals underlying a specific tract of land;

9 (3) "minerals" includes oil and gas;

10 (4) "oil and gas operations" means the drilling of an oil and gas well,
 11 the production and completion operations ensuing from the drilling, and oil and gas
 12 geophysical exploration activities that require entry upon the surface estate;

13 (5) "surface estate" means an estate in or ownership of the surface of a
 14 particular tract of land;

15 (6) "surface owner" means any person who holds record title to the
 16 surface of the land as an owner.

17 * **Sec. 5.** AS 38.05.177(c) is amended to read:

18 (c) The director shall give notice under AS 38.05.945 of receipt of the lease
 19 application, [AND] call for comments from the public, and execute a lease as
 20 follows:

21 (1) the [. THE] director's call for public comments must provide
 22 opportunity for public comment for a period of not less than 60 days;

23 (2) if [. IF], after review of information received during the public
 24 comment period and consideration of public comments received, the director
 25 determines that the discovery of a local source of natural gas would benefit the
 26 residents of an area, the director may [SHALL] execute a lease for the area described
 27 in (b) of this section; the [. THE] director may [SHALL] execute the lease only after
 28 completion of a title search, the close of the public comment period, and, if review is
 29 required under AS 46.40, after the final consistency determination is made under
 30 AS 46.40;

31 (3) a [. A] lease entered into under this subsection gives the lessee the

1 exclusive right to explore for, develop, and produce, for a term of three years, natural
2 gas on the state land described in the lease; the right to explore for, develop, and
3 produce is limited to gas from a field if a part of the field is within 3,000 feet of the
4 surface.

5 * Sec. 6. AS 38.05.177(f) is amended to read:

6 (f) A shallow gas lease must provide for

7 (1) payment to the state of annual rent in the amount of \$1 an [PER]
8 acre; the [. THE] rent is due and payable on the date determined in the lease; if [. IF]
9 the lease payment is not received by the due date, the director shall mail the lessee one
10 written notice, certified return receipt requested; if [. IF] the lessee fails to pay the
11 rent within 30 days after [OF] receipt of the notice, the director shall terminate the
12 lease;

13 (2) a water well testing requirement for each lease that contains
14 one or more wells that serve as a source of potable water; the testing requirement
15 of this paragraph applies to each water well that is located within a square that
16 bounds a circle with a radius of one-quarter mile around the drill site and the
17 sides of which are parallel or perpendicular to the four cardinal directions and
18 are tangent to the circle; under this paragraph, the lessee shall, before
19 commencement of production testing and production activities on the lease,

20 (A) test each well for dissolved contents, including methane,
21 and water flow; and

22 (B) provide a copy of the test results to the land owner, who
23 shall maintain the test record;

24 (3) appropriate setbacks governing the placement by the lessee or
25 the lessee's agent of compressor stations on the lease; setbacks developed under
26 this paragraph must be determined with reference to the population density of
27 the parcel or parcels subject to the lease, the size of the owner's parcels, and the
28 general character of the land subject to the lease; the terms of the lease must
29 require the lessee or lessee's agent to negotiate to meet the requirement of this
30 paragraph, but the owner may not unreasonably withhold agreement;

31 (4) reasonable and appropriate measures to mitigate the noise of

1 compressors, engines, and other equipment operated by the lessee or the lessee's
2 agent of compressor stations on the lease; noise mitigation measures developed
3 under this paragraph must be determined with reference to the population
4 density of the parcel or parcels subject to the lease, the size of the owner's
5 parcels, and the general character of the land subject to the lease; the terms of
6 the lease shall require the lessee or lessee's agent to negotiate to meet the
7 requirement of this paragraph, but the owner may not unreasonably withhold
8 agreement;

9 (5) action at the time of the termination or abandonment of the
10 lease to require the lessee or the lessee's agent to restore, reclaim, or abate the
11 adverse effects of the exploration and development operations using natural
12 revegetation or reseeded using endemic plant species; the lease may require the
13 lessee or the lessee's agent to consult with the director of the division of
14 agriculture.

15 * Sec. 7. AS 38.05.177(k) is amended to read:

16 (k) The commissioner [MAY]

17 (1) may adopt only the regulations that are reasonable and that are
18 necessary to implement, interpret, or make specific the provisions of this section or to
19 establish procedures to govern application of the provisions of this section; [AND]

20 (2) may, in addition to any requirement for a bond under
21 AS 38.05.130, establish by regulation a form and amount for statewide, areawide,
22 unit-wide, or per-lease bonds sufficient to secure damages that may be caused by the
23 activities of a lessee, or the lessee's successors or assigns, related to a shallow natural
24 gas lease entered into under this section; if the commissioner acts under this
25 paragraph, the commissioner

26 (A) shall require a person applying for a lease under this
27 section to post the bond as a condition for the director's executing the lease;

28 (B) may not require a bond posted under this paragraph from a
29 person applying for a lease if the person has already posted a bond covering
30 the person's statewide oil and gas leasing activities in an amount of at least
31 \$500,000;

1 (3) shall, if a bond is sought under AS 38.05.130, before the
2 amount of the surety bond to be posted is determined by the director, require as
3 a condition for issuing the bond that the director, after notice and an opportunity
4 to be heard, determine that, to exercise rights under the reservation as set out in
5 AS 38.05.125 and the lease, the lessee has demonstrated that access and entry
6 upon the land of the owner is reasonably necessary or convenient to render
7 beneficial and efficient the complete enjoyment of the property and the reserved
8 rights; the lessee has the burden of demonstrating compliance with the
9 requirement of this paragraph; and

10 (4) shall require the lessee to provide written advance notice to the
11 owner of initial entry onto the property of the owner at least 30 days before
12 initial entry.

13 * Sec. 8. AS 38.05.177 is amended by adding new subsections to read:

14 (p) Under AS 38.05.130 as applicable to shallow natural gas exploration and
15 development that is authorized under this section, if

16 (1) the owner and the lessee enter into an agreement by which the
17 lessee makes provision to pay the owner of the land for all damages, the parties shall
18 incorporate in the agreement the provisions described in (f) of this section that are
19 negotiated;

20 (2) the owner and the lessee do not enter into an agreement by which
21 the lessee makes provision to pay the owner of the land for all damages, and the lessee
22 proceeds to request the director to set the amount of a surety bond, the owner may, in
23 conjunction with notice and the opportunity to be heard, provide the director with the
24 owner's comments about the appropriate location of wells, roads, and other
25 improvements that may be made by the lessee or the lessee's agent to secure the
26 lessee's rights under the lease.

27 (q) In (f), (k)(3), and (p) of this section, "owner" means the property owner
28 whose property is subject to the reservation described in AS 38.05.125(a).

29 * Sec. 9. AS 38.05.945(a) is amended to read:

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

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

3 (2) zoning of land under applicable law;

4 (3) issuance of a

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

8 (B) [REPEALED

9 (C)] written finding for the sale, lease, or disposal of an interest
10 in state land or resources under AS 38.05.035(e)(6), except an oil or gas lease
11 sale described in AS 38.05.035(e)(6)(F) for which the director must provide
12 opportunity for public comment under the provisions of that subparagraph;

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

15 (5) a preliminary finding under AS 38.05.035(e) concerning sites for
16 aquatic farms and related hatcheries;

17 (6) a decision under AS 38.05.132 - 38.05.134 regarding the sale,
18 lease, or disposal of an interest in state land or resources;

19 (7) a notice of receipt of a lease application and call for comments
20 under AS 38.05.177(c).

21 * Sec. 10. AS 38.05.945(b) is amended to read:

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

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

26 (2) if the notice is of a preliminary written finding described in
27 (a)(3)(A) of this section or a call for comments under (a)(7) of this section, the
28 department shall give notice at the beginning of the public comment period for the
29 preliminary written finding or call for comments, as appropriate, notifying the
30 public of the right to submit comments; the department shall give notice by

31 (A) publication of a legal notice in newspapers of statewide

1 circulation and in newspapers of general circulation in the vicinity of the
2 proposed action at least once a week for two consecutive weeks;

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

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

8 (D) one or more of the following methods:

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

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

13 (iii) another method calculated to reach affected parties;

14 (3) if the notice is of an action described in (a) of this section, other
15 than notice of an action under (a)(3)(A) or (a)(7) of this section, the department shall
16 give notice at least 30 days before the action by publication in newspapers of
17 statewide circulation and in newspapers of general circulation in the vicinity of the
18 proposed action and one or more of the following methods:

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

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

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

25 (D) another method calculated to reach affected persons.

26 * **Sec. 11.** AS 46.03.100(f) is amended to read:

27 (f) This section does not apply to discharges of solid or liquid waste material
28 or water discharges from the following activities if the discharge is incidental to the
29 activity and the activity does not produce a discharge from a point source, as that term
30 is defined in regulations adopted under this chapter, directly into any surface water of
31 the state:

- 1 (1) mineral drilling, trenching, ditching, and similar activities;
2 (2) landscaping;
3 (3) water well drilling and [,] geophysical drilling [, OR COAL BED
4 METHANE DRILLING OR OTHER NATURAL GAS DRILLING TO RECOVER
5 GAS FROM A FIELD IF A PART OF THE FIELD IS WITHIN 3,000 FEET OF THE
6 SURFACE]; or
7 (4) drilling, ditching, trenching, and similar activities associated with
8 facility construction and maintenance or with road or other transportation facility
9 construction and maintenance; however, the exemption provided by this paragraph
10 does not relieve a person from obtaining a permit under this section if
11 (A) the drilling, ditching, trenching, or similar activity will
12 involve the removal of the groundwater, stormwater, or wastewater runoff that
13 has accumulated and is present at an excavation site for facility, road, or other
14 transportation construction or maintenance; and
15 (B) a permit is otherwise required by this section.

16 * Sec. 12. AS 46.04.030(b) is amended to read:

17 (b) A person may not cause or permit the operation of a pipeline or an
18 exploration or production facility in the state unless an oil discharge prevention and
19 contingency plan for the pipeline or facility has been approved by the department and
20 the person is in compliance with the plan. This subsection does not apply to an
21 exploration or production facility used solely to explore for or to develop or produce
22 shallow natural gas resources, except that this exemption does not apply if the Alaska
23 Oil and Gas Conservation Commission determines under AS 31.05.030(j)(2)(C)
24 [AS 31.05.030(j)] that

- 25 (1) a well drilled for shallow natural gas may penetrate a formation
26 capable of flowing oil; and
27 (2) the volume of oil encountered will be of such quantities that a
28 contingency plan will be required.

29 * Sec. 13. AS 46.04.900(25) is amended to read:

30 (25) "shallow natural gas" means coal bed methane, natural gas drilled
31 for under a lease authorized by AS 38.05.177, or natural gas drilled for in a well the

1 true vertical depth of which is 3,000 [4,000] feet or less;

2 * Sec. 14. The uncodified law of the State of Alaska added by sec. 1, ch. 45, SLA 2003, is
3 amended to read:

4 LEGISLATIVE FINDINGS. The legislature finds that

5 (1) the development of shallow natural gas resources is in the best
6 interests of the State of Alaska;

7 (2) shallow natural gas is abundant and widespread in Alaska and
8 bears the promise of providing Alaskans, particularly Alaskans living in rural areas,
9 with an inexpensive and clean source of energy if those resources can be economically
10 developed;

11 (3) the development of shallow natural gas poses significantly fewer
12 risks and creates substantially less impact to the environment than traditional deep oil
13 and gas projects, which have served as the model for oil and gas industry and
14 environmental regulations to date in Alaska;

15 (4) the regulatory requirements developed and applied to traditional
16 deep oil and gas projects in Alaska are ill-suited and unduly onerous when applied to
17 shallow natural gas projects, threatening the economic viability of otherwise desirable
18 exploration and development projects;

19 (5) there is an immediate state and national need for the development
20 of clean and economical unconventional energy sources, such as shallow natural gas
21 resources;

22 (6) reform of existing laws and regulations is needed to remove
23 unnecessary regulatory burdens on the private sector to foster and encourage the
24 development in Alaska of these necessary resources;

25 (7) the legislature is acting in the interest of promoting the active
26 development of such resources, while ensuring that suitable measures are taken to
27 protect human health and safety and the natural environment,

28 (A) to remove impediments to the responsible development of
29 shallow natural gas; and

30 (B) to provide the proper state agencies with clear authority and
31 discretion to adopt regulatory practices appropriate to shallow natural gas

1 exploration and development projects, in recognition of the lower risks posed
2 by such projects to human health and safety and the natural environment [;
3 AND

4 (C) TO RESERVE ALL RIGHTS AND POWERS NOT
5 PREEMPTED BY FEDERAL LAW AND REGULATION IN ORDER TO
6 ASSERT STATE PRIMACY OVER THE REGULATION OF SHALLOW
7 NATURAL GAS].

8 * Sec. 15. AS 31.05.125 and AS 38.05.177(n) are repealed. ~~AS~~

9 * Sec. 16. This Act takes effect July 1, 2004.