

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11322 SENATE RESOURCES

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4

ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

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

MEMORANDUM

DATE: April 8, 2004
TO: Senator Scott Ogan
Chair, Senate Resources Committee
FROM: Rep. Bruce Weyhrauch
SUBJECT: HB 522 – Small Cruise Ship Discharges

Attached to this memo is HB 522 and materials in support.

At your earliest opportunity, I request that this bill be scheduled for a hearing in the Resources committee. If you have any questions or need further information, I invite you to contact myself, or my aide, Linda Sylvester.

Thank you for your kind attention to this matter.

ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA
STATE CAPITOL
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STATE AFFAIRS COMMITTEE

HB 522

Small Cruise Ship Discharge

Sponsor Statement

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

In addition to the large cruise vessels, HB 260 also required the small cruise vessels to comply with the same standards. Even though the smaller vessels contribute approximately 3% of the wastewater discharged in Alaskan waters in 2001, the assumption was made that environmental technologies developed by the large vessels could "filter down" and be applied to the smaller vessels. HB 260 gave the industry, including the small commercial vessels until January 1, 2004 to comply.

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

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

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

Updated: 3/3/04
Contact: Linda Sylvester
465-4963



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March 4, 2004

Ref: J04029-02L

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

Subject: Limitations on Modifying Small Commercial Passenger Vessels

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

Dear Mr. Brockway,

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

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

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

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

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

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

Sincerely,



EXPIRES 11/16/04

John W. Waterhouse, P.E.
President



Architectural & Engineering Services for the Marine Industry

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March 2, 2004

Ref: J04029-01L

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

Subject: Limitations on Modifying Small Commercial Passenger Vessels

References: a. Alaska House Bill 522, "An Act relating to discharges from small commercial passenger vessels; and providing for an effective date."

b. Assessment of Cruise Ship and Ferry Wastewater Impacts in Alaska, Alaska Department of Environmental Conservation, Juneau, Alaska, February 9, 2004.

Dear Mr. Brockway,

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

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

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

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

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

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

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

Cruise West
March 2, 2004

Ref. J04029-01L

Page 3

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

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

Sincerely,



EXPIRES 11/16/04

John W. Waterhouse, P.E.
President

Revised DRAFT

Compliance Cost Estimates

This document outlines the costs of full compliance with the DEC discharge standards scheduled to become effective January, 2004 for small cruise vessels. (sec.7, CCSHB 260)

This information was prepared for the Alaska Small Cruise Vessel Association (ASCVA). ASCVA is an informal association of Alaska small cruise vessel operators, consisting of Cruise West, New World Ship Management Co. LLC, and Lindblad Expeditions, Inc.

Cruise West:

Cruise West has six small vessels that will be subject to the ADEC discharge requirements: Spirit of Alaska, Spirit of Discovery, Spirit of '98, Spirit of Columbia, Spirit of Endeavor, and Spirit of Oceanus.

Equipment costs for six vessels: \$ 240,000.

Installation cost estimates for six vessels: \$ 360,000 to \$570,000. (\$60,000 to \$95,000 per vessel)

In the case of the Spirit of Columbia, Spirit of Alaska and Spirit of Endeavor, the vessels must be reconfigured to provide space for the new equipment resulting in loss of berths and revenue. Based on the 2004 itineraries, the loss of revenue will be \$ 791,000.

Total costs and revenue loss for 2004 is \$ 1.39 million to \$1.6 million.

Lindblad Expeditions:

Lindblad has two vessels that will be subject to the new requirements: Sea Bird, and Sea Lion.

Equipment and installation cost for two vessels: \$ 1.038 million (these treatment systems require vacuum toilets, additional holding tank capacity, stability stern extensions, and electrical and plumbing upgrades adding significant costs)

Loss of revenue from reduction in berths due to reconfiguration: \$ 1.915 (loss of three berth per ship)



Cruise West – An Alaskan Success

American-owned Cruise West is North America's leading small-ship cruise line – and a major Alaskan success story. Our roots in the state stretch back over 50 years. In 1946 our founder, Chuck West, started a travel agency in Fairbanks and air tours to the Arctic. These businesses became the original Westours. Over time, Chuck became known as "Mr. Alaska" for his role in founding Alaska's first hotel chain, motorcoach line, modern-day cruises, and many other aspects of Alaska tourism today.

Smaller is Better – Today's Cruise West began in 1973 with the philosophy that Alaskan visitors deserve to explore the Great Land in small numbers, while causing minimal impact on the land and on the communities we visit. Our long-standing promise to our guests is that they will enjoy an Alaska experience that is **Up-Close – Casual – Personal**.

Small Ships, Low Impact – Our seven ships range in capacity from just 70 to 114 guests. When we visit a community, our limited numbers do not overwhelm the local facilities or the local population.

| | | | | | | | |
|---------------------|-----|---------------------|----|-------------------|-----|--------------------|----|
| Spirit of Alaska | 78 | Spirit of Discovery | 84 | Spirit of Oceanus | 114 | Spirit of Columbia | 78 |
| Spirit of Endeavour | 102 | Spirit of '98 | 96 | Sheltered Seas | 70 | | |

Widely Distributed Visitation – We offer a wider choice of port calls than any other cruise line in Alaska. We actively seek to offer our guests experiences in fascinating, out-of-the-way communities that are reflective of the "real Alaska." We particularly like to work with small communities who seek sustainable levels of tourist visitation, without having an undue impact on their local way of life or port facilities.

| | | | |
|-----------|------------|-----------------|----------|
| Hyder | Metlakatla | Ketchikan | Kake |
| Wrangell | Petersburg | Sitka | Juneau |
| Gustavus | Elfin Cove | Pelican | Skagway |
| Haines | Cordova | Whittier | Homer |
| Anchorage | Kodiak | Dutch Harbor | St. Paul |
| Savoonga | Nome | Little Diomedea | |

See Alaska with Alaskans – Many of our ship's crews, and virtually all of our land tour staff, are year-round Alaskans. On land, we employ 75 to 80 Alaskans in Ketchikan, Petersburg, Juneau, Anchorage, Denali Park and Fairbanks.

More Overnights on Land – Many of our cruises begin or end in Ketchikan, Juneau and Anchorage, with included overnight stays. This means local hotels and restaurants get more business, and cities earn applicable taxes. Juneau alone, for instance, is the turnaround port for five of our seven Alaska itineraries. Our guests occupy thousands of hotel rooms each season.

We Support Our Local Communities – In addition to our overnight stays in local communities, we reprovision in Anchorage, Ketchikan and Juneau, pay port charges, airport landing fees, and make all the other necessary expenditures that help keep Alaska running!

Take Only Photographs – Leave Only Our Wake Behind

LINDBLAD EXPEDITIONS ECONOMIC IMPACT

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

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

CRUISE WEST ECONOMIC IMPACT

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

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COPIES



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

20 February 2004

The State Legislature of Alaska
Juneau, Alaska

Re: Economic Impact of the Operations of Clipper Cruise Line

Honorable Senators and Representatives:

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "G. Welsh". The signature is written in a cursive style and is positioned above the typed name.

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



CRUISE LINE AGENCIES OF ALASKA

P.O. Box 8080 • 1249 Tongass Avenue Suite B, Ketchikan, AK 99901 • Ph. 907-225-0999 • FX. 907-247-6042
E-mail: Ketchikan@claalaska.com

Tuesday, March 30, 2004

Honorable Representative Bill Williams
State Capitol, Room 515
Juneau, AK 99801-1182

RE: Small cruise vessel legislation SB 361/HB 522

Dear Representative Williams:

This is to ask your support for Senate Bill 361 and House Bill 522. These bills, when combined, will allow small-cruise vessels to continue to serve Alaska. They are an important part of our local and statewide economy.

SB 361 and HB 522 would allow the older small-ships to use best management practices to minimize stationary wastewater discharges. This alternative to complete retrofitting of the vessel is responsible and environmentally sound.

We urge you to support SB 361 and HB 255. This is vital to maintaining a strong visitor industry and responsibly managing the environment in Alaska. Your time and attention to this matter is greatly appreciated.

Sincerely,

Bob Berto
President
Cruise Line Agencies of Alaska



AWRTA

Dear Representatives and Senators,

RE: Small cruise vessel legislation, HB 522 & SB 361

The Alaska Wilderness Recreation and Tourism Association (AWRTA) strongly supports both HB 522 and SB 361, bills relating to discharges from small commercial passenger vessels. AWRTA is a membership-driven trade association formed to be a collective voice for wilderness-dependent businesses. We advocate for the sustainability of Alaska's natural and cultural resources, responsible tourism and tourism planning for communities.

While we enthusiastically supported the Commercial Vessel Environmental Compliance Program via HB 260 passed in 2001, we recognize that the intent of this Program was based on the assumption that small cruise ship vessels could conform to the environmental technology developed by large-ship cruise vessels. In order for small ship cruise companies like Lindblad Expeditions, Alaska Sightseeing/Cruise West, and Glacier Bay Cruises to continue to operate in Alaskan waters, an alternative regulatory scheme that focuses on minimizing these ships discharges is required. HB 522 and SB 361 offer reasonable alternative plans that will allow these small ship companies to continue operation beyond July 2004.

Small ship cruise lines are highly valued partner in Alaska's tourism economy, and many AWRTA members depend small ship passengers for their livelihood. Small ship cruise vessels with 150 passengers or less operate with distinctly different philosophies than foreign-flagged large multi-national cruise ships. Small ships visit Alaskan communities where passengers spending power is directed to small businesses owned and operated by Alaskans. When passengers disembark these ships, many travel to other regions of Alaska with AWRTA member businesses that offer land based lodges, tours, and activities, thereby diversifying the economic reach to other Alaskan business sectors. Small ship cruise lines are flagged in the US, adhere to both Alaska and US labor laws, pay income taxes as well as the real costs associated with doing business in Alaska.

We support HB 522 and SB 361, and believe that these bills offer solid solutions utilizing best management practices to minimize stationary wastewater discharges.

Thank you for passing this important legislation.

Best Regards,

Catherine McDermott
Board of Directors
Alaska Wilderness Recreation and Tourism Association

Subject: Small Cruise Ship and Ferry Compliance on Wastewater

Date: Wed, 24 Mar 2004 23:52:36 -0900

From: "John Pearson" <jpearson@ptialaska.net>

To: "Georgianna Lincoln" <Senator_Georgianna_Lincoln@legis.state.ak.us>,
"Senator Kim Elton" <Senator_Kim_Elton@legis.state.ak.us>,
"Senator Bert Stedman" <Senator_Bert_Stedman@legis.state.ak.us>,
"Representative Albert Kookesh" <Representative_Albert_Kookesh@legis.state.ak.us>,
"Representative Peggy Wilson" <Representative_Peggy_Wilson@legis.state.ak.us>,
"Representative Bill Williams" <Representative_Bill_Williams@legis.state.ak.us>,
"Representative Carl Morgan" <Representative_Carl_Morgan@legis.state.ak.us>

CC: "Gary Benedict" <sealaskainn@yahoo.com>, "Dick West" <DickW@cruisewest.com>,
"Larry Johansen" <cwjnu@gci.net>, "Len Laurance" <l.laurance@worldnet.att.net>,
"Rob Allen" <rallen@allenmarine.com>, "Hugh Bevan" <hugh@cityofsitka.com>,
"S Thomas Eriggs" <tom_briggs@dot.state.ak.us>

Ref: HB522 and SB361

Unfortunately, we ran out of time yesterday afternoon at the Southeast Conference meeting, for me to request your support for the above referenced legislation. The two bills refer to the issue of wastewater discharge laws related to small cruise ships and the Alaska ferry system.

Recently the Juneau Empire gave the public a wrong image in their publication, with the impression that the small cruise vessels and the ferry system were getting exemptions to the law in dealing with the wastewater issue.

These Juneau Empire statements were totally inaccurate and misleading!

The 2001 Cruise Ship Legislation (HB 260) provides a very clear policy and intent statement addressing the requirements of small vessels operators as well as the ferries on the subject. Today, there are no exemptions, and the small vessels operators should be viewed as being good stewards of our waters.

As HB522 and SB361 come before your respective bodies, it is essential that our regional legislators stick together in their position and support for the legislation.

Today small vessel operators such as Cruise West and Lindblad Expeditions are in fact, going the extra mile in their concerns for the Alaska environment. In addition, they are an important economic factor in our local communities, especially our rural communities.

We request your full collective support as Southeast Legislators on the legislation and best efforts to correct the Juneau Empire impressions of this special and unique form of tourism.

John Pearson
Community Development Specialist
Hyder Board of Trade (Chamber)

JUNEAU EMPIRE

ROBERT HALE
Publisher

LOLA LEAMER
Controller

MARIE TOLAND
Advertising director

LORI THOMSON
Managing editor

CONNIE MCGEE
New media director

MARK WARMAN/GALEN WYATT
Production directors

Letters to the editor

Bill sets reasonable ship standards

The House and Senate will shortly take up House Bill 522. This piece of legislation is designed to craft a plan by which small ships can continue to comply with Alaska's high wastewater standards beyond the immediate future. HB 522 is a realization that the cookie cutter that was created for the large ships in the original bill doesn't fit for the small ship and seeks to create a reasonable path to small ship compliance. Contrary to common misconceptions, the provisions in HB 522 do not exempt small ships from wastewater standards. They will be required to meet all benchmarks set under the original legislation. Why then is HB 522 needed?

First realize that the large ships comprised 97 percent of the total wastewater being emitted. The emerging technologies being developed to meet these standards were designed to be installed on these larger and much newer vessels. The market for this technology designed to fit into the dozen smaller (and in some cases 20 year old vessels) does not currently exist. The larger vessels have solved most of their issues by simply adding

massive holding tanks that a 140-foot vessel cannot accommodate. As these technologies develop it will be fully expected that the small ships will deploy them, and all small ships currently being designed will be required to build to meet the standards as written.

So what's being done with these older boats? Second, realize that the American built small vessels do in fact meet all federal standards and that all discharges are being treated. It is a fact that the only time that the small ships do not meet the stringency of the Alaska standards is when they are stationary for a period of longer than four to six hours. While the vessel is underway at a speed of at least six knots and off shore one mile small ships far exceed state standards. While the vessel is stationary small ship operators are obligated to provide a best management plan of action, approved by ADEC, to minimize this impact. These include reducing water usage while in port, utilizing shore facilities, and minimizing stationary activity. For example in Juneau, Cruise West guest leave the vessel immediately upon arrival and proceed to check into a local hotel thus substantially reducing the need to discharge.

The small ships, and their unique circumstances, were caught up in the wake of the original law. HB 522 allows us the chance to achieve the standards set for us in a reasonable manner. Your understanding and support is appreciated.

Larry Johansen
Southeast Regional Manager
Cruise West
Juneau

STATE OF ALASKA

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF WATER
DIRECTOR'S OFFICE

cc: Sen. Resources.

FRANK H. MURKOWSKI, GOVERNOR
410 Willoughby Avenue, Suite 303
Juneau, Alaska 99801-1795
PHONE: (907) 465-5300
FAX: (907) 465-5274
TDD/TTY: (907) 465-5040
<http://www.state.ak.us/DEC/>

April 5, 2004

The Honorable Burt Stedman, Chairman
Senate Community and Regional Affairs Committee
Alaska State Senate
State Capitol, Room 30
Juneau, Alaska 99801

Dear Senator Stedman:

This letter responds to questions posed during the March 31 Senate Community and Regional Affairs Committee hearing on SB 361, relating to discharges from small commercial passenger vessels.

Q. What is the department's position on the concept of limiting the new "alternative terms and conditions" option (AS 46.03.462(e)) to vessels that are currently in service in Alaska?

A. As a general rule, the department does not believe that environmental law should rely on limiting competition or access to markets as a means to achieve compliance with environmental standards. In this case, the department intends to regulate all small vessels such that all discharges result in compliance with state water quality standards. There is no need to restrict the new provision to vessels currently operating in Alaska waters in order to achieve compliance with environmental standards.

Q. What is the department's position on an amendment replacing the standard for approving a Best Management Plan from one of "protecting the environment" to one of "safeguarding public health and protecting important wildlife habitat" in AS 46.03.462(e).

A. DEC prefers "protecting the environment." We see no reason to narrow the standard to public health and wildlife habitat concerns. The department's general authorities include protecting water quality for all uses including public health and aquatic life as well as other uses such as recreational and commercial/industrial uses.

Q. AS 46.03.462(e) prohibits requiring an owner or operator to retrofit a vessel solely for the purpose of waste treatment if the retrofitting requires additional stability testing or relicensing by the U.S. Coast Guard. Does this limit DEC's ability to require new technologies as part of the Best Management Practices plan?

A. Yes, but the department believes that the small vessels can comply with water quality standards by changing practices – such as not discharging wastewater while at anchor or at port. If new wastewater treatment technologies for smaller vessels become available, we expect the industry will weigh the costs and advantages of installing the new technology against those of operating under a Best Management Practices plan. Either way, water quality will have to be protected.

Q. Clarify the various ways that a small vessel may comply with the Commercial Passenger Vessel Environmental Compliance law if SB 361 is passed.

A. The small vessel owner/operator may:

1. Adhere to the standard terms and conditions in AS 46.03.462(b)(1).

2. Request that DEC allow the vessel to follow alternative terms and conditions for a period of time that the department deems appropriate under the provisions of AS 46.03.462(c). Under this provision, DEC may allow alternative terms and conditions that: 1) provide an equivalent level of environmental protection as the standard terms and conditions, 2) allow additional time for an owner/operator to make changes to a vessel, or 3) allow the use of experimental technology.

3. Under SB 361's new subsection AS 46.03.462(e), DEC would develop regulations that allow a vessel whose keel was laid before January 1, 2004 to submit a Best Management Practices plan for DEC approval. The plan would protect the environment to the "maximum extent feasible," but could not require retrofitting a vessel solely for the purpose of waste treatment if the retrofitting were to require stability testing or relicensing by the U.S. Coast Guard. An approved plan would be valid for 3 years.

Q. What would be the effect of changing the word "may" to "shall" in the first sentence of AS 46.03.462(e)?

"The owner or operator of a small commercial passenger vessel may submit a plan for alternative terms and conditions of vessel discharges if the keel was laid before January 1, 2004."

A. This would have the effect of requiring all small commercial passenger vessels submit a Best Management Plan, even if the vessel intended to comply with the standard wastewater discharge terms and conditions. Use of the permissive term "may" allows owners/operators to choose from among the three options: complying with the standard terms and conditions as provided in AS 46.03.462(b)(1), complying with alternative terms and conditions as provided by AS 46.03.462(c), or complying with an approved Best Management Plan as provided by the new AS 46.03.462(e). We suggest that retaining the permissive "may" is necessary to preserve the intended choice.

If you have any other questions regarding the department's interpretation of the bill, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Dan Easton". The letters are cursive and somewhat slanted.

Dan Easton, Director
Division of Water

cc: Senator Tom Wagoner
Senator Gary Stevens
Senator Kim Elton
Senator Georgiana Lincoln

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

PETERSBURG LEGISLATIVE INFORMATION OFFICE

PHONE: 772-3741

FAX: 772-3779

FAX TRANSMISSION

TO: Senate Resources Comte / SB 361

FAX: 907.465.3265

DATE: 4/12/2004

MESSAGE:

1 page to follow this cover

Please furnish this comment to the
SRES comte members for their consider-
ation and for the comte record

Thank you,

Ellen S. [Signature]

4/12/2004
Senate Resources Committee
RE: Small cruise vessel legislation
SB361

Dear Chairman Ogan and Senators,

We support passage of SB 361, the small cruise ship legislation. This bill is a responsible way of ensuring the small cruise ships can remain in business and protect the environment at the same time. We would like to urge your support, too.

SB 361 would allow the older, small ships like Lindblad's Sea Bird and Sea Lion and the Yorktown Clipper to use best management practices to minimize stationary wastewater discharges. This alternative to complete retrofitting of the vessel is responsible and environmentally sound.

These small cruise ships are US owner and crewed. Their passengers spend considerably more money per person than the large vessel passengers. The small companies are vital to the small communities. They use local tour operators and vendors. SB 361 will allow them to use best management practices to manage their wastewater discharges.

Please support SB 361. It is an environmentally responsible alternative for older vessels to meet wastewater discharge standards and continue to help sustain the communities in our area. These jobs and monetary contributions are vitally important.

Sincerely yours,
Viking Travel, Inc.
David Berg, President

David Berg
Viking Travel, Inc.
www.AlaskaFerry.com
907.772.3818 - Phone
907.772.3940 - Fax
101 N. Nordic, Box 787
Petersburg AK 99833

HB

524

SENATE COMMITTEE REPORT

DATE: 3/26/04

FURTHER:

DATE TURNED
IN TO OFFICE: 4-2-04

Resources Committee considered HOUSE BILL NO. 524 am

HB 524 WASTE MANAGEMENT/DISPOSAL

"An Act relating to the protection of land and water from waste disposal; providing for the regulation of waste management; making conforming amendments; and providing for an effective date."

and recommends:

- be replaced with S CS HB 524am (RES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

| | |
|-------------------------------------|--------------------------|
| Senate Bill: | |
| <input 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 | Indet. | Zero | FN# |
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PREVIOUS FISCAL NOTE(S):

| Department | Date | Fiscal | Indet. | Zero | FN# |
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APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | DO PASS | DO NOT PASS | NO REC | AMEND |
|---------------------------------|---------|-------------|--------|-------|
| <i>Frank...</i> | | | ✓ | |
| <i>...</i> | | | ✓ | |
| <i>...</i> | | | ✓ | |
| <i>Joseph...</i> | ✓ | | | |
| <i>Ben...</i> | ✓ | | | |
| <i>...</i> | | | ✓ | |
| CHAIR: <i>Scott...</i> | ✓ | | | |

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Travel | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Contractual | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Supplies | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Equipment | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Land & Structures | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Grants & Claims | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Miscellaneous | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Bill has no fiscal impact on the Department.

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

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

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 5, 2004

SUBJECT: SCS HB 524(RES)

TO: Senator Scott Ogan,
Chair of the Senate Resources Committee

FROM: Pam Finley *PF*
Revisor of Statutes

Enclosed is SCS HB 524(RES). This is a governor's bill, and our office has not had the opportunity to prepare a CS for it until now. In addition to minor stylistic changes to make the draft conform to the drafting manual, we made one change we need to bring to your attention, and failed to make one change that perhaps should be made.

First, we changed "paragraph" to "subparagraph" in AS 46.03.100(e)(4)(D) because from the context it appeared that the provision was limited to that subparagraph. If, however, the language was intended to apply to all of AS 46.03.100(e)(4), it should be moved up before the (A) - (D) list.

Secondly, AS 46.03.110(e) has a reference to a "permit required under AS 46.03.100." Should "permit" in AS 46.03.110(e) be changed to "authorization"? We did not make this change, but you may want to consult the Attorney General's office to determine whether AS 46.03.110(e) needs to be amended.

PF:med
04-373.med

Enclosure



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

State Capitol, Room 103, Juneau Alaska 99801 * (907) 465-3878 * 1 (800) 862-3878 * Fax (907) 465-3265

Senator_Scott_Ogan@legis.state.ak.us

Http://www.akrepublicans.org/ogon

FACSIMILE TRANSMITTAL SHEET

TO: *Leg Legal*

FROM: *Linda Hagg - Sen Res.*

COMPANY:

DATE: *4-3-04*

FAX NUMBER:

TOTAL NO. OF PAGES INCLUDING COVER:

PHONE NUMBER:

RE: *HB 524 am*

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Please prepare a Senate Resources CS for HB 524 am (version 23-GH2008\A.A) amendment adopted by Sen Resources is attached.

Please call # 4907 if there are any questions. This leg. moved out of committee Friday afternoon.

23G-2
3/26/2004
(2:20 PM)

A M E N D M E N T

OFFERED IN THE SENATE
RESOURCES COMMITTEE
TO: HB 524 am

BY Elton

- 1 Page 4, line 31, through page 5, line 1:
- 2 Delete "after a financial review under regulations adopted by the department; regulations
- 3 adopted under this paragraph"
- 4 Insert ". Regulations adopted under this subsection"
- 5
- 6 Page 5, line 10, following "demonstration":
- 7 Insert "after a financial review under regulations adopted by the department"



SENATOR KIM ELTON

MEMORANDUM

DATE: March 29, 2004
TO: Linda Hay
FROM: Paula Cadiente *Paula*
SUBJ: Amendment to HB 524 am

Attached is an amendment Sen. Elton would like to make to HB 524 am. This bill was amended on the House floor on Friday.

I've checked with Rep. Heinze's staff and Matt Davidson and they have no problem with the amendment. This was suggested to us by the department and they will have someone at today's committee meeting to discuss it if needed.

-----ALASKA SENATE-----

STATE CAPITOL • JUNEAU, ALASKA 99801-1182 • (907) 465-4947 • FAX (907) 465-2108
SENATOR_KIM_ELTON@LEGIS.STATE.AK.US

During its March 25, 2004 floor session, the House made two amendments to HB 524. Part of the first amendment was intended to conform the Section 3 financial responsibility provisions with an amendment previously made to the mine reclamation financial assurance provisions of HB 486, so that both would require that financial tests be prescribed in regulations for use of corporate guarantees and other forms of financial assurance. The amendment also intended to add language to ensure that a financial review would be conducted before allowing renewal of a self-insurance demonstration. Unfortunately, the phrase meant to achieve that was inadvertently attached to the overall financial tests language instead of to the AS 46.03.100(f)(1) self-insurance renewal provision. The proposed amendment would move the phrase to the correct location.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
HOUSE BILL 524
"RELATING TO THE PROTECTION OF LAND AND WATER FROM WASTE DISPOSAL"
MARCH 3, 2004

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

What the bill does:

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

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

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

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

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

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
SENATE BILL 355/HOUSE BILL 524

"RELATING TO THE PROTECTION OF LAND AND WATER FROM WASTE DISPOSAL"

Senate Bill 355 and House Bill 524 replace specific statutory references to "permits" with the broader term "authorization" and allows DEC to select from a range of tools to authorize waste disposal activities depending on risk. Tools include:

- I. **Individual permits.** This is the conventional permit issued to a specific facility for a particular disposal activity. Individual permits are used to authorize larger, more complex, larger volume, and higher risk activities.

Examples of facilities and operations likely authorized using **individual permits**:

- Major seafood processors
- Major municipal wastewater discharges
- Refinery discharges
- Ballast water treatment discharges
- Large (Class I and 2) landfills
- Oil and gas drilling waste disposal not covered by integrated waste mgt. permits
- Asbestos monofills

- II. **General permits.** General permits are used to authorize a number of similar activities in a geographic area. Persons that wish to be covered by the general permit notify DEC of their intent to operate in compliance with the permit. General permits are used to authorize lower risk activities.

Examples of facilities and operations likely authorized using **general permits**:

- Placer mines
- Log transfer facilities
- Stormwater discharges
- Remote camp sewage/solid waste disposal
- Oil and gas exploration and development
- Small seafood processors

- III. **Permits by rule.** The "permit by rule" tool is used to authorize low-risk activities by promulgating requirements in regulation.

Examples of facilities and operations likely authorized using **permits by rule**:

- Rural landfills
- Residential domestic wastewater systems that discharge to marine waters
- Coal bed methane exploration
- Non-jurisdictional wetland fill
- Construction dewatering
- Oil/water separators
- Small animal confinement operations
- Construction debris landfills
- Wood waste monofills

IV. **Plan approvals.** Sewerage systems and treatment works **that do not discharge** can be authorized by plan approval.

Examples of facilities and operations likely authorized by **plan approval**:

- Zero-discharge sewage treatment lagoons
- Zero-discharge temporary storage of oil and gas drilling waste
- Zero-discharge temporary storage for some coal bed methane projects

V. **Integrated waste management permits.** Complex facilities and operations requiring more than one DEC waste disposal authorization can be authorized using integrated waste management permits.

Examples of facilities and operations likely authorized by **integrated waste management permits**:

- Complex mining operations
- Major oil/gas development/production projects

HB 524

Relating to Protection of Land and Water from Waste Disposal

Enhanced Short Sectional Analysis (as amended on the House floor March 25, 2004)

Section 1. Makes conforming changes to reflect AS 46.03.100's switch from "permit" as the only form of agency approval to the more flexible "prior authorization."

Section 2. Makes conforming changes to reflect retitling of AS 46.03.100 to "waste management and disposal authorizations" and repeal of AS 46.03.720(a).

Section 3. Modifies current "waste disposal permit" requirements to fit a "waste management and disposal authorization" regulatory approach. Reorganizes current AS 46.03.100, retaining much of the original language but modifying some provisions to clarify waste disposal authorization requirements and explicit provide for use of broader range of tools. *Please refer to attached table for annotated comparison of reenacted AS 46.03.100 to the repealed section.*

1. **Subsection (a)** prohibits waste disposal and related sewer or treatment system construction activities without DEC authorization.

2. **Subsection (b)** describes five waste management and disposal authorization tools to be used and revises general permit standards.

3. **Subsection (c)** centralizes sewer or treatment system plan review and approval authority and provides for plan approval to serve in lieu of a permit under some circumstances.

4. **Subsection (d)** provides for use of integrated waste management and disposal authorizations.

5. **Subsection (e)** pulls together in one subsection the existing waste disposal permit exemptions, except that a drilling waste exemption has been modified (by a House floor amendment on March 25, 2004) to remove coal bed methane drilling from the activities that are exempt from the requirement to obtain advance authorization. The result of the House floor amendment is that disposal of waste from coal bed methane drilling will require a prior authorization but that authorization can be given using any of the tools in subsection (b).

6. **Subsection (f)** clarifies and amends proof of financial responsibility requirements for facilities that handle hazardous waste, mining waste from operations that use chemical processing or have the potential to generate acid, and some municipal solid waste disposal facilities.

7. **Subsection (g)** modifies the waste reduction practices and priorities demonstration so that it applies only to non-municipal solid waste disposal applicants.

HB 524

Relating to Protection of Land and Water from Waste Disposal

Section 4. Amends permit application requirements and makes conforming changes.

Section 5. Changes newspaper publication requirements for waste management and disposal permits to allow for noticing of draft authorizations, not just of application submittals.

Section 6. Clarifies permit duration limit, provides for regulations on administrative continuance of expiring permits, and makes conforming language changes.

Section 7. Amends statutory provisions on termination and modification of waste disposal permits and makes conforming changes.

Section 8. Adds a savings clause to allow for termination and modification of permits or plan approvals for reasons other than those in Section 7.

Section 9. Makes conforming changes to reflect the reorganization of subsections in AS 46.03.100 and the terminology used for financial responsibility requirements.

Section 10. Redefines the term "solid waste."

Section 11. Adds definition for "municipal solid waste."

Section 12. Repeals AS 46.03.090 sewage and industrial waste or treatment plan submittal provision and AS 46.03.720(a) sewerage system or treatment works plan review and approval provisions in favor of addressing those plan requirements through the waste management and disposal authorization required by AS 46.03.100.

Section 13. Instructs the Revisor of Statutes to make conforming changes to one section heading to reflect repeal of a subsection.

Section 14. Provides for an immediate effective date to allow work on regulations to implement the requirements of Sections 1-12 above to begin without delay.

HB 524

Relating to Protection of Land and Water from Waste Disposal

Comparison Reenacted and Existing AS 46.03.100

| SB 355's Reenacted AS 46.03.100 | Compared to Existing AS 46.03.100 | Comments |
|---|---|---|
| Subsec. (a) sent. 1 | Substantially similar to first sentence of AS 46.03.100(a) but reoriented to state requirement to obtain a permit as a prohibition against constructing, modifying or operating without "prior authorization"; also added "sewerage system" and "treatment works" to the more general "operation that results in the disposal" of waste concept | Centralizes prohibitions against unauthorized waste disposal-related operations, including construction and modification of facilities, as a prelude to providing for use of the flexible tools set out in subsec. (b) |
| sent. 2 | Existing language from second sentence of AS 46.03.100(a), except that the words "owned or" are added after "publicly" | "Owned or" added to be consistent with the federal requirement that some discharges into "publicly owned" (not just operated) treatment works require prior authorization |
| Subsec. (b) para. (1) individual permit tool | Tool recognized in AS 46.03.100(a)'s requirement to "procure a permit" | |
| para. (2) general permit tool | Tool authorized in AS 46.03.100(h), subject to hazardous waste exclusion in final sentence of AS 46.03.100(a), but modified to change test for general permit issuance from "will cause only minimal adverse environmental effects when performed separately and cumulatively" to "will comply with applicable environmental quality standards established under this title"; also provides for determination to be based on available information and eliminates .100(a) exclusion | Refocuses on environmental quality standards test to ensure decision will be based on specific, concrete standards for determining whether general permit will be at least as protective as issuing a series of individual permits for the category of activity authorized; clarifies information requirement to ensure that general permit tool can be used based on available information, when sufficient, without new studies; removes hazardous waste exclusion to preserve future flexibility |

HB 524

Relating to Protection of Land and Water from Waste Disposal

| | | |
|---|---|---|
| para. (3) "permit by rule" tool | New tool | Provides flexibility |
| para. (4) plan approval tool | New tool but consistent with practice under AS 46.03.090 and .720(a) | Provides flexibility |
| para. (5) integrated waste management tool | New tool but consistent with practice | Provides flexibility; reduces burden on permittees and allows for coordination of requirements |
| Subsec. (c) sent. 1 discretion to require submittal of sewerage system or treatment works plan for review and approval prior | Essentially combines AS 46.03.090 plan submittal authority and AS 46.03.720(a) qualified plan approval requirement [.090 and .720(a) are repealed by sec. 12] | Converts current mix of discretion to require plan submittal and waivable prohibition against unapproved construction or operation into a flexible waste management tool |
| sent. 2 designation of plan approval as authorization for zero-discharge designed facilities | New provision | Provides flexibility to use plan approval in lieu of or in combination with other forms of authorization |
| Subsec. (d) integrated waste management permit | New provision but consistent with AS 46.03.100(a)'s "permit" requirement | Codifies practice already used for some major facilities needing multiple "permits" |
| Subsec. (e) para. (1) domestic sewage exemption | Identical to exemption in AS 46.03.100(c) | |
| para. (2) oil & gas drilling waste exemption | Identical to exemption in AS 46.03.100(d)(1) | |
| para. (3) oil & gas injection well exemption | Identical to exemption in AS 46.03.100(d)(2) | |
| para. (4) incidental discharge exemption | Identical to exemption in AS 46.03.100(f), except that a March 25, 2004 House floor amendment has modified the existing .100(f)(3) exemption | Floor amendment removes coal bed methane drilling from the .100(f)(3) group of drilling waste activities exempted from the requirement to obtain prior authorization. Subparagraph lettering deleted to accommodate renumbering |
| para. (5) bilge pumping exemption | Identical to exemption in AS 46.03.100(g)(1) | |
| para. (6) cooling water exemption | Identical to exemption in AS 46.03.100(g)(2) | |
| para. (7) firing range exemption | Identical to exemption in AS 46.03.100(i) | |

HB 524

Relating to Protection of Land and Water from Waste Disposal

| | | |
|---|--|--|
| <p>Subsec. (f) sent. 1 requirement for hazardous waste disposal facilities and certain mines to provide proof of financial responsibility</p> | <p>As to hazardous waste disposal facilities, substantially the same as the first sentence of AS 46.03.100(b); explicit authority to require proof for mines that use chemical processing or have the potential to generate acid is a new addition</p> | <p>Addition is consistent with current practice of requiring proof of financial responsibility for mine waste disposal (usually through reclamation bond) to address water quality-related risks from mining operations</p> |
| <p>sent. 2 discretion to require financial responsibility proof from municipal solid waste facilities</p> | <p>New provision</p> | <p>Added to satisfy federal solid waste program requirement</p> |
| <p>sent. 3 forms of proof acceptable</p> | <p>Substantially the same as second sentence of AS 46.03.100(b), except for (i) addition of "letter of credit" and "certificate of deposit" forms and catch-all "other proof" approved in regulations, (ii) narrowing of general terms "surety" and "guarantee" by addition of modifiers "bond" and "corporate," and (iii) rewording/reordering to satisfy legislative drafting styles</p> | <p>Forms of proof of financial responsibility clarified and expanded to comport with forms allowed under the federal act governing solid waste facilities and to coordinate with the proposal (in SB 339/HB 486) to clarify and expand the forms of mine reclamation financial assurance</p> |
| <p>sent. 4 requirement to include financial tests in regulations</p> | <p>New provision</p> | <p>Added to be consistent with amendments made in the DNR mining reclamation financial assurance bill</p> |
| <p>sent. 5 authority to accept reclamation financial assurance for mines</p> | <p>New provision</p> | <p>Consistent with current practice under solid waste regulations meant to avoid duplicative bonding</p> |

HB 524

Relating to Protection of Land and Water from Waste Disposal

| | | |
|---|--|--|
| <p>sent. 6 expiration of certain financial responsibility forms</p> | <p>Substantially the same as third sentence of AS 46.03.100(b), except for addition of references to "letter of credit" and "certificate of deposit" forms, narrowing of general term "guarantee" by addition of modifier "corporate," and rewording/reordering to satisfy legislative drafting styles</p> | |
| <p>Subsec. (g) waste reduction demonstration requirement</p> | <p>Combines AS 46.03.100(e) and the general permit exclusion from the final sentence of AS 46.03.100(h) but adds an exclusion for municipal solid waste disposal facilities</p> | <p>New exclusion removes burden of demonstrating consideration of waste reduction options using the AS 46.06.021 reduction, recycling, treatment and disposal priorities for facilities that receive municipal solid waste because such facilities have limited ability to control the type and quantity of waste they receive</p> |

**Illustration of the Repealed and Reenacted changes to AS 46.03.100
by Section 3 of HB 524aa**

The highlighted words, phrases and sentences below are identical or substantially similar to how they appear in existing AS 46.03.100, except that due to reorganization they may now appear in different subsections, with different numbering or lettering, or in combination with added or modified language.

The words, phrases and sentences that are not highlighted are new or modified language.

Following this illustration of repealed and reenacted language are:

- (1) a bullet list describing language removed from AS 46.03.100 by HB 524, as amended by the House on March 25, 2004, and
- (2) a bullet list summarizing other substantive changes made.

.....

Sec. 46.03.100. Waste management and disposal authorization. (a) A person may not construct, modify, or operate a sewerage system or treatment works, or dispose of or conduct an operation that results in the disposal of solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state without prior authorization from the department. Department authorization shall be obtained for direct disposal and for disposal, other than of domestic sewage, into publicly owned or operated sewerage systems.

(b) Prior authorization by the department is provided through one or a combination of the following:

- (1) an individual permit issued for a specific facility or disposal activity;
- (2) a general permit issued on a statewide, regional, or other geographical basis for a category of disposal activities that the commissioner, using information available when the permit is developed, determines are similar in nature and will comply with applicable environmental quality standards established under this title;
- (3) regulations adopted by the department authorizing a category of disposal without requiring a permit and establishing specific siting or operational requirements, discharge limits, or best management practices for the disposal category;
- (4) designation and approval of a plan as described under (c) of this section;

(5) an integrated waste management and disposal authorization as described in (d) of this section.

(c) The department may require the submission of plans for review and written approval before construction, extension, installation, modification or operation of a publicly or privately owned or operated sewerage system or treatment works. If the sewerage system or treatment works is designed to prevent disposal from the system or works outside of containment under normal operating conditions, the department may designate that the plan approval constitutes the authorization required under (a) of this section.

(d) The department may issue an integrated waste management and disposal authorization covering multiple related or unrelated waste management or disposal activities to be conducted at a facility, including generation, treatment, storage and disposal of solid or liquid waste. An integrated waste management and disposal authorization may include the authorizations in (b) and (c) of this section and a water quality-related certification required by 33 U.S.C. 1341 for the discharge of dredged or fill materials or of pollutants to surface waters from point sources.

(e) This section does not apply to

(1) a person discharging only domestic sewage into a sewerage system;

(2) disposals subject to regulation under AS 31.05.030(e)(2);

(3) injection projects permitted under AS 31.05.030(h);

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

(A) mineral drilling, trenching, ditching, and similar activities;

(B) landscaping;

(C) water well drilling, geophysical drilling; or

(D) drilling, ditching, trenching, and similar activities associated with facility construction and maintenance or with road or other transportation facility construction and maintenance; however, the exemption provided by this paragraph does not relieve a person from obtaining a prior authorization under this section if the drilling, ditching,

trenching, or similar activity will involve the removal of the groundwater, stormwater, or wastewater runoff that has accumulated and is present at an excavation site for facility, road, or other transportation construction or maintenance and a prior authorization is otherwise required by this section;

(5) bilge pumping, unless the bilge product pumped may be expected to yield an oily sludge, emulsion, or sheen on the surface of any water of the state;

(6) cooling water discharges from a boat or vessel into any surface water of the state; or

(7) the firing or other use of munitions in training activities conducted 19 on active ranges, including active ranges operated by the United States Department of 20 Defense or a United States military agency.

(f) A person who applies for an authorization to operate a solid waste disposal facility that accepts hazardous waste or a mining waste disposal facility for an operation that chemically processes ores or has the potential to generate acid shall furnish to the department proof of financial responsibility to manage and close the facility in a manner that the department finds will control or minimize the risk of the release of unauthorized levels of pollutants from the facility to waters. The department may require that a municipal solid waste disposal facility furnish proof of financial responsibility. Proof of financial responsibility may be demonstrated by self-insurance, insurance, surety bond, corporate guarantee, letter of credit, certificate of deposit, or other proof of financial responsibility approved by the department, under regulations adopted by the department after a financial review under regulations adopted by the department; regulations adopted under this paragraph must set financial tests for the acceptance of corporate guarantees and other forms of financial responsibility that the department determines would be required for an independent showing of financial capability. For a mining waste disposal facility, the department may accept as adequate to satisfy the requirement of this subsection financial assurance for reclamation provided to a state or federal land management agency if it otherwise meets the requirements of this subsection. The department's acceptance of proof of financial responsibility under this subsection expires

(1) one year from its issuance for self-insurance, unless the department accepts a renewal of the same self-insurance demonstration;

(2) on the effective date of a change in the insurance agreement, surety bond, corporate guarantee, letter of credit, or certificate of deposit;

(3) on the expiration or cancellation of the insurance agreement, surety bond, corporate guarantee, letter of credit, or certificate of deposit.

(g) A person who applies for a solid waste disposal authorization under this section, except for an authorization under (b)(2) of this section or an authorization to dispose of municipal solid waste, shall demonstrate to the satisfaction of the department that the applicant has reasonably considered all solid waste management options and that the authorization would be consistent with the practices and priorities established under AS 46.06.021.

.....

Synopsis of provisions removed from AS 46.03.100:

- Coal bed methane drilling exemption from waste disposal permit requirement (existing AS 46.03.100(f)(3) final clause). Removed by House floor amendment No. 2 on March 25, 2004.
 - Requirement for municipal solid waste disposal facilities to demonstrate consideration of waste management options and waste reduction priorities.
-

Summary of other substantive changes:

- Moves plan review and approval requirements into the AS 46.03.100 waste disposal and management section. (Plan submittal, review and approval authorities elsewhere are repealed by Section 12.)
- Adds three waste management and disposal tools to the AS 46.03.100 tool kit.
- Modifies standard for issuance of a general permit.
- Adds provisions on proof of financial responsibility for mining waste operations.
- Adds provision giving the department discretion to require proof of financial responsibility from municipal solid waste disposal facilities.
- Modifies standards for determining whether offered proof of financial responsibility is sufficient.
- Adds forms of financial responsibility that may be used.
- Adds requirement that financial responsibility regulations set financial tests.

HB524



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

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

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 25, 2004

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

Dear Speaker Kott:

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

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

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

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

The Honorable Pete Kott

February 25, 2004

Page 2

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

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

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

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

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

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

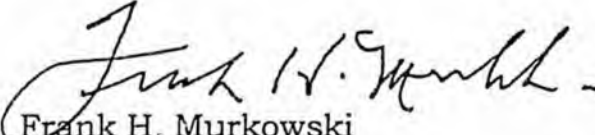
The Honorable Pete Kott
February 25, 2004
Page 3

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

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

I urge your prompt and favorable action on this measure.

Sincerely yours,



Frank H. Murkowski
Governor

Enclosure

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

410 Willoughby Ave., Ste 303
Juneau, AK 99801-1795
PHONE: (907) 465-5065
FAX: (907) 465-5070
<http://www.state.ak.us/dec/>

March 26, 2004

The Honorable Scott Ogan
Chairman, Senate Resources Committee
State Capitol, Room 103
Juneau, Alaska 99801

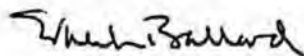
Dear Senator Ogan:

The Department of Environmental Conservation respectfully requests your consideration in scheduling HB 524, an "Act relating to the protection of land and water from waste disposal; providing for the regulation of waste management; making conforming amendments; and providing for an effective date," before the Senate Resources at your earliest convenience. The companion bill, SB 355, has already been heard once in your committee and was also heard in the Senate Community and Regional Affairs Committee. The House Bill passed the house 36 - 1.

You may recall that we spoke about the department's efforts to draft a bill that would direct the State to assume primacy for the federal wastewater discharge permitting (NPDES) program. It turns out that we are not yet ready to proceed with NPDES assumption and HB 524 does not direct this agency to pursue primacy. The bill, however, retains many of the other important provisions we discussed. Its effect is to rationalize the statutory authority for the waste disposal permit program under AS 46.03.100, by reorganizing and supplementing the permitting tools available to the agency to protect Alaska's surface water and groundwater from pollution. HB 524 has a zero fiscal note.

Dan Easton, Water Division Director for the Department of Environmental Conservation will provide you with any additional information you might require regarding this bill. Your staff can contact Mr. Easton at 465-5135, or Melanie Lesh, the department's legislative liaison, at 465-5290. As always, please contact me if I can be of assistance.

Sincerely,



Ernesta Ballard
Commissioner

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Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907)272-1481 Fax: (907)279-8114
Email: crockett@aoga.org
Marilyn Crockett, Deputy Director

March 29, 2004

Senator Scott Ogan, Chair
Senate Resources Committee
Alaska State Legislature
State Capitol, Room 103
Juneau, Alaska 99801-1182

HB524 am – Waste Management and Disposal

Dear Senator Ogan:

The Alaska Oil and Gas Association (AOGA) is a private, nonprofit trade association whose 19 member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska. We are submitting this letter for the Committee's consideration during its deliberations on HB524 am, "An Act relating to the protection of land and water from waste disposal; providing for the regulation of waste management; making conforming amendments; and providing for an effective date". AOGA supports this legislation.

This legislation is an excellent example of the Alaska Department of Environmental Conservation continuing to pursue opportunities to streamline its processes, while at the same time ensuring that its assigned responsibility of protecting Alaska's environment is carried out. It gives DEC additional regulatory tools for waste management and disposal activities in Alaska by providing it with flexibility to authorize these activities through general permits for like activities, authorization by regulation, and approvals of management plans, in addition to the traditional vehicle of issuing individual permits.

It also gives the Department the ability to administratively extend permits which are about to expire. This is an authority which has long been in place with other agencies, and in particular, the U.S. Environmental Protection Agency. The ability to administratively extend permits is important because it allows the Department to spend additional time on renewal of a particular permit if it feels it is necessary; it allows DEC the flexibility to prioritize limited permitting resources by extending those permits which are low risk and for which there are no changes needed, allowing it then to focus those limited resources on permits which may be more complicated and need additional attention; and finally, it satisfies the need of the permit holder to have a permit in place so that their operations can continue in the situations discussed above where a permit may expire through no fault of the permit holder.

March 29, 2004

Page 2

We are disappointed that the legislation was amended to eliminate the exemption for shallow gas drilling. This section provides that the listed activities are exempt if the discharge is incidental to the activity and the activity does not produce a discharge from a point source. Waste management and disposal activities associated with shallow gas drilling meet the same test of being benign as the other activities covered by this exemption.

We understand DEC will be addressing these activities through regulation. Therefore, we encourage the Committee's prompt passage of HB524 am. Thank you for your consideration.

Sincerely,


MARILYN CROCKETT

HB

531

SENATE COMMITTEE REPORT

DATE: 5/1/04

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 5-4-04

Resources Committee considered CS FOR HOUSE BILL NO. 531(FIN) am

HB 531 CONVENTIONAL & NONCONVENTIONAL GAS LEASES

"An Act relating to natural gas exploration and development and to nonconventional gas, and amending the section under which shallow natural gas leases may be issued; and providing for an effective date."

and recommends:

- be replaced with S CS HB 531 (RES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

| | |
|-------------------------------------|--------------------------|
| Senate Bill: | |
| <input 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 # _____ |

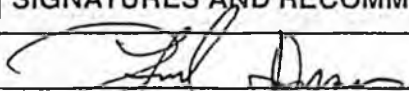
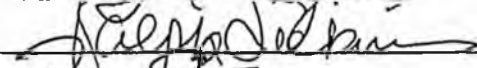
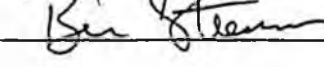
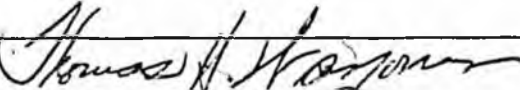
NEW FISCAL NOTE(S):

| Department | Date | Fiscal | Indet. | Zero | FN# |
|------------|------|--------|--------|------|-----|
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PREVIOUS FISCAL NOTE(S):

| Department | Date | Fiscal | Indet. | Zero | FN# |
|------------|---------|--------|--------|------|-----|
| DNR | 4/29/04 | ✓ | | | 2 |
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APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | DO PASS | DO NOT PASS | NO REC | AMEND |
|--|---------|-------------|--------|-------|
|  | ✓ | | | |
|  | ✓ | | | |
|  | ✓ | | | |
| | | | | |
| CHAIR:  | ✓ | | | |

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
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|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---------------------------|-------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 Gr./Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| 1162 AOGCC Receipts | 20.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |
| TOTAL | 20.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)
\$20.0 for hydrology training and contractual costs.

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 531(O&G)
 (H) Publish Date: 4/5/04

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

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
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| CAPITAL EXPENDITURES | | | | | | |
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|---|--|--|--|--|--|--|
| CHANGE IN REVENUES (1004 GF) + | **Indeterminate Positive Amount** | | | | | |
|---|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 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

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

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

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

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

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 531(FIN)
(H) Publish Date: 4/30/04

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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|-------------------------------|---------------------------------|--|--|--|--|--|
| CHANGE IN REVENUES () | **Indeterminate Amount** | | | | | |
|-------------------------------|---------------------------------|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--|--------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 252.6 | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type-Do not abbreviate) | | | | | | |
| TOTAL | 252.6 | 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 | 1 | | | | | |

ANALYSIS: (Attach a separate page if necessary)

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

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

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

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 531(FIN)

ANALYSIS CONTINUATION

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

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

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

Expenditures:

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

Travel for public hearings: \$4,000.

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

Expenses Associated with public notice and printing best interest findings:

Printing findings: \$1,400

Postage \$1,600

Envelopes: \$69

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

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

AMENDMENT

#1

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

1 Page 6, line 25:

2 Delete "finds"

3 Insert "determines"

4

5 Page 7, line 4, following "or the":

6 Insert "United States"

7

8 Page 7, line 5:

9 Delete "and"

10

11 Page 7, line 11, following "required":

12 Insert "; and

13

14

15

16

17

(D) as a condition of approval of a permit to drill a well for
production or production testing of coal bed methane, require the
operator to design and implement a water well testing program to provide
baseline data on water quality and quantity; the commission shall make
the results of the water well testing program available to the public"

AMENDMENT

#2

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

1 Page 19, line 10:

2 Delete "(A)"

3

4 Page 19, line 23:

5 Delete "and"

6

7 Page 19, lines 24 - 29:

8 Delete all material.

9

10 Page 23, line 7:

11 Delete "AS 38.05.180(n)(2)"

12 Insert "AS 38.05.180(n)(2)(A)"

13

14 Page 26, lines 26 through 30:

15 Delete all material.

16

17 Page 38, line 28, following "gas,":

18 Insert "(A)"

19

20 Page 38, line 30, following "lease":

21 Insert "; and

22 (B) if the nonconventional gas produced will not be in
23 direct competition with gas on which a royalty at a rate of at least 12.5

1 percent is payable, then the royalty share payable to the state on all
2 production of gas from the pool attributable to that lease shall be 6.25
3 percent based upon production delivered in pipeline quality and free of all
4 lease expenses, including separation, cleaning, dehydration, gathering, salt
5 water disposal, and preparation for transportation off the lease"

AMENDMENT

3

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

1 Page 20, line 13, following "AS 38.05.180(ff)(4)":

2 Insert "or 38.05.180(gg)"

3

4 Page 20, line 26, following "AS 38.05.180(ff)":

5 Insert ", 38.05.180(gg),"

6

7 Page 39, line 18:

8 Delete "a new subsection"

9 Insert "new subsections"

10

11 Page 40, following line 17:

12 Insert new subsections to read:

13 "(gg) Before approving operations for the development of coal bed methane
14 under AS 38.05.134, 38.05.177, or this section, the director shall ensure that the
15 approval is conditioned upon

16 (1) reasonable and appropriate setbacks governing the placement by
17 the operator of compressor stations; setbacks approved under this paragraph must be
18 determined with reference to the population density and general character of the
19 parcels surrounding the proposed compressor station site; and

20 (2) reasonable and appropriate measures to mitigate the noise of
21 compressors, engines, and other noise generating equipment operated by the operator
22 on the lease or license; measures approved under this paragraph must be determined
23 with reference to the population density and general character of the parcels
24 surrounding the proposed compressor, engine, or other noise generating equipment."

1 (3) the provisions of AS 38.05.130 apply to the extraction of coal bed
2 methane, except that the provisions of that section shall be implemented as follows:

3 (A) for an activity or operation for which the department, by
4 regulation, requires submission and approval of a plan of operations before
5 activities or operations may be undertaken, the director shall, as a condition for
6 issuing the bond, after notice and an opportunity to be heard, review the plan
7 of operations to determine if use of the surface is reasonably necessary to
8 extract coal bed methane; and

9 (B) the director may not require a bond posted under this
10 paragraph from a lessee or agent of a lessee if the lessee or agent has already
11 posted a bond covering the lessee's statewide oil and gas leasing activities.

L

amendment #

Page 41, lines 27 and 28

Delete "shales containing gas" and insert "gas
contained in shales".

LEGAL SERVICES

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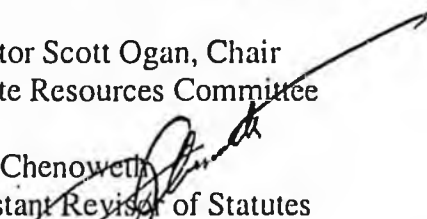
MEMORANDUM

May 4, 2004

SUBJECT: Amendment X.A.5 to CSHB 531(FIN) am
(Work Order No. 23-LS1818\X.A.5)

TO: Senator Scott Ogan, Chair
Senate Resources Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes



In preparing the amendment, I've added the modification set out that refers to page 23, at line 7.

I disagree that the placement proposed by this amendment is an improvement over the handling of the material in the bill. The change adds a royalty modification amendment into a subsection, AS 38.05.180(n), that now deals entirely with rent. If change of placement is desired, the better handling of the material would be to retain and rewrite AS 38.05.177(g) to accomplish this change. That subsection currently deals with the royalty payable under a shallow natural gas lease. Alternatively, I could add a new paragraph to AS 38.05.180(ff).

JBC:med
04-502.med

Enclosure

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

1 Page 19, line 10:

2 Delete "(A)"

3

4 Page 19, line 23:

5 Delete "and"

6

7 Page 19, lines 24 - 29:

8 Delete all material.

9

10 Page 23, line 7:

11 Delete "AS 38.05.180(n)(2)"

12 Insert "AS 38.05.180(n)(2)(A)"

13

14 Page 26, lines 26 through 30:

15 Delete all material.

16

17 Page 38, line 28, following "gas,":

18 Insert "(A)"

19

20 Page 38, line 30, following "lease":

21 Insert "; and

22

23

(B) if the nonconventional gas produced will not be in
direct competition with gas on which a royalty at a rate of at least 12.5

1 percent is payable, then the royalty share payable to the state on all
2 production of gas from the pool attributable to that lease shall be 6.25
3 percent based upon production delivered in pipeline quality and free of all
4 lease expenses, including separation, cleaning, dehydration, gathering, salt
5 water disposal, and preparation for transportation off the lease"

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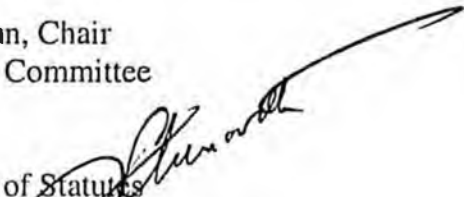
MEMORANDUM

May 4, 2004

SUBJECT: Amendments X.2 - X.4 to CSHB 531(FIN) am -- notes to accompany the draft amendments (Work Order Nos. 23-LS1818\X.2 - X.4)

TO: Senator Scott Ogan, Chair
Senate Resources Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes



The amendments are transmitted with these comments --

All three retain references to "coalbed methane" rather than substituting "nonconventional gas." I understand that the reference is intentional so that these requirements will operate to recover that resource only.

Amendment X.2: No comments.

Amendment X.3:

I opted not to use up another section in an already crowded article solely for dealing with "coalbed methane." The material proposed is added as a further paragraph to AS 38.05.180(ff), added as a new paragraph (5).

Amendment X.4:

The source of the language of the amendment was the same North Dakota statute that gave rise to AS 34.90, added in CSHB 395(FIN) am. Since the material is being incorporated into AS 38.05, I've substituted terms that already operate in that chapter -- "owner" for "surface owner" and "lessee or agent of the lessee" for "developer," for example.

I also don't understand the necessity of the material in subparagraph (A), for it largely repeats the language of AS 38.05.130. But if (A) is retained, I question reference in the text of the subparagraph to "procedure similar to the procedure used to administer AS 38.05.130" since the lead-in provision already says that AS 38.05.130 is to apply.

Senator Scott Ogan

May 4, 2004

Page 2

In subparagraph (B), the department assumes applicability of a plan of operations, but a plan of operations is a creature of regulation, so I have made the adjustment.

Subparagraph (C) is modeled on AS 38.05.177(k)(2)(B).

JBC:med

04-501.med

Enclosure

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

1 Page 6, line 25:

2 Delete "finds"

3 Insert "determines"

4

5 Page 7, line 4, following "or the":

6 Insert "United States"

7

8 Page 7, line 5:

9 Delete "and"

10

11 Page 7, line 11, following "required":

12 Insert ": and

13

14

15

16

17

(D) as a condition of approval of a permit to drill a well for
production or production testing of coal bed methane, require the
operator to design and implement a water well testing program to provide
baseline data on water quality and quantity; the commission shall make
the results of the water well testing program available to the public"

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

1 Page 40, line 17, following "and":

2 Insert ";

3 (5) before approving operations ~~on a noneconventional gas lease~~ for the
4 ~~exploration and~~ development of coal bed methane under AS 38.05.134, 38.05.177, or
5 this section, ~~or under an exploration license for the exploration and development of~~
6 ~~coal bed methane issued under AS 38.05.131 - 38.05.133~~, the director shall ensure that
7 the approval is conditioned upon

8 (A) reasonable and appropriate setbacks governing the
9 placement by the operator of compressor stations; setbacks approved under this
10 subparagraph must be determined with reference to the population density and
11 general character of the parcels surrounding the proposed compressor station
12 site; and

13 (B) reasonable and appropriate measures to mitigate the noise
14 of compressors, engines, and other noise generating equipment operated by
15 the operator on the lease or license; measures approved under this
16 subparagraph must be determined with reference to the population density and
17 general character of the parcels surrounding the proposed compressor, engine,
18 or other noise generating equipment"

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

1 Page 40, lines 6 - 12:

2 Delete all material and insert:

3 "(3) the provisions of AS 38.05.130 apply to the provisions of this
4 section for the extraction of coal bed methane, except that the provisions of that
5 section shall be implemented as follows:

6 (A) a lessee or agent of the lessee may not exercise a right of
7 entry until the lessee or agent makes provision to pay the owner full payment
8 for all damages sustained by the owner by reason of entering upon the land; if
9 the owner, for any cause, refuses or neglects to settle the damages, the lessee or
10 agent of the lessee may enter upon the land after posting a surety bond
11 determined by the department using a procedure similar to the procedure used
12 to administer AS 38.05.130, including notice and an opportunity to be heard;
13 the bond must be sufficient as to form, amount, and security to secure to the
14 owner payment for damages; the owner may institute legal proceedings in a
15 court where the land is located as may be necessary to determine the damages
16 that the owner may suffer;

17 ~~A~~ (B) for an activity or operation for which the department, by
18 regulation, requires submission and approval of a plan of operations before
19 activities or operations may be undertaken, the director shall, as a condition for
20 issuing the bond, after notice and an opportunity to be heard, review the plan
21 of operations to determine if use of the surface is reasonably necessary to
22 extract coal bed methane; and

23 ~~B~~ (C) the director may not require a bond posted under this

1

paragraph from a lessee or agent of a lessee if the lessee or agent has already

2

posted a bond covering the lessee's statewide oil and gas leasing activities;"

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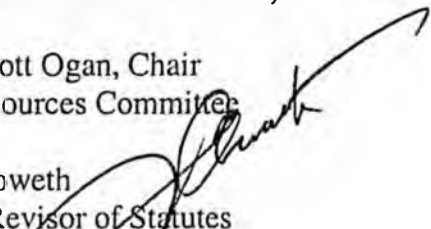
MEMORANDUM

May 2, 2004

SUBJECT: Draft SCS CSHB 531() -- notes to accompany the bill draft
(Work Order No. 23-LS1818\B)

TO: Senator Scott Ogan, Chair
Senate Resources Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes



The draft transmitted with this memo responds to your instruction to merge CSHB 395(FIN) am into CSHB 531(FIN) am. The resulting draft, identified as SCS CSHB 531(), deletes the language providing for the AOGCC public forum provisions (bill sections 3 and 4 in CSHB 395(FIN) am). The "mineral property leasing" provisions of AS 34.90, bill section 7 of CSHB 395(FIN) am have also been omitted; inclusion of that material -- it appears only in CSHB 395(FIN) am and not in CSHB 531(FIN) am -- would require a title change to CSHB 531(FIN) am in the second house, and you indicated you wanted to avoid that outcome if possible.¹

The combination of the two bills means that there is significant substantive material covering leasing of nonconventional gas under the "gas only" leasing authority proposed in the bill. Rather than show this material as additional subsections in an already too long AS 38.05.180, I am proposing to "reuse" or "recycle" AS 38.05.177. In this draft, I am proposing to repeal and reenact the section, limiting its contents to supplemental material applicable to "gas only" leasing under AS 38.05.180 for just nonconventional gas. This necessitates a movement or relocation of material, albeit without substantive change.

One issue that deserves attention as the draft is developed is the conflict between CSHB 395(FIN) am and CSHB 531(FIN) am as to which sets of law--former unamended AS 38.05.177 or AS 38.05.177 as repealed and reenacted in this Act--should apply to existing leases. This is noted in the discussion of handling of House amendments in this version that appears later in the memo.

¹ If you leave the mineral interest leasing provisions, AS 34.90, as the only provisions in CSHB 395(FIN) am, captioned SCS CSHB 395(), we would have to revise the title of *that* bill to eliminate what would be the extraneous references in the title to shallow natural gas. That would necessitate a concurrent resolution waiving appropriate rules to allow a narrowing of the bill title in order to delete material.

*

I'm sure that many House legislators are going to be looking at the draft with an eye to seeing how certain specific contents that were added to the House Resources-passed version either as House Finance-sponsored amendments or as floor amendments added in second reading have been handled in this version. What follows outlines my treatment of those materials in this bill draft --

AMENDMENT M.2 TO CSHB 395(RES), by Representative Harris, offered in House Finance: This is an "Applicability" provision. I have revised the references in this provision and it now appears as bill section 58 with appropriate permanent law cross-references substituted.

AMENDMENT M.3 TO CSHB 395(RES), by Representative Harris, offered in House Finance: This is the no "re-lease" provision covering currently issued shallow natural gas leases, and appears in AS 38.05.177(e)(1), added by bill section 27 [page 24, lines 21 - 25].

FLOOR AMENDMENT #1 TO CSHB 395(FIN), APRIL 30 HOUSE JOURNAL AT pp 3690 - 3693, by Representatives Harris and Gara: These changes are additional safeguards drawn from House Bill 370. Comparable provisions may be found in the accompanying draft at bill section 4 (adding subsection (c) to AS 29.40.040) and in bill section 27 (adding subsection (d)(1) - (3)) [page 24, lines 1 - 17].

AMENDMENT V.2 TO CSHB 531(RES), offered in House Finance: This is the "conversion to exploration licensing" option and appears as bill section 59.

AMENDMENT V.3 TO CSHB 531(RES), offered in House Finance: The amendment deleted the second part of a modified bond requirement covering compensation to the owner for loss of "use and enjoyment of the property." The omission is retained. See AS 38.05.177(c)(5), added by bill section 27 [page 22, lines 23 - 29].

FLOOR AMENDMENT #2 TO CSHB 531(FIN), APRIL 30 HOUSE JOURNAL AT PAGE 3699, by Representatives Kerttula and Croft: When it was reported to the floor, CSHB 531(FIN) contained a provision directing the Department of Natural Resources to handle existing leases and lease applications under the former (i.e. the current, unamended) provisions of AS 38.05.177. This floor amendment eliminated the part of the language directing the manner of handling of "lease *applications* under AS 38.05.177 that were received by the [department] before January 1, 2004," leaving the remainder of the language of that version of the bill in place.

This left each House-passed bill having its own "Applicability" provision. The provision in CSHB 395(FIN) am looked forward and directed that amended lease provisions should apply to former leases, while the similar provision in CSHB 531(FIN) am directed that former, unamended AS 38.05.177, with a limited number of revisions, would apply to

existing leases. I have made a choice and, for purposes of moving this draft through the process, have opted to go with the approach approved in CSHB 395(FIN) am -- as you will see in bill section 58. If that is not the correct choice, then section 58 should be redrafted to declare that former, unamended provisions of AS 38.05.177 should apply, with limited revisions:

ADMINISTRATION OF CERTAIN FORMER SHALLOW NATURAL GAS LEASES. The provisions of AS 38.05.177, as those provisions read on the day before the effective date of their repeal and reenactment by sec. 27 of this Act apply to shallow natural gas leases issued under AS 38.05.177 and in effect on December 31, 2003, except that a lease

(1) or part of a lease that was issued under former AS 38.05.177 before the effective date of this section and that is surrendered or relinquished under former AS 38.05.177(h)(1) may not again be leased unless the lease complies with the provisions of AS 38.05.177, as repealed and reenacted by sec. 27 of this Act; and

(2) issued before January 1, 2004, under former AS 38.05.177(c) may be extended at the discretion of the director; a lease may be extended under this paragraph upon application by the lessee; the director may once extend the lease for a period of not more than three years; in exercising discretion to extend a lease under this paragraph, the director may not extend the lease unless the director considers

(A) the extent of the exploration activity already conducted on the lease and on adjacent areas;

(B) the probability that further exploration activity will occur on the lease and will lead to gas development and production; and

(C) whether extension of the lease's primary term will accelerate the eventual production of gas from the lease.

On this point, you may want to ask the Department of Natural Resources for guidance.

FLOOR AMENDMENT #3 TO CSHB 531(FIN), APRIL 30 HOUSE JOURNAL AT pp 3699 - 3700, by Representatives Rokeberg and Joule: This series of changes addresses the relationship of shallow natural gas underlying coal leases. The amendments added on the House floor appear in this draft as the last sentence of bill section 16 [page 15, lines 20 - 23]; in bill sections 24 [page 20, line 19] and 26 [page 21, line 1]; in AS 38.05.177(c)(7), added by bill section 27 [page 23, lines 2 - 5]; and in bill section 37, added as the second amendment to AS 38.05.180(m) [page 39, lines 16 - 22] (rather than being placed at the end of that subsection).

JBC:med
04-494.med

Enclosure

23-LS1818\B
Chenoweth
5/2/04

SENATE CS FOR CS FOR HOUSE BILL NO. 531()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to natural gas exploration and development and to nonconventional
2 gas, and amending the section under which shallow natural gas leases may be issued;
3 and providing for an effective date."

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

5 * Section 1. AS 14.40.365(a) is amended to read:

6 (a) The University of Alaska may select and is entitled to receive the
7 conveyance of not less than 250,000 and not more than 260,000 acres of land
8 conveyed to the state under sec. 6(b) of the Alaska Statehood Act (P.L. 85-508, 72
9 Stat. 339). The Board of Regents of the University of Alaska shall periodically submit
10 a list of selections to the commissioner of natural resources and, if the list of selections
11 contains land within the boundaries of a municipality, the Board of Regents of the
12 University of Alaska shall submit the list to the municipality. The Board of Regents
13 and the commissioner of natural resources shall periodically and jointly submit to the
14 legislature, within 30 days of the beginning of a regular legislative session, a list of the

1 selections of land proposed to be conveyed by the state to the University of Alaska
2 under this section. If the list submitted to the legislature contains land within the
3 boundaries of a municipality, the Board of Regents and the commissioner of natural
4 resources shall provide a copy of the list to the municipality. Each list must contain
5 not more than 25 percent of the total acres of land to which the university is entitled
6 after subtracting previous conveyances under this section, but not less than 25,000
7 acres or the remaining entitlement under this section, whichever is less. A list of
8 selections submitted shall be considered approved for conveyance to the University of
9 Alaska unless the legislature acts to disapprove the list during the legislative session
10 during which the list was submitted. If the amount of land to be conveyed exceeds the
11 balance due the university under this section, the university shall set out the land to be
12 conveyed in priority order. Land may not be selected if, on the date of its selection by
13 the university, it

14 (1) is identified in AS 16.20, AS 41.15.300 - 41.15.330, or AS 41.21 or
15 has been reserved by law from the public domain;

16 (2) is located within a municipality unless the land is vacant,
17 unappropriated, unreserved land; if land included on the list of selections is selected
18 by the municipality with remaining selection rights under AS 29.65 within 120 days of
19 receiving the Board of Regents' list of selections under this subsection, the university
20 may not select the land unless a binding agreement between the university and the
21 municipality is negotiated to allow the selection; if the municipal selection is
22 disapproved, in whole or in part, the university may select the land, or any available
23 portion of the land, and that selection will relate back to the date of the Board of
24 Regents' list of selections under this subsection and shall have priority over all other
25 selections or claims made subsequent to that notice; in this paragraph, "vacant,
26 unappropriated, unreserved land" has the meaning given in AS 29.65.130;

27 (3) is land

28 (A) included in a five-year proposed [OIL AND GAS] leasing
29 program under AS 38.05.180(b); or

30 (B) leased under, or for which a lease application is pending
31 under, AS 38.05.180(d) or 38.05.150;

- 1 (4) is subject to
2 (A) an oil, gas, or coal lease, or coal prospecting permit;
3 (B) a mining claim, offshore prospecting permit, a prospecting
4 site, an upland mining lease, or a mining leasehold location;
5 (5) is necessary to carry out the purpose of an interagency land
6 management agreement; or
7 (6) is subject to conveyance under a land exchange or land settlement
8 agreement.

9 * Sec. 2. AS 14.40.365(e) is amended to read:

10 (e) The list of selections of land submitted to the legislature may not include a
11 land selection made by the University of Alaska under this section if the commissioner
12 of natural resources determines in writing that the proposed selection

13 (1) includes land that the commissioner, in consultation with the
14 commissioner of fish and game, determines has demonstrated value to the public as a
15 habitat area that is especially critical to the perpetuation of fish or wildlife;

16 (2) includes land for which, at the time of its selection under this
17 section, a municipality has made a selection under AS 29.65 unless the land selection
18 is, at a later date, rejected by the commissioner of natural resources or relinquished by
19 the municipality;

20 (3) includes land that the commissioner reasonably believes may be
21 selected by a newly formed municipality under AS 29.65.030, but the commissioner
22 may not withhold selection under this paragraph for more than three years after the
23 municipality's incorporation;

24 (4) includes land within the boundaries of a municipality, the
25 municipality has a remaining entitlement under AS 29.65, and the municipality selects
26 the land under AS 29.65 within 120 days after receipt by the municipality of the Board
27 of Regents' list of selections under (a) of this section;

28 (5) includes land that, at the time of its selection under this section,

29 (A) is subject to an [OIL AND GAS] exploration license
30 issued under AS 38.05.131 - 38.05.134; or

31 (B) the commissioner reasonably believes will be made part of

1 an [OIL AND GAS] exploration license issued under AS 38.05.131 -
 2 38.05.134; the commissioner may not refuse to convey title to land to the
 3 University of Alaska under this subparagraph for more than two years after its
 4 first selection by the University of Alaska; or

5 (6) includes land the commissioner of natural resources reasonably
 6 believes would not be in the best interests of the state to convey outside of state
 7 ownership.

8 * Sec. 3. AS 19.40.200(b) is amended to read:

9 (b) The prohibition on disposal of state land under (a) of this section does not
 10 apply to a disposal

11 (1) to a licensed public utility or a licensed common carrier under
 12 AS 38.05.810(e);

13 (2) for the reauthorization of leases that were in effect on January 1,
 14 1994, for nonresidential purposes within the following development nodes:

15 (A) Coldfoot:

16 Township 28 North, Range 12 West, Fairbanks Meridian

17 Sections 3 - 4

18 Sections 9 - 10

19 Sections 15 - 16

20 Sections 20 - 22

21 (B) Yukon River Crossing:

22 Township 12 North, Range 10 West, Fairbanks Meridian

23 Sections 6 - 7

24 Township 12 North, Range 11 West, Fairbanks Meridian

25 Sections 1 - 2

26 Section 12

27 Township 13 North, Range 10 West, Fairbanks Meridian

28 Sections 29 - 32

29 Township 13 North, Range 11 West, Fairbanks Meridian

30 Section 22

31 Sections 25 - 27

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Sections 34 - 36

(3) for nonresidential development within the following development

nodes:

(A) Deadhorse:

Township 10 North, Range 14 East, Umiat Meridian

Township 10 North, Range 15 East, Umiat Meridian

Section 8

Sections 17 - 20

Section 30

(B) Coldfoot:

Township 28 North, Range 12 West, Fairbanks Meridian

Sections 3 - 4

Sections 9 - 10

Sections 15 - 16

Sections 20 - 22

Township 29 North, Range 12 West, Fairbanks Meridian

Sections 23 - 27

Sections 34 - 35

(C) Franklin Bluffs:

Township 4 North, Range 14 East, Umiat Meridian

Sections 3 - 4

Sections 9 - 10

Sections 15 - 16

(D) Happy Valley:

Township 3 South, Range 14 East, Umiat Meridian

Sections 19 - 20

Sections 29 - 30

(E) Yukon River Crossing:

Township 12 North, Range 10 West, Fairbanks Meridian

Sections 6 - 7

Township 12 North, Range 11 West, Fairbanks Meridian

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Sections 1 - 2

Section 12

Township 13 North, Range 10 West, Fairbanks Meridian

Sections 29 - 32

Township 13 North, Range 11 West, Fairbanks Meridian

Section 22

Sections 25 - 27

Sections 34 - 36; or

(4) necessary for

(A) an oil and gas lease or gas only lease under AS 38.05.180;

(B) exploration, development, production, or transportation of oil and gas north of 68 degrees north latitude; or

(C) a state lease or materials sale for

(i) exploration, development, production, or transportation of oil or [AND] gas;

(ii) reconstruction or maintenance of state highways; or

(iii) construction or maintenance of airports.

* Sec. 4. AS 29.40.040 is amended by adding a new subsection to read:

(c) Land use regulations of a municipality adopted under this section establishing allowable uses and limitations on nonconventional gas exploration and development activities, including limitations that protect neighborhoods, protect the safety of residents, and limit audible noise, shall be given effect to the fullest extent allowed under the Constitution of the State of Alaska.

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

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

(1) may not

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

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using best practical technology

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

5 (2) shall

6 (A) regulate hydraulic fracturing in nonconventional gas
 7 wells to assure protection of drinking water quality;

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

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

18 * Sec. 6. AS 31.05.060(c) is amended to read:

19 (c) Notwithstanding the requirements of (a) and (b) of this section that relate
 20 to fixing a date for a hearing and causing notice of the hearing to be given, for an
 21 action under this chapter that involves the exploration for or development of
 22 nonconventional [SHALLOW NATURAL] gas and that has application to a single
 23 well or a single field, upon the request of a lessee or operator, the commission may,
 24 where operations might be unduly delayed, approve a variance from the commission's
 25 regulations that apply to the well or field without providing notice and opportunity to
 26 be heard. In the exercise of its authority to issue the variance,

27 (1) the commission may approve the variance if

28 (A) the approval provides at least an equally effective means of
 29 accomplishing the requirement set out in the commission's regulation; or

30 (B) the commission determines that the request is more
 31 appropriate to the proposed operation than compliance with the requirement of

1 the regulation; and

2 (2) the terms of the approval of the variance may include exempting
3 the lessee or operator from a requirement of a regulation if the commission determines
4 that the requirement is not necessary or not suited to the well or field taking into
5 consideration

6 (A) the nature of the operation involved;

7 (B) the characteristics of the well or field for which the
8 variance is sought; and

9 (C) the reasonably anticipated risks of the exemption from the
10 requirement to human safety and the environment.

11 * Sec. 7. AS 31.05.170 is amended by adding a new paragraph to read:

12 (16) "nonconventional gas" has the meaning given in AS 38.05.965.

13 * Sec. 8. AS 36.30.850(b)(25) is amended to read:

14 (25) acquisition of confidential seismic survey data necessary for pre-
15 sale oil and gas lease or gas only lease analyses under AS 38.05.180;

16 * Sec. 9. AS 36.30.850(b)(33) is amended to read:

17 (33) contracts between the Department of Natural Resources and
18 contractors qualified to evaluate hydrocarbon development, production, transportation,
19 and economics, to assist the commissioner of natural resources in evaluating
20 applications for [OIL AND GAS] royalty increases or decreases or other [OIL AND
21 GAS] royalty adjustments, and evaluating the related financial and technical data,
22 entered into under AS 38.05.180(j);

23 * Sec. 10. AS 38.04.065(i) is amended to read:

24 (i) An oil and gas lease sale or gas only lease sale is not subject to this
25 section. Oil and gas lease sales and gas only lease sales are subject to the planning
26 process established under AS 38.05.180.

27 * Sec. 11. AS 38.05.035(e) is amended to read:

28 (e) Upon a written finding that the interests of the state will be best served, the
29 director may, with the consent of the commissioner, approve contracts for the sale,
30 lease, or other disposal of available land, resources, property, or interests in them. In
31 approving a contract under this subsection, the director need only prepare a single

1 written finding. In addition to the conditions and limitations imposed by law, the
2 director may impose additional conditions or limitations in the contracts as the director
3 determines, with the consent of the commissioner, will best serve the interests of the
4 state. The preparation and issuance of the written finding by the director are subject to
5 the following:

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

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

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

16 (i) applicable statutes and regulations;

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

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

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

1 (i) the only uses to be authorized by the proposed
2 disposal are part of that phase;

3 (ii) the disposal is a [AN OIL AND GAS] disposal of
4 oil and gas, or of gas only, and, before the next phase of the project
5 may proceed, public notice and the opportunity to comment are
6 provided under regulations adopted by the department unless the
7 project is subject to a consistency review under AS 46.40 and public
8 notice and the opportunity to comment are provided under
9 AS 46.40.096(c);

10 (iii) the department's approval is required before the
11 next phase of the project may proceed; and

12 (iv) the department describes its reasons for a decision
13 to phase;

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

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

20 (B) issues based on the statutes and regulations referred to in
21 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
22 subsection;

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

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

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