



# LAWS OF ALASKA

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**Chapter No.**  
140

## AN ACT

Authorizing shallow natural gas leasing from sources within 3,000 feet of the surface; relating to regulation of natural gas exploration facilities for purposes of preparation of discharge prevention and contingency plans and compliance with financial responsibility requirements; addressing the relationship between shallow natural gas and other natural resources; and adding, in the exemption from obtaining a waste disposal permit for disposal of waste produced from drilling, a reference to shallow natural gas.

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

THE ACT FOLLOWS ON PAGE 1

**Approved by the Governor:** July 11, 1996  
**Actual Effective Date:** October 9, 1996

AN ACT

1 Authorizing shallow natural gas leasing from sources within 3,000 feet of the surface; relating  
2 to regulation of natural gas exploration facilities for purposes of preparation of discharge  
3 prevention and contingency plans and compliance with financial responsibility requirements;  
4 addressing the relationship between shallow natural gas and other natural resources; and  
5 adding, in the exemption from obtaining a waste disposal permit for disposal of waste  
6 produced from drilling, a reference to shallow natural gas.

7

8 \* **Section 1, LEGISLATIVE FINDINGS AND PURPOSE.** (a) The legislature finds that

9 (1) there exist throughout the state sizeable deposits of coal and small but  
10 commercially significant amounts of natural gas located close to the earth's surface that are  
11 usually, though not always, associated with and emitted from coal deposits;

12 (2) the methane derived from this coal and other sources and that is found in  
13 reservoirs at depths of less than 3,000 feet could be tapped to serve as a principal or a chief  
14 supplemental energy source of benefit to residents of areas in which they are found;

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1 (3) the methane derived from this coal and other shallow gas reservoirs could  
2 be developed without interfering with the development and transportation of the state's vast gas  
3 reserves available for interstate and foreign markets; and

4 (4) it is in the best interests of the state and its people that this natural gas should  
5 be identified and developed, especially to serve as a source of natural gas for use in rural  
6 communities and remote locations within the state, especially when this natural gas can be  
7 delivered to consumers at less cost than alternative energy sources.

8 (b) In authorizing a program of leasing shallow natural gas from state land, it is the  
9 legislature's purpose to provide both a means and an incentive by which that gas may be  
10 identified and developed at low cost for the direct benefit of residents of remote or sparsely  
11 populated areas for which connection to the in-place gas pipeline transmission and distribution  
12 system serving population centers in Southcentral Alaska is not economically feasible.

13 \* Sec. 2. AS 38.05.035(e)(6) is amended to read:

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

23 (A) a contract for a negotiated sale authorized under  
24 AS 38.05.115;

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

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

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

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

30 (F) a production license issued under AS 38.05.207;

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

1 acreage offered in a sale that was held within the previous five years if the sale  
 2 was subject to a written best interest finding, unless the commissioner  
 3 determines that new information has become available that justifies a revision  
 4 of the best interest finding; [OR]

5 (H) a lease sale under AS 38.05.180(w) of acreage offered in  
 6 a sale that was held within the previous five years if the sale was subject to a  
 7 best interest finding, unless the commissioner determines that new information  
 8 has become available that justifies a revision of the best interest finding; or

9 (I) a shallow gas lease authorized under AS 38.05.177 in an  
 10 area for which leasing is authorized under AS 38.05.177;

11 \* Sec. 3. AS 38.05.140(a) is amended to read:

12 (a) A person may not take or hold coal leases or permits during the life of coal  
 13 leases on state land exceeding an aggregate of 46,080 acres, except that a person may  
 14 apply for coal leases or permits for acreage in addition to 46,080 acres, not exceeding  
 15 a total of 5,120 additional acres of state land. The additional area applied for shall be  
 16 in multiples of 40 acres and the application shall contain a statement that the granting  
 17 of a lease for additional land is necessary for the person to carry on business  
 18 economically and is in the public interest. On the filing of the application, except as  
 19 provided by AS 38.05.177(a)(2)(C), the coal deposits in the land covered by the  
 20 application shall be temporarily set aside and withdrawn from all other forms of  
 21 disposal provided under AS 38.05.135 - 38.05.181.

22 \* Sec. 4. AS 38.05.150 is amended by adding a new subsection to read:

23 (f) Notwithstanding AS 38.05.177, a lease entered into under this section gives  
 24 the lessee the right to vent or remove methane and other gas held in association with  
 25 the coal in the land covered by the lease to ensure safe coal mining operations.

26 \* Sec. 5. AS 38.05 is amended by adding a new section to read:

27 Sec. 38.05.177. SHALLOW NATURAL GAS LEASES. (a) The provisions of  
 28 this section

29 (1) apply to gas, whether methane associated with and derived from coal  
 30 deposits or otherwise, developed from a source that is onshore and within 3,000 feet of  
 31 the surface; and

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- 1 (2) do not apply to authorize lease of  
2 (A) land  
3 (i) that is subject to an oil and gas exploration license or  
4 lease issued under AS 38.05.131 - 38.05.134; or  
5 (ii) that is leased under AS 38.05.180;  
6 (B) the land (i) that is proposed to be subject to an oil and gas  
7 exploration license or lease issued under AS 38.05.131 - 38.05.134; or (ii) that  
8 is described in and part of a proposed oil and gas leasing program prepared under  
9 AS 38.05.180(b); however, the commissioner may waive the limitations of this  
10 subparagraph;  
11 (C) the land that is held under a coal lease entered into under  
12 AS 38.05.150, unless the applicant for a shallow natural gas lease is also the  
13 lessee under AS 38.05.150 of that land; or  
14 (D) the valid existing selections of the Alaska Mental Health  
15 Trust Authority made for the purpose of reconstituting the mental health trust  
16 established under the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat.  
17 709 (1956), that become subject to management under AS 38.05.801, or of land  
18 that has been designated by law for or is subject to designation for conveyance  
19 to the Alaska Mental Health Trust Authority; however, after consultation with  
20 the Alaska Mental Health Trust Authority, the commissioner may waive the  
21 limitations of this subparagraph.  
22 (b) For the purpose of exploring for and developing shallow natural gas  
23 reservoirs, upon application, the director may lease to a person land for which the state  
24 owns the subsurface rights. A person applying for a lease under this subsection  
25 (1) shall specify the area to be leased; the area to be leased may not  
26 exceed 5,760 acres; a lessee may not hold more than 46,080 acres of land under leases  
27 entered into under this section;  
28 (2) may be required to pay a reasonable application fee of up to \$500.  
29 (c) Within 20 days of receipt of a lease application, the director shall give  
30 notice under AS 38.05.945 of receipt of the lease application and call for comments  
31 from the public. The director's call for public comments must provide opportunity for

1 public comment for a period of 60 days. If, after review of information received  
2 during the public comment period, the director determines that the discovery of a local  
3 source of natural gas would benefit the residents of an area, the director shall execute  
4 a lease for the area described in (b) of this section. The director shall execute the  
5 lease within 90 days after the close of the public comment period or, if review is  
6 required under AS 46.40, within 30 days after the final consistency determination is  
7 made under AS 46.40, whichever is later. A lease entered into under this subsection  
8 gives the lessee the exclusive right to explore for, develop, and produce, for a term of  
9 three years, natural gas on the state land described in the lease; the right to explore for,  
10 develop, and produce is limited to gas derived from natural gas within 3,000 feet of  
11 the surface.

12 (d) A lease shall be automatically extended if and for so long thereafter as gas  
13 is produced in paying quantities from the lease and the lessee continues to meet all  
14 requirements of the lease. A lease issued under this section covering land on which  
15 there is a well capable of producing gas in paying quantities does not expire because  
16 the lessee fails to produce gas unless the lessee is allowed reasonable time to place the  
17 well on a producing status. If drilling has commenced on the expiration date of the  
18 primary term of the lease and is continued with reasonable diligence, including such  
19 operations as redrilling, sidetracking, or other means necessary to reach the originally  
20 proposed bottom hole location, the lease is extended for one year and for so long  
21 thereafter as gas is produced in paying quantities. A gas lease issued under this  
22 section that is subject to termination by reason of cessation of production does not  
23 terminate if, within 90 days after production ceases or a longer period determined at  
24 the discretion of the director, reworking or drilling operations are commenced on the  
25 land under lease and are thereafter conducted with reasonable diligence during the  
26 period of nonproduction. In addition, upon application by the lessee, the director may  
27 once extend a lease issued under (c) of this section for a period of not more than three  
28 years.

29 (e) The director may, following the procedures described in (c) of this section,  
30 adjust the boundaries of a lease entered into under this section as may be necessary  
31 to ensure development of natural gas within a reasonably compact area; a lease as

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1 adjusted under this subsection remains subject to the acreage limitations set out in  
2 (b)(1) of this section.

3 (f) A shallow gas lease must provide for payment to the state of annual rent  
4 in the amount of 50 cents per acre. The rent is due and payable on the dates  
5 determined in the lease. The director shall mail the lessee one written notice, certified  
6 return receipt requested, three weeks before the due date of the rent. If the lessee fails  
7 to pay rent, the director shall terminate the lease.

8 (g) The royalty payable on natural gas produced from a lease  
9 (1) is

10 (A) 12.5 percent of the value of production removed or sold  
11 from the lease for gas exported from the state or gas that is produced in direct  
12 competition with gas on which a royalty at a rate of at least 12.5 percent is  
13 payable; and

14 (B) except as provided in (A) of this paragraph, 6.25 percent of  
15 the value of the production removed or sold from the lease; and

16 (2) shall be based upon production delivered in pipeline quality and  
17 free of all lease expenses, including but not limited to separation, cleaning,  
18 dehydration, gathering, salt water disposal, and preparation for transportation off the  
19 lease.

20 (h) A lease issued under this section is subject to the following terms and  
21 conditions and may be terminated by the director in the event of a breach of a term or  
22 condition:

23 (1) the lessee may surrender the lease or relinquish part of the lease at  
24 any time;

25 (2) the lease may not be transferred or assigned until a well capable of  
26 production of gas in paying quantities has been drilled on the lease; however, this  
27 paragraph does not prohibit the lessee from entering into a farm out agreement or similar  
28 arrangement with a third party under which the third party assists in exploration and  
29 development of production from the lease if the agreement or arrangement does not  
30 require a payment of consideration by the third party to the lessee, except that the lessee  
31 may retain an overriding royalty interest in the lease or may retain a net profit or other

1 production payment.

2 (i) The applicant for a lease is responsible for conducting a title search for the  
3 area described in the lease application.

4 (j) A lease does not give the lessee the right to produce oil. A lease does not  
5 give the lessee the right to produce gas from sources that are not within 3,000 feet of the  
6 surface. If a well drilling for natural gas under a lease authorized by this section  
7 penetrates a formation capable of producing gas below 3,000 feet of the surface or  
8 penetrates a formation capable of producing oil, the owner or operator

9 (1) shall notify the department and the Alaska Oil and Gas Conservation  
10 Commission; and

11 (2) may not conduct further operations in the drilled well until the facility  
12 complies with all applicable laws and regulations relating to oil and gas exploration and  
13 production; however, this paragraph does not prevent the owner or operator from  
14 conducting activities that may be required by the Alaska Oil and Gas Conservation  
15 Commission to plug, plug-back, or abandon a well.

16 (k) The commissioner of natural resources may adopt only the regulations that  
17 are reasonable and that are necessary to implement, interpret, or make specific the  
18 provisions of this section or to establish procedures to govern application of the  
19 provisions of this section.

20 (l) A lessee obtaining a lease under this section may exercise the rights  
21 authorized by this section and the lease. The rights granted by the lease must be  
22 exercised in a manner that does not unreasonably interfere with eventual development  
23 of other mineral deposits on the land leased. However, in a lease entered into under  
24 AS 38.05.150 for land that is already leased under this section, coal may not be mined  
25 or extracted by the coal lessee from the coal lease without prior agreement with the  
26 lessee holding the lease issued under this section.

27 (m) Except as otherwise specifically provided in this section, the provisions  
28 of AS 38.05.135 - 38.05.184 apply to leases entered into under this section.

29 (n) In this section, "lease" means a shallow gas lease authorized by this section.

30 \* Sec. 6. AS 38.05.180(f) is amended to read:

31 (f) Except as provided by AS 38.05.131 - 38.05.134 and 38.05.177, the

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1 commissioner may issue oil and gas leases on state land to the highest responsible  
2 qualified bidder determined by competitive bidding under regulations adopted by the  
3 commissioner. Bidding may be by sealed bid or according to any other bidding  
4 procedure the commissioner determines is in the best interests of the state. Whenever,  
5 under any of the leasing methods listed in this subsection, a royalty share is reserved  
6 to the state, it shall be delivered in pipeline quality and free of all lease or unit  
7 expenses, including but not limited to separation, cleaning, dehydration, gathering, salt  
8 water disposal, and preparation for transportation off the lease or unit area. Following  
9 a pre-sale analysis, the commissioner may choose at least one of the following leasing  
10 methods:

11 (1) a cash bonus bid with a fixed royalty share reserved to the state of  
12 not less than 12.5 percent in amount or value of the production removed or sold from  
13 the lease;

14 (2) a cash bonus bid with a fixed royalty share reserved to the state of  
15 not less than 12.5 percent in amount or value of the production removed or sold from  
16 the lease and a fixed share of the net profit derived from the lease of not less than 30  
17 percent reserved to the state;

18 (3) a fixed cash bonus with a royalty share reserved to the state as the  
19 bid variable but no less than 12.5 percent in amount or value of the production  
20 removed or sold from the lease;

21 (4) a fixed cash bonus with the share of the net profit derived from the  
22 lease reserved to the state as the bid variable;

23 (5) a fixed cash bonus with a fixed royalty share reserved to the state  
24 of not less than 12.5 percent in amount or value of the production removed or sold  
25 from the lease with the share of the net profit derived from the lease reserved to the  
26 state as the bid variable;

27 (6) a cash bonus bid with a fixed royalty share reserved to the state  
28 based on a sliding scale according to the volume of production or other factor but in  
29 no event less than 12.5 percent in amount or value of the production removed or sold  
30 from the lease;

31 (7) a fixed cash bonus with a royalty share reserved to the state based

1 on a sliding scale according to the volume of production or other factor as the bid  
2 variable but not less than 12.5 percent in amount or value of the production removed  
3 or sold from the lease.

4 \* Sec. 7. AS 46.03.100(f) is amended to read:

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

10 (1) mineral drilling, trenching, ditching, and similar activities;

11 (2) landscaping;

12 (3) water well drilling, geophysical drilling, or coal bed methane  
13 **drilling or other natural gas drilling to recover gas from a reservoir at a depth of**  
14 **less than 3,000 feet;** or

15 (4) drilling, ditching, trenching, and similar activities associated with  
16 facility construction and maintenance or with road or other transportation facility  
17 construction and maintenance; however, the exemption provided by this paragraph does  
18 not relieve a person from obtaining a permit under (a) of this section if

19 (A) the drilling, ditching, trenching, or similar activity will  
20 involve the removal of the groundwater, stormwater, or wastewater runoff that  
21 has accumulated and is present at an excavation site for facility, road, or other  
22 transportation construction or maintenance; and

23 (B) a permit is otherwise required by (a) of this section.

24 \* Sec. 8. AS 46.04.030(b) is amended to read:

25 (b) A person may not cause or permit the operation of a pipeline or an  
26 exploration or production facility in the state unless an oil discharge prevention and  
27 contingency plan for the pipeline or facility has been approved by the department and  
28 the person is in compliance with the plan. **This subsection does not apply to an**  
29 **exploration facility used solely to explore for shallow natural gas by means of**  
30 **drilling a well on a lease authorized under AS 38.05.177.**

31 \* Sec. 9. AS 46.04.040(b) is amended to read:

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1 (b) A person may not cause or permit the operation of a pipeline or an  
2 exploration or production facility in the state unless the person has furnished to the  
3 department, and the department has approved, proof of financial ability to respond in  
4 damages. Proof of financial responsibility required for

5 (1) a pipeline or an offshore exploration or production facility is  
6 \$50,000,000 per incident;

7 (2) an onshore production facility is

8 (A) \$20,000,000 per incident if the facility produces over  
9 10,000 barrels per day of oil;

10 (B) \$10,000,000 per incident if the facility produces over 5,000  
11 barrels per day but not more than 10,000 barrels per day of oil;

12 (C) \$5,000,000 per incident if the facility produces over 2,500  
13 barrels per day but not more than 5,000 barrels per day of oil;

14 (D) \$1,000,000 per incident if the facility produces 2,500 barrels  
15 per day or less of oil;

16 (3) an onshore exploration facility is

17 (A) \$25,000 per incident for a facility used solely to explore  
18 for shallow natural gas by means of drilling a well to explore for gas,  
19 whether methane associated with and derived from coal deposits or  
20 otherwise, from a source that is within 3,000 feet of the surface; and

21 (B) except as provided by (A) of this paragraph, \$1,000,000  
22 per incident.