

HOUSE BILL NO. 220

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GARDNER, Gara, Kerttula

Introduced: 3/31/11

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the shared use of oil and gas facilities."**

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

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

5 LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that

6 (1) the development of oil and gas resources requires the use of private
7 infrastructure on land leased from the state;

8 (2) the competitive market has failed to provide reasonable opportunity for
9 producers to develop newly discovered or proven oil and gas reserves because of the cost of
10 building new facilities or the inability to access existing facilities;

11 (3) in the Charter for Development of the Alaskan North Slope, entered into
12 by the state, BP Alaska Exploration (Alaska) Inc., and ARCO Alaska, Inc., on December 2,
13 1999,

14 (A) the state expressed the view that the commissioner of natural
15 resources possesses the power to require working interest owners to provide others

1 access to facilities on terms that are nondiscriminatory, just, and reasonable; and

2 (B) although BP Alaska Exploration (Alaska) Inc. and ARCO Alaska,
3 Inc., did not take a position on the state's view described in (A) of this paragraph, BP
4 Alaska Exploration (Alaska) Inc. and ARCO Alaska, Inc.,

5 (i) made a commitment that, after the merger between the two
6 companies, neither BP Alaska Exploration (Alaska) Inc. nor ARCO Alaska,
7 Inc., would unreasonably withhold its voting support as an owner of a facility
8 for allowing nearby fields to have access to existing unit facilities on
9 reasonable commercial terms; and

10 (ii) agreed that, if a nearby field operator reasonably and
11 diligently negotiates to unsuccessful impasse with owners of facilities that
12 include BP Alaska Exploration (Alaska) Inc. and ARCO Alaska, Inc., and after
13 90 days' advance notice to BP Alaska Exploration (Alaska) Inc. and ARCO
14 Alaska, Inc., the two companies would subject themselves to binding
15 arbitration on the question of reasonable commercial terms for that access; and

16 (4) the authority of the Department of Natural Resources to exercise oversight
17 of all oil and natural gas facilities, equipment, infrastructure, and activities on state oil and
18 natural gas units and leases under AS 38.05 and AS 44.37.020(a) was further recognized by
19 the governor in Administrative Order No. 234.

20 (b) The legislature finds that it is in the best interests of the state to

21 (1) maximize the development of oil and gas resources in the state and
22 revenue to the state from the development of those resources;

23 (2) minimize unnecessary duplication of oil and gas facilities to promote
24 safety and economic efficiency, protect the state's royalty interests, and reduce the
25 environmental footprint;

26 (3) encourage and facilitate agreements between the developers of newly
27 discovered or proven oil and gas reserves and the owners and operators of oil and gas
28 facilities that provide for access to the facilities in exchange for a just and reasonable rate of
29 compensation.

30 (c) It is the intent of the legislature that this Act provide a means for the commissioner
31 of natural resources to facilitate the sharing of facilities through negotiation, mediation, and

1 other action necessary to maximize the benefits to the people of the state from the production
2 of the state's oil and gas resources.

3 * **Sec. 2.** AS 31 is amended by adding a new chapter to read:

4 **Chapter 20. Shared Use of Oil and Gas Facilities.**

5 **Sec. 31.20.010. Promotion of shared use of facilities.** (a) The commissioner
6 shall promote and facilitate the shared use of facilities for the purpose of developing
7 oil and gas resources for the maximum benefit of the people of the state.

8 (b) The department shall adopt regulations necessary for the implementation
9 and administration of this chapter. The regulations must include a description of the
10 information required to be submitted by an applicant making an application for
11 assistance in negotiating access to facilities, the information that must be submitted by
12 a facility owner when there is an application to use the owner's capacity, the procedure
13 to be used for mediating shared facility use between the applicant and the owner or
14 operator of the facility, and the procedure to be used for arbitrating an agreement for
15 shared facility use.

16 **Sec. 31.20.020. Application for assistance.** (a) An operator or working
17 interest owner of a lease or property that has negotiated in good faith during a period
18 of not less than six months to access an existing facility for a different lease or
19 property but has failed to reach an agreement for the use of the existing facility may
20 apply to the commissioner for assistance under this chapter.

21 (b) The operator or working interest owner making an application for
22 assistance shall provide

23 (1) a description of the facility to be shared; including location,
24 estimated capacity, and capacity needed by the applicant;

25 (2) the name of the owner or operator of the facility that has the power
26 to enter into an agreement for the shared use of the facility;

27 (3) an estimate of the time period in which the facility is needed for the
28 applicant's oil or gas;

29 (4) an analysis of the benefit to the state that would result from the use
30 of the shared facility compared with the applicant's development of its own facility;

31 (5) a description of the negotiations between the applicant and the

1 owner of the facility to be shared, including the final offer made by the applicant and
2 the response to that offer by the owner or operator of the facility;

3 (6) the reasons why the applicant concludes that further negotiation
4 with the owner or operator of the facility is expected to be unsuccessful and why the
5 assistance by the commissioner is required; and

6 (7) other information required by a regulation adopted by the
7 department.

8 (c) As soon as practicable after receiving an application for assistance under
9 this section, the commissioner shall provide a copy of the application to the owner or
10 operator identified in accordance with (b)(2) of this section. The owner or operator
11 receiving the copy of the application under this subsection shall have 30 days to
12 evaluate the application and give notice to the commissioner as to whether the owner
13 or operator anticipates that continuing negotiations with the applicant may lead to an
14 agreement for the shared use of the facility. If the owner or operator anticipates that
15 continuing negotiations are not likely to lead to an agreement for the shared use of the
16 facility, the commissioner may require the parties to submit to mediation as provided
17 under (e) of this section.

18 (d) If the commissioner determines that further negotiations between the
19 applicant and the owner or operator of the facility are likely to lead to an agreement
20 for the shared use of the facility, the commissioner shall suspend the application for
21 180 days to allow further negotiation. The commissioner may also suspend the
22 application for 90 days at the request of the applicant and the owner or operator when
23 the applicant and the owner or operator agree that they are close to reaching an
24 agreement. The commissioner may expand the period of suspension after making a
25 finding that additional time is required for continued good faith negotiation between
26 the parties. After the end of the suspension period, or earlier if the parties have reached
27 an impasse, the applicant shall notify the commissioner of the outcome of the
28 negotiation.

29 (e) The commissioner shall require the parties to submit to mediation under
30 AS 31.20.030 if the parties have failed to negotiate an agreement for the shared use of
31 the facility after the end of the 180-day or 90-day period, as applicable, in (d) of this

1 section, or earlier if the commissioner finds that the owner or operator of the facility
2 fails to negotiate in good faith, if the commissioner finds that

3 (1) further negotiations between the applicant and the owner or
4 operator of the facility are not likely to lead to an agreement for the shared use of the
5 facility; and

6 (2) the shared use of the facility provides for the maximum recovery
7 and conservation of the state's oil and gas resources and is in the best interests of the
8 state.

9 **Sec. 31.20.030. Mediation.** (a) After the commissioner makes a finding under
10 AS 31.20.020(d), the commissioner shall provide written notice of the finding to the
11 owner or operator of the facility and the person making an application for assistance
12 under AS 31.20.020(a). The written notice must

13 (1) state that the parties have 180 days after the date of the notice to
14 negotiate a facility sharing agreement; and

15 (2) require the parties to submit to mediation before the commissioner
16 if an agreement is not reached.

17 (b) If the commissioner finds that the owner or operator of the facility fails to
18 participate in mediation in good faith, or if the owner or operator of the facility and the
19 person making the application for assistance fail to reach an agreement for the shared
20 use of the facility within 180 days after the commissioner provides written notice
21 under (a) of this section or after mediation ordered under AS 31.20.020(c), and the
22 commissioner determines that the shared use of the facility provides for the maximum
23 recovery and conservation of the state's oil and gas resources and is in the best
24 interests of the state, the commissioner shall issue an order that requires the parties to
25 submit to arbitration under AS 31.20.040.

26 (c) A person aggrieved by a determination of the commissioner or the
27 commissioner's delegate under (b) of this section may file an appeal with the
28 commissioner within 30 days after the date of the notice. The appeal shall be
29 conducted using the procedure in AS 44.62.230 - 44.62.630 (Administrative Procedure
30 Act).

31 (d) The commissioner may delegate the commissioner's responsibilities to

1 conduct mediation under this section to a professional mediator. If the commissioner
2 delegates authority to a mediator under this subsection, the person making an
3 application for assistance under AS 31.20.020(a) and the facility owner or operator of
4 the facility shall reimburse the department for the cost of employing the mediator in
5 equal shares and shall reimburse the department for other costs incurred by the
6 department in equal shares.

7 **Sec. 31.20.040. Arbitration.** (a) After ordering the parties to submit to
8 arbitration under AS 31.20.030(b), the commissioner shall conduct arbitration using
9 the procedure established in regulations adopted by the department.

10 (b) The commissioner

11 (1) shall

12 (A) act as arbitrator between the owner or operator of the
13 facility and the person making the application for assistance under
14 AS 31.20.020(a);

15 (B) require the owner or operator of the facility and the person
16 making the application for assistance to submit in good faith their best and
17 final offers for the shared use of the facility, including production capacity and
18 amount of reasonable compensation, within 75 days after an order to submit to
19 arbitration under AS 31.20.030(b) is issued;

20 (C) after conducting arbitration under regulations adopted
21 under (e) of this section and in the discretion of the commissioner, designate
22 the good faith offer submitted under (B) of this paragraph that shall be
23 applicable to the shared use of the facility; the commissioner may not impose
24 terms and conditions that were not in a good faith offer submitted under (B) of
25 this paragraph; in this subparagraph, the failure to submit a good faith offer
26 may be grounds for the commissioner to rule against the party that failed to
27 submit a good faith offer and in favor of a good faith offer submitted to the
28 commissioner; and

29 (2) may require the parties to sign confidentiality agreements to protect
30 information exchanged during the arbitration process.

31 (c) If, during the course of the arbitration, the commissioner determines that

1 the shared use of the facility is not economically feasible or that pursuing the shared
2 use of the facility is not in the best interests of the state, the arbitration shall be
3 terminated. The termination of the arbitration under this subsection does not preclude
4 the parties from independently pursuing an agreement for the shared use of the
5 facility.

6 (d) Each party participating in arbitration shall bear its own costs and shall
7 reimburse the department for costs incurred by the state, including the cost of an
8 arbitrator in equal shares, if the arbitrator is employed by the commissioner under (f)
9 of this section.

10 (e) The department shall adopt regulations for the conduct of arbitration under
11 this section. The regulations must provide procedures for

12 (1) discovery, submission of motions and briefs, holding hearings, and
13 receiving testimony and other evidence related to the shared use of the facility;

14 (2) determining

15 (A) the total capacity of the facility proposed to be shared and
16 the capacity of the facility that is available to be shared;

17 (B) the total cost of operating the facility;

18 (C) an allocation of the total cost of operating the facility to the
19 portion of the facility that is to be shared;

20 (D) the amount of capital investment by the owner or operator
21 of the facility and an amount, if any, to be recovered from the person
22 proposing to access the facility;

23 (E) the commercially reasonable compensation to the owner or
24 operator for the use of the shared facility;

25 (F) the time period for sharing the facility;

26 (G) the cost and availability of an alternative facility to the
27 applicant;

28 (H) the commercially reasonable compensation to the owner
29 and operator of the facility and other working interest owners using that
30 facility for lost or deferred production that results from the shared use of the
31 facility by the person making the application for assistance;

1 (I) the allocation of costs necessary for improvements to the
 2 facility between the person making the application for assistance, the owner or
 3 operator of the facility, and other working interest owners using the facility if
 4 the commissioner finds that benefits of access across rights-of-way and
 5 improvements to the facility required to accommodate the use by the person
 6 making application for assistance outweigh the alternative of lost or deferred
 7 production that would result from failing to provide access or make the
 8 improvements;

9 (J) the need for indemnification and the liability of each party
 10 under the agreement; and

11 (K) the form and type of evidence that must be produced
 12 during arbitration;

13 (3) requiring the owner or operator of the facility and the person
 14 proposing to share the facility to file with the commissioner the terms and conditions
 15 under which the facility would be shared and the compensation to be provided to the
 16 owner or operator of the facility;

17 (4) issuing an order following the completion of arbitration and the
 18 contents of that order, including the determination of the amount of capacity to be
 19 shared and the consideration to be paid to the owner or operator for the shared use of
 20 the facility;

21 (5) reconsidering an order to share or not to share the facility;

22 (6) preserving the confidentiality of the information produced by each
 23 party in the course of arbitration;

24 (7) maintaining a record of the arbitration proceeding; and

25 (8) appealing the final order following arbitration to the superior court.

26 (f) The commissioner may delegate the commissioner's responsibilities to
 27 conduct arbitration under (b) and (c) of this section to a professional arbitrator.

28 **Sec. 31.20.050. Order after arbitration.** (a) Except as provided in (b) of this
 29 section, after the completion of the arbitration under AS 31.20.040, the commissioner
 30 shall issue an order

31 (1) rejecting all best and final offers submitted under

1 AS 31.20.040(b)(1)(B) or in the course of the arbitration and giving the parties 60
 2 days to resubmit best and final offers for the shared use of the facility; an order under
 3 this paragraph must include the reasons for finding that the offers are inadequate to
 4 support a decision to order or deny the shared use of the facility;

5 (2) rejecting the shared use of the facility based on written findings and
 6 a determination that the shared use of the facility is not economically feasible or that
 7 the shared use is not in the best interests of the state; or

8 (3) requiring the shared use of the facility if the owner or operator of
 9 the facility has not agreed to share the facility and the commissioner finds that the
 10 shared use of the facility provides for the maximum recovery and conservation of the
 11 state's oil and gas resources, is economically feasible, and is in the best interests of the
 12 state.

13 (b) The commissioner may issue an order described in (a)(2) or (a)(3) of this
 14 section only after completion of an arbitration under AS 31.20.040 that considered
 15 best and final offers resubmitted in response to an order issued under (a)(1) of this
 16 section.

17 (c) An order issued under (a) of this section is a final administrative action for
 18 purposes of appeal to the superior court in the state. An order under (a)(1) of this
 19 section is final on the earlier of the date the parties notify the commissioner that best
 20 and final offers will not be resubmitted or the first day after the end of the period for
 21 resubmitting best and final offers. An order under (a)(2) or (a)(3) of this section is
 22 final on the date determined under regulations adopted under AS 31.20.040(e).

23 **Sec. 31.20.060. Confidentiality.** Information required to be submitted to the
 24 commissioner or the department under this chapter is confidential.

25 **Sec. 31.20.900. Definitions.** In this chapter,

26 (1) "commissioner" means the commissioner of natural resources;

27 (2) "department" means the Department of Natural Resources;

28 (3) "facility" means roads, drilling rigs, flow lines, a flow station, a
 29 gathering center, a pump station, a storage tank, related appurtenances, and other
 30 facilities that gather, clean, dehydrate, condition, or store crude oil, natural gas, or
 31 associated hydrocarbons and are located on a lease or property leased from the state.

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

3 **REPORTING OF FACILITY SHARING AGREEMENTS.** (a) As soon as practicable
4 after the effective date of this Act, the commissioner of natural resources shall issue a notice
5 requiring an owner or operator of a facility to report whether the facility is or has been subject
6 to an agreement for the shared use of more than one lease or property. The report and any
7 agreement for the shared use of a facility shall be filed within 60 days after the date the notice
8 is issued by the commissioner of natural resources.

9 (b) Notwithstanding (a) of this section, the owner or operator of a facility is not
10 required to file a report under (a) of this section if the only leases or properties served by the
11 facility are or have been included in a unit and the facility is owned or operated by the
12 operator for the unit.

13 (c) A report filed with the commissioner of natural resources under this section is
14 required to be kept confidential and not subject to disclosure under AS 40.25.110 - 40.25.220.

15 (d) In this section,

16 (1) "facility" has the meaning given in AS 31.20.900, enacted in sec. 2 of this
17 Act;

18 (2) "unit" has the meaning given in AS 43.55.900.