

# HB 361: DISPOSALS OF STATE RESOURCES

## BRIEFING PAPER

FOR THE HOUSE RESOURCES COMMITTEE • MARCH 5, 2012

The Division of Mining, Land and Water in the Department of Natural Resources has identified over 30 statutory changes that would help reduce applicant costs, create efficiencies by streamlining processes, reduce redundancies, and reduce opportunities for legal challenges. These changes would reduce the permitting burden on the applicant and free more time for staff to work on processing applications. Department of Law has drafted a bill that includes some of the highest priority changes that relate to the certain leasing and disposal programs and to water rights that are administered by the Department of Natural Resources.

### **The bill would accomplish the following primary objectives:**

- 1) Give the department more flexibility on when to issue negotiated land leases, as opposed to using a competitive bid process
  - The proposed changes would give DNR more flexibility to negotiate leases after solicitation of competitive interest where only one party seeks the lease.
  - Negotiating leases rather than conducting the full process for a competitive lease will improve processing times and decrease administrative expenses.
  - Monetary caps would be raised from \$5000 to \$10,000 on negotiated leases. The consumer Price Index and land values have increased statewide over the last decade and the monetary cap for negotiating leases has not been adjusted to reflect these changes in value. This would allow more leases to be negotiated rather than having to be offered competitively, which is more time consuming and delays the issuance of the lease.<sup>1</sup>
  - Offering more negotiated leases reduces the time it takes to issue leases and reduces costs to the applicant. This will help us reduce the backlog, and help ensure we are not hampering private-sector development by unnecessarily delaying lease issuances.
  - This change does not apply to oil and gas leases.
- 2) Allow department discretion in renewing certain land leases in good standing for term equal to initial term
  - Significantly reduces the administrative cost to the state for executing a new lease at the end of the primary term for these types of lease.

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1. Often leases that are offered competitively do not receive any competitive bidders, thus the time does not add any benefit to the process. This change would not prevent the state from offering competitively if it determined there was a competitive interest.

- Includes the requirement for a lease to be used for purpose of original decision in order to be considered in good standing.
- Reduces cost and processing time for lessee at point of renewal when lessee is in good standing and following all the terms of their initial authorization.
- This change does not apply to oil and gas leases.

3) Separate out the respective rules and procedures for timber sales and material sales (such as for rock and gravel)

- Timber and material sale statutes are intertwined, which has led to misinterpretations because many of the existing statutes are specific to only timber or material sales, but not both.
- The proposed changes would provide clarity and efficiency for the material sales process by:
  - Allowing the state to solicit competitive interest in material sales, and if there is none, avoid the longer competitive process. This would allow sales to be offered through a more efficient negotiated sale process
  - Eliminating multiple duplicative decision processes for material sites that will have multiple sales
  - Establishing how prices would be determined and allowing for more use of the representative regional sales price rather than requiring appraisals of the material, thus reducing cost and processing time for applicants
  - Clarifying that material may be sold at less than fair market value for certain instances that are in the public interest
  - Allowing material use that is incidental to other authorizations to be sold without a separate material sale authorization, reducing processing time and cost for applicants
  - Defining materials in such a way as to add clarity and avoid lengthy disputes
  - Allowing the department to convey materials as needed for certain flood control purposes
- The proposed statute changes would ease the permitting burden on the private sector by allowing material sales to be issued more quickly and efficiently. Also, these changes would improve access to state materials for public benefit, such as to municipalities.

4) Clarify that temporary water use permits may be renewed

- Under current statutes, a permittee must reapply for a Temporary Water Use Authorization (TWUA) permit if their project lasts longer than five years. The application must be submitted at the five-year mark and re-adjudicated by staff, even if the use is for the same amount of water from the same source for the same purposes.

- The proposed change would allow the division to provide a new TWUA at the five-year mark—if the water use is the same—without a formal decision process. This would allow applicants to avoid delays during renewal, and would save the division staff time which could be utilized for processing other authorizations.
  - TWUA are not permanent water rights. The division may change or revoke TWUA as necessary.
- 5) Allow the department to use sealed bid procedures, rather than public auction, where appropriate
- This change would clarify that DNR can use sealed bids to facilitate public auctions. The sealed-bid auction option is a more efficient and often more revenue positive option. Using this option will reduce the time it takes to sell or lease state land.
  - Without this change, DNR could be challenged on the fact that it cannot utilize sealed bid auctions for public auctions, creating inefficiencies, and making it more difficult for the private sector to obtain state land.
  - This change addresses statutes that affect land sales, land leasing, contracts, agricultural preferences, and aquatic farm leasing, but does not affect oil and gas leasing.
- 6) Modernize public notice requirements for disposals of property rights
- Enables the department to notice disposals of property rights via the Alaska Online Public Notice System and de-emphasize notice given in printed media.
  - Helps to limit the cost of public noticing, as the cost for noticing in newspapers is continuing to increase as the popularity of print media decreases.
  - Increases flexibility for the department on how we issue public notice.
  - Existing statutes require 30 day public notice for disposals of property rights.
- 7) Give the department the authority to exempt small mining operations from having to pay production royalties
- Creates a savings for small-production miners and the state—amounts being produced from these operations are diminutive and not worth the state’s cost to complete the accounting and processing of the royalty.
- 8) Revise a portion of the mining licensing tax law to allow companies to file their licensing tax by either calendar year or fiscal year
- Allows for a simplified process and administrative savings for filing, both for the state and the company.
  - Helps to coordinate licensing tax processing between the state and company, which creates efficiencies.

9) Allow the director of the Division of Mining, Land and Water to extend or renew a submerged land mining lease for up to a period of 20 years

- Significantly reduces the administrative cost to the state for executing a new lease at the end of the primary term for these types of lease.
- Benefits the lessee by providing them more certainty in renewing their lease, pending that they are in good standing with the state with adequate production and in compliance with the terms of their lease.