



**Alaska Department of
NATURAL
RESOURCES**

**Summary of Changes
HB 77: Land Disposals/Exchanges; Water Rights
Division of Mining, Land and Water
March 10, 2014**

This is a summary of changes between SCS CSHB 77 (FIN)\Version Y and 2d Senate CS for House Bill No. 77(RES)\Version H. All page numbers reference Version 28-GH1524\H.

In Section 1 beginning on page 1, line 10, language was added to limit the applicability of the Department of Natural Resources' (DNR) authority to issue general permits, specify a process for creating them, and address how they may be appealed. The "notwithstanding" clause has been replaced with a provision that removes potential conflicts with three applicable Title 38 provisions. The changes further restrict general permits to be used only for activities that the department can already authorize through a permit under AS 38.05 and AS 38.95, or regulations adopted under those statutes. This eliminates leasing, easements, material sales, other land sales, and other provisions of Title 38. The process to create a general permit is now defined as requiring public notice and opportunity to comment for 30 days on a proposed general permit. The permits may only be issued if unlikely to result in "significant or irreparable" harm to state land or resources rather than "significant and irreparable harm." Additionally, if the commissioner decides to issue a general permit after the public comment period, there must be a written decision. However, a decision to not issue a general permit does not require a written decision, and is not appealable. Lastly, Section 1 now clarifies that the original decision is appealable, but not the subsequent lawful use of the general permit once established and that public notice is not required for subsequent activity occurring under the general permit.

Stylistic edits were suggested by Legislative Legal on page 2, line 23. Drafting standards utilize the word "within," in the context of that provision which is how the statutes currently read, rather than "not later than" as proposed in Version Y. These same stylistic edits were also made in other sections of the bill (pg. 7, lines 11 and 29; pg. 11, line 17; pg. 16, line 27; pg. 17, line 31) and resulted in the removal of Sections 13 and 39 of Version Y, which made similar stylistic drafting edits. Subsequent sections were renumbered accordingly.

In Section 7, the preference right provision applicability was narrowed to state land leases issued competitively under AS 38.05.070 (page 8, lines 14-15). It is also clarified that this provision applies to valid municipal entitlements on page 8, line 13. A provision is added on page 8, line 21 to address when the preference right application must be filed (within 120 days of notice to lessee of the municipal land selection). Some words were changed to better clarify or make the provision consistent with other statutes. Page 8, line 30 clarifies how the municipal entitlement would be affected by a granted preference right. The funds to be transferred to the municipality are "subject to appropriation" to avoid creating a dedicated fund. Lastly, the definition of building was further clarified to be no less than 500 square feet in size (page 9, lines 5-6). Due to changes made last year to AS 38.05.035, this new subsection was also re-lettered.

Stylistic edits were also made in Section 22 changing the words "to be" to "that would be" (pg. 16, lines 17, 19 and 21).

Section 34 (page 20, line 16) was amended to make “persons” singular. This is for uniformity with statutory drafting standards and not a substantive change. Under rules of statutory interpretation, singular means plural, plural means singular.

In Section 36 (former Section 37), beginning on page 21, line 6, a clause was added that the commissioner does not have to prepare a notice of application for sale, appropriation, or removal of water until the application is ready for decision. It would be inappropriate to move forward with the notice until appropriate application and necessary data is available to begin the adjudication process.

Former section 42, which contained changes to AS 46.15.145(a) that removed “person” from eligible applicants to file for a water reservation, was removed and the statute is left as it reads today. Subsequent sections were renumbered accordingly.

A new Section 40 beginning on page 22, line 12, was inserted and lists out criteria used in the commissioner’s public interest determination for water reservations. Although the criteria were required to be used previously through regulation, the criteria are now directly incorporated into this statute. Subsequent sections were renumbered accordingly.

A new Section 42 beginning on page 23, line 14, adds new subsections to the water reservation statutes that explains the treatment of the applications. New subsection (g) was added that directs the commissioner to issue any approved certification for a water reservation applied for by a person to an appropriate state agency to ensure that a public entity holds the reservation for a public resource. Subsection (h) grants discretion to the commissioner to determine when and in what order to process water reservation applications, however clarifies that the order an application is processed does not affect priority of appropriation. Subsection (i) clarifies that an applicant will have the right to appeal a decision on the application. It further clarifies that only the applicant or agency holder of a reservation may appeal subsequent administration of the reservation under AS 46.15.145(f), and that the right to appeal may not be transferred or assigned. Subsection (j) clarifies how much and what type of hydrologic data must be submitted before the commissioner can issue a certificate of reservation. Subsequent sections were renumbered accordingly.

A new section 44 (page 24, line 7) adds a new provision that states that an applicant in the water chapter does not have any property right in the application. This does not contradict with the property right granted through a traditional water right for beneficial use upon certification. Subsequent sections in the bill are renumbered accordingly.

A new section 45 (page 24, line 10) adds “federally recognized tribe” into the Water Use Act definition of “person.” While the current definition is already interpreted by DNR as allowing tribes to apply as a “person,” this language clarifies that understanding. Subsequent sections were renumbered accordingly.

Section 48 (former Section 47) beginning on page 24, line 24, contains the transition language for pending applications for reservations of water. It is changed to require that all applications, including pending applications filed before the immediate effective date of Sections 35-45 of this Act, will be processed using the provisions of this Act.

Sections 49 and 52 (beginning on page 24, line 29 and page 25, line 13) amend the effective date to July 1, 2014. Section 51 (page 25, line 11) adds additional provisions of this Act that take effect immediately (including the changes to AS 46.15).