

# 2<sup>nd</sup> SCS CSHB77\VERSION H: *SECTIONAL ANALYSIS*

**Senate Resources  
Committee**

March 10, 2014

Juneau, AK

**Division of Mining, Land  
and Water**

*Alaska Department of  
Natural Resources*



# SECOND SCS CS HB77(RES)\H

## - MAIN PROVISIONS -

- **General Permits**
- **Land Lease and Sale Provisions**
- **Extensions and Renewals on Land and Aquatic Leases**
- **Preference Right for Certain Land Leases**
- **Preliminary Written Findings**
- **Land Exchanges**
- **Chikuminuk Lake Feasibility Study**
- **Appeals**
  - Best Interest Findings and Decisions
  - Land and Fisheries Development Leases
  - Water Use Act
  - General Appeals Statute
- **Water Use Act**
  - General
  - Water Reservations
  - Temporary Water Use Authorizations

# SECOND SCS CS HB77(RES) \H

## - GENERAL PERMITS -

**Section 1 adds a new subsection (c) to AS 38.05.020 to allow the Department of Natural Resources (DNR) the ability to issue a general permit**

- General permits can only be issued for an activity on state land that the department may already authorize through permit under AS 38.05 and AS 38.95
- DNR's creation of a general permit will require public notice and comment
- A decision to issue a general permit will be appealable at the time of issuance but a general permit cannot be appealed based on subsequent activities conducted in compliance with the permit
- ***Cannot*** be issued for:
  - Decisions on easements, oil and gas or mineral leasing, coal leases, material sales, or other disposals of state land
  - Activities where “significant **or** irreparable” harm to state land or resources would be caused
  - Activities occurring inside state forests, parks, and game refuges, or for coal mining (federally delegated program)



# SECOND SCS CS HB77(RES) \H

## - LAND LEASE AND SALE PROVISIONS -

- **Section 3** allows the director to execute a contract for the sale, lease, or other disposal of land or an interest in land without commissioner approval if the annual rental is not greater than \$10,000 (rather than \$5,000).
- **Section 8** amends AS 38.05.065(a) to allow land and property sales to be purchased by contract or by payment in full up-front.
- **Sections 9 and 10** remove references to AS 38.05.065(b) related to sale of land by lottery, which is repealed in Section 46 as the newly created Section 8 now includes all land sales.
- **Section 21** adds a definition to include that “public auction” includes a public oral outcry auction and a public online auction.

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## - EXTENSIONS AND RENEWALS ON LAND AND AQUATIC LEASES -

- **Section 11** adds a new subsection (f) to AS 38.05.070 that allows a one-time extension by the director of DMLW for a period of up to two years for an existing land lease if in the best interest of the state.
- **Section 11** also allows leases to remain active while DMLW adjudicates a request to renew the lease, a request to purchase the leased land under a preference right under AS 38.05.102 or where the lessee plans to substantially change the operation to the point where a new best interest finding and decision must be issued under AS 38.05.035(e).
- **Section 15** removes the reference to lease renewals as **Section 16** provides that the director may extend aquatic farm leases for up to two years while a renewal application is pending or where the lessee plans to substantially change the purpose or operation of an existing lease such that a new best interest finding and decision must be issued under AS 38.05.035(e).
- **Section 16** also allows the director of DMLW to issue a one-time renewal, for a period of up to ten years in duration, of an existing aquatic farm lease if it is determined to be in the best interest of the state.

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## - PREFERENCE RIGHT ON CERTAIN LAND LEASES -

- **Section 7** creates a new preference right that allows an individual that holds a state land lease for 10 years that was issued competitively, with a constructed building, where 25% of their income for 10 years came from that land, to purchase the land before the state conveys the land to a municipality through a municipal entitlement.
- An application must be filed with the director of DMLW within 120 days after notice to the lessee of the municipal entitlement land selection.
- If the preference right is approved, the land shall be sold at fair market value as determined by an appraisal under AS 38.05.840 and a survey, both at the cost of the applicant.
- If the preference right is approved, subject to legislative appropriation, the revenue from the purchase of the parcel will be given to the municipality and the municipal entitlement shall be reduced accordingly.





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## - PRELIMINARY WRITTEN FINDINGS -

- **Section 3** clarifies that preliminary decisions can be used for non-oil and gas disposal of interest decisions:
  - The law today does not provide the Director of DMLW with the explicit authority to issue preliminary decisions and public notice.
- **Section 17** amends AS 38.05.185(a) to allow the director of DMLW to make a preliminary written decision for a mineral order or leasehold location order regarding availability of land to mineral leasing or entry. This conforms to amendments made in Section 19.
- **Section 18** amends AS 38.05.300(a) to allow the director of DMLW to make a preliminary written decision regarding the classification or reclassification of state land. This conforms to amendments made in Section 19.
- **Section 19** amends the public notice statute AS 38.05.945(a) to include public notice for various preliminary decisions or final decisions if a preliminary decision is not issued. This section clarifies that all mineral orders and leasehold location orders are subject to public notice requirements of AS 38.05.945, not just mineral closing orders.

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## - LAND EXCHANGES -

- **Sections 22 through 27** give DMLW more flexibility in its authority to exchange land or interest in land when it is in the best interest of the State.
- **Section 22** is modeled after AS 29.65.090, which provides for exchanges between DNR and boroughs and municipalities. Subsequent sections make conforming amendments.
- **Section 2** removes the reference to the additional requirement that the director of the division of Mining, Land and Water shall consult with other departments during the negotiation of a land exchange (AS 38.50.090), as this provision is deleted in Section 46 of the bill. This provision is replaced in Section 22 with the addition of language referring to decision and review procedures established in AS 38.05.035(e).



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## - APPEALS -

- **HB 77 seeks to change the standard from “aggrieved” to “substantially and adversely affected” so that appellants are required to provide some amount of information that clearly explains how they or their interests are directly, negatively affected by the decision**
- **Best Interest Findings on Disposals**
  - **Section 4** clarifies that only a person who is substantially and adversely affected by a final written best interest finding related to the sale, lease, or disposal of land or an interest in land may appeal a director’s decision. It also adds that the applicant may also appeal the decision.
  - **Sections 5 and 6** clarify but do not change the intent of existing statutes.
  - **Section 5** clarifies that for appeals of written best interest findings related to the sale, lease, or disposal of land or an interest in land, it is considered a denial if the Commissioner does not act on a request for reconsideration within 30 days after the issuance of the final written finding.
  - **Section 6** states that a court can only deal with points presented to the commissioner in the appeal or request for reconsideration of a written best interest finding related to the sale, lease, or disposal of land or an interest in land.

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## - APPEALS -

- **Land and Fisheries Development Leases**

- **Section 12** amends AS 38.05.075(a) so that only a bidder who is substantially and adversely affected by the issuance of a determination of highest bidder in a lease sale may appeal for a review of the determination under AS 44.37.011.
- **Section 13** amends AS 38.05.075(h) so that only a person substantially and adversely affected by the department's prequalification decision may appeal or request reconsideration within 5 days of the decision.
- **Section 13** also clarifies that appeals to DNR and superior court would now be addressed under AS 44.37.011 and therefore the sentence providing appeal to superior court is deleted.
- **Section 14** clarifies that only an applicant substantially and adversely affected by the department's decision related to leases for fisheries development may appeal or request reconsideration under AS 44.37.011 within 20 days after the decision is issued.

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## - APPEALS -

- **Water Use Act**

- **Sections 38 and 39** continue the changes made to statutes related to appeals including a requirement that a person be “adversely affected” as defined in Section 39 in order to appeal a decision regarding a proposed sale or application for appropriation or removal of water.

- **General Appeals Statutes**

- **Sections 30 through 34** amend AS 44.37.011 to allow only either an applicant or a person who is substantially and adversely affected, rather than aggrieved, to appeal or request reconsideration of DNR decisions.
- **Section 34** adds new subsections to define what it means to be adversely affected and outlines additional requirements in the DNR administrative appeal process.



# SECOND SCS CS HB77(RES) \H

## - WATER USE ACT -

**DNR has three principal tools to manage the State's water resources:**

- Water Rights
- Temporary Water Use Authorizations (TWUAs, a.k.a. TWUPs)
- Water Reservations – preserve a specific quantity of water to remain in a water body, for public purposes

Allow the public to remove water from water bodies

**Water rights and TWUAs are the primary way Alaskans are authorized to use water. Both are used for all manner of water uses, such as:**

- Ice-bridge crossings
- Ice roads
- Ski resort snowmaking
- Village landfills, sewer and water projects
- Hydroelectric projects

# SECOND SCS CS HB77(RES) \H

## - WATER RESERVATIONS -

**2<sup>nd</sup> SCS CSHB 77(RES) retains a person's ability to file for a water reservation.**

**Section 42** adds new subsections to the water reservation statute AS 46.15.145.

- Clarifies that the certificate of reservation, if approved, will be **issued to an appropriate state agency**.
- Provides that the commissioner has the discretion to determine the order in which he processes applications for water reservation, although the order of processing does not affect priority of appropriation.
- An applicant has the right to appeal a decision on a reservation application, and only the applicant or the agency that holds a reservation may appeal subsequent administration of the reservation.
- An applicant must submit at least five years of nonproprietary public domain hydrologic data or hydrologic data collected by or for the applicant.

# SECOND SCS CS HB77(RES) \H

## - WATER RESERVATIONS -

**2<sup>nd</sup> SCS CSHB 77 (RES) retains a “person’s” ability to file for a water reservation.**

- **Section 40** adds factors for the commissioner to consider in determining whether a proposed reservation of water is in the public interest.
- **Section 41** removes the requirement that the commissioner review all reservations of water at least once every ten years and provides that the commissioner may review reservations of water at any time.
- **Section 48** states that any pending applications for water reservations that are filed before the immediate effective date of the water reservation statutes will be processed using the provisions of the Act.



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## - WATER USE ACT -

- **Other Changes to the Water Use Act**

- **Section 35** would allow people to carry small quantities of water from one hydrologic unit to another without violating the law.
- **Section 36** provides that the commissioner shall prepare public notice on a proposed sale of water or an application for appropriation or removal of water once the commissioner determines that the proposal or application is ready for a decision.
- **Section 37** removes a requirement that mail notice of proposed sales of water or applications for appropriation or removal of water be certified mail.
- **Section 43** amends AS 46.15.155(a) to clarify that the commissioner may issue one or more new temporary water use permits for the same project.
- **Section 44** adds a general provision to the Water Use Act that states that an applicant under that chapter does not have a property right in the application.
- **Section 45** adds to the definition of “person” for the Water Use Act to clarify that federally recognized tribes are considered “persons.”

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## - OTHER PROVISIONS -

- **Chikuminuk Lake**
  - **Section 29** adds a new section that allows performance of a feasibility study for the development and operation of a hydroelectric site at Chikuminuk Lake.
  - **Section 47** allows a feasibility study for a hydroelectric project at Chikuminuk Lake to proceed by making inapplicable any inconsistent provisions of the Wood-Tikchik State Park Management Plan and regulations.
- **Section 20** clarifies the definition of “state land” includes shoreland and tideland in AS 38.05.965(21). Previous definition included “shore” and “tide.”
- **Section 28** revises the statute to exclude the requirements of AS 38.05.305(e) for alterations of platted boundaries if all owners approve and no public easements or rights-of-way are affected.
- **Section 46** repeals certain statutes that have been modified in other sections of this bill related to land sale contracts, land exchanges, and water reservations.