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Bullock
4/4/14

CS FOR HOUSE BILL NO. 371()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE BY REQUEST

A BILL
FOR AN ACT ENTITLED

1 **"An Act providing for the Department of Transportation and Public Facilities to hold**
2 **the surface estate of certain state land; relating to the transfer of certain state land and**
3 **materials; relating to the lease, sale, or disposal by the Department of Transportation**
4 **and Public Facilities of rights-of-way, property interests, or improvements; relating to**
5 **the term for certain easements or rights-of-way that are part of a reciprocal exchange**
6 **with the federal government; relating to the conveyance of land for right-of-way**
7 **purposes from the Alaska Railroad Corporation to the Department of Transportation**
8 **and Public Facilities; and providing for an effective date."**

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

10 *** Section 1.** AS 02.15 is amended by adding a new section to article 2 to read:

11 **Sec. 02.15.065. Surface estate of state airport land.** The department has
12 primary authority to manage the surface estate of land and property interests acquired

1 or held by the state for an airport, airport access road, or airport-related operations,
2 including land conveyed by the federal government under sec. 35 of the Alaska
3 Omnibus Act of 1959 (P.L. 86-70, 73 Stat. 141). In the exercise of that authority, the
4 department may require terms and conditions that are applicable to a proposed use of
5 the surface estate that may be authorized by the Department of Natural Resources in
6 the administration of the state program for the conservation and development of
7 natural resources.

8 * **Sec. 2.** AS 02.15.070(b) is repealed and reenacted to read:

9 (b) If the department determines that land, property interests, or improvements
10 are no longer necessary, the department shall notify the commissioner of natural
11 resources of the determination and may

12 (1) transfer the land, property interests, or improvements to the
13 Department of Natural Resources, if requested by the commissioner of natural
14 resources; or

15 (2) dispose of the land, property interests, or improvements by sale,
16 lease, vacation, or exchange, according to terms, standards, and conditions established
17 by the commissioner.

18 * **Sec. 3.** AS 02.15.070 is amended by adding a new subsection to read:

19 (c) If the department determines that a part of the state public domain is
20 reasonably necessary for an airport or as a source of materials for the construction or
21 maintenance of an airport, the department shall file with the Department of Natural
22 Resources a written determination and preliminary property plan identifying the
23 portion of or interest in the public domain land that the department reasonably needs,
24 subject to the following:

25 (1) the department shall provide public notice of the intended transfer
26 by posting the written determination and preliminary property plan on the Alaska
27 Online Public Notice System (AS 44.62.175);

28 (2) within four months after the filing, the Department of Natural
29 Resources shall transfer title to the surface estate to the department, subject to valid
30 existing rights; the transfer of land or materials under this subsection is not a disposal
31 of state land, and the transfer is presumed to be in the public interest;

(3) a transfer under this subsection vests control of the surface estate in the department, including the right to extract or use sand, gravel, rock, timber, or other construction materials, and the right to tunnel, ditch, contour, excavate, or otherwise develop or use the land for transportation, utility, and related purposes;

(4) within two years after the completion of construction or of the opening of a materials site, the department shall prepare and record a record of survey of the property received by the department.

* **Sec. 4.** AS 19.05.070(b) is repealed and reenacted to read:

(b) If the department determines that land, property interests, or improvements are no longer necessary, the department shall notify the commissioner of natural resources of the determination and may

(1) transfer the land, property interests, or improvements to the Department of Natural Resources, if requested by the commissioner of natural resources; or

(2) dispose of the land, property interests, or improvements by sale, lease, vacation, or exchange, according to terms, standards, and conditions established by the commissioner.

* **Sec. 5.** AS 19.05.080 is amended by adding a new subsection to read:

(b) If the department determines that a part of the state public domain is reasonably necessary for the right-of-way of a highway or as a source of materials for the construction or maintenance of a highway, the department shall file with the Department of Natural Resources a written determination and preliminary right-of-way plan identifying the portion of or interest in the public domain land that the department reasonably needs, subject to the following:

(1) the department shall provide public notice of the intended transfer by posting the written determination and preliminary right-of-way plan on the Alaska Online Public Notice System (AS 44.62.175);

(2) within four months after the filing, the Department of Natural Resources shall transfer title to the surface estate to the department, subject to valid existing rights; the transfer of land or materials under this subsection is not a disposal of state land, and the transfer is presumed to be in the public interest;

(3) a transfer under this subsection vests control of the surface estate in the department, including the right to extract or use sand gravel, rock, timber, or other construction materials, and the right to tunnel, ditch, contour, excavate, or otherwise develop or use the land for transportation, utility, and related purposes;

(4) within two years after the completion of construction or the opening of a materials site, the department shall prepare and record a record of survey of the property received by the department.

* **Sec. 6.** AS 19.05 is amended by adding a new section to article 2 to read:

Sec. 19.05.124. Surface estate of state highway land. The department has primary authority to manage the surface estate of land and property interests acquired or held by the state for the state highway system, including land conveyed by the federal government under sec. 21 of the Alaska Omnibus Act of 1959 (P.L. 86-70, 73 Stat. 141), maintenance yards, materials sites, and other land and property interests necessary for the operation of the state highway system. In the exercise of that authority, the department may require terms and conditions that are applicable to a proposed use of the surface estate that may be authorized by the Department of Natural Resources in the administration of the state program for the conservation and development of natural resources.

* **Sec. 7.** AS 35.10.120 is amended to read:

Sec. 35.10.120. Lease or sale of [MARINE OR] harbor facilities. The department may lease for a period up to 50 years or may sell for a nominal sum to a municipality [AN INCORPORATED CITY, PUBLIC UTILITY DISTRICT,] or other incorporated area [MARINE OR] harbor facilities constructed or rebuilt with territorial funds or state funds or with territorial or state and federal matching funds. The intent of this section is to allow a municipality [CITIES, PUBLIC UTILITY DISTRICTS, AND OTHER INCORPORATED AREAS] to lease or purchase a [MARINE OR] harbor facility [FACILITIES] so that the municipality [THEY] may enforce municipal ordinances on the harbor facility [THEM] and legally assess fees to meet maintenance costs.

* **Sec. 8.** AS 35.20.010 is amended by adding a new subsection to read:

(b) If the department determines that a part of the state public domain is

reasonably necessary for a public building or public facility or as a source of materials for the construction or maintenance of a building or facility, the department shall file with the Department of Natural Resources a written determination and preliminary site plan showing the portion of or interest in the public domain land that the department reasonably needs, subject to the following:

(1) the department shall provide public notice of the intended transfer by posting the written determination and preliminary site plan on the Alaska Online Public Notice System (AS 44.62.175);

(2) within four months after the filing, the Department of Natural Resources shall transfer title to the surface estate to the department, subject to valid existing rights; the transfer of land or materials under this subsection is not a disposal of state land, and the transfer is presumed to be in the public interest;

(3) a transfer under this subsection vests control of the surface estate in the department, including the right to extract or use sand, gravel, rock, timber, or other construction materials, and the right to tunnel, ditch, contour, excavate, or otherwise develop or use the land for a public building or public facility;

(4) within two years after the completion of construction or the opening of a materials site, the department shall prepare and record a record of survey of the property received by the department.

* **Sec. 9.** AS 35.20 is amended by adding a new section to read:

Sec. 35.20.015. Surface estate of public facility land. The department has primary authority to manage the surface estate of land and property interests acquired or held by the state for public buildings and public facilities owned or controlled by the department. In the exercise of that authority, the department may require terms and conditions that are applicable to a proposed use of the surface estate that may be authorized by the Department of Natural Resources in the administration of the state program for the conservation and development of natural resources.

* **Sec. 10.** AS 35.20.070 is repealed and reenacted to read:

Sec. 35.20.070. Leasing and disposing of land and property interests. If the department determines that land, property interests, or improvements are no longer necessary, the department shall notify the commissioner of natural resources of the

determination and may

(1) transfer the land, property interests, or improvements to the Department of Natural Resources, if requested by the commissioner of natural resources; or

(2) dispose of the land, property interests, or improvements by sale, lease, vacation, or exchange, according to terms, standards, and conditions established by the commissioner.

* Sec. 11. AS 38.05.030(b) is amended to read:

(b) The provisions of this chapter do not apply to a [ANY] power, duty, or authority now or in the future granted to the Department of Transportation and Public Facilities in the name of the state, to acquire, use, lease, dispose of, or exchange real property, or any interest in real property or to a transfer of land under AS 02.15.070(c), AS 19.05.080(b), or AS 35.20.010(b). Land transferred [ASSIGNED] by the division of lands to the Department of Transportation and Public Facilities may [SHALL] be returned to [THE MANAGEMENT OF] the division of lands when the land [IT] is no longer needed for the purposes transferred [ASSIGNED].

* Sec. 12. AS 38.05.030(d) is amended to read:

(d) The [EXCEPT FOR LAND THAT IS REQUIRED TO BE RETURNED TO THE DEPARTMENT UNDER (b) OF THIS SECTION, THE] Department of Transportation and Public Facilities may dispose of real property acquired [BY IT] under AS 02.15.065, 02.15.070, AS 19.05.040(1), (2), and (9), 19.05.080 - 19.05.124, AS 35.05.040(1), (2), and (6) [AS 02.15.070, AS 19.05.040(1) AND (2), 19.05.080 - 19.05.120, AS 35.05.040(1) AND (2)], and AS 35.20.010 - 35.20.050. Land conveyed under this section to a municipality for less than fair market value shall be credited against the municipality's entitlement under AS 29.65.

* Sec. 13. AS 38.05.030 is amended by adding a new subsection to read:

(h) Notwithstanding the provisions in AS 38.05.550 - 38.05.565, extraction and use of materials from sources and sites owned by the state is not a disposal of materials when used for the construction or maintenance of an airport, highway, or public facility owned by the state. The department may not collect payments, set time

1 limitations, or otherwise restrict the Department of Transportation and Public
2 Facilities from access to a source of materials and a site owned by the state.

3 * **Sec. 14.** AS 42.40.285 is amended to read:

4 **Sec. 42.40.285. Legislative approval required.** Unless the legislature
5 approves the action by law, the corporation may not

6 (1) exchange, donate, sell, or otherwise convey its entire interest in
7 land to an entity other than the Department of Transportation and Public
8 Facilities for state right-of-way purposes;

9 (2) issue bonds;

10 (3) extend railroad lines; this paragraph does not apply to a spur,
11 industrial, team, switching, or side track;

12 (4) lease land for a period in excess of 95 years unless the corporation
13 reserves the right to terminate the lease if the land is needed for railroad purposes;

14 (5) apply for or accept a grant of federal land within a municipality;
15 before approving an action under this paragraph, the legislature must determine that
16 the federal land is required for essential railroad purposes; this paragraph does not
17 apply to the application for or acceptance of a grant of federal land associated with

18 (A) the Anchorage-Wasilla line change project on Elmendorf
19 Air Force Base and Fort Richardson;

20 (B) the Fairbanks intermodal rail yard expansion project;

21 (C) a conveyance of rail properties of the Alaska Railroad
22 under the original Alaska Railroad Transfer Act of 1982 as set out in Title VI,
23 P.L. 97-468; in this subparagraph, "rail properties of the Alaska Railroad" has
24 the meaning given in 45 U.S.C. 1202(10).

25 * **Sec. 15.** The uncoded law of the State of Alaska is amended by adding a new section to
26 read:

27 **TERM OF CERTAIN EASEMENTS TO IMPLEMENT A RECIPROCAL**
28 **EXCHANGE.** The easements identified on the map numbered 92337 and dated June 15,
29 2005, and that are part of the reciprocal exchange of easements or rights-of-way and
30 easements enacted into federal law under 119 Stat. 1177, may have a term of years for a
31 period of more than 55 years if the commissioner of natural resources determines the length of

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1 the term to be in the best interest of the state.

2 * **Sec. 16.** This Act takes effect immediately under AS 01.10.070(c).