

SENATE BILL NO. 26

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/18/13

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska Land Act, including certain authorizations, contracts,**
2 **leases, permits, or other disposals of state land, resources, property, or interests; relating**
3 **to authorization for the use of state land by general permit; relating to exchange of state**
4 **land; relating to procedures for certain administrative appeals and requests for**
5 **reconsideration to the commissioner of natural resources; relating to the Alaska Water**
6 **Use Act; and providing for an effective date."**

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

8 *** Section 1.** AS 38.05.020 is amended by adding a new subsection to read:

9 (c) Notwithstanding any other provision of law, the commissioner may
10 authorize an activity on state land by the issuance of a general permit if the
11 commissioner finds that the activity is unlikely to result in significant and irreparable
12 harm to state land or resources. This subsection does not apply to land designated
13 under AS 16.20, AS 27.21, AS 41.17, or AS 41.21.

1
2 * **Sec. 2.** AS 38.05.030(c) is amended to read:

3 (c) **The** [IN ADDITION TO THE REQUIREMENTS SPECIFIED IN
4 AS 38.50.090, THE] agencies referred to in (b) of this section and other state agencies
5 with authority to acquire or dispose of land shall give written notification of the fact of
6 acquisition, lease, disposal, or exchange to the commissioner **not later than**
7 [WITHIN] three months after the date that they make the acquisition, lease, disposal,
8 or exchange.

9 * **Sec. 3.** AS 38.05.035(e) is amended to read:

10 (e) Upon a written finding that the interests of the state will be best served, the
11 director may, with the consent of the commissioner, approve contracts for the sale,
12 lease, or other disposal of available land, resources, property, or interests in them. In
13 approving a contract under this subsection, the director need only prepare a single
14 written finding. In addition to the conditions and limitations imposed by law, the
15 director may impose additional conditions or limitations in the contracts as the director
16 determines, with the consent of the commissioner, will best serve the interests of the
17 state. The preparation and issuance of the written finding by the director are subject to
18 the following:

19 (1) with the consent of the commissioner and subject to the director's
20 discretion, for a specific proposed disposal of available land, resources, or property, or
21 of an interest in them, the director, in the written finding,

22 (A) shall establish the scope of the administrative review on
23 which the director's determination is based, and the scope of the written
24 finding supporting that determination; the scope of the administrative review
25 and finding may address only reasonably foreseeable, significant effects of the
26 uses proposed to be authorized by the disposal;

27 (B) may limit the scope of an administrative review and finding
28 for a proposed disposal to

29 (i) applicable statutes and regulations;

30 (ii) the facts pertaining to the land, resources, or
31 property, or interest in them, that the director finds are material to the

determination and that are known to the director or knowledge of which is made available to the director during the administrative review; and

(iii) issues that, based on the statutes and regulations referred to in (i) of this subparagraph, on the facts as described in (ii) of this subparagraph, and on the nature of the uses sought to be authorized by the disposal, the director finds are material to the determination of whether the proposed disposal will best serve the interests of the state; and

(C) may, if the project for which the proposed disposal is sought is a multiphased development, limit the scope of an administrative review and finding for the proposed disposal to the applicable statutes and regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that pertain solely to the disposal phase of the project when

(i) the only uses to be authorized by the proposed disposal are part of that phase;

(ii) the disposal is a disposal of oil and gas, or of gas only, and, before the next phase of the project may proceed, public notice and the opportunity to comment are provided under regulations adopted by the department;

(iii) the department's approval is required before the next phase of the project may proceed; and

(iv) the department describes its reasons for a decision to phase;

(2) the director shall discuss in the written finding prepared and issued under this subsection the reasons that each of the following was not material to the director's determination that the interests of the state will be best served:

(A) facts pertaining to the land, resources, or property, or an interest in them other than those that the director finds material under (1)(B)(ii) of this subsection; and

(B) issues based on the statutes and regulations referred to in (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this

1 subsection;

2 (3) a written finding for an oil and gas lease sale or gas only lease sale
3 under AS 38.05.180 is subject to (g) of this section;

4 (4) a contract for the sale, lease, or other disposal of available land or
5 an interest in land is not legally binding on the state until the commissioner approves
6 the contract, but if the appraised value is not greater than \$50,000 in the case of the
7 sale of land or an interest in land, or \$10,000 [\$5,000] in the case of the annual rental
8 of land or interest in land, the director may execute the contract without the approval
9 of the commissioner;

10 (5) public notice requirements relating to the sale, lease, or other
11 disposal of available land or an interest in land for oil and gas, or for gas only,
12 proposed to be scheduled in the five-year oil and gas leasing program under
13 AS 38.05.180 (b), except for a sale under (6)(F) of this subsection, are as follows:

14 (A) before a public hearing, if held, or in any case not less than
15 180 days before the sale, lease, or other disposal of available land or an interest
16 in land, the director shall make available to the public a preliminary written
17 finding that states the scope of the review established under (1)(A) of this
18 subsection and includes the applicable statutes and regulations, the material
19 facts and issues in accordance with (1)(B) of this subsection, and information
20 required by (g) of this section, upon which the determination that the sale,
21 lease, or other disposal will serve the best interests of the state will be based;
22 the director shall provide opportunity for public comment on the preliminary
23 written finding for a period of not less than 60 days;

24 (B) after the public comment period for the preliminary written
25 finding and not less than 90 days before the sale, lease, or other disposal of
26 available land or an interest in land for oil and gas or for gas only, the director
27 shall make available to the public a final written finding that states the scope of
28 the review established under (1)(A) of this subsection and includes the
29 applicable statutes and regulations, the material facts and issues in accordance
30 with (1) of this subsection, and information required by (g) of this section,
31 upon which the determination that the sale, lease, or other disposal will serve

1 the best interests of the state is based;

2 (6) before a public hearing, if held, or in any case not less than 21 days
 3 before the sale, lease, or other disposal of available land, property, resources, or
 4 interests in them other than a sale, lease, or other disposal of available land or an
 5 interest in land for oil and gas or for gas only under (5) of this subsection, the director
 6 shall make available to the public a written finding that, in accordance with (1) of this
 7 subsection, sets out the material facts and applicable statutes and regulations and any
 8 other information required by statute or regulation to be considered upon which the
 9 determination that the sale, lease, or other disposal will best serve the interests of the
 10 state was based; **the director may make available to the public a preliminary**
 11 **written finding and provide opportunity for public comment on the preliminary**
 12 **written finding for a period of at least 30 days;** [HOWEVER,] a written finding is
 13 not required before the approval of

14 (A) a contract for a negotiated sale authorized under
 15 AS 38.05.115;

16 (B) a lease of land for a shore fishery site under AS 38.05.082;

17 (C) a permit or other authorization revocable by the
 18 commissioner;

19 (D) a mineral claim located under AS 38.05.195;

20 (E) a mineral lease issued under AS 38.05.205;

21 (F) an exempt oil and gas lease sale or gas only lease sale under
 22 AS 38.05.180(d) of acreage subject to a best interest finding issued within the
 23 previous 10 years or a reoffer oil and gas lease sale or gas only lease sale under
 24 AS 38.05.180(w) of acreage subject to a best interest finding issued within the
 25 previous 10 years, unless the commissioner determines that substantial new
 26 information has become available that justifies a supplement to the most recent
 27 best interest finding for the exempt oil and gas lease sale or gas only lease sale
 28 acreage and for the reoffer oil and gas lease sale or gas only lease sale acreage;
 29 however, for each oil and gas lease sale or gas only lease sale described in this
 30 subparagraph, the director shall call for comments from the public; the
 31 director's call for public comments must provide opportunity for public

comment for a period of not less than 30 days; if the director determines that a supplement to the most recent best interest finding for the acreage is required under this subparagraph,

(i) the director shall issue the supplement to the best interest finding not later than 90 days before the sale;

(ii) not later than 45 days before the sale, the director shall issue a notice describing the interests to be offered, the location and time of the sale, and the terms and conditions of the sale; and

(iii) the supplement has the status of a final written best interest finding for purposes of (i) and (l) of this section;

(G) a surface use lease under AS 38.05.255;

(H) a permit, right-of-way, or easement under AS 38.05.850;

(7) the director shall include in

(A) a preliminary written finding, if **issued** [REQUIRED], a summary of agency and public comments, if any, obtained as a result of contacts with other agencies concerning a proposed disposal or as a result of informal efforts undertaken by the department to solicit public response to a proposed disposal, and the department's preliminary responses to those comments; and

(B) the final written finding a summary of agency and public comments received and the department's responses to those comments.

* **Sec. 4.** AS 38.05.035(i) is amended to read:

(i) A person who is eligible to file an administrative appeal or a request for reconsideration, as appropriate, under this subsection and who is **substantially and adversely affected** [AGGRIEVED] by the final written finding of the director entered under (e)(5) or (6) of this section may, **not later than** [WITHIN] 20 days after the issuance of the final written finding, file an administrative appeal or request reconsideration of the decision by the commissioner. A person is eligible to file an administrative appeal or a request for reconsideration if the person

(1) meaningfully participated in the process set out in this chapter for receipt of public comment by

(A) submitting written comment during the period for receipt of public comment; or

(B) presenting oral testimony at a public hearing, if a public hearing was held; or [AND]

(2) is the applicant [AFFECTED BY THE FINAL WRITTEN FINDING].

* **Sec. 5.** AS 38.05.035(j) is amended to read:

(j) An administrative appeal or a request for reconsideration submitted under (i) of this section must specify the written finding complained of and the specific basis upon which it is challenged. [THE COMMISSIONER SHALL GRANT OR DENY THE ADMINISTRATIVE APPEAL OR RECONSIDERATION REQUEST WITHIN 30 DAYS AFTER ISSUANCE OF THE FINAL WRITTEN FINDING.] Failure of the commissioner to act on a [THE] request for reconsideration not later than 30 days after issuance of the final written finding [WITHIN THIS PERIOD] is a denial of the request for reconsideration and a final administrative decision for purposes of appeal to the superior court.

* **Sec. 6.** AS 38.05.035(l) is amended to read:

(l) A person may appeal a final written finding issued under (e)(5) or (6) of this section to the superior court, but only if the person was eligible to request, and did request, an administrative appeal or reconsideration of that finding under (i) of this section. The person shall initiate the appeal to the court not later than [WITHIN] 30 days from the date that the decision on administrative appeal or reconsideration is mailed or otherwise distributed, or the date the request for reconsideration is considered denied by the commissioner's failure to act on the request, whichever is earlier. The points on appeal to the court are limited to those presented to the commissioner in the person's administrative appeal or request for reconsideration.

* **Sec. 7.** AS 38.05.065(a) is amended to read:

(a) The contract of sale for land or property sold [AT PUBLIC AUCTION OR BY SEALED BID] under this chapter or former AS 38.05.078 [AS 38.05.055] shall require the remainder of the purchase price to be paid in monthly, quarterly, or annual installments over a period of not more than 20 years, with interest at the rate

provided in (i) of this section. Installment payments plus interest shall be set on the level-payment basis.

* **Sec. 8.** AS 38.05.065(c) is amended to read:

(c) The director shall, for contracts under (a) [, (b),] or (h) of this section, set out in the contract for each sale the period for the payment of installments and the total purchase price plus interest. The director, with the consent of the commissioner, may also include in contracts under this section conditions, limitations, and terms considered necessary and proper to protect the interest of the state. Violations of any provision of this chapter or the terms of the contract of sale subject the purchaser to appropriate administrative and legal action, including but not limited to specific performance, foreclosure, ejectment, or other legal remedies in accordance with applicable state law.

* **Sec. 9.** AS 38.05.065(h) is amended to read:

(h) The commissioner, after consulting with the Board of Agriculture and Conservation (AS 03.09.010),

(1) shall provide that, notwithstanding (a) [AND (b)] of this section, in a contract for the sale of land classified under AS 38.05.020(b)(6) for agricultural uses, the interest rate to be charged on installment payments may not exceed 9.5 percent; and

(2) may declare a moratorium of up to five years on payments on land sold under this section for land classified under AS 38.05.020(b)(6) for agricultural uses if

(A) the commissioner determines that the moratorium is in the best interest of the state;

(B) the commissioner certifies and the contract purchaser agrees to perform farm development, crop production, and harvesting, not including land clearing or related activity, requiring the expenditure of amounts equivalent to the payments that would otherwise be made during the moratorium;

(C) the sale of the agricultural land takes place after July 1, 1979; and

(D) the contract purchaser is in compliance with the development plan specified in the purchase contract at the time the purchaser applies for a moratorium under this paragraph and remains in compliance with the development plan during the moratorium; for the payments subject to the moratorium declared under this paragraph, interest payments are subject to the moratorium but interest continues to accrue during the moratorium.

* **Sec. 10.** AS 38.05.070 is amended by adding new subsections to read:

(f) A lease may be extended once for a period up to two years, if the director determines it to be in the best interests of the state and the extension is necessary to prolong the lease while the department considers

(1) a lessee preference application under AS 38.05.102;

(2) an application to renew the lease under (e) of this section; or

(3) an application to issue a new lease on the same site that, because it substantially changes the purpose or operation of an existing lease, requires a new finding and decision under AS 38.05.035(e) before the purpose or operation of a lease is changed.

(g) An extension issued under (f) of this section is not subject to AS 38.05.035(e). The director shall provide public notice of the decision to extend the lease.

* **Sec. 11.** AS 38.05.075(a) is amended to read:

(a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.082, 38.05.083, 38.05.087, 38.05.102, 38.05.565, 38.05.600, 38.05.810, and this section, when competitive interest has been demonstrated or the commissioner determines that it is in the state's best interests, leasing shall be made at public auction or by sealed bid, at the discretion of the director, to the highest qualified bidder as determined by the commissioner. A bidder may be represented by an attorney or agent at a public auction. In the public notice of a lease to be offered at public auction or by sealed bid, the commissioner shall specify a minimum acceptable bid and the lease compensation method. The lease compensation method shall be designed to maximize the return on the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).

A substantially and adversely affected [AN AGGRIEVED] bidder may appeal **or**

1 **request reconsideration under AS 44.37.011; however, the appeal or request must**
 2 **be made not later than** [TO THE COMMISSIONER WITHIN] five days **after**
 3 **issuance of the determination of the highest qualified bidder** for a review of the
 4 determination. The leasing shall be conducted by the commissioner, and the successful
 5 bidder shall deposit at the public auction or with the sealed bid the first year's rental or
 6 other lease compensation as specified by the commissioner, or that portion of it that
 7 the commissioner requires in accordance with the bid. The commissioner shall require,
 8 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or
 9 appraisal costs reasonably incurred by another qualified bidder acting in accordance
 10 with the regulations of the commissioner or incurred by the department under
 11 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal
 12 costs is determined by the commissioner to be the highest qualified bidder under this
 13 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those
 14 costs or to the department if the department incurred the costs. All costs for survey and
 15 appraisal shall be approved in advance in writing by the commissioner. The
 16 commissioner shall immediately issue a receipt containing a description of the land or
 17 interest leased, the price bid, and the terms of the lease to the successful qualified
 18 bidder. If the receipt is not accepted in writing by the bidder under this subsection, the
 19 commissioner may offer the land for lease again under this subsection. A lease, on a
 20 form approved by the attorney general, shall be signed by the successful bidder and by
 21 the commissioner.

22 * **Sec. 12.** AS 38.05.075(e) is amended to read:

23 (e) The commissioner may require prequalification of bidders for a lease to be
 24 issued under AS 38.05.070. If the commissioner determines to require
 25 prequalification, the procedures established by this section and the notice including
 26 prequalification requirements required to be given under AS 38.05.945 shall be
 27 completed **not later than** [WITHIN] 75 days **after** [OF] the receipt of the first lease
 28 application unless the commissioner grants additional time for the completion of the
 29 procedures. **During** [WITHIN] the 75-day period or the additional time granted by the
 30 commissioner, the commissioner shall complete

31 (1) classification under AS 38.05.300;

(2) the procedures required by AS 38.05.035(e);

(3) any other action required by law for the disposal of the lease to a bidder except survey, appraisal, and the auction or sealed bid.

* **Sec. 13.** AS 38.05.075(h) is amended to read:

(h) A person substantially and adversely affected [AGGRIEVED] by a decision of the commissioner under this section may appeal or request reconsideration under AS 44.37.011; however, the appeal or request for reconsideration must be made not later than [TO THE COMMISSIONER WITHIN] five days after [OF] the prequalification decision. [THE DECISION OF THE COMMISSIONER UNDER THIS SUBSECTION MAY BE APPEALED TO THE SUPERIOR COURT.]

* **Sec. 14.** AS 38.05.082(b) is amended to read:

(b) The director may classify land as subject to leases for fisheries development and publicly invite applications for lease of the selected areas. Each application shall be accompanied by an affidavit to the effect that the applicant presently intends to personally utilize the leased area for fishing purposes the following season. If two or more applications are received for the same shore area, the director shall award the lease to the most qualified applicant. In determining the qualifications of applicants, the director shall consider the length of time during which the applicant has been engaged in set netting, the proximity of the past fishing sites of the applicant to the land to be leased, the present ability of the applicant to utilize the location to its maximum potential, and other factors relevant to the equitable assignment of the disputed area. If the director cannot determine a preference between conflicting applicants for the same lease site on the basis of qualifications, the director shall select between the applicants by lot. A substantially and adversely affected [AN AGGRIEVED] applicant may appeal to the commissioner under AS 44.37.011 not later than 20 [WITHIN 30] days after issuance of the determination for a review of the director's determination.

* **Sec. 15.** AS 38.05.083(a) is amended to read:

(a) The commissioner may offer to the public for lease at public auction or by sealed bid under AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic

1 farming or related hatchery operations. Before a final decision to issue [OR RENEW]
 2 a lease under this section, the commissioner shall give notice and allow opportunity
 3 for comment in accordance with AS 38.05.945 and may hold a hearing to take
 4 testimony. Before a final decision to issue [OR RENEW] a lease under this section,
 5 the commissioner shall consider all relevant comment or testimony submitted under
 6 this section, AS 38.05.945, or 38.05.946.

7 *** Sec. 16.** AS 38.05.083 is amended by adding new subsections to read:

8 (g) The director may renew a lease issued under this section before its
 9 expiration if the lease is in good standing and the director determines the lease renewal
 10 to be in the best interests of the state. A renewal issued under this subsection is not
 11 subject to AS 38.05.035(e). A lease may be renewed only once for a term not longer
 12 than 10 years. The director shall provide notice of the decision to renew the lease.

13 (h) The director may extend the term of a lease issued under this section if the
 14 lease is in good standing and the lease extension is determined to be in the best
 15 interests of the state. A lease may be only extended once before its expiration for an
 16 additional period of not more than two years. A lease extension may only be issued if
 17 the director determines the extension is necessary while the department considers

18 (1) an application to renew the lease under (g) of this section; or

19 (2) an application to issue a new lease on the same site that, because it
 20 substantially changes the purpose or operation of an existing lease, requires a new
 21 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease
 22 is changed.

23 (i) An extension issued under (h) of this section is not subject to
 24 AS 38.05.035(e). The director shall provide public notice of the decision to extend the
 25 lease.

26 *** Sec. 17.** AS 38.05.185(a) is amended to read:

27 (a) The acquisition and continuance of rights in and to deposits on state land
 28 of minerals, which on January 3, 1959, were subject to location under the mining laws
 29 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in
 30 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to
 31 mineral deposits owned by any other person or government. The director, with the

approval of the commissioner, shall determine that land from which mineral deposits may be mined only under lease, and, subject to the limitations of AS 38.05.300, that land that shall be closed to location under AS 38.05.185 - 38.05.275. State land may not be closed to location under AS 38.05.185 - 38.05.275 except as provided in AS 38.05.300 and unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection. The determinations required under this subsection shall be made in compliance with land classification orders and land use plans developed under AS 38.05.300. **A preliminary written decision under this subsection may be made available to the public and provide opportunity for public comment on the preliminary written decision for a period of at least 30 days.**

* **Sec. 18.** AS 38.05.300(a) is amended to read:

(a) The commissioner shall classify for surface use land in areas considered necessary and proper. This section does not prevent reclassification of land where the public interest warrants reclassification, nor does it preclude multiple purpose use of land whenever different uses are compatible. **The commissioner may make available to the public a preliminary written classification decision and provide opportunity for public comment on the preliminary written decision for a period of at least 30 days.** If the area involved contains more than 640 contiguous acres, state land, water, or land and water area may not, except by act of the state legislature, (1) be closed to multiple purpose use, or (2) be otherwise classified by the commissioner so that mining, mineral entry or location, mineral prospecting, or mineral leasing is precluded or is designated an incompatible use, except when the classification is necessary for a land disposal or exchange or is for the development of utility or transportation corridors or projects or similar projects or infrastructure, or except as allowed under (c) of this section.

* **Sec. 19.** AS 38.05.945(a) is amended to read:

(a) This section establishes the requirements for notice given by the department for the following actions:

(1) a preliminary decision, or final decision if a preliminary decision is not issued, regarding the classification or reclassification of state land under AS 38.05.300 or a mineral order or leasehold location order regarding [AND] the availability [CLOSING] of land to mineral leasing or entry under AS 38.05.185;

(2) a preliminary decision, or final decision if a preliminary decision is not issued, regarding the zoning of land under applicable law;

(3) issuance of a

(A) preliminary written finding under AS 38.05.035(e)(5)(A) regarding the sale, lease, or disposal of an interest in state land or resources for oil and gas, or for gas only, subject to AS 38.05.180(b);

(B) written finding for the sale, lease, or disposal of an interest in state land or resources under AS 38.05.035(e)(6), except

(i) if a preliminary written finding is issued under AS 38.05.035(e)(6); or

(ii) a lease sale described in AS 38.05.035(e)(6)(F) for which the director must provide opportunity for public comment under the provisions of that subparagraph;

(C) preliminary written finding that the director issued under AS 38.05.035(e)(6);

(4) a competitive disposal of an interest in state land or resources after final decision under AS 38.05.035(e);

(5) a preliminary finding under AS 38.05.035(e) concerning sites for aquatic farms and related hatcheries;

(6) a decision under AS 38.05.132 - 38.05.134 regarding the sale, lease, or disposal of an interest in state land or resources.

* **Sec. 20.** AS 38.05.965(21) is amended to read:

(21) "state land" or "land" means all land, including shoreland [SHORE], tideland [TIDE], and submerged land, or resources belonging to or

1 acquired by the state;

2 * **Sec. 21.** AS 38.05.965 is amended by adding a new paragraph to read:

3 (26) "public auction" includes a public oral outcry auction and a public
4 online auction.

5 * **Sec. 22.** AS 38.50.010 is amended to read:

6 **Sec. 38.50.010. Authorization for exchange of state land.** Subject to the
7 requirements of this chapter, the director [, WITH THE CONCURRENCE OF THE
8 COMMISSIONER,] is authorized to exchange [DISPOSE OF] state land or interest in
9 land [BY EXCHANGING IT] for land, interest in land, or other consideration when it
10 is in the best interest of the state, including either or both the land estate or
11 mineral estate. Land or an interest in land must be of approximately equal value;
12 however, the director may accept cash from, or pay cash to, any other party to an
13 exchange in order to equalize the value of the property or other consideration
14 conveyed and received by the state. If the director determines that the property
15 to be exchanged is not of approximately equal value or if the value cannot be
16 ascertained with reasonable certainty, the director may enter into an exchange
17 with a finding that the value of the property to be received, together with the
18 value of other public benefits, equals or exceeds the value of the property that the
19 state will relinquish. Exchange procedures must comply with applicable statutes
20 and regulations and follow the decision and review procedures under
21 AS 38.05.035(e). The director may include in any patent or the written decision
22 stipulations necessary to promote or protect the public interest. If a land
23 exchange exceeds \$5,000,000 in the value of state land, or if the exchange is other
24 than of an approximately equal value, the director shall forward the proposed
25 exchange to the legislature for review under AS 38.50.140 not later than 10 days
26 from the convening of the next legislative session. The notice provisions of
27 AS 38.05.945 must be followed. [EXCHANGES SHALL BE FOR THE PURPOSE
28 OF CONSOLIDATING STATE LAND HOLDINGS, CREATING LAND
29 OWNERSHIP AND USE PATTERNS WHICH WILL PERMIT MORE EFFECTIVE
30 ADMINISTRATION OF THE STATE PUBLIC DOMAIN, FACILITATING THE
31 OBJECTIVES OF STATE PROGRAMS, OR OTHER PUBLIC PURPOSES.]

1 * **Sec. 23.** AS 38.50.030(b) is amended to read:

2 (b) The director may negotiate an exchange involving more than one party [;
3 HOWEVER IN ORDER TO ASCERTAIN WHETHER THE EQUAL VALUE
4 REQUIREMENTS OF THIS CHAPTER HAVE BEEN MET, THE DIRECTOR
5 SHALL CONSIDER ONLY THE LAND AND OTHER CONSIDERATION WHICH
6 THE STATE WOULD CONVEY AND RECEIVE IF THE EXCHANGE WERE
7 EXECUTED].

8 * **Sec. 24.** AS 38.50.050 is amended to read:

9 **Sec. 38.50.050. Conveyance of mineral rights.** Subject to the requirements of
10 this chapter, the director is authorized to exchange mineral rights in state land to the
11 extent that the conveyance is authorized by the state constitution and applicable
12 federal law. [THE DIRECTOR MAY NOT EXCHANGE OR RECEIVE THE
13 SURFACE ESTATE OF LAND OR THE MINERAL RIGHTS IN IT, ONE
14 WITHOUT THE OTHER, UNLESS THE SEPARATION OF ESTATE IS
15 NECESSITATED BY A PRIOR SEPARATION OF OWNERSHIP OR BY
16 RESTRICTIONS IN APPLICABLE LAW, OR THE DIRECTOR OTHERWISE
17 FINDS THAT THE CONVEYANCE OR RECEIPT OF THE SURFACE OR
18 MINERAL ESTATES, ONE WITHOUT THE OTHER, IS NECESSARY TO
19 ACHIEVE A SIGNIFICANT PUBLIC PURPOSE.]

20 * **Sec. 25.** AS 38.50.070 is amended to read:

21 **Sec. 38.50.070. Valid existing rights.** Conveyances made by the state under
22 this chapter are subject to valid existing rights, including [, BUT NOT LIMITED TO,]
23 contracts, permits, leases, rights-of-way, and easements. Unless jurisdiction is waived,
24 the appropriate state agency shall continue to administer valid existing rights, and [AS
25 LONG AS] any revenues derived from the existing rights continue to accrue to the
26 state until state land has been conveyed under AS 38.50.150 [ARE DISTRIBUTED
27 AS PROVIDED IN THE EXCHANGE AGREEMENT].

28 * **Sec. 26.** AS 38.50.140 is amended to read:

29 **Sec. 38.50.140. Legislative review.** Not later than [WITHIN] 10 days from
30 [OF] the convening of a regular legislative session, the governor shall transmit to the
31 president of the senate and the speaker of the house of representatives any proposal for

a land exchange required to be submitted to the legislature for approval under **AS 38.50.010** [AS 38.50.020(a)] that is scheduled to occur before the next legislative session. If exigent circumstances seriously affecting state interests so require, the governor may submit the proposed exchange to the legislature at some other time. A finding of exigent circumstances shall be carefully documented in the letter of transmittal. The director is authorized to conclude a proposed exchange agreement upon approval by the legislature of the proposed exchange agreement. A decision by the legislature to disapprove a proposed exchange shall be accompanied by a recommendation to the governor with respect to future actions which the director should take concerning the exchange.

* **Sec. 27.** AS 38.50.170(3) is amended to read:

(3) "state land" means all land including **shoreland** [SHORE], **tideland** [TIDE], and submerged land or unsevered resources belonging to or acquired by the state excluding interests in land severed or constructively severed from the land.

* **Sec. 28.** AS 40.15.305(e) is amended to read:

(e) A recorded plat may not be altered or replatted except on petition of the state, a municipality, a public utility, or the owner of a majority of the land affected by the proposed alteration or replat. The petition shall be filed with the commissioner and shall be accompanied by a copy of the existing plat showing the proposed alteration or replat. The provisions of AS 29.40.130 and 29.40.140(a) apply to an alteration or replat submitted under this subsection. The provisions of (d) of this section do not apply to an alteration or replat petition, but the commissioner shall state in writing reasons for disapproval of the petition. **Alteration of a platted boundary is exempt from this subsection if all owners approve and no public easement or right-of-way is affected. A plat of the alteration remains subject to all other provisions of this section.**

* **Sec. 29.** AS 44.37.011(a) is amended to read:

(a) This section applies to administrative appeals or **requests** [PETITIONS] for reconsideration of a decision in an administrative appeal to the commissioner of natural resources, except for those administrative appeals or **requests for**

1 **reconsideration** [PETITIONS] done under AS 38.35, [OR] AS 43.82, **or a different**
 2 **procedure set out in AS 27.21 or its applicable regulations.** If a conflict occurs
 3 between this section and other state law existing at the time of **original** enactment of
 4 this section, the provisions of this section control.

5 * **Sec. 30.** AS 44.37.011(b) is amended to read:

6 (b) If a person is **an applicant, or substantially and adversely affected**
 7 [AGGRIEVED] by a decision of the Department of Natural Resources not made by
 8 the commissioner and is otherwise eligible to seek the commissioner's review of the
 9 decision, the person may appeal to the commissioner. The person may not file a
 10 **request** [PETITION] for reconsideration of the commissioner's decision on the
 11 appeal. The commissioner's decision on the administrative appeal is a final
 12 administrative order for purposes of filing an appeal of the administrative decision to
 13 the court.

14 * **Sec. 31.** AS 44.37.011(c) is amended to read:

15 (c) If a person is **substantially and adversely affected** [AGGRIEVED] by a
 16 decision of the department made by the commissioner and is otherwise eligible to seek
 17 the commissioner's review of the decision, the person may not appeal that decision to
 18 the commissioner; however, the person may **request** [PETITION THE
 19 COMMISSIONER FOR] reconsideration of the commissioner's decision. The
 20 commissioner's decision made upon reconsideration or the commissioner's failure to
 21 act on the **request** [PETITION] for reconsideration is a final administrative order for
 22 purposes of filing an appeal of the administrative decision to the court.

23 * **Sec. 32.** AS 44.37.011(d) is amended to read:

24 (d) If a person has a right to **appeal or request** [PETITION FOR]
 25 reconsideration under [AS 44.62.540 OR] this section, the person has [A TOTAL OF]
 26 20 **calendar** days **after the date of issuance of a final department decision** [,
 27 INCLUDING THE TIME AVAILABLE UNDER AS 44.62.540,] in which to file **an**
 28 **appeal or a request** [PETITION] for reconsideration with the commissioner.

29 * **Sec. 33.** AS 44.37.011 is amended by adding new subsections to read:

30 (f) In this section, in order for a person to be adversely affected, a final
 31 decision made by the department must create or impose an adverse and direct effect or

1 detriment on the person or the interests of that person.

2 (g) An appeal or request for reconsideration must include a statement that
3 explains how the person is substantially and adversely affected by the department
4 decision. The statement must

5 (1) specifically describe the substantial and adverse effect on the
6 person that is a direct result of the decision; and

7 (2) explain how the decision caused the substantial and adverse effect
8 on the person.

9 (h) If the department gives public notice and allows a public comment period
10 of at least 30 days on a proposed action, the department may restrict eligibility to
11 appeal or request reconsideration to persons who have provided timely comment on
12 the proposed action by including notice of the restriction as part of its public notice
13 announcing the opportunity to comment.

14 (i) The commissioner may reject an appeal or request for reconsideration for
15 failure to meet the requirements of (f) - (h) of this section.

16 * **Sec. 34.** AS 46.15.035(a) is amended to read:

17 (a) **A significant amount of water, as determined by the department by**
18 **regulation,** [WATER] may not be removed from the hydrologic unit from which it
19 was appropriated to another hydrologic unit, inside or outside the state, without being
20 returned to the hydrologic unit from which it was appropriated nor may **a significant**
21 **amount of** water be appropriated for removal from the hydrologic unit from which the
22 appropriation is sought to another hydrologic unit, inside or outside the state, without
23 the water being returned to the hydrologic unit from which it is to be appropriated,
24 unless the commissioner

25 (1) finds that the water to be removed or appropriated for removal is
26 surplus to needs within the hydrologic unit from which the water is to be removed or
27 appropriated for removal, including fishing, mining, timber, oil and gas, agriculture,
28 domestic water supply, and other needs as determined by the commissioner;

29 (2) finds that the application for removal or appropriation for removal
30 meets the requirements of AS 46.15.080; and

31 (3) assesses a water conservation fee under (b) of this section.

1 * **Sec. 35.** AS 46.15.133(a) is amended to read:

2 (a) If the commissioner proposes a sale of water or receives an application for
3 appropriation or removal, the commissioner shall prepare a notice containing the
4 location and extent of the proposed sale, appropriation, or removal, the name and
5 address of the applicant, if applicable, and other information the commissioner
6 considers pertinent. The notice shall state that, **not later than** [WITHIN] 15 days
7 **after** [OF] publication or service of notice, persons may file with the director written
8 objections [,] stating the name and address of the objector [,] and any facts tending to
9 show that rights of the objector or the public interest **as described in AS 46.15.080(b)**
10 would be adversely affected by the proposed sale, appropriation, or removal.

11 * **Sec. 36.** AS 46.15.133(b) is amended to read:

12 (b) The commissioner shall publish the notice in one issue of a newspaper of
13 general distribution in the area of the state in which the water is to be appropriated,
14 removed, or sold. The commissioner shall also have notice served personally or by
15 [CERTIFIED] mail upon an appropriator of water or applicant for or holder of a
16 permit who, according to the records of the division of lands, may be affected by the
17 proposed sale, appropriation, or removal and may serve notice upon any governmental
18 agency, political subdivision, or person; notice shall also be served upon the
19 Department of Fish and Game and the Department of Environmental Conservation.
20 An applicant for an appropriation or removal shall pay the commissioner's costs in
21 providing publication and notice under this subsection. The commissioner may require
22 as a condition of a sale of water under AS 46.15.037, that a purchaser of water
23 reimburse the department for the costs associated with providing notice of the
24 proposed sale.

25 * **Sec. 37.** AS 46.15.133(c) is amended to read:

26 (c) **Not later than** [WITHIN] 15 days of publication or service of notice, an
27 interested person may file an objection. The commissioner may hold hearings upon
28 giving due notice and shall grant, deny, or condition the proposed sale or application
29 for appropriation or removal in whole or in part within 30 days of receipt of the last
30 objection or, if the commissioner elects to hold hearings, within 180 days of receipt of
31 the last objection. Notice of the order or decision shall be served personally or mailed

1 to any person who has filed an objection.

2 * **Sec. 38.** AS 46.15.133(d) is amended to read:

3 (d) If no objection is filed, the commissioner may proceed to make a **final**
 4 determination upon the application for appropriation or removal or the proposal for
 5 sale.

6 * **Sec. 39.** AS 46.15.133(e) is amended to read:

7 (e) A person **adversely affected** [AGGRIEVED] by the action of the
 8 commissioner or by the failure of the commissioner to grant, deny, or condition a
 9 proposed sale or an application for appropriation or removal in accordance with (c) of
 10 this section may appeal to the superior court. **In this subsection, to be adversely**
 11 **affected, a person must be directly affected by a decision made by the department**
 12 **either by a physical or financial detriment to the person's interests resulting from**
 13 **the decision.**

14 * **Sec. 40.** AS 46.15.145(a) is amended to read:

15 (a) The state, an agency or a political subdivision of the state, **or** an agency of
 16 the United States [OR A PERSON] may apply to the commissioner to reserve
 17 sufficient water to maintain a specified instream flow or level of water at a specified
 18 point on a stream or body of water, or in a specified part of a stream, throughout a year
 19 or for specified times, for

- 20 (1) protection of fish and wildlife habitat, migration, and propagation;
- 21 (2) recreation and park purposes;
- 22 (3) navigation and transportation purposes; and
- 23 (4) sanitary and water quality purposes.

24 * **Sec. 41.** AS 46.15.145(f) is amended to read:

25 (f) **The** [AT LEAST ONCE EACH 10 YEARS THE] commissioner **may**
 26 [SHALL] review **a** [EACH] reservation under this section to determine whether the
 27 purpose described in (a) of this section for which the certificate reserving water was
 28 issued and the findings described in (c) of this section still apply to the reservation. If
 29 the commissioner determines that the purpose, or part or all of the findings, no longer
 30 apply to the reservation, the commissioner may revoke or modify the certificate
 31 reserving the water after notice, hearing when appropriate, and a written determination

1 that the revocation or modification is in the best interests of the state.

2 * **Sec. 42.** AS 46.15.155(a) is amended to read:

3 (a) Notwithstanding any contrary provision of this chapter, the commissioner
4 may authorize the temporary use of a significant amount of water, as determined by
5 the department by regulation, for a period of time not to exceed five consecutive years
6 in each authorization, if the water applied for has not been appropriated in
7 accordance with this chapter. The commissioner may issue one or more new
8 temporary water use authorizations for the same project.

9 * **Sec. 43.** AS 38.05.065(b); AS 38.50.020, 38.50.040, 38.50.080, 38.50.090, 38.50.100,
10 38.50.110, 38.50.120, 38.50.130; and AS 46.15.145(e) are repealed.

11 * **Sec. 44.** The uncoded law of the State of Alaska is amended by adding a new section to
12 read:

13 TRANSITION: PENDING APPLICATIONS FOR RESERVED WATER. The
14 Department of Natural Resources shall return any applications and fees for applications
15 pending as of the effective date of this Act to persons no longer authorized to reserve water
16 under sec. 40 of this Act. The commissioner of the Department of Natural Resources may
17 refer applications that are no longer authorized to other state agencies for an independent
18 evaluation and consideration of submission of a similar application to request a reservation to
19 that agency.

20 * **Sec. 45.** The uncoded law of the State of Alaska is amended by adding a new section to
21 read:

22 TRANSITION: REGULATIONS. The Department of Natural Resources may
23 immediately adopt regulations necessary to implement the changes made by this Act. The
24 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1,
25 2013.

26 * **Sec. 46.** The uncoded law of the State of Alaska is amended by adding a new section to
27 read:

28 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
29 heading of AS 44.37.011 from "Additional procedures for administrative appeals and
30 petitions for reconsideration to the commissioner of natural resources" to "Procedures for
31 administrative appeals and requests for reconsideration to the commissioner of natural

1 resources."

2 * **Sec. 47.** Section 45 of this Act takes effect immediately under AS 01.10.070(c).

3 * **Sec. 48.** Except as provided in sec. 47 of this Act, this Act takes effect July 1, 2013.