

# MEMORANDUM

## State of Alaska Department of Law

**To:** The Honorable Cathy Giessel,  
Chair  
Senate Resources Committee  
State Capitol Room 427  
Juneau, AK 99801

**DATE:** February 17, 2015

**FILE No.:** JU201500022

**TELEPHONE No.:** (907) 465-3600

**FROM:** Thomas Lenhart  
Senior Assistant Attorney  
General  
Natural Resources Section  
John "Chris" Maisch  
State Forester  
DNR, Division of Forestry

**SUBJECT:** Draft bills HB 87 and SB 32  
amending provisions for state  
negotiated timber sales

Draft Bills HB 87 and SB 32, which amend provisions for state negotiated timber sales, include a section with the following new language:

(c) If a sale of timber may be offered under multiple provisions of AS 38.05.110-38.05.123, the Commissioner shall determine under which of the applicable provisions to offer the timber consistent with the best interest of the state.

A question has been raised by both the House and Senate Resource Committees as to the possible interpretations of the phrase "consistent with the best interest of the state." More specifically, does including this phrase in the new section effectively require a formal finding of best interest for every timber sale?

Sections 38.05.110 – 38.05.123, to which this new section will apply, currently provide five different mechanisms for selling state timber. Each type of sale refers to "best interest" of the state. However, the language is different in each, with some sections requiring a formal

written finding of best interest and others making only a general reference to “best interest” of the state.

One general principle of statutory construction is that the more specific statute controls if a more general statute addresses the same point and there is any ambiguity. Here, the very specific language regarding “best interest” found within sections AS 38.05.110 – 38.05.123 takes precedent over the language proposed in this draft bill. Therefore, the phrase “consistent with the best interest of the state” should be interpreted by any court as only a general statement of best interest that does not affect the more specific language governing the particular sale. As such, the new phrase effectively has no meaning as the statute section for each sale type already addresses the requirements for “best interest.”

Given that the new phrase “consistent with the best interest of the state” has no legal effect but nevertheless may create some degree of ambiguity on the question of what is required to demonstrate “best interest” for any given sale, striking the phrase from the new section (c) is recommended in the interest of clarity. The recommended change is shown on the attached copy of HB 87.

Section 2 of this bill amends negotiated timber sales authorized under AS 38.05.118. The phrase “and upon a finding that the sale is in the best interest of the state” is being added to replace best interest language for this category of sale that is being deleted in Section 3 of the bill. This is an example of where the more specific provision requires the state to make a best interest finding, but the more generic language proposed in Section 1 of this bill would only require the Commissioner to generally act in the best interest of the state without the necessity of a specific finding of best interest. Confusion is best avoided by deleting the unnecessary best interest language in Section 1.

This recommended amendment in no way weakens or changes any of the Division of Forestry's public process for the sale of timber. As a review, our timber sale process begins with the identification of proposed sales in the Five Year Schedule of Timber Sales (FYSTS) AS 38.05.113 which is a notice document to the public, agencies and timber purchasers of our planned timber sale locations and size. This document is not a decision document and thus is not appealable.

Next in the process is the drafting of a Preliminary Best Interest Finding (PBIF). This document is noticed for both agency and public comment. All comments received are, analyzed, considered and responded to before the Final Best Interest Finding (FBIF) is drafted and published. This is an appealable document. If the BIF determines a timber sale should occur and after initiation of site specific preliminary work, a Forest Land Use Plan (FLUP) AS 38.05.112 is completed for the timber sale. This document is also open for public and agency comment and can modify the final sale layout. Comments received are responded to prior to the sale being offered under the timber sale authority identified in the BIF.

**A BILL  
FOR AN ACT ENTITLED**

1   **"An Act relating to the sale of timber on state land; and providing for an effective date."**

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

3    \* **Section 1.** AS 38.05.110 is amended by adding a new subsection to read:

4                   (c) If a sale of timber may be offered under multiple provisions of  
5           AS 38.05.110 - 38.05.123, the commissioner shall determine under which of the  
6           applicable provisions to offer the timber.

7    \* **Sec 2.** AS 38.05.118(a) is amended to read:

8                   (a) Notwithstanding **AS 38.05.115 and 38.05.120, and upon a finding that**  
9           **the sale is in the best interest of the state** [ANY OTHER PROVISION OF  
10           AS 38.05.110 - 38.05.120], the commissioner may negotiate a sale of timber to a local  
11           manufacturer **of wood products or a user of wood fiber** at appraised value. The  
12           period of a contract for a sale of timber negotiated under this section may not exceed  
13           25 years. The contract shall provide that the appraised value of timber remaining to be  
14           harvested under the provisions of the contract shall be redetermined at least once every  
15           five years.

New Text Underlined [DELETED TEXT BRACKETED]

- 1     \* **Sec. 3.** AS 38.05.118(c) is repealed.
- 2     \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section  
3     to  
4     read:  
5     APPLICABILITY. Sections 1, 2, and 3 of this Act apply to sales of timber on  
6     state  
7     land made on or after the effective date of this Act.
- 8     \* **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).