

SENATE CS FOR CS FOR HOUSE BILL NO. 109(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 5/8/97

Referred: Rules

Sponsor(s): REPRESENTATIVE THERRIAULT

SENATORS Pearce, Mackie, Taylor, Miller

A BILL

FOR AN ACT ENTITLED

**1 "An Act relating to the management and disposal of state land and resources;
2 relating to certain remote parcel and homestead entry land purchase contracts and
3 patents; and providing for an effective date."**

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 09.10.120 is amended by adding a new subsection to read:

6 (b) Notwithstanding (a) of this section or any other provision of law, the state
**7 may bring an action in the name of or for the benefit of the state to (1) quiet or
8 confirm the state's interests in real property, or (2) protect resources held in trust for
9 the public, at any time.**

10 * Sec. 2. AS 38.04.010(b) is amended to read:

11 (b) State land that is located beyond the range of existing schools and other
**12 necessary public services, or that is located where development of sources of
13 employment is improbable, may be made available for seasonal recreational purposes
14 or for low density settlement. The seasonal recreation use or low density settlement**

shall have sufficient separation between residences so that public services will not be necessary or expected. The availability of timber, firewood, and water resources shall be considered in determining separation between residences. **By considering the availability of timber, firewood, and water under this subsection or in making any disposal decision, the state does not by virtue of that consideration imply any right of the person receiving the disposal to an exclusive or other right to the timber, firewood, or water, that the state will not make any other disposals in the area, or that any disposals made will be limited in type or any other manner.**

* Sec. 3. AS 38.04.020(h) is amended to read:

(h) Individual parcels disposed of in subdivisions **intended for private residential or recreational use** may not exceed five acres unless the commissioner determines that a larger size is necessary to comply with municipal ordinances; [,] to permit the design of a viable subdivision because of topographical features, soil conditions, on-site sewage disposal requirements, or water drainage or supply considerations that are unique to the subdivision; **to increase the return to the state from the sale of the parcels;** [,] to minimize adverse effect on wildlife, fishery, public recreation, timber, or other significant resources in the area; [,] or to minimize adverse effect on other residential uses in the area.

* Sec. 4. AS 38.04.020(i) is amended to read:

(i) Nothing in this section prevents the disposal of other land by the commissioner in accordance with AS 38.05.055, 38.05.057, 38.05.070, the issuance of remote **recreational** cabin **site leases or sales** [PERMITS] under **AS 38.05.600** [AS 38.05.079], AS 38.08, **AS 38.09**, or other law.

* Sec. 5. AS 38.04.022(a) is amended to read:

(a) The revenue from the sale of state land shall be deposited in a special state land disposal income account in the state general fund. The legislature may appropriate money from the special state land disposal income account for expenditure by the Department of Natural Resources for necessary costs incurred by the commissioner in the implementation of state land disposal programs authorized under this title [AND FOR IMPLEMENTATION OF AS 38.04.021].

* Sec. 6. AS 38.04.035 is amended to read:

1 **Sec. 38.04.035. Criteria for program selection.** In determining which land
 2 availability program is appropriate for state land in different locations, the director
 3 shall be guided by the following criteria:

4 (1) to cover public costs associated with private land use and to provide
 5 the public with a fair return for publicly owned property, conveyance of state land to
 6 private parties shall [SHOULD] be at fair market value except where otherwise
 7 authorized by statute, or by an administrative regulation the adoption of which is
 8 specifically permitted by statute;

9 (2) sale or lease programs should be used where land is readily
 10 accessible to a major community center or where, because of a prime location on
 11 waterfront or a transportation route or some other location characteristic, land has
 12 relatively high real estate value;

13 (3) sale programs are preferred but lease programs may [SHOULD] be
 14 used

15 (A) where special land use controls are required and there is a
 16 high public interest in having certain types of land used for particular purposes;

17 (B) when the intended use is a temporary one;

18 (C) in commercial or industrial situations when a leasehold can
 19 provide cash flow advantages to the lessee;

20 (D) when a unique location with special public values is
 21 involved, as in a deep water port, hydroelectric site, or aquaculture facility;

22 (E) where current demand for private use is high, but
 23 projections suggest that, in the future, the land may be more valuable for public
 24 use, as in accessible waterfront recreation areas;

25 (4) [FOR ENABLING ISOLATED CABIN DEVELOPMENT IN
 26 REMOTE LOCATIONS WHERE SURVEY AND CONVEYANCE IS
 27 IMPRACTICAL, OR WHERE DISPOSAL OF LAND WOULD CAUSE POTENTIAL
 28 CONFLICTS WITH OTHER RESOURCES AND USES, OR WHERE A LONG-
 29 RANGE INTEREST IN PUBLIC OWNERSHIP AND USE EXIST, A SYSTEM FOR
 30 CABIN PERMITS ON PUBLIC LAND MAY BE USED;

31 (5)] limited or conditional title may be granted when the state's best

1 interest so dictates; among other things, title limitations may include grants of
 2 agricultural interest only, retention of development rights, and retention of scenic or
 3 other easements; a conditional title may be tied to a development schedule or other
 4 standards of performance.

5 * **Sec. 7.** AS 38.04.045(b) is amended to read:

6 (b) Before the issuance of a long-term lease under AS 38.05.070 or of a patent
 7 for state land, an official cadastral survey shall be accomplished, unless a comparable,
 8 approved survey exists that has been conducted by the federal Bureau of Land
 9 Management. Before land may be offered under AS 38.08 or AS 38.09, or before land
 10 may be offered under AS 38.05.055 or 38.05.057, except land that is classified for
 11 agricultural uses, an official rectangular survey grid shall be established. The
 12 rectangular survey section corner positions shall be monumented and shown on a
 13 cadastral survey plat approved by the state. For those areas where the state may wish
 14 to convey surface estate outside of an official rectangular survey grid, the
 15 commissioner may waive monumentation of individual section corner positions and
 16 substitute an official control survey with control points being monumented and shown
 17 on control survey plats approved by the state. The commissioner may not issue more
 18 than one conveyance for each section within a township outside of an official
 19 rectangular survey grid. Land to be conveyed may not be located more than two miles
 20 from an official survey control monument except that the commissioner may waive this
 21 requirement on a determination that a single purpose use does not justify the
 22 requirement if the existing status of the land is known with reasonable certainty. The
 23 lots and tracts in state subdivisions shall be monumented and the cadastral survey and
 24 plats for the subdivision shall be approved by the state. Where land is located within
 25 a municipality with planning, platting, and zoning powers, plats for state subdivisions
 26 shall comply with local ordinances and regulations in the same manner and to the same
 27 extent as plats for subdivisions by other landowners. State subdivisions shall be filed
 28 and recorded in the district recorder's office. The requirements of this section do not
 29 apply to land made available [THROUGH A CABIN PERMIT SYSTEM,] for material
 30 sales, for short-term leases, for parcels adjoining a surveyed right-of-way, or for land
 31 that has been open to random staking under the [REMOTE PARCEL PROGRAM OR]

homestead program in the past; however, for short-term leases, the lessee shall comply with local subdivision ordinances unless waived by the municipality under procedures specified by ordinance. In this subsection, "a single purpose use" includes a communication site, an aid to navigation, and a park site.

* **Sec. 8.** AS 38.04.065(h) is amended to read:

(h) Before the commissioner adopts a regional land use plan, a land classification may be made on the basis of a site-specific land use plan [, EXCEPT A CLASSIFICATION FOR A LAND DISPOSAL UNDER AS 38.05.057, AS 38.08, OR AS 38.09]. After adoption of a regional land use plan, land classifications shall be made under the plan.

* **Sec. 9.** AS 38.05.050 is amended to read:

Sec. 38.05.050. Disposal of land for private ownership. The commissioner shall determine the land to be disposed of for private use. The commissioner shall determine the time and place of disposal. An auction sale, a lottery sale, or a disposal of land for homesites may [SHALL] be held in a community that is near the land to be sold or disposed of.

* **Sec. 10.** AS 38.05.055 is amended to read:

Sec. 38.05.055. Auction sale procedures. Unless another method of sale is required under this chapter, [AS 38.07, OR] AS 38.08, or AS 38.09, the sale of state land shall be made at public auction to the highest qualified bidder as determined by the director. The director may accept bids and sell state land under this section at no less than 70 percent of the appraised fair market value of the land. To qualify to participate under this section in a public auction of state land that is other than commercial, industrial, or agricultural land, a bidder shall have been a resident of the state for at least one year immediately preceding the date of the auction and submit proof of that fact, as the commissioner requires by regulation. [A BIDDER MUST APPEAR IN PERSON AT THE AUCTION UNLESS MEDICAL REASONS, ATTENDANCE AT SCHOOL, OR MILITARY SERVICE OUTSIDE THE STATE PREVENT ATTENDANCE.] A bidder may be represented by an attorney or agent at the auction [IF THE LAND OFFERED FOR DISPOSAL IS COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL LAND]. An aggrieved bidder may appeal to

the commissioner within five days after the sale for a review of the director's determination. The sale shall be conducted by the director, and, at the time of sale, the successful bidder shall deposit an amount equal to five percent of the purchase price. The director shall immediately issue a receipt containing a description of the land or property purchased, the price bid, and the amount deposited. The receipt shall be acknowledged in writing by the bidder.

* **Sec. 11.** AS 38.05.057(a) is amended to read:

(a) The commissioner may dispose of land, including land limited to use for agricultural purposes, by lottery. The purchase price of land sold by lottery shall be the fair market value of the land as determined by the commissioner. The commissioner may sell land by lottery for less than the fair market value of the land on a determination that scarcity of land for private use in the area of the land to be sold has resulted in unrealistic land values. [THE COMMISSIONER SHALL CONSULT WITH THE ASSESSOR OF A MUNICIPALITY BEFORE DETERMINING THE PURCHASE PRICE FOR LAND THAT IS LOCATED IN THE MUNICIPALITY AND THAT IS TO BE SOLD UNDER THIS SECTION.] The lottery shall be conducted in public by the commissioner. A [AN APPLICANT MAY NOT BE SELECTED TO PURCHASE LAND UNLESS THE APPLICANT IS PRESENT ON THE DATE AND AT THE PLACE THAT THE LOTTERY IS CONDUCTED UNLESS MEDICAL REASONS, ATTENDANCE AT SCHOOL, OR MILITARY SERVICE OUTSIDE THE STATE PREVENT ATTENDANCE. AN APPLICANT MAY BE REPRESENTED BY AN AGENT ON THE DAY OF THE LOTTERY IF THE LAND OFFERED FOR SALE IS COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL LAND. ON THE DAY OF THE LOTTERY A] purchaser selected by lot shall deposit an amount equal to five percent of the purchase price **within 30 days after receiving notification of the selection.**

* **Sec. 12.** AS 38.05.065(a) is amended to read:

(a) The contract of sale for land sold at public auction under 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 [PREVAILING] rate **provided in (i) of this section** [FOR REAL ESTATE

MORTGAGE LOANS MADE BY THE FEDERAL LAND BANK FOR THE FARM CREDIT DISTRICT FOR ALASKA AT THE TIME THE CONTRACT IS SIGNED].

Installment payments plus interest shall be set on the level-payment basis.

* **Sec. 13.** AS 38.05.065(b) is amended to read:

(b) The contract of sale for land sold under AS 38.05.057 or under former AS 38.05.078 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. Installment payments plus interest shall be set on the level-payment basis. The interest rate to be charged on installment payments is the [PREVAILING] rate **provided in (i) of this section** [FOR REAL ESTATE MORTGAGE LOANS MADE BY THE FEDERAL LAND BANK FOR THE FARM CREDIT DISTRICT FOR ALASKA AT THE TIME THE CONTRACT IS SIGNED].

* **Sec. 14.** AS 38.05.065 is amended by adding a new subsection to read:

(i) The interest rate for contracts under this section is the prime rate as reported in the Wall Street Journal on the first business day of the month in which the contract is sent to the purchaser for signature, plus three percent; however, the total rate of interest may not exceed

(1) 9.5 percent, in contracts for the sale of land classified under AS 38.05.020(b)(6) for agricultural uses; or

(2) 13.5 percent, in other contracts for the sale of land.

* **Sec. 15.** AS 38.05.067(d) is amended to read:

(d) This section does not apply to the sale of state land under **AS 38.05.057, AS 38.08, or** [AS 38.04.020(g)(2) AND] AS 38.09.

* **Sec. 16.** AS 38.05.069(e)(2) is repealed and reenacted to read:

(2) "adjacent" means that a tract of land has one common boundary point with presently held land or is separated from the presently held land only by a physical barrier such as a road or stream.

* **Sec. 17.** AS 38.05.075(a) is amended to read:

(a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, [38.05.079,] 38.05.082, 38.05.083, 38.05.087, 38.05.102, **38.05.600,** 38.05.810, and this section, leasing shall be made at public auction to the highest qualified bidder as determined

by the commissioner. In the public notice of a lease to be offered at public auction, 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). An aggrieved bidder may appeal to the commissioner within five days for a review of the determination. The leasing shall be conducted by the commissioner and the successful bidder shall deposit at the auction the first year's rental or other lease compensation as specified by the commissioner, or that portion of it that the commissioner requires in accordance with the bid. The commissioner shall require, under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or appraisal costs reasonably incurred by another qualified bidder acting in accordance with the regulations of the commissioner or incurred by the department under AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal costs is determined by the commissioner to be the highest qualified bidder under this subsection, the deposit shall be paid to the unsuccessful bidder who incurred those costs or to the department if the department incurred the costs. All costs for survey and appraisal shall be approved in advance in writing by the commissioner. The commissioner shall immediately issue a receipt containing a description of the land or interest leased, the price bid, and the terms of the lease to the successful qualified bidder. If the receipt is not accepted in writing by the bidder under this subsection, the commissioner may offer the land for lease again under this subsection. A lease, on a form approved by the attorney general, shall be signed by the successful bidder and by the commissioner within the period specified in the auction notice.

* **Sec. 18.** AS 38.05.075(c) is amended to read:

(c) The owner or lessee of land that fronts on **shoreland, tideland,** [TIDE] or submerged land of the state **may be granted a preference right to** [IS ENTITLED TO ACQUIRE] a lease for the **shoreland, tideland, or** [TIDE AND] submerged land without competitive bidding if the director determines that

(1) the lease of the **shoreland, tideland,** [TIDE] or submerged land is necessary to facilitate water transportation of goods, services, or resources to or from the owned or leased upland or for another water-dependent purpose;

(2) the proposed use of the shoreland, tideland, [TIDE] or submerged land is compatible with the classification of the land and with any applicable land use plan adopted under AS 38.04.065; and

(3) issuance of the lease to the shoreland, tideland, [TIDE] or submerged land will not interfere with prior existing rights to the leased land.

* **Sec. 19.** AS 38.05.075(d) is amended to read:

(d) If the commissioner issues a lease under (c) of this section, the right of access to the shoreland, tideland, or [TIDE AND] submerged land shall be nonexclusive in the lessee unless the commissioner grants the lessee the exclusive right to use the shoreland, tideland, or [TIDE AND] submerged land.

* **Sec. 20.** AS 38.05.083 is repealed and reenacted to read:

Sec. 38.05.083. Aquatic farming and hatchery site leases. (a) The commissioner may offer to the public for lease at public auction under AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic farming or related hatchery operations. Before a final decision to issue or renew a lease under this section, the commissioner shall give notice and allow opportunity for comment in accordance with AS 38.05.945 and may hold a hearing to take testimony. Before a final decision to issue or renew a lease under this section, the commissioner shall consider all relevant comment or testimony submitted under this section, AS 38.05.945, or 38.05.946.

(b) The commissioner, for good cause, may deny an application for issuance or renewal of a lease under this section but shall provide the applicant with written findings that explain the reasons for the denial.

(c) A site may be leased under this section for not less than the appraised fair market value of the lease. The value of the lease shall be reappraised every five years.

(d) A lease under this section may be assigned, but, if the assignee changes the use of the site, the lease reverts to the state.

(e) Before entering into a lease under this section, the commissioner shall require the lessee to post a performance bond or provide other security to cover the costs to the department of restoring the leased site in the event the lessee abandons the site.

(f) The commissioner shall adopt regulations establishing criteria for the

1 approval or denial of leases under this section and for limiting the number of sites for
 2 which leases may be issued in an area in order to protect the environment and natural
 3 resources of the area. The regulations must provide for the consideration of upland
 4 management policies and whether the proposed use of a site is compatible with the
 5 traditional and existing uses of the area in which the site is located.

6 * **Sec. 21.** AS 38.05.090 is repealed and reenacted to read:

7 **Sec. 38.05.090. Removal or reversion of improvements upon termination**
 8 **of leases.** (a) Unless otherwise agreed to in writing by the commissioner, a lessee
 9 shall remove from a former leasehold

10 (1) all personal property, including above-ground tanks, transportable
 11 buildings, equipment, machinery, tools, and other goods, not belonging to the state,
 12 within 30 days after termination of the lease; and

13 (2) all buildings and fixtures, including gravel pads, and below-ground
 14 tanks, foundations, and slabs, not belonging to the state, within 60 days after
 15 termination of the lease.

16 (b) Unless otherwise agreed to in writing by the commissioner, the lessee shall
 17 restore the leasehold to a good and marketable condition, acceptable to the
 18 commissioner, within 120 days after termination of the lease.

19 (c) If the lessee does not remove personal property, buildings, and fixtures as
 20 required within the time specified under (a) of this section, title to the personal
 21 property, buildings, and fixtures that remain automatically vests in the state unless the
 22 commissioner elects to remove and dispose of the remaining personal property,
 23 buildings, and fixtures of the lessee. The commissioner may assess upon the lessee
 24 the cost of removing and disposing of personal property, buildings, and fixtures
 25 remaining upon the land.

26 (d) If the lessee does not restore the land within the time period specified
 27 under (b) of this section, the commissioner may have the land restored and assess the
 28 costs upon the lessee.

29 (e) As part of a lease agreement, and in order to protect the public interest, the
 30 commissioner may require terms for removal or reversion of improvements additional
 31 to those specified in (a) - (d) of this section.

(f) Private residential improvements of a lessee that have become fixtures of the land and that are not removed by that lessee upon termination of the lease shall be purchased by the subsequent purchaser of the land if the improvements were authorized in the former lease or by permit from the director and if they have a net value of more than \$10,000. The net value is the value of the improvements as determined by an appraisal approved by the commissioner, less all rents due the department, all costs of restoration under (d) of this section, and all department expenses estimated to be incurred in making the sale. After termination of the former lessee's lease, and at additional times as determined necessary by the commissioner, the value of the authorized residential fixtures shall be determined by an independent appraisal made at the cost of the former lessee. A notice or offer by the state to sell formerly leased land under this subsection must state (1) the appraised value of authorized residential fixtures remaining on the land that must be purchased, and (2) that that cost is included in the purchase price. Out of the proceeds of the sale, the department shall pay to the former lessee the appraised value of the residential improvements, less all rents due the department, all costs of restoration due the department under (d) of this section, and all department expenses incurred in making the sale.

(g) Personal property described in (c) of this section is not subject to AS 34.45 (Uniform Unclaimed Property Act).

* **Sec. 22.** AS 38.05.131(a) is amended to read:

(a) Unless specifically provided otherwise in AS 38.05.132 - 38.05.134, the provisions of AS 38.05.005 - 38.05.037 [AS 38.05.005 - 38.05.040], 38.05.140(f), 38.05.180, 38.05.182 - 38.05.184, and 38.05.920 - 38.05.990 apply to the issuance of oil and gas exploration licenses and leases under AS 38.05.132 - 38.05.134.

* **Sec. 23.** AS 38.05 is amended by adding a new section to read:

Article 12A. Remote Recreational Cabin Site Sales and Leases.

Sec. 38.05.600. Remote recreational cabin sites. (a) The commissioner may provide for the sale or lease of state land for remote recreational cabin sites. Sales under this section shall be at fair market value determined as of the time of entry, and the purchaser shall reimburse the state for the appraisal, survey, and platting costs for

1 the recreational cabin site.

2 (b) The annual fee for a remote recreational cabin site lease shall be set by the
3 commissioner so as to ensure that the state receives a fair return for the use granted
4 by the lease for the term of the lease. The commissioner shall establish regulations
5 that specify the application procedures for and the terms and conditions of a remote
6 recreational cabin site lease. A lease must be for a term of not more than five years,
7 and may be renewed for one additional five-year period. At any time during the lease,
8 the lessee may purchase the remote recreational cabin site by having the site appraised
9 and surveyed in a manner acceptable to the department and by paying to the state the
10 fair market value for the site determined as of the time of entry. The lease may not
11 be assigned by the original lessee during the term of the lease.

12 (c) A remote recreational cabin site lease may be terminated by the
13 commissioner before the expiration of the term of the lease if a lessee fails to use the
14 land under lease in the manner required by the terms of the lease. After termination
15 of a remote recreational cabin site lease, improvements or personal property on the
16 land subject to the lease shall be managed in the same manner as required by
17 AS 38.05.090.

18 * **Sec. 24.** AS 38.05.810(a) is amended to read:

19 (a) Except as otherwise provided in AS 38.05.183(h), the (1) lease, sale, or
20 other disposal of state land or resources may be made to a state or federal agency or
21 political subdivision, (2) [THE] lease, sale, or disposal of coal deposits suitable for
22 mining may be made to a utility owned and operated by a government agency or
23 nonprofit cooperative association organized to participate under the Federal Rural
24 Electrification Act for the purpose of generating electric power and energy or the
25 production of process steam, or both, (3) [OR THE] sale or other disposal of state land
26 may be made to a tax-exempt, nonprofit corporation, association, club, or society
27 organized and operated [EXCLUSIVELY] for the management of a cemetery or a solid
28 waste or other public facility, or (4) sale or other disposal of land within a state
29 subdivision may be made to that subdivision's nonprofit, tax-exempt homeowners'
30 association, for less than the appraised value as determined by the director and
31 approved by the commissioner to be fair and proper and in the best interests of the

public, with due consideration given to the nature of the public services or function rendered by the **applicant** [AGENCY, SUBDIVISION, TAX-EXEMPT, NONPROFIT CORPORATION, ASSOCIATION, CLUB, OR SOCIETY, OR UTILITY MAKING APPLICATION], and of the terms of the grant under which the land was acquired by the state. **The commissioner shall ensure, by regulation, deed restriction, covenant, or otherwise, that disposals of land under this subsection serve a public purpose and are in the public interest.**

* **Sec. 25.** AS 38.05.840(a) is amended to read:

(a) Land may not be sold or leased, or a renewal lease issued, except in the case of an oil or gas or mineral lease, unless it has been appraised within **two years** [ONE YEAR] before the date fixed for the sale or lease. When land is offered at public sale but is not sold and is available at private sale, a reappraisal is not required unless the director considers that a change in value of the land may have occurred. A grazing lease may be granted to a lessee of federal grazing land without prior appraisal [,] if the federal lease was cancelled to allow the state to select the land under lease. Land may not be sold or leased for less than the approved, appraised market value, except as provided in AS 38.05.055, 38.05.057, 38.05.075 - 38.05.085, 38.05.097, 38.05.810, and 38.05.820.

* **Sec. 26.** AS 38.05.850(a) is amended to read:

(a) The director, without the prior approval of the commissioner, may issue permits, rights-of-way, or easements on state land for roads, trails, ditches, field gathering lines or transmission and distribution pipelines not subject to AS 38.35, telephone or electric transmission and distribution lines, log storage, oil well drilling sites and production facilities for the purposes of recovering minerals from adjacent land under valid lease, and other similar uses or improvements, or **revocable, nonexclusive permits** for the [LIMITED] personal **or commercial** use **or removal of resources that the director has determined to be of limited value** [OF TIMBER OR MATERIALS]. The commissioner, upon recommendation of the director, shall establish a reasonable rate or fee schedule to be charged for these uses, subject to the exception for nonprofit cooperative associations specified in (b) of this section. In the granting, suspension, or revocation of a permit or easement of land, the director shall

1 give preference to that use of the land that [WHICH] will be of greatest economic
 2 benefit to the state and the development of its resources. However, first preference
 3 shall be granted to the upland owner for the use of a tract of tideland, or tideland and
 4 contiguous submerged land, that [WHICH] is seaward of the upland property of the
 5 upland owner and that [WHICH] is needed by the upland owner for any of the
 6 purposes for which the use may be granted.

7 * **Sec. 27.** AS 38.05.945(a) is amended to read:

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

10 (1) classification or reclassification of state land under AS 38.05.300
 11 and the closing of land to mineral leasing or entry under AS 38.05.185;

12 (2) zoning of land under applicable law;

13 (3) issuance of a

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

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

20 (C) written finding for the sale, lease, or disposal of an interest
 21 in state land or resources under AS 38.05.035(e)(6), except an oil or gas lease
 22 sale described in AS 38.05.035(e)(6)(G) for which the director must provide
 23 opportunity for public comment under the provisions of that subparagraph;

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

26 (5) [A PUBLIC HEARING UNDER AS 38.05.856(b);

27 (6)] a preliminary finding under AS 38.05.035(e) [AND 38.05.855(c)]
 28 concerning sites for aquatic farms and related hatcheries;

29 (6) [(7)] a decision under AS 38.05.132 - 38.05.134 regarding the sale,
 30 lease, or disposal of an interest in state land or resources.

31 * **Sec. 28.** AS 38.05.945(d) is amended to read:

(d) Notice at least 30 days before action under (a)(5) [OR (6)] of this section shall be given to appropriate

(1) regional fish and game councils established under AS 16.05.260; and

(2) coastal resource service areas organized under AS 46.40.110 - 46.40.210.

* **Sec. 29.** AS 38.08.030(b) is amended to read:

(b) Fees for filing an application may not exceed **\$25** [\$10].

* **Sec. 30.** AS 38.08.040(a) is amended to read:

(a) An applicant meeting the qualifications for homesite entry under AS 38.08.030 **and selected under (f) of this section** shall be issued a revocable permit to occupy and improve the homesite in order to qualify for issuance of patent as provided in this chapter. **The holder of a homesite entry permit shall pay, in advance, an annual rental fee of \$100.** [THE APPLICATION FEE IS THE SOLE RENT CHARGEABLE ON THE PERMIT FOR ITS DURATION.]

* **Sec. 31.** AS 38.08.040 is amended by adding a new subsection to read:

(f) If only one application for a homesite parcel is received, the commissioner shall offer an entry permit for the parcel to the applicant provided the applicant is otherwise qualified. If more than one application is received for a parcel, the commissioner shall select by lottery the applicant who is entitled to receive the permit for the parcel. The lottery shall be conducted under regulations adopted by the commissioner that are to the maximum extent practicable consistent with the provisions of AS 38.05.057 and the regulations adopted under that section.

* **Sec. 32.** AS 38.09.010(g) is amended to read:

(g) The commissioner may limit the number of persons permitted to **obtain** [STAKE] homestead entries within an area designated under (a) of this section by a lottery of qualified applicants. [THE COMMISSIONER MAY CONDUCT A LOTTERY HELD UNDER THIS SUBSECTION IN THE COMMUNITY THAT IS CLOSEST TO THE AREA DESIGNATED FOR HOMESTEAD ENTRY. THE COMMISSIONER MAY REQUIRE THAT EACH PARTICIPANT IN THE LOTTERY BE PRESENT UNLESS ATTENDANCE AT THE LOTTERY IS

1 PREVENTED BY

2 (1) MEDICAL REASONS, ATTENDANCE AT SCHOOL, OR
3 MILITARY SERVICE OUTSIDE THE STATE; OR

4 (2) A MANDATORY, UNAVOIDABLE EMPLOYMENT
5 COMMITMENT DETERMINED VALID BY THE COMMISSIONER BEFORE THE
6 SALE.]

7 * **Sec. 33.** AS 38.09.030(a) is amended to read:

8 (a) An applicant for a homestead entry permit shall

9 (1) submit proof acceptable to the commissioner that the applicant is
10 at least 18 years of age and has been a resident of the state for not less than one year
11 immediately before the date of application;

12 (2) pay a fee of \$5 per acre according to the description provided by
13 the applicant **if the entry is on land classified agricultural, or \$10 per acre if the**
14 **entry is on land not classified agricultural;**

15 (3) agree to comply with the requirements of AS 38.09.050;

16 (4) certify that the corners of the land entered have been staked and the
17 boundaries have been flagged; or

18 (5) assume full responsibility for the accuracy of the description of the
19 land filed with the commissioner under AS 38.09.020(b).

20 * **Sec. 34.** AS 38.09.050(b) is amended to read:

21 (b) Nothing in this chapter prohibits a homestead entry permit holder from
22 residing in a temporary dwelling on the homestead [BEFORE ERECTION OF THE
23 PERMANENT DWELLING].

24 * **Sec. 35.** AS 38.09.090(b) is amended to read:

25 (b) An applicant who complies with **AS 38.09.050(a)(2), (4), and (5),**
26 **[AS 38.09.050(a)(2) - (5)]** and who tenders the commissioner an amount equal to five
27 percent of the present fair market value of the land within five years of the issuance
28 of the permit may purchase the land under AS 38.05.065. The purchase price is the
29 fair market value of the land at the time of the purchase.

30 * **Sec. 36.** AS 38.09 is amended by adding a new section to read:

31 **Sec. 38.09.105. Removal of conditions on remote parcel and homestead**

entry land. (a) The commissioner may not include the conditions of former AS 38.05.078(d) in a remote parcel purchase contract issued on or after the effective date of this section.

(b) The commissioner shall amend a remote parcel or homestead entry land purchase contract or patent issued before the effective date of this section to remove the conditions of former AS 38.05.078(d) or former AS 38.09.050(e) if the holder of the purchase contract or patent

(1) requests the amendment;

(2) pays the reasonable administrative costs of the amendment as determined by the commissioner; and

(3) pays the difference, as established by the commissioner, between the land's fair market value before the amendment and the estimated fair market value after the amendment.

* **Sec. 37.** AS 38.95 is amended by adding a new section to read:

**Article 7. No Obligation to Provide Services to Disposals
of State Land; No Limitation on Further Disposals.**

Sec. 38.95.300. Disclaimer applicable to state disposals. Except as otherwise specifically provided, nothing in this title

(1) obligates the state to provide services to land that is disposed of by the state, or any grantee of the state, or is the subject of any disposal program;

(2) limits the authority of the state to dispose of land or any interest in land or resources in the area of the current disposal, provides any exclusive right or interest in the area of the disposal, or implies or requires that any disposals made will be limited in type or any other manner.

* **Sec. 38.** AS 38.04.021; AS 38.05.040, 38.05.057(g), 38.05.079, 38.05.855, 38.05.856, 38.05.946(b); AS 38.08.090; AS 38.09.040(a)(3), 38.09.050(a)(3), 38.09.050(d), 38.09.050(e), 38.09.900(3), and 38.09.900(4) are repealed.

* **Sec. 39.** Notwithstanding AS 41.21.120 - 41.21.125, within Township 10 North, Range 1 East, Seward Meridian, the commissioner of natural resources may

(1) convey a property interest in land to the Alaska Railroad Corporation for the purpose of realigning the railroad in conjunction with the relocation of the Seward

Highway, provided that the property interest conveyed must be equivalent to that conveyed to the state-owned railroad under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982) and shall be held and managed by the Alaska Railroad Corporation under AS 42.40;

(2) grant a 300 foot wide highway easement to the Department of Transportation and Public Facilities for the relocated Seward Highway;

(3) grant a 100 foot wide utility easement to Chugach Electric Association, Inc., for the relocation of the 115 kilovolt electric transmission line (Federal Power Commission project no. 2170, AA-39417, and ADL 32417) and the electric distribution line (A-029885) located within the Chugach State Park.

*** Sec. 40.** (a) Notwithstanding the decision of the Alaska Supreme Court in Kachemak Bay Watch v. Noah, _____ P.2d _____ (Sup. Ct. No. S-7326; April 11, 1997), the Department of Natural Resources shall issue a lease under AS 38.05.083, as amended by sec. 20 of this Act, to a person who, on April 10, 1997, held a lease issued under AS 38.05.083 as it read on the day before the effective date of this section. Notwithstanding AS 38.05.083, as amended by sec. 20 of this Act, the terms and conditions of a lease issued under this subsection shall be substantially similar to the terms of the lease as it read on the day before the effective date of this section. Notice under AS 38.05.945 and a best interest determination under AS 38.05.035 are not required for the issuance of a lease under this subsection.

(b) Notwithstanding the repeal of AS 38.05.856 by sec. 38 of this Act and the decision of the Alaska Supreme Court in Kachemak Bay Watch v. Noah, _____ P.2d _____ (Sup. Ct. No. S-7326; April 11, 1997), the Department of Natural Resources shall allow a person who, (1) on April 10, 1997, held a permit issued under former AS 38.05.856, or (2) on or before April 10, 1997, had timely applied for a renewal of a permit under former AS 38.05.856, that had not been revoked or for which renewal had not been denied, to continue to operate under the terms and conditions of the permit as it read, or would have read, on the day before the effective date of this section if the person applies within 120 days of the effective date of this section for a lease under AS 38.05.083, as amended by sec. 20 of this Act. The department shall provide a preference right to a person applying for a lease under this subsection who has developed an aquatic farm site under former AS 38.05.855 by October 1, 1998. The right of a person to continue to operate under the terms and conditions of a permit continues until the earlier of the date the person's lease application is denied by the department, the date the

1 person is issued a lease by the department, or July 1, 1999. The right of a person to continue
 2 to operate under the terms and conditions of a permit as allowed by this subsection is proper
 3 notwithstanding a failure of the department to properly identify districts under former
 4 AS 38.05.855 before the issuance of the permit.

5 (c) Notwithstanding the repeal of AS 38.05.856 by sec. 38 of this Act and the decision
 6 of the Alaska Supreme Court in Kachemak Bay Watch v. Noah, _____ P.2d _____ (Sup. Ct.
 7 No. S-7326; April 11, 1997), the Department of Natural Resources shall allow a person who,
 8 on or before April 10, 1997, received a final decision from the department to issue to the
 9 person a permit under former AS 38.05.856, to operate under the terms and conditions of the
 10 permit as it would have read if it had been issued on the day before the effective date of this
 11 section if the person applies within 120 days of the effective date of this section for a lease
 12 under AS 38.05.083, as amended by sec. 20 of this Act. The department shall provide a
 13 preference right to a person applying for a lease under this subsection who has developed an
 14 aquatic farm site under former AS 38.05.855 by October 1, 1998. The right of a person to
 15 continue to operate under this subsection continues until the earlier of the date the person's
 16 lease application is denied by the department, the date the person is issued a lease by the
 17 department, or July 1, 1999. The right of a person to continue to operate under this
 18 subsection is proper notwithstanding a failure of the department to properly identify districts
 19 under former AS 38.05.855 before the issuance of the final decision.

20 * **Sec. 41.** A disposal by the Department of Natural Resources of a homesite under
 21 AS 38.08 by lottery, on or after July 6, 1984, and before the effective date of this section, is
 22 valid and effective, notwithstanding the fact that the disposal was by lottery, if the disposal
 23 otherwise complied with the requirements of AS 38.08.

24 * **Sec. 42.** APPLICABILITY. The change to the interest rate to be charged on contracts
 25 for the sale of land under AS 38.05.065, made by secs. 12 - 14 of this Act, applies to all
 26 contracts under AS 38.05.065 sent by the Department of Natural Resources to purchasers for
 27 signature on or after the effective date of secs. 12 - 14 of this Act.

28 * **Sec. 43.** TRANSITIONAL PROVISIONS: REGULATIONS. (a) Notwithstanding
 29 sec. 45 of this Act, the Department of Natural Resources may proceed to adopt regulations
 30 necessary to implement the changes made by this Act. The regulations take effect under
 31 AS 44.62 (Administrative Procedure Act), but not before July 1, 1997.

1 (b) To the extent they are consistent with AS 38.08, regulations governing the
2 selection of applicants for homesite parcels under AS 38.08 in effect on the effective date of
3 secs. 30 and 31 of this Act remain in effect notwithstanding the amendment to AS 38.08.040,
4 made by secs. 30 and 31 of this Act, until the regulations are amended, repealed, or
5 superseded.

6 * **Sec. 44. RETROACTIVE EFFECT.** To the maximum extent constitutionally permissible,
7 sec. 1 of this Act is retroactive to January 3, 1959.

8 * **Sec. 45.** Except for secs. 40 and 43 of this Act, this Act takes effect July 1, 1997.

9 * **Sec. 46.** Sections 40 and 43 of this Act take effect immediately under AS 01.10.070(c).