



MEMORANDUM

Department of Natural Resources

STATE OF ALASKA
Office of the Commissioner

TO: Rep. Eric Feige, Co-Chair
Rep. Paul Seaton, Co-Chair

DATE: March 13, 2012

TELEPHONE: 465-4730

FROM: Esther Tempel, Legislative Liaison

SUBJECT: HB 361 Follow-Up

During the March 5, 2012 hearing on HB 361, the following questions were raised. Please find below the responses from the Division of Mining, Land and Water along with the original questions that were asked (bolded).

Please let me or Dep. Director Wyn Menefee know if you require any further information or have any additional questions.

Note all references to the bill are working off of version 27-GH2717\A

How many leases would be affected by point one of the briefing paper (allowing more leases to be negotiated)?

Let us first clarify that this does not retroactively affect any existing leases. It only applies to future applications for leases. We can not accurately predict how many leases will be applied for and where. We can only look at the historical data and generalize the response.

The goal is to move more lease application processing from full competitive process to negotiated process. There are two parts of the bill that address this effort to shorten the processing time and reduce costs to the applicants. A negotiated process avoids the necessity to prepare an auction brochure, wait 30 additional days after posting notice of the auction, hold the auction and then issue the lease. (See attached chart)

On the first part under Section 5 (on page 3 line 5): the intent is to raise the initial threshold for allowing the director discretion to negotiate leases when the yearly appraised value of the transaction (i.e., rental value) does not exceed \$10,000 and the term will not exceed 10 years. The vast majority of our leases do not exceed this value. Most leases are already below the existing \$5000 threshold and only a handful of leases would be affected by this change each year. For example, certain larger tracts near communities or on the North Slope (leases of land outside of oil and gas lease boundaries or for non-oil and gas development) could exceed the \$5,000 value. Raising the threshold to \$10,000 would not automatically move the leases to the negotiated process, but rather provide the director discretion to use the negotiated process.

The second part under Section 6 (on page 3 line 14) would affect many more leases. The intent of part (d) is to first solicit competitive interest in an area where we have a lease application, and if there is no interest other than the applicant, we would begin to negotiate the lease with the applicant, thus avoiding the competitive auction process. We get between 10 – 20 lease applications per year that could potentially be affected by this revision.

Currently these revisions would allow this type of negotiated process for any lease that falls under AS 38.05.070. This includes leasing of uplands, and tide, submerged or shorelands except for resource extraction such as timber, mining or oil and gas leasing. The revisions are broad enough to be applicable for recreational facilities development, aquatic farm, hatchery, and shore fishery leasing. Where more specific statutes are applicable, such as in the shore fishery leasing under AS 38.05.082, the more specific statutes would prevail if there was a conflict.

Under briefing paper point 2, list what types of leases would be affected by this renewal clause?

This revision in Section 6 (on page 3 line 19) allows the director to renew leases that are in good standing one time. Because this revision is in AS 38.05.070 and includes direct references to leases issued under AS 38.05.075 (leasing procedures) and those issued under AS 38.05.810 (public and charitable leases), the renewal clause affects leases of uplands, and tide, submerged or shorelands except

for resource extraction such as timber, mining or oil and gas leasing. This could include everything from docks to lodges to energy production to storage facilities. It is applicable for recreational facilities development, aquatic farm, hatchery, and shore fishery leasing. It would not include leases under the Remote Recreational Cabin Site Program or agricultural preference rights.

Can renewals be applied for before the expiration of the lease?

There are three sections of HB361 that addresses renewals, sections 6 (general leases), 13 (submerged mineral leases), and 21 (temporary water use authorizations). There was concern expressed that lessees should have the ability to apply for renewal sooner than at the point of lease expiration. In all cases the statute would allow leases to be applied for before point of expiration. DNR would seek a determination of whether the lessee would want a renewal in sufficient time before expiration to allow for the renewal decision to be made before expiration. In some cases there may be some reasonable restrictions that would limit how far before the date of expiration a request for renewal could be received. For instance in aquatic farming and mineral leasing, there are requirements of annual reporting of production. DNR would not consider renewal of the lease more than a year before date of expiration to allow time for review of the last year's production reports to determine if the lessee was still in good standing following the stipulations in the lease. Note existing AS 38.05.250(c) allows for submerged mineral leases to be renewed year by year as long as there is production in paying quantities from the leased area, but does not allow for renewals of 20 year terms. This revision under section 13 allows the longer term renewal that provides more certainty for the lessee in business planning.

Do current land leases provide any first right of refusal to give the current lessee the upper hand on reissuance?

Under the current statutes, any reissuance of a lease at the end of a term would require a competitive process. If there was competitive interest and a new applicant were to win the auction, they would be required to reimburse the previous lessee for any of the improvements that the first lessee had built provided that they want to continue in the same use of the land. But the first lessee does not have the first right of refusal.

Under briefing paper point 4, verify that you could issue TWUA before end of term if it makes sense.

As mentioned before, under the revision in section 21, the temporary water use authorizations can be issued at or before the end of the lease.

Clarification of briefing paper point 8: it is mining royalty not mining license tax.

As a reminder, point 8 on the briefing paper is incorrect in saying that we are revising mining licensing tax law referring to Section 12 on page 6 of the bill. We are instead revising the mining royalty law. The statute revision is correct but the briefing paper used an incorrect term when referring to Section 12. The change in Section 12 does not conflict with the Department of Revenue's regulations which state that the mining license tax year is the same as that person's tax year for federal income tax purposes.

Follow up on Agricultural preference right auction question from Representative Seaton

The committee questioned whether the changes suggested in Section 3 (on page 2 line 22) adversely affected the state getting adequate compensation and would be used to stifle bidding. Upon further review of this section, DNR does not believe that the revision to allow the use of sealed bids in any way alters the probable outcome of an agricultural auction held under this section of statute. This area of statute in AS 38.05.069 provides an agricultural preference right. The apparent reason for the existence of this section is to allow agricultural land owners the right to broaden their land ownership if adjacent agricultural land becomes available. This preference right only comes into play when the commissioner has determined that the highest and best use of the unoccupied land to be leased is for agricultural use, and the adjacent owner is an Alaskan resident already using that adjacent parcel for agricultural purposes. This provides the right of the existing farmer to meet high bid to expand their farm. Whether the auction occurs through sealed bid or outcry auction, the adjacent land owner knows they can match high bid to purchase adjacent land through the preference right. They have no incentive to put in a high bid through sealed bid or to drive up the price through an outcry auction. They would wait to match the high bid in either event. Therefore it would not affect the outcome of the auction.

The revision DNR suggests does not address the underlying issue of whether the agricultural preference under the existing statute is the best policy; rather we seek to bring consistency in statute regarding the use of sealed bids or auctions. If there is a desire by the committee to address the underlying policy question of whether the state should offer the agricultural preference in the first place, we suggest that it be done in a separate statute revision.