

CS FOR SENATE BILL NO. 68(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:**Referred:****Sponsor(s): SENATOR GIESSEL****A BILL****FOR AN ACT ENTITLED**

1 **"An Act relating to public notice for certain state actions and public hearings; and**
2 **providing for an effective date."**

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

4 * **Section 1.** AS 38.05.073(c) is amended to read:

5 (c) If the commissioner identifies land for recreational facilities development
6 leasing under (a) of this section, at least 30 days before the commissioner decides to
7 solicit proposals from potential lessees, the commissioner shall provide public notice
8 of the location and the specific type of recreational facilities development being
9 considered and request comments. The notice shall be provided to (1) a municipality if
10 the land is entirely or partially within the boundaries of the municipality; (2) a regional
11 corporation organized under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement
12 Act) if the boundaries of the corporation established by 43 U.S.C. 1606(a) encompass
13 part or all of the land and the land encompassed by the corporation's boundaries is
14 entirely or partially outside the municipality; (3) a village corporation organized under

1 43 U.S.C. 1601 if all or part of the land is within 40 miles of the village for which the
2 corporation was established and the land is located entirely or partially outside a
3 municipality; (4) other persons affected by the specific recreational facility
4 development; and (5) persons who have specifically requested to be notified. Public
5 notice identifying the location and the specific type of recreational facilities
6 development under consideration must also be published **on the Alaska Online**
7 **Public Notice System (AS 44.62.175). When appropriate in the judgment of the**
8 **commissioner, notice may also be published** [AT LEAST TWICE] in a newspaper
9 of general circulation in the state and in a local newspaper in general circulation in the
10 region where the land is located. The comments received under this subsection
11 become part of the public record for the consideration of the commissioner.

12 * **Sec. 2.** AS 38.05.073(e) is amended to read:

13 (e) After preparing a request for proposals under (d) of this section, the
14 commissioner may issue the request to solicit proposals from persons who are
15 interested in leasing the land for recreational facilities development. The request for
16 proposals must be **published on the Alaska Online Public Notice System**
17 **(AS 44.62.175). When appropriate in the judgment of the commissioner, notice**
18 **may also be published** [ADVERTISED AT LEAST THREE TIMES] in a newspaper
19 of general circulation in the state and in a local newspaper in general circulation in the
20 region where the land is located. The proposals submitted to the commissioner must
21 include the specific facts on which the potential lessee bases its ability to develop the
22 land, including its ability to comply with the items identified in (d)(1) - (4) of this
23 section.

24 * **Sec. 3.** AS 38.05.205(a) is amended to read:

25 (a) Prior discovery, location, and recording shall initiate prior rights to mineral
26 deposits subject to AS 38.05.185 - 38.05.275 in or on state land, other than submerged
27 land, which is open to mining leasing. Locations shall be made and certificates of
28 location recorded in accordance with AS 38.05.195. If the located land is available
29 only for leasing, the director shall publish **notice of the recording of the location and**
30 **notice that a mineral lease will be issued on the Alaska Online Public Notice**
31 **System (AS 44.62.175). When appropriate in the judgment of the director, the**

1 **director may also publish these notices** in a paper of general circulation in the area
2 of the location [, NOTICE OF THE RECORDING OF THE LOCATION AND
3 NOTICE THAT A MINERAL LEASE WILL BE ISSUED]. The notice may be
4 combined with notices of locations either in the same general area or statewide. Unless
5 a conflicting location exists, **not** [NO] later than two weeks after publication of the
6 notice, an application form for a mining lease shall be mailed to the locator by the
7 director. A lease application shall be filed with the director by the locator within 90
8 days after receipt of the form. If the located land is not available for leasing, notice
9 shall be given the locator by the director and the locator's prior rights shall terminate.
10 A mining lessee has the exclusive rights of possession and extraction of all minerals
11 subject to AS 38.05.185 - 38.05.275 lying within the boundaries of the lease or
12 location. Mining leases may be issued for one location or for a group of contiguous
13 locations held in common. Minerals may not be mined and marketed or used until a
14 lease is issued, except for limited amounts necessary for sampling or testing.

15 * **Sec. 4. AS 38.05.945(b)** is amended to read:

16 (b) When notice is required to be given under this section,

17 (1) the notice must contain sufficient information in commonly
18 understood terms to inform the public of the nature of the action and the opportunity
19 of the public to comment on it;

20 (2) if the notice is of a preliminary written finding described in
21 (a)(3)(A) of this section, the department shall give notice at the beginning of the public
22 comment period for the preliminary written finding, notifying the public of the right to
23 submit comments; the department shall give notice by [(A)] posting **the** notice on the
24 Alaska Online Public Notice System **(AS 44.62.175)** for at least 30 consecutive days;
25 **the department may also give notice by one or more of the following methods:**

26 **(A)** [(B)] PUBLICATION OF A NOTICE IN DISPLAY
27 ADVERTISING FORM DESCRIBING THE PROPOSED ACTION AND
28 REFERENCING THE ONLINE NOTICE REQUIRED IN (A) OF THIS
29 PARAGRAPH IN NEWSPAPERS OF STATEWIDE CIRCULATION AND
30 IN NEWSPAPERS OF GENERAL CIRCULATION IN THE VICINITY OF
31 THE PROPOSED ACTION, IF AVAILABLE, AT LEAST ONCE A WEEK

1 FOR TWO CONSECUTIVE WEEKS;

2 (C)] public service announcements on the electronic media
3 serving the area to be affected by the proposed action;

4 **(B)** [AND (D) ONE OR MORE OF THE FOLLOWING
5 METHODS:

6 (i)] publication of a [LEGAL] notice in **display**
7 **advertising form in** newspapers of statewide circulation or in
8 newspapers of general circulation in the vicinity of the proposed action;

9 **(C)** [, IF AVAILABLE, AT LEAST ONCE A WEEK FOR
10 TWO CONSECUTIVE WEEKS;

11 (ii)] posting in a conspicuous location in the vicinity of
12 the action;

13 **(D)** [(iii)] notification of parties known or likely to be affected
14 by the action; or

15 **(E)** [(iv)] another method calculated to reach affected parties;

16 (3) if the notice is of an action described in (a) of this section, other
17 than notice of an action under (a)(3)(A) of this section, the department shall give
18 notice at least 30 days before the action by posting **the** notice on the Alaska Online
19 Public Notice System **(AS 44.62.175)** for at least 30 consecutive days and by one or
20 more of the following methods:

21 (A) publication of a notice in display advertising form
22 describing the proposed action and referencing the online notice required in
23 this paragraph in newspapers of statewide circulation and in newspapers of
24 general circulation in the vicinity of the proposed action, if available [, AT
25 LEAST ONCE A WEEK FOR TWO CONSECUTIVE WEEKS];

26 (B) publication through public service announcements on the
27 electronic media serving the area affected by the action;

28 (C) posting in a conspicuous location in the vicinity of the
29 action;

30 (D) notification of parties known or likely to be affected by the
31 action; or

1 (E) another method calculated to reach affected persons.

2 * **Sec. 5.** AS 44.62.190(a) is amended to read:

3 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,
4 notice of the proposed action shall be

5 (1) published, at the discretion of the state agency giving the notice,
6 in the newspaper of general circulation or trade or industry publication that the state
7 agency prescribes or [AND POSTED] on the Alaska Online Public Notice System
8 (AS 44.62.175); [IN THE DISCRETION OF THE STATE AGENCY GIVING THE
9 NOTICE, THE REQUIREMENT OF PUBLICATION IN A NEWSPAPER OR
10 TRADE OR INDUSTRY PUBLICATION MAY BE SATISFIED BY USING A
11 COMBINATION OF PUBLICATION AND BROADCASTING; WHEN
12 BROADCASTING THE NOTICE, AN AGENCY MAY USE AN ABBREVIATED
13 FORM OF THE NOTICE IF THE BROADCAST PROVIDES THE NAME AND
14 DATE OF THE NEWSPAPER OR TRADE OR INDUSTRY JOURNAL AND THE
15 INTERNET ADDRESS OF THE ALASKA ONLINE PUBLIC NOTICE SYSTEM
16 WHERE THE FULL TEXT OF THE NOTICE CAN BE FOUND;]

17 (2) furnished to every person who has filed a request for notice of
18 proposed action with the state agency;

19 (3) if the agency is within a department, furnished to the commissioner
20 of the department;

21 (4) when appropriate in the judgment of the agency,

22 (A) furnished to a person or group of persons whom the agency
23 believes is interested in the proposed action; and

24 (B) published or broadcast in the additional form and manner
25 the state agency prescribes;

26 (5) furnished to the Department of Law together with a copy of the
27 proposed regulation, amendment, or order of repeal for the department's use in
28 preparing the opinion required after adoption and before filing by AS 44.62.060;

29 (6) furnished by electronic format to all incumbent State of Alaska
30 legislators.

31 * **Sec. 6.** AS 44.62.190(f) is amended to read:

(f) To the extent feasible, the subject line of electronic mail and the title of a [WRITTEN] publication providing the information required by (d) of this section must give the reader a fair idea of the substance of the proposed new regulation, the proposed amended regulation, or the regulation proposed for repeal.

* Sec. 7. AS 44.62.200(d) is amended to read:

(d) When a state agency, other than the Regulatory Commission of Alaska, the Board of Fisheries, or the Board of Game, posts, furnishes, or otherwise provides a notice of the proposed adoption, amendment, or repeal of a regulation under AS 44.62.190, a brief description of the changes made by the proposed adoption, amendment, or repeal must accompany the notice. However, if, under AS 44.62.190(a), the notice is published [IN A NEWSPAPER OR TRADE OR INDUSTRY PUBLICATION] or [IS] broadcast, this subsection does not require that the brief description otherwise required by this subsection accompany the notice [PUBLICATION OR THE BROADCAST]. To the extent practicable, the brief description shall be written in clear, easily readable language that a person without a legal background is able to understand.

* Sec. 8. AS 44.62.245(b) is amended to read:

(b) When the amended version of a document or other material incorporated by reference in a regulation as described in (a) of this section becomes available, the state agency shall

(1) make the amended version of the document or other material available to the public for review; and

(2) post, at the discretion of the agency, on the Alaska Online Public Notice System (AS 44.62.175) or [AND PUBLISH] in a newspaper of general circulation, [OR] trade or industry publication, or [IN A] regularly published agency newsletter or similar printed publication, not later than 15 days after the amended version of the document or other material becomes available, a notice that describes the affected regulation, the effective date of the amended version of the document or other material, and how a copy of the amended version may be obtained or reviewed.

* **Sec. 9.** AS 44.62.300(b) is amended to read:

(b) Notwithstanding (a) of this section, a person may not bring an action in

court to challenge the adoption, repeal, or amendment of a regulation by a state agency for

(1) insufficiency or inaccuracy of the information provided under AS 44.62.190(d) or (g);

(2) failure of the subject line of electronic mail or the title of a [WRITTEN] publication to meet the requirements of AS 44.62.190(f);

(3) failure of the brief description required by AS 44.62.200(d) to comply with the requirements of AS 44.62.200(d) relating to

(A) the clarity and readability of the brief description; or

(B) the description of the changes made by the proposed adoption, amendment, or repeal of a regulation; or

(4) inaccuracy or insufficiency of the answer to a question provided by the state agency under AS 44.62.213.

* **Sec. 10.** AS 46.03.110(b) is amended to read:

(b) After receipt of a proper application for an individual or general permit or a determination by the department that a general permit should be proposed, the department shall publish notice of the application or proposal, or of the availability of a draft permit for comment, as applicable. At the discretion of the department, the notice may be published [,] in at least two publications of a newspaper of general circulation within the general area in which the disposal of waste material is proposed to be made, or [. THE NOTICE SHALL ALSO BE POSTED] on the Alaska Online Public Notice System (AS 44.62.175). The department [MAINTAINED UNDER AS 44.62.175 AND] may also publish the notice [BE PUBLISHED] in other appropriate information media. The notice must include a statement that a person who wants to present views to the department with regard to the application or proposal may do so in writing to the department within 30 days after the first publication of the notice. The written response entitles the writer to a copy of the application or draft permit, and, in the case of an application or proposal to issue a general permit, the application or proposal shall also be posted by the department on the Internet at the same time that notice is published under this subsection.

* **Sec. 11.** AS 46.15.065(b) is amended to read:

(b) The commissioner shall, as soon as practicable, determine the rights of persons owning existing appropriations. To accomplish this, the commissioner shall

(1) by order set a definite period for filing a declaration of appropriation within a specified area or from a specified source;

(2) publish notice of the order on the Alaska Online Public Notice System (AS 44.62.175) for at least three consecutive weeks; when appropriate in the judgment of the commissioner, the commissioner may also publish notice under this paragraph [ONCE A WEEK FOR THREE WEEKS] before the beginning of the period in a newspaper of general circulation in the affected area;

(3) give notice of the order by certified mail to any appropriator within the specified area or from the specified source who has requested mailed notice or of whom the commissioner can readily obtain knowledge, including each owner of a recorded mining claim.

* **Sec. 12.** AS 46.15.133(b) is amended to read:

(b) The commissioner shall publish the notice on the Alaska Online Public Notice System (AS 44.62.175) and, when appropriate in the judgment of the commissioner, in one issue of a newspaper of general distribution in the area of the state in which the water is to be appropriated, removed, or sold. The commissioner shall also have notice served personally or by certified mail on [UPON] an appropriator of water or applicant for or holder of a permit who, according to the records of the division of lands, may be affected by the proposed sale, appropriation, or removal and may serve notice on [UPON] any governmental agency, political subdivision, or person; notice shall also be served on [UPON] the Department of Fish and Game and the Department of Environmental Conservation. An applicant for an appropriation or removal shall pay the commissioner's costs in providing publication and notice under this subsection. The commissioner may require as a condition of a sale of water under AS 46.15.037 [,] that a purchaser of water reimburse the department for the costs associated with providing notice of the proposed sale.

* **Sec. 13.** This Act takes effect immediately under AS 01.10.070(c).