

SENATE CS FOR CS FOR HOUSE BILL NO. 77(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/8/13

Referred: Rules

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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; establishing that performance of a feasibility study for the development and**
5 **operation of a hydroelectric site at Chikuminuk Lake is not considered an incompatible**
6 **use of the Wood-Tikchik State Park; relating to procedures for certain administrative**
7 **appeals and requests for reconsideration to the commissioner of natural resources;**
8 **relating to the Alaska Water Use Act; and providing for an effective date."**

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

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

11 (c) Notwithstanding any other provision of law, the commissioner may
12 authorize an activity on state land by the issuance of a general permit if the

1 commissioner finds that the activity is unlikely to result in significant and irreparable
 2 harm to state land or resources. This subsection does not apply to land designated
 3 under AS 16.20, AS 27.21, AS 41.17, or AS 41.21.

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

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

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

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

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

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

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

31 (i) applicable statutes and regulations;

1 (ii) the facts pertaining to the land, resources, or
 2 property, or interest in them, that the director finds are material to the
 3 determination and that are known to the director or knowledge of which
 4 is made available to the director during the administrative review; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 with (1) of this subsection, and information required by (g) of this section,
 2 upon which the determination that the sale, lease, or other disposal will serve
 3 the best interests of the state is based;

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

16 (A) a contract for a negotiated sale authorized under
 17 AS 38.05.115;

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

19 (C) a permit or other authorization revocable by the
 20 commissioner;

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

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

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

1 subparagraph, the director shall call for comments from the public; the
2 director's call for public comments must provide opportunity for public
3 comment for a period of not less than 30 days; if the director determines that a
4 supplement to the most recent best interest finding for the acreage is required
5 under this subparagraph,

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

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

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

13 (G) a surface use lease under AS 38.05.255;

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

15 (7) the director shall include in

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

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

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

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

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

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

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

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

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

10 (j) An administrative appeal or a request for reconsideration submitted under
11 (i) of this section must specify the written finding complained of and the specific basis
12 upon which it is challenged. [THE COMMISSIONER SHALL GRANT OR DENY
13 THE ADMINISTRATIVE APPEAL OR RECONSIDERATION REQUEST WITHIN
14 30 DAYS AFTER ISSUANCE OF THE FINAL WRITTEN FINDING.] Failure of the
15 commissioner to act on **a** [THE] request for reconsideration **not later than 30 days**
16 **after issuance of the final written finding** [WITHIN THIS PERIOD] is a denial of
17 the request for reconsideration and a final administrative decision for purposes of
18 appeal to the superior court.

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

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

29 * **Sec. 7.** AS 38.05.035 is amended by adding a new subsection to read:

30 (o) Where there is an active municipal entitlement selection on state land
31 under AS 29.65.010 - 29.65.030 that has a state-issued lease and before the decision to

1 approve the municipal entitlement, the director shall grant a preference right to
 2 purchase without competitive bid of up to five acres of the state land to an individual
 3 who has erected a building approved by a lease on the state land and used the land for
 4 bona fide business purposes for 10 or more years under a state lease, if the business
 5 produced not less than 25 percent of the total income of the applicant for the 10 years
 6 preceding the application to purchase the land. The director shall sell the land at a
 7 price determined by the director to represent the current fair market value of the
 8 unimproved land determined by appraisal and survey, if not already completed, at the
 9 cost of the applicant. If the director determines, in a written finding, that the purchase
 10 of the land would interfere with public use by residents of the area, the director may
 11 condition the purchase to mitigate the adverse effects on the public or may reject the
 12 application if those effects cannot be mitigated. The revenue from the purchase of the
 13 parcel will be given to the municipality if the municipal entitlement is approved for
 14 that acreage. In this subsection,

15 (1) "building" means a permanent type of structure with solid walls,
 16 foundation, and roof;

17 (2) "business purposes" means a purpose consistent with the
 18 classification of the land at the time the land was entered.

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

20 (a) **Unless the remainder of the purchase price is paid in full at the time of**
 21 **the sale, a** [THE] contract of sale for land **or property** sold [AT PUBLIC AUCTION
 22 OR BY SEALED BID] under **this chapter or former AS 38.05.078** [AS 38.05.055]
 23 shall require the remainder of the purchase price to be paid in monthly, quarterly, or
 24 annual installments over a period of not more than 20 years, with interest at the rate
 25 provided in (i) of this section. Installment payments plus interest shall be set on the
 26 level-payment basis.

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

28 (c) The director shall, for **a contract that provides for installment payments**
 29 [CONTRACTS] under (a) [, (b),] or (h) of this section, set out in the contract [FOR
 30 EACH SALE] the period for the payment of installments and the total purchase price
 31 plus interest. The director, with the consent of the commissioner, may also include in **a**

1 **contract** [CONTRACTS] under this section conditions, limitations, and terms
2 considered necessary and proper to protect the interest of the state. Violations of any
3 provision of this chapter or the terms of the contract of sale subject the purchaser to
4 appropriate administrative and legal action, including but not limited to specific
5 performance, foreclosure, ejectment, or other legal remedies in accordance with
6 applicable state law.

7 * **Sec. 10.** AS 38.05.065(h) is amended to read:

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

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

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

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

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

24 (C) the sale of the agricultural land takes place after July 1,
25 1979; and

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

1 * **Sec. 11.** AS 38.05.070 is amended by adding new subsections to read:

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

5 (1) a lessee preference application under AS 38.05.102;

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

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

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

14 * **Sec. 12.** AS 38.05.075(a) is amended to read:

15 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.082,
16 38.05.083, 38.05.087, 38.05.102, 38.05.565, 38.05.600, 38.05.810, and this section,
17 when competitive interest has been demonstrated or the commissioner determines that
18 it is in the state's best interests, leasing shall be made at public auction or by sealed
19 bid, at the discretion of the director, to the highest qualified bidder as determined by
20 the commissioner. A bidder may be represented by an attorney or agent at a public
21 auction. In the public notice of a lease to be offered at public auction or by sealed bid,
22 the commissioner shall specify a minimum acceptable bid and the lease compensation
23 method. The lease compensation method shall be designed to maximize the return on
24 the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).
25 **A substantially and adversely affected** [AN AGGRIEVED] bidder may appeal **or**
26 **request reconsideration under AS 44.37.011; however, the appeal or request must**
27 **be made not later than** [TO THE COMMISSIONER WITHIN] five days **after**
28 **issuance of the determination of the highest qualified bidder** for a review of the
29 determination. The leasing shall be conducted by the commissioner, and the successful
30 bidder shall deposit at the public auction or with the sealed bid the first year's rental or
31 other lease compensation as specified by the commissioner, or that portion of it that

1 the commissioner requires in accordance with the bid. The commissioner shall require,
 2 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or
 3 appraisal costs reasonably incurred by another qualified bidder acting in accordance
 4 with the regulations of the commissioner or incurred by the department under
 5 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal
 6 costs is determined by the commissioner to be the highest qualified bidder under this
 7 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those
 8 costs or to the department if the department incurred the costs. All costs for survey and
 9 appraisal shall be approved in advance in writing by the commissioner. The
 10 commissioner shall immediately issue a receipt containing a description of the land or
 11 interest leased, the price bid, and the terms of the lease to the successful qualified
 12 bidder. If the receipt is not accepted in writing by the bidder under this subsection, the
 13 commissioner may offer the land for lease again under this subsection. A lease, on a
 14 form approved by the attorney general, shall be signed by the successful bidder and by
 15 the commissioner.

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

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

25 (1) classification under AS 38.05.300;

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

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

29 * **Sec. 14.** AS 38.05.075(h) is amended to read:

30 (h) A person **substantially and adversely affected** [AGGRIEVED] by a
 31 decision of the commissioner under this section may appeal **or request**

1 **reconsideration under AS 44.37.011; however, the appeal or request for**
 2 **reconsideration must be made not later than** [TO THE COMMISSIONER
 3 WITHIN] five days **after** [OF] the prequalification decision. [THE DECISION OF
 4 THE COMMISSIONER UNDER THIS SUBSECTION MAY BE APPEALED TO
 5 THE SUPERIOR COURT.]

6 * **Sec. 15.** AS 38.05.082(b) is amended to read:

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

23 * **Sec. 16.** AS 38.05.083(a) is amended to read:

24 (a) The commissioner may offer to the public for lease at public auction or by
 25 sealed bid under AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic
 26 farming or related hatchery operations. Before a final decision to issue [OR RENEW]
 27 a lease under this section, the commissioner shall give notice and allow opportunity
 28 for comment in accordance with AS 38.05.945 and may hold a hearing to take
 29 testimony. Before a final decision to issue [OR RENEW] a lease under this section,
 30 the commissioner shall consider all relevant comment or testimony submitted under
 31 this section, AS 38.05.945, or 38.05.946.

1 * **Sec. 17.** AS 38.05.083 is amended by adding new subsections to read:

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

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

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

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

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

20 * **Sec. 18.** AS 38.05.185(a) is amended to read:

21 (a) The acquisition and continuance of rights in and to deposits on state land
22 of minerals, which on January 3, 1959, were subject to location under the mining laws
23 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in
24 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to
25 mineral deposits owned by any other person or government. The director, with the
26 approval of the commissioner, shall determine that land from which mineral deposits
27 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that
28 land that shall be closed to location under AS 38.05.185 - 38.05.275. State land may
29 not be closed to location under AS 38.05.185 - 38.05.275 except as provided in
30 AS 38.05.300 and unless the commissioner makes a finding that mining would be
31 incompatible with significant surface uses on the state land. State land may not be

1 restricted to mining under lease unless the commissioner determines that potential use
 2 conflicts on the state land require that mining be allowed only under written leases
 3 issued under AS 38.05.205 or the commissioner has determined that the land was
 4 mineral in character at the time of state selection. The determinations required under
 5 this subsection shall be made in compliance with land classification orders and land
 6 use plans developed under AS 38.05.300. **A preliminary written decision under this**
 7 **subsection may be made available to the public and provide opportunity for**
 8 **public comment on the preliminary written decision for a period of at least 30**
 9 **days.**

10 * **Sec. 19.** AS 38.05.300(a) is amended to read:

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

25 * **Sec. 20.** AS 38.05.945(a) is amended to read:

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

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

1 AS 38.05.185;

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

4 (3) issuance of a

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

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

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

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

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

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

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

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

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

24 (21) "state land" or "land" means all land, including **shoreland**
 25 **[SHORE]**, **tideland** **[TIDE]**, and submerged land, or resources belonging to or
 26 acquired by the state;

27 * **Sec. 22.** AS 38.05.965 is amended by adding a new paragraph to read:

28 (26) "public auction" includes a public oral outcry auction and a public
 29 online auction.

30 * **Sec. 23.** AS 38.50.010 is amended to read:

31 **Sec. 38.50.010. Authorization for exchange of state land.** Subject to the

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

26 * **Sec. 24.** AS 38.50.030(b) is amended to read:

27 (b) The director may negotiate an exchange involving more than one party [;
 28 HOWEVER, IN ORDER TO ASCERTAIN WHETHER THE EQUAL VALUE
 29 REQUIREMENTS OF THIS CHAPTER HAVE BEEN MET, THE DIRECTOR
 30 SHALL CONSIDER ONLY THE LAND AND OTHER CONSIDERATION WHICH
 31 THE STATE WOULD CONVEY AND RECEIVE IF THE EXCHANGE WERE

1 EXECUTED].

2 * **Sec. 25.** AS 38.50.050 is amended to read:

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

14 * **Sec. 26.** AS 38.50.070 is amended to read:

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

22 * **Sec. 27.** AS 38.50.140 is amended to read:

23 **Sec. 38.50.140. Legislative review. Not later than** [WITHIN] 10 days **from**
 24 [OF] the convening of a regular legislative session, the governor shall transmit to the
 25 president of the senate and the speaker of the house of representatives any proposal for
 26 a land exchange required to be submitted to the legislature for approval under
 27 **AS 38.50.010** [AS 38.50.020(a)] that is scheduled to occur before the next legislative
 28 session. If exigent circumstances seriously affecting state interests so require, the
 29 governor may submit the proposed exchange to the legislature at some other time. A
 30 finding of exigent circumstances shall be carefully documented in the letter of
 31 transmittal. The director is authorized to conclude a proposed exchange agreement

1 upon approval by the legislature of the proposed exchange agreement. A decision by
 2 the legislature to disapprove a proposed exchange shall be accompanied by a
 3 recommendation to the governor with respect to future actions which the director
 4 should take concerning the exchange.

5 * **Sec. 28.** AS 38.50.170(3) is amended to read:

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

10 * **Sec. 29.** AS 40.15.305(e) is amended to read:

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

22 * **Sec. 30.** AS 41.21.167 is amended by adding a new subsection to read:

23 (e) Performance of a feasibility study for the development and operation of a
 24 hydroelectric site at Chikuminuk Lake is not considered an incompatible use.

25 * **Sec. 31.** AS 44.37.011(a) is amended to read:

26 (a) This section applies to administrative appeals or **requests** [PETITIONS]
 27 for reconsideration of a decision in an administrative appeal to the commissioner of
 28 natural resources, except for those administrative appeals or **requests for**
 29 **reconsideration** [PETITIONS] done under AS 38.35, [OR] AS 43.82, **or a different**
 30 **procedure set out in AS 27.21 or its applicable regulations.** If a conflict occurs
 31 between this section and other state law existing at the time of **original** enactment of

1 this section, the provisions of this section control.

2 * **Sec. 32.** AS 44.37.011(b) is amended to read:

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

11 * **Sec. 33.** AS 44.37.011(c) is amended to read:

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

20 * **Sec. 34.** AS 44.37.011(d) is amended to read:

21 (d) If a person has a right to **appeal or request** [PETITION FOR]
 22 reconsideration under [AS 44.62.540 OR] this section, the person has [A TOTAL OF]
 23 20 **calendar** days **after the date of issuance of a final department decision** [,
 24 INCLUDING THE TIME AVAILABLE UNDER AS 44.62.540,] in which to file **an**
 25 **appeal or a request** [PETITION] for reconsideration with the commissioner.

26 * **Sec. 35.** AS 44.37.011 is amended by adding new subsections to read:

27 (f) In this section, in order for a person to be adversely affected, a final
 28 decision made by the department must create or impose an adverse and direct effect or
 29 detriment on the person or the interests of that person.

30 (g) An appeal or request for reconsideration must include a statement that
 31 explains how the person is substantially and adversely affected by the department

1 decision. The statement must

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

4 (2) explain how the decision caused the substantial and adverse effect
5 on the person.

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

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

13 * **Sec. 36.** AS 46.15.035(a) is amended to read:

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

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

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

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

29 * **Sec. 37.** AS 46.15.133(a) is amended to read:

30 (a) If the commissioner proposes a sale of water or receives an application for
31 appropriation or removal, the commissioner shall prepare a notice containing the

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

8 * **Sec. 38.** AS 46.15.133(b) is amended to read:

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

22 * **Sec. 39.** AS 46.15.133(c) is amended to read:

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

30 * **Sec. 40.** AS 46.15.133(d) is amended to read:

31 (d) If no objection is filed, the commissioner may proceed to make a **final**

1 determination upon the application for appropriation or removal or the proposal for
2 sale.

3 * **Sec. 41.** AS 46.15.133(e) is amended to read:

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

11 * **Sec. 42.** AS 46.15.145(a) is amended to read:

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

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

21 * **Sec. 43.** AS 46.15.145(f) is amended to read:

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

30 * **Sec. 44.** AS 46.15.155(a) is amended to read:

31 (a) Notwithstanding any contrary provision of this chapter, the commissioner

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

6 * **Sec. 45.** AS 38.05.065(b); AS 38.50.020, 38.50.040, 38.50.080, 38.50.090, 38.50.100,
7 38.50.110, 38.50.120, 38.50.130; and AS 46.15.145(e) are repealed.

8 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TRANSITION: WOOD-TIKCHIK STATE PARK MANAGEMENT PLAN AND
11 REGULATIONS; ENFORCEMENT. To allow for a feasibility study for the development and
12 operation of a hydroelectric site at Chikuminuk Lake, the Department of Natural Resources
13 may not enforce or implement provisions in the Wood-Tikchik State Park Management Plan,
14 dated October 2002, and regulations applicable to the Wood-Tikchik State Park that are
15 inconsistent with AS 41.21.167(e), enacted by sec. 30 of this Act.

16 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 TRANSITION: PENDING APPLICATIONS FOR RESERVED WATER. The
19 Department of Natural Resources shall return any applications and fees for applications
20 pending as of the effective date of sec. 42 of this Act to persons no longer authorized to
21 reserve water under sec. 42 of this Act. The commissioner of the Department of Natural
22 Resources may refer applications that are no longer authorized to other state agencies for an
23 independent evaluation and consideration of submission of a similar application to request a
24 reservation to that agency.

25 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 TRANSITION: REGULATIONS. The Department of Natural Resources may
28 immediately adopt regulations necessary to implement the changes made by this Act. The
29 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1,
30 2013.

31 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
3 heading of AS 44.37.011 from "Additional procedures for administrative appeals and
4 petitions for reconsideration to the commissioner of natural resources" to "Procedures for
5 administrative appeals and requests for reconsideration to the commissioner of natural
6 resources."

7 * **Sec. 50.** Sections 30, 46, and 48 of this Act take effect immediately under
8 AS 01.10.070(c).

9 * **Sec. 51.** Except as provided in sec. 50 of this Act, this Act takes effect July 1, 2013.