



**Alaska Department of
NATURAL
RESOURCES**

Sectional Analysis
2nd SCS CS HB77(RES)\Version H
Division of Mining, Land and Water
March 10, 2014

Section 1 adds a new subsection (c) to AS 38.05.020 to allow the Department of Natural Resources (DNR) the ability to issue a general permit for an activity on state land that the department may already authorize through permit under AS 38.05 and AS 38.95 in the Alaska Land Act. A general permit may be issued if the activity is unlikely to result in significant or irreparable harm to state land or resources. The section outlines the decision process for a general permit, which includes a public comment period provided for a proposed general permit. A decision to issue a general permit will be appealable at the time of issuance through the general DNR appeal provision (AS 44.37.011). After the initial appeal period has ended for the decision to establish a general permit, it cannot be later appealed based on subsequent activity that adheres to the general permit. Activities conducted under the general permit will not require further public notice. This section does not apply to state game refuges (AS 16.20), the Alaska Surface Coal Mining Control and Reclamation Act (AS 27.21), state forests (AS 41.17) and state parks (AS 41.21). If there is a conflict between this provision and a provision in AS 38.04, AS 38.05, or AS 38.95, the provisions of this section control.

Section 2 removes the reference to the additional requirement that the director of the division of Mining, Land and Water (DMLW) shall consult with other departments during the negotiation of a land exchange (AS 38.50.090), as this provision is repealed in Section 46 of the bill. This provision is replaced in Section 22 with the addition of language referring to decision and review procedures established in AS 38.05.035(e).

Section 3 allows the director to execute a contract for the sale, lease, or other disposal of land or an interest in land without commissioner approval if the annual rental is not greater than \$10,000 (rather than \$5,000). This section also clarifies that the director of DMLW may provide a preliminary written best interest finding and public notice for that preliminary finding for non-oil and gas related land disposals.

Section 4 clarifies that only a person who is substantially and adversely affected by a final written best interest finding related to the sale, lease, or disposal of land or an interest in land may appeal a director's decision. It also adds that the applicant may also appeal the decision.

Section 5 clarifies that for appeals of written best interest findings related to the sale, lease, or disposal of land or an interest in land, it is considered a denial if the Commissioner does not act on a request for reconsideration within 30 days after the issuance of the final written finding.

Section 6 states in an administrative appeal to court of a written best interest finding related to the sale, lease, or disposal of land or an interest in land, a court can only deal with points presented to the commissioner in the appeal or request for reconsideration.

Section 7 creates a new preference right that allows an individual that holds a state land lease for 10 years that was issued competitively, with a constructed building, where 25% of their income for 10 years came from that land, to purchase the land before the state conveys the land to a municipality through a municipal

entitlement. The director may either condition the purchase or reject the application for preference right if he determines that the purchase of the land would interfere with public use by residents of the area. If the preference right is approved, subject to appropriation, the revenue from the purchase of the parcel will be given to the municipality and the municipal entitlement shall be reduced by the amount of land covered under this section.

Sections 8 through 10 amend statutes to allow land and property sales to be purchased by contract or by payment in full up-front. Sections 9 and 10 remove references to AS 38.05.065(b) related to sale of land by lottery, which is repealed in Section 46 as the newly created Section 8 now includes all land sales.

Section 11 adds a new subsection (f) to AS 38.05.070 that allows a one-time extension by the director of DMLW for a period of up to two years for an existing land lease if in the best interest of the state. This section allows leases to remain active while DMLW adjudicates a request to renew the lease, a request to purchase the leased land under a preference right under AS 38.05.102 or where the lessee plans to substantially change the operation to the point where a new best interest finding and decision must be issued under AS 38.05.035(e).

Section 12 amends AS 38.05.075(a) so that only a bidder who is substantially and adversely affected by the issuance of a determination of highest bidder in a lease sale may appeal for a review of the determination under AS 44.37.011.

Section 13 amends AS 38.05.075(h) so that only a person substantially and adversely affected by the department's prequalification decision may appeal or request reconsideration within 5 days of the decision. This section also clarifies that appeals to DNR and superior court would now be addressed under AS 44.37.011 and therefore the sentence providing appeal to superior court is deleted.

Section 14 clarifies that only an applicant substantially and adversely affected by the department's decision related to leases for fisheries development may appeal or request reconsideration under AS 44.37.011 within 20 days after the decision is issued.

Section 15 and 16 relate to aquatic farming leases. Section 15 removes the reference to lease renewals as Section 16 adds a new subsection related specifically to renewal of aquatic farm leases. Section 16 allows the director of DMLW to issue a one-time renewal, for a period of up to ten years in duration, of an existing aquatic farm lease if it is determined to be in the best interest of the state. Section 16 also provides that the director may extend aquatic farm leases for up to two years while a renewal application is pending or where the lessee plans to substantially change the purpose or operation of an existing lease such that a new best interest finding and decision must be issued under AS 38.05.035(e).

Section 17 amends AS 38.05.185(a) to allow the director of DMLW to make a preliminary written decision for a mineral order or leasehold location order regarding availability of land to mineral leasing or entry. This conforms to amendments made in Section 19.

Section 18 amends AS 38.05.300(a) to allow the director of DMLW to make a preliminary written decision regarding the classification or reclassification of state land. This conforms to amendments made in Section 19.

Section 19 amends the public notice statute AS 38.05.945(a) to include public notice for various preliminary decisions or final decisions if a preliminary decision is not issued. This section also clarifies

that all mineral orders and leasehold location orders are subject to public notice requirements of AS 38.05.945, not just mineral closing orders.

Section 20 clarifies the definition of “state land” includes shoreland and tideland in AS 38.05.965(21). Previous definition included “shore” and “tide.”

Section 21 adds a definition to include that “public auction” includes a public oral outcry auction and a public online auction.

Sections 22 through 27 give DMLW more flexibility in its authority to exchange land or interest in land when it is in the best interest of the State. Section 22 is modeled after AS 29.65.090 which provides for exchanges between DNR and boroughs and municipalities. Subsequent sections make conforming amendments.

Section 28 revises the statute to exclude the requirements of AS 38.05.305(e) for alterations of platted boundaries if all owners approve and no public easements or rights-of-way are affected.

Section 29 adds a new section that allows performance of a feasibility study for the development and operation of a hydroelectric site at Chikuminuk Lake.

Sections 30 through 34 amend statutes to allow only either an applicant or a person who is substantially and adversely affected, rather than aggrieved, to appeal or request reconsideration of DNR decisions. Section 30 clarifies when the requirements of AS 44.37.011 are applicable. Section 33 clarifies that a person has 20 calendar days after the issuance date of a final department decision in which to file an appeal or request for reconsideration. Section 34 adds new subsections to define what it means to be adversely affected and outlines additional requirements in the DNR administrative appeal process.

Section 35 would allow people to carry small quantities of water from one hydrologic unit to another without violating the law.

Section 36 makes minor wording revisions and also provides that the commissioner shall prepare public notice on a proposed sale of water or an application for appropriation or removal of water once the commissioner determines that the proposal or application is ready for a decision.

Section 37 removes a requirement that mail notice of proposed sales of water or applications for appropriation or removal of water be certified mail.

Sections 38 and 39 continue the changes made to statutes related to appeals including a requirement that a person be “adversely affected” as defined in Section 39 in order to appeal a decision regarding a proposed sale or application for appropriation or removal of water. It further defines adversely affected in this subsection to require that the decision has a physical or financial detriment to a person’s interests.

Section 40 adds factors for the commissioner to consider in determining whether a proposed reservation of water is in the public interest.

Section 41 removes the requirement that the commissioner review all reservations of water at least once every ten years and provides that the commissioner may review reservations of water at any time.

Section 42 adds new subsections to the water reservation statute AS 46.15.145. These subsections provide that for any water reservation applied for by a person, the certificate of reservation, if approved,

will be issued to an appropriate state agency. It also provides that the commissioner has the discretion to determine the order in which he processes applications for water reservation, although the order of processing does not affect priority of appropriation. An applicant has the right to appeal a decision on a reservation application, and only the applicant or the agency that holds a reservation may appeal subsequent administration of the reservation. The section states that an applicant must submit at least five years of hydrologic data and specifies what type of data must be submitted.

Section 43 amends AS 46.15.155(a) to clarify that the commissioner may issue one or more new temporary water use permits for the same project.

Section 44 adds a general provision to the Water Use Act that states that an applicant under that chapter does not have a property right in the application.

Section 45 adds to the definition of “person” for the Water Use Act to clarify that federally recognized tribes are considered “persons.”

Section 46 repeals certain statutes that have been modified in other sections of this bill related to land sale contracts, land exchanges, and water reservations.

Section 47 allows a feasibility study for a hydroelectric project at Chikuminuk Lake to proceed by making inapplicable any inconsistent provisions of the Wood-Tikchik State Park Management Plan and regulations.

Section 48 states that any pending applications for water reservations that are filed before the immediate effective date of the water reservation statutes will be processed using the provisions of the Act.

Section 49 allows the Department to adopt regulations necessary to implement changes to take effect on or after July 1, 2014.

Section 50 instructs the Revisor to change the heading of AS 44.37.011.

Section 51 establishes an immediate effective date for Sections 29, 35-45, and 47-49.

Section 52 establishes an effective date of July 1, 2014 for the remainder of the act.