

CS HB 77(RES): LAND DISPOSALS/EXCHANGES; WATER RIGHTS

SECTIONAL ANALYSIS

FOR THE SENATE FINANCE COMMITTEE • MARCH 13, 2013

Section 1 adds a new subsection (c) to AS 38.05.020 to allow the Commissioner the ability to issue a general permit for activity on state land if the activity is unlikely to result in significant and irreparable harm to state land or resources except for land covered in: fish and game habitats (AS 16.20), the Alaska Surface Coal Mining Control and Reclamation Act (AS 27.21), forest resources (AS 41.17) and parks and recreational facilities (AS 41.21).

Section 2 removes the reference to the additional requirement that the director of the division of Mining, Land and Water shall consult with other departments during the negotiation of a land exchange (AS 38.50.090), as this provision is deleted in Section 43 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 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 may appeal a director's decision. It also adds that the applicant may also appeal the decision.

Section 5 clarifies that it is considered a denial if the Commissioner does not act on a request for reconsideration 30 days after issuance of the final written finding.

Section 6 states in an administrative appeal to court, a court can only deal with points presented to the commissioner in the appeal or request for reconsideration.

Sections 7 through 9 amend statutes to allow land and property sales to be purchased by contract or by payment in full up-front. Sections 8 and 9 remove references to AS 38.05.065(b) related to sale of land by lottery, which is repealed in Section 43 as the newly created Section 7 now includes all land sales.

Section 10 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 11 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.

Section 12 amends language related to prequalification of bidders for a lease to make the time constraints more easily understood.

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 no later than 5 days after the decision is released.

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 no later than 20 days after the decision is issued. This section also clarifies that appeals to DNR and superior court would now be addressed under AS 44.37.01 and therefore the sentence providing appeal to superior court is deleted.

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 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.

Sections 29 through 33 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 29 clarifies when the requirements of AS 44.37.011 is applicable. Section 32 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 33 adds new subsections to define what it means to be adversely affected and outlines additional requirements in the DNR administrative appeal process.

Section 34 would allow people to carry small quantities of water from one hydrologic unit to another without violating the law.

Sections 35 through 37 make minor wording revisions related to water statutes that preserve the original intent of the statute.

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.

Sections 40 and 41 amend water reservation statutes to limit the application for reservations of water to federal or state agencies, or political subdivision of the state. 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 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 43 repeals certain statutes that have been modified in other sections of this bill related to land sale contracts, land exchanges, and water reservations.

Section 44 provides one year for applicants with pending applications who do not meet the new qualifications established in Section 40 to request the commissioner of DNR to transfer their pending applications to an entity of their choice that is authorized to reserve water. If, within two years, the entity notifies the Department that it will not pursue the reservation or does not indicate whether it intends to pursue the same or smaller reservation, DNR will return the application fee to the original applicant. If the entity pursues the reservation of water, DNR will consider the application and if a certificate of water is issued, the priority date will be retained.

Section 45 allows the Department to adopt regulations necessary to implement changes to take effect after July 1, 2013.

Section 46 instructs the Revisor to change the heading of AS 44.37.011.

Section 47 establishes an immediate effective date for Section 45.

Section 48 establishes an effective date of July 1, 2013 for the remainder of the act.