



LAWS OF ALASKA

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Source

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Chapter No.

240

AN ACT

Relating to the exchange of state land; and providing for an effective date.

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

* Section 1. AS 38 is amended by adding a new chapter to read:

CHAPTER 50. EXCHANGE OF STATE LAND.

Sec. 38.50.010. AUTHORIZATION. Subject to the requirements of this chapter, the director, with the concurrence of the commissioner, is authorized to dispose of state land or interest in land by exchanging it for land, interest in land, or other consideration. Exchanges shall be for the purpose of consolidating state land holdings, creating land ownership and use patterns which will permit more effective administration of the state public domain, facilitating the objectives of state programs, or other public purposes.

Sec. 38.50.020. VALUE OF PROPERTIES EXCHANGED. (a) The land, interest in land, and other consideration which the state receives in an exchange made under this chapter shall be equal to or exceed the appraised fair market value of the land, interest in land or property exchanged by the state; however, the director may accept cash from, or pay cash to, any other party to an exchange in order to equalize the value of the property or other consideration conveyed and received by the state. If the director determines that the property to be exchanged is not equal in appraised fair market value or if the value cannot be ascertained with reasonable certainty, the director may enter into an exchange if he finds that the appraised fair market value of the property to be received, together with the value of other public benefits, equals or exceeds the value of the property which the state will relinquish. An exchange for

other than equal appraised fair market value is subject to legislative review as provided in sec. 140 of this chapter.

(b) An appraisal required by this section is presumed accurate and valid for a period of six months from the time the appraisal is completed. After that time, or if the director has reason to believe that the value of the appraised property has changed significantly during the original six-month period, a reappraisal of the property is required.

Sec. 38.50.030. PARTIES. (a) The director may exchange land and interest in land with a government agency, organization, corporation, individual, or other person. At the beginning of discussions concerning a proposed exchange, the director shall require proof that each party to the negotiations is the owner of, or is legally entitled to, the property which the party desires to exchange and proof that a person acting as an agent for the party has the authority to negotiate an exchange in behalf of his principal.

(b) The director may negotiate an exchange involving more than one party; however, in order to ascertain whether the equal value requirements of this chapter have been met, the director shall consider only the land and other consideration which the state would convey and receive if the exchange were executed.

Sec. 38.50.040. LAND SUBJECT TO EXCHANGE. Except as otherwise provided in this chapter, the director is authorized to convey for purposes of exchange any state land or interest in land regardless of the authority under which the land or interest was obtained by the state. The conveyance of university land and school land shall be approved in the manner prescribed in AS 38.05.030, and the conveyance of mental health land shall be approved by a board composed of the director of the division of mental health, the chairman of the Mental Health Advisory Council, and the commissioner of revenue.

Sec. 38.50.050. CONVEYANCE OF MINERAL RIGHTS. Subject to the requirements of this chapter, the director is authorized to exchange mineral rights in state land to the extent that the conveyance is authorized by the state constitution and applicable federal law. The director may not exchange or receive the surface estate of land or the mineral rights in it, one without the other, unless the separation of estate is necessitated by a prior separation of ownership or by restrictions in applicable law, or the director otherwise finds that the conveyance or receipt of the surface or mineral estates, one without the other, is necessary to achieve a significant public purpose.

Sec. 38.50.060. RESERVATIONS AND COVENANTS. The director may include in any patent or other instrument issued under this chapter any reservations and covenants relating to the land which he considers necessary to protect or promote the public interest. Reservations and covenants may include, but are not limited to, those relating to access, environmental protection, and use or development rights. The director may receive land which is subject to reservations and covenants if he finds that the reservations

and covenants are consistent with the public interest.

Sec. 38.50.070. VALID EXISTING RIGHTS. Conveyances made by the state under this chapter are subject to valid existing rights, including, but not limited to, contracts, permits, leases, rights-of-way, and easements. Unless jurisdiction is waived, the appropriate state agency shall continue to administer valid existing rights as long as any revenues derived from the rights are distributed as provided in the exchange agreement.

Sec. 38.50.080. PROHIBITION AGAINST FUTURE CONSIDERATIONS AND ALIENATION OF SELECTION RIGHTS. (a) The director may not negotiate or enter into a land exchange agreement which requires the identification of land, interest in land, or other consideration, except for the performance of necessary survey work, at any time after the agreement is initially executed.

(b) The director, in implementing the provisions of this chapter, may not alienate or agree not to exercise selection rights granted to the state in the Alaska Statehood Act or other applicable law authorizing the state to select land or interest in land.

Sec. 38.50.090. COORDINATION WITH OTHER STATE AGENCIES. (a) During the negotiation of a land exchange, the director shall consult with other departments and other divisions of the Department of Natural Resources relative to matters which are within their jurisdiction. If land under the jurisdiction of a state agency other than the Department of Natural Resources may be involved in a proposed exchange, the director shall afford the head of that agency an opportunity to participate in the discussions respecting the land.

(b) The director shall be afforded an opportunity to review and comment on any land exchange proposed by a state agency other than the Department of Natural Resources.

Sec. 38.50.100. FINDING REQUIREMENT AS TO ALTERNATIVES. Before circulating notice under sec. 110 of this chapter, the director shall consider other alternatives to achieve the objectives of the proposed exchange in an effort to determine whether the proposed exchange will best serve the public interest. In making this determination, the director shall consider, among other things, the advantages and disadvantages of acquiring the land or interest in land for the state by means of purchase, lease, or selection under the Alaska Statehood Act, or condemnation. In addition, he shall consider alternatives to the disposal through exchange of the state land or interest in land, including, but not limited to, lease or sale.

Sec. 38.50.110. NOTICE OF PROPOSED EXCHANGE. (a) Not more than 60 days nor less than 30 days before a public hearing is scheduled under sec. 120 of this chapter the director shall circulate a notice containing the information specified in (b) of this section. The director shall

(1) publish or post the notice as provided in AS 38.05.345, except as otherwise specified in this section. The director shall publish the notice in a newspaper of

general circulation in the vicinity of the land which the state will receive and in the three most populated cities of the state;

(2) mail the notice to any person who has filed a request for notice of proposed exchanges;

(3) mail the notice to each member of the legislature;

(4) mail the notice to each municipality the boundaries of which encompass or are located within six linear miles of land involved in the proposed exchange;

(5) circulate the notice to the Office of the Governor and to all state departments;

(6) mail the notice to the appropriate board or other entity or person with approval authority as indicated in sec. 40 of this chapter and AS 38.05.030, when university land, school land, or mental health land is involved in the proposed exchange;

(7) mail the notice to any corporation organized under the Alaska Native Claims Settlement Act, which corporation owns or has selected land located within a radius of 15 linear miles from land or property involved in the proposed exchange; and

(8) mail the notice to any other party, including an organization of land users, that he considers appropriate.

(b) The notice of proposed exchange shall include the following information:

(1) a statement of the proposed action and a legal or other appropriate description of the tracts and potential uses of land involved in the proposed exchange;

(2) a map of sufficient scale to allow identification of each tract in relationship to reference points which are easily identified by laymen;

(3) the name and post office address of each party to the proposed exchange;

(4) a statement that any person asserting a claim to the property involved or desiring to comment or to obtain further information concerning the exchange should contact the office designated in the notice;

(5) the date, time, and place of a public hearing which has been scheduled in connection with the proposed exchange.

Sec. 38.50.120. PUBLIC HEARINGS. (a) The director may hold as many public hearings as is considered appropriate. There shall be at least one public hearing.

(b) A person who desires to testify at a hearing shall be provided an opportunity to do so, subject to reasonable

time limits. In addition, the director shall hold the hearing record open for at least two weeks following the conclusion of a hearing in order to receive supplemental or additional statements.

Sec. 38.50.130. REPORT ON PROPOSED EXCHANGE. (a) In conjunction with the public notice required by sec. 110 of this chapter, the director shall prepare and distribute the report required by this section to the parties listed in sec. 120(a)(2) - (8) of this chapter and to any other party who requests it. The report shall contain, among other things, a copy of the notice required by sec. 110 of this chapter and a discussion in a concise format designed to facilitate public understanding of the issues of

- (1) the physical characteristics of the land involved, including the surface and mineral resources associated with the land;
- (2) the appraised fair market value of each tract involved in the exchange or, if the exchange is for other than equal appraised fair market value, the nonmonetary values which are involved;
- (3) the benefits and detriments which can be expected to accrue, including possible social, economic, and environmental impacts; and
- (4) alternatives to the proposed exchange.

(b) Upon termination of the period provided for agency and public comment, the report and the proposed land exchange may be revised, if appropriate, to reflect comments or other information which has come to the director's attention. A brief summary of all comments and information received shall be appended to the report.

Sec. 38.50.140. LEGISLATIVE REVIEW. Within 10 days of the convening of a regular legislative session, the governor shall transmit to the president of the senate and the speaker of the house of representatives any proposal for a land exchange for other than equal appraised fair market value which is scheduled to occur before the next legislative session. If, in his view, exigent circumstances seriously affecting state interests so require, the governor may submit the proposed exchange to the legislature at some other time. A finding of exigent circumstances shall be carefully documented in the letter of transmittal. The director is authorized to conclude a proposed exchange agreement unless either house of the legislature by simple resolution disapproves of the exchange within 60 legislative days of transmittal by the governor. A decision by the legislature to disapprove a proposed exchange shall be accompanied by a recommendation to the governor with respect to future actions which the director should take concerning the exchange.

Sec. 38.50.150. EXECUTION OF EXCHANGE. If a deed, contract of exchange, or other instrument of conveyance which the director receives to effectuate an exchange is properly executed, acknowledged, and authorized by the appropriate party, the director shall accept conveyance of title to the land and other property which the state is to

receive as consideration, and he shall issue a patent, contract of exchange or other instrument of conveyance to the appropriate party for the property which he is then obligated to convey. Before acceptance by the director of a deed, contract of exchange or other instrument, no action taken by him or by any other state official creates a right against the state with respect to state land.

Sec. 38.50.160. REGULATIONS. The commissioner may adopt regulations under the Administrative Procedure Act (AS 44.62) necessary to carry out the purposes of this chapter.

Sec. 38.50.170. DEFINITIONS. In this chapter, unless otherwise specified,

(1) "commissioner" means the commissioner of natural resources;

(2) "director" means the director of the division of lands.

(3) "state land" means all lands including shore, tide and submerged land or unsevered resources belonging to or acquired by the state excluding interests in land severed or constructively severed from the land.

* Sec. 2. AS 38.05.030(a), (c) and (e) are amended to read:

(a) The sale, lease or other disposal of university lands shall be made by the commissioner in accordance with the provisions of this chapter and ch. 50 of this title. No sale, lease, exchange or other disposal of university lands may be made without the approval of the Board of Regents of the University of Alaska.

(c) In addition to the requirements specified in AS 38.50.090, the agencies referred to in (a) and (b) of this section and other state agencies with authority to acquire or dispose of land shall give written notification of the fact of acquisition, lease or exchange to the division of lands within three months after the date that they make the acquisition, lease or exchange.

(e) The sale, lease or other disposal of school lands under the jurisdiction of the department shall be made by the commissioner in accordance with the provisions of this chapter and ch. 50 of this title. However, disposal of school lands under this subsection, other than disposal by lease for a term of years or by exchange for a purpose authorized in AS 38.50.010, shall be made only for sites for school facilities or for public park and public recreation purposes. When the department determines that it is in the best interest of the state to dispose of the school lands located within Sections 16 and 36 in an organized borough or city of any class, the borough or city is authorized, and has preference for six months after notice, to acquire the land at the appraised value by purchase or exchange of land acceptable to the department. No sale, lease, exchange or other disposal of school lands may be made without the approval of the State Board of Education.

* Sec. 3. AS 38.05.125 is amended to read:

Sec. 38.05.125. RESERVATION. Each contract for the sale, lease or grant of state land, and each deed to state land, properties or interest in state land, made under secs. 315 - 325 of this chapter, secs. 45 - 120 of this chapter, or ch. 50 of this title except as provided in AS 38.50.050 is subject to the following reservations: "The party of the first part, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times for the purpose of opening, developing, drilling, and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved."

* Sec. 4. AS 38.95.060 is repealed.

* Sec. 5. This Act takes effect September 1, 1976.