

**SENATE BILL NO. 240**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY SENATOR THERRIAULT**

**Introduced: 1/12/04**

**Referred: Resources, Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act prescribing a definition of 'damages' that a landowner may claim for injury to**  
2 **or interference with the owner's use of property by a person entering upon the land**  
3 **under the state reservation of oil, gas, mineral, material, or related interests, addressing**  
4 **the determination of the form, amount, and security of the surety bond determined by**  
5 **the director of lands to secure the landowner payment for damages, directing**  
6 **preparation of notice to the landowner for subsurface activities on the land, and setting**  
7 **a limitation on actions against a landowner resulting from entry upon land under the**  
8 **state reservation of interests."**

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

10 **\* Section 1.** AS 38.05.130 is amended to read:

11 **Sec. 38.05.130. Damages and posting of bond.** Rights may not be exercised  
12 by the state, its lessees, successors, or assigns under the reservation as set out in

1 AS 38.05.125 until the state, its lessees, successors, or assigns make provision to pay  
 2 the owner of the land full payment for all damages sustained by the owner [,] by  
 3 reason of entering upon the land. If the owner for any cause refuses or neglects to  
 4 settle the damages, the state, its lessees, successors, **or** assigns, or an applicant for a  
 5 lease or contract from the state for the purpose of prospecting for valuable minerals, or  
 6 **for an** option, contract, or lease for mining coal or **for a** lease for extracting  
 7 geothermal resources, petroleum, or natural gas,

8 **(1)** may enter upon the land in the exercise of the reserved rights after  
 9 posting a surety bond determined by the director, after notice and an opportunity to be  
 10 heard, to be sufficient as to form, amount, and security to secure to the owner payment  
 11 for damages; [,] and

12 **(2)** may institute legal proceedings in a court where the land is located,  
 13 as may be necessary to determine the damages **that** [WHICH] the owner may suffer.

14 \* **Sec. 2.** AS 38.05.130 is amended by adding new subsections to read:

15 (b) In (a) of this section, "damages" means compensation due the owner for  
 16 injury to or interference with the owner's use of property, including improvements and  
 17 related personal property, for an entry upon the land in the exercise of a reserved right  
 18 for a purpose described in (a) of this section when the entry gives rise to

19 (1) loss of or injury to the value of the owner's property,  
 20 improvements, or personalty; or

21 (2) interference with or interruption of the owner's access to or use of  
 22 the property or improvements.

23 (c) In (b) of this section, the measure of

24 (1) the loss of or injury to the value of the owner's property,  
 25 improvements, or personalty under (b)(1) of this section is the actual cost of repair,  
 26 relocation, replacement, or restoration of the property, improvements, and personalty,  
 27 not to exceed the fair market value;

28 (2) the interference with or interruption of the owner's access to or use  
 29 of the property or improvements under (b)(2) of this section must be based on the  
 30 owner's actual use of the property and improvements immediately preceding the entry  
 31 and is, for the period or duration of the interference or interruption, the greater of

1 (A) the loss of income to the owner; or

2 (B) the loss of the value of the use by the owner.

3 (d) For damages sustained by an owner for an entry upon the land in the  
4 exercise of a reserved right for an activity described in (a) of this section, the  
5 provisions of (b) and (c) of this section do not prevent the owner from recovering  
6 against a state lessee, successor, or assign, or an applicant described in (a) of this  
7 section

8 (1) damages under

9 (A) AS 09.45.730 for cutting, injuring, or removing timber; or

10 (B) AS 09.45.735 for trespass; or

11 (2) subject to AS 09.50.280, punitive damages for the knowing  
12 noncompliance by the lessee, successor, assign, or applicant

13 (A) entering on the land in the exercise of a reserved right for a  
14 purpose described in (a) of this section without first complying with (a)(1) of  
15 this section; or

16 (B) with a material term or condition that governs the  
17 concurrent use of land under the reservation of entry to the land for a purpose  
18 described in (a) of this section that is set out in an approved plan under which  
19 the lessee, successor, assign, or applicant is required to operate, however the  
20 plan is denominated under this chapter or in a regulation adopted under this  
21 chapter.

22 (e) The owner of land subject to the reservation described in AS 38.05.125  
23 and the state, the state's lessee, successor, or assign, or an applicant described in (a) of  
24 this section may agree on a different measure of damages than that set out in (c) of this  
25 section.

26 (f) When, under (a)(1) of this section, the director acts to determine the form,  
27 amount, and security of the surety bond to secure the owner payment for damages, the  
28 director may

29 (1) initiate a calculation of the amount of the bond by reference to the  
30 assessed value of the property determined by an assessor under AS 29.45.110; if the  
31 director initiates a calculation of the amount of the bond by reference to the assessed

1 value of the property, the director shall determine the amount of the bond to be the  
2 greater of

3 (A) the assessed value of the entire parcel; or

4 (B) \$100,000;

5 (2) in making the determination under this subsection, take into  
6 consideration factors and attributes apart from the property's assessed value  
7 determined by the assessor under AS 29.45.110.

8 (g) Notwithstanding any other provision of law, a person may not bring an  
9 action against the owner of land for an injury or damages resulting from the entry onto  
10 that land by a state lessee, successor, assign, or applicant described in (a) of this  
11 section in the exercise of the right described in that subsection. However, this  
12 exemption does not apply if the owner of the land

13 (1) is also the lessee, successor, assign, or applicant described in (a) of  
14 this section who enters onto the land; or

15 (2) acts in a manner that is grossly negligent or that constitutes  
16 intentional misconduct with respect to an activity of the state lessee, successor, assign,  
17 or applicant described in (a) of this section in the exercise of the right described in that  
18 subsection, and the owner's act contributes to the injury or damages.

19 \* **Sec. 3.** AS 38.05 is amended by adding a new section to read:

20 **Sec. 38.05.955. Notice to landowner by reason of entry upon land under**  
21 **state's reservation of interest.** (a) This section establishes the requirements for  
22 notice given by the department to the owner of land subject to the reservation set out  
23 in AS 38.05.125 when rights are to be exercised by the state, its lessee, successor,  
24 assign, or an applicant described in AS 38.05.130(a).

25 (b) If a state lessee, successor, assign, or applicant described in  
26 AS 38.05.130(a) has authority to enter onto land not owned by the state for a purpose  
27 described in AS 38.05.130(a) and, under this chapter, the lessee, successor, assign, or  
28 applicant is required to operate under a plan approved by the commissioner under  
29 AS 38.05.020 or the director under AS 38.05.035 setting out terms governing  
30 concurrent uses of the land, however the plan is denominated under this chapter or in a  
31 regulation adopted under this chapter, before entry on to the land the commissioner

1 shall provide to the landowner

2 (1) a copy of the approved plan, together with a brief summary of the  
3 activity that, under the approved plan, the lessee, successor, assign, or applicant may  
4 exercise on the land under the reservation; and

5 (2) a brief description in writing of the legal rights of the owner,  
6 including rights of the owner set out in AS 38.05.130.