

Original sponsor: Resources Committee

Offered: 5/17/76  
Referred: Finance

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 726 am H

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the exchange of state land; and  
7 providing for an effective date."

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

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

10 CHAPTER 50. EXCHANGE OF STATE LAND.

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

19 Sec. 38.50.020. VALUE OF PROPERTIES EXCHANGED. (a) The land,  
20 interest in land, and other consideration which the state receives in an  
21 exchange made under this chapter shall be equal to or exceed the ap-  
22 praised fair market value of the land, interest in land or property  
23 exchanged by the state; however, the director may accept cash from, or  
24 pay cash to, any other party to an exchange in order to equalize the  
25 value of the property or other consideration conveyed and received by  
26 the state. If the director determines that the property to be exchanged  
27 is not equal in appraised fair market value or if the value cannot be  
28 ascertained with reasonable certainty, the director may enter into an  
29 exchange if he finds that the appraised fair market value of the

1 property to be received, together with the value of other public bene-  
2 fits, equals or exceeds the value of the property which the state will  
3 relinquish. An exchange for other than equal appraised fair market  
4 value is subject to legislative review as provided in sec. 140 of this  
5 chapter.

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

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

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

24 Sec. 38.50.040. LAND SUBJECT TO EXCHANGE. Except as otherwise  
25 provided in this chapter, the director is authorized to convey for  
26 purposes of exchange any state land or interest in land irrespective of  
27 the physical character, classification, or authority under which the  
28 land or interest was obtained by the state; the conveyance of university  
29 land and school land shall be approved in the manner prescribed in

1 AS 38.05.030 and 38.05.032, and the conveyance of mental health land  
2 shall be approved by a board composed of the director of the division of  
3 mental health, the chairman of the Mental Health Advisory Council, and  
4 the commissioner of revenue.

5 Sec. 38.50.050. CONVEYANCE OF MINERAL RIGHTS. Subject to the  
6 requirements of this chapter, the director is authorized to convey  
7 mineral rights in state land to the extent that the conveyance is autho-  
8 rized by the state constitution and applicable federal law. The director  
9 may not convey or receive the surface estate of land or the mineral  
10 rights in it, one without the other, unless the transfer is necessitated  
11 by a prior separation of ownership or by restrictions in applicable law,  
12 or the director otherwise finds that the conveyance or receipt of the  
13 surface or mineral estates, one without the other, is necessary to  
14 achieve a significant public purpose.

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

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

1 exchange agreement.

2 Sec. 38.50.080. EXECUTORY EXCHANGES AND PROHIBITION AGAINST  
3 ALIENATION OF SELECTION RIGHTS. (a) The director may not negotiate  
4 or enter into a land exchange agreement which requires the identifica-  
5 tion of land, interest in land, or other consideration, except for the  
6 performance of necessary survey work, at any time after the agreement is  
7 initially executed unless exigent circumstances seriously affecting  
8 state interests exist. An executory exchange of this type is subject to  
9 legislative review as provided in sec. 140 of this chapter.

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

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

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

25 Sec. 38.50.100. FINDING REQUIREMENT AS TO ALTERNATIVES. Before  
26 circulating notice under sec. 110 of this chapter, the director shall  
27 consider other alternatives to achieve the objectives of the proposed  
28 exchange in an effort to determine whether the proposed exchange will  
29 best serve the public interest. In making this determination, the

1 director shall consider, among other things, the advantages and dis-  
2 advantages of acquiring the land or interest in land for the state by  
3 means of purchase, lease, or selection under the Alaska Statehood Act,  
4 or condemnation. In addition, he shall consider alternatives to the  
5 disposal through exchange of the state land or interest in land, includ-  
6 ing, but not limited to, lease or sale.

7 Sec. 38.50.110. NOTICE OF PROPOSED EXCHANGE. (a) Not more than  
8 60 days nor less than 30 days before a public hearing is scheduled under  
9 sec. 120 of this chapter and not less than 45 days before he intends to  
10 enter an agreement if a hearing is not scheduled, the director shall  
11 circulate a notice containing the information specified in (b) of this  
12 section. The director shall

13 (1) publish or post the notice as provided in AS 38.05.345,  
14 except as otherwise specified in this section. The director shall  
15 publish the notice in a newspaper of general circulation in the vicinity  
16 of the land which the state will receive and in the three most populated  
17 cities of the state;

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

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

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

24 (5) circulate the notice to the Office of the Governor and to  
25 the following departments: Administration, Community and Regional  
26 Affairs, Environmental Conservation, Fish and Game, Highways, Law,  
27 Public Works, and Revenue;

28 (6) mail the notice to the appropriate board or other entity  
29 or person with approval authority as indicated in sec. 40 of this

1 chapter and AS 38.05.030, when university land, school land, or mental  
2 health land is involved in the proposed exchange;

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

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

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

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

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

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

19 (4) a statement that any person asserting a claim to the  
20 property involved or desiring to comment or to obtain further informa-  
21 tion concerning the exchange should contact the office designated in the  
22 notice; if a public hearing is not scheduled, the statement shall  
23 indicate that comments must be submitted within a specified period of  
24 not less than 30 days after the first publication of notice; and

25 (5) the date, time, and place of a public hearing which has  
26 been scheduled in connection with the proposed exchange, and if no  
27 hearing has been scheduled, a statement indicating that a hearing will  
28 be held if 25 resident registered voters request the director in writing  
29 to hold one within a specified period of not less than 20 days after the

1 first publication of notice.

2 Sec. 38.50.120. PUBLIC HEARINGS. (a) The director may hold as  
3 many public hearings as he considers appropriate, and he shall hold at  
4 least one public hearing if

5 (1) a proposed exchange is for other than equal appraised  
6 fair market value;

7 (2) at least 25 resident registered voters request a hearing;  
8 or

9 (3) a municipality entitled to notice under sec. 110(a)(4) of  
10 this chapter requests a hearing.

11 (b) In making a determination as to whether to hold a public  
12 hearing under (a) of this section, the director shall consider, among  
13 other things, the convenience of the public; the location, value, and  
14 amount of acreage involved in the proposed exchange; the nature and  
15 magnitude of expected primary and secondary impacts; and any view  
16 expressed by the public or by others entitled to notice under sec.  
17 110(a) of this chapter.

18 (c) A person who desires to testify at a hearing shall be provided  
19 an opportunity to do so, subject to reasonable time limits. In addi-  
20 tion, the director shall hold the hearing record open for at least two  
21 weeks following the conclusion of a hearing in order to receive supple-  
22 mental or additional statements.

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

1 standing of the issues of

2 (1) the physical characteristics of the land involved, in-  
3 cluding the surface and mineral resources associated with the land;

4 (2) the appraised fair market value of each tract involved in  
5 the exchange or, if the exchange is for other than equal appraised fair  
6 market value, the nonmonetary values which are involved;

7 (3) the benefits and detriments which can be expected to  
8 accrue, including possible social, economic, and environmental impacts;  
9 and

10 (4) alternatives to the proposed exchange.

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

16 Sec. 38.50.140. LEGISLATIVE REVIEW. Within 10 days of the con-  
17 vening of a regular legislative session, the governor shall transmit to  
18 the president of the senate and the speaker of the house of representa-  
19 tives any proposal for a land exchange for other than equal appraised  
20 fair market value which is scheduled to occur before the next legisla-  
21 tive session. If, in his view, exigent circumstances seriously affect-  
22 ing state interests so require, the governor may submit the proposed  
23 exchange to the legislature at some other time or to the legislative  
24 council when the legislature is not in session. A finding of exigent  
25 circumstances shall be carefully documented in the letter of trans-  
26 mittal. The director is authorized to conclude a proposed exchange  
27 agreement unless the legislature by concurrent resolution disapproves of  
28 the exchange within 45 legislative days of transmittal or the end of the  
29 session, whichever occurs first, or unless within 45 days of transmittal

1 the legislative council, in cases when it is submitted to the council,  
2 votes to refer it to the legislature. A decision by the legislature to  
3 disapprove a proposed exchange shall be accompanied by a recommendation  
4 to the governor with respect to future actions which the director should  
5 take concerning the exchange. A proposed exchange which is referred to  
6 the legislature by the legislative council is subject to review in  
7 accordance with this section.

8 Sec. 38.50.150. EXECUTION OF EXCHANGE. If a deed or other instru-  
9 ment of conveyance which the director receives to effectuate an exchange  
10 is properly executed, acknowledged, and authorized by the appropriate  
11 party, the director shall accept conveyance of title to the land and  
12 other property which the state is to receive as consideration, and he  
13 shall issue a patent or other instrument of conveyance to the appropri-  
14 ate party for the property which he is then obligated to convey. Before  
15 acceptance by the director of a deed or other instrument, no action  
16 taken by him or by any other state official creates a right against the  
17 state with respect to state land.

18 Sec. 38.50.160. REGULATIONS. The commissioner may adopt regula-  
19 tions under the Administrative Procedure Act (AS 44.62) necessary to  
20 carry out the purposes of this chapter.

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

23 (1) "commissioner" means the commissioner of natural re-  
24 sources;

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

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

27 (a) The sale, lease or other disposal of university lands shall be  
28 made by the commissioner in accordance with the provisions of this  
29 chapter and ch. 50 of this title [UNIVERSITY LANDS MAY BE EXCHANGED

1 FOR (1) STATE LANDS, (2) PRIVATELY OWNED LANDS, (3) VACANT, UNAPPRO-  
2 PRIATED AND UNRESERVED PUBLIC LANDS AND (4) LANDS OWNED BY A CITY,  
3 BOROUGH OR OTHER PUBLIC ENTITY. HOWEVER, ALL LANDS EXCHANGED FOR  
4 UNIVERSITY LANDS MUST HAVE THE SAME FAIR MARKET VALUE AS THE UNIVERSITY  
5 LANDS.] No sale, lease, exchange or other disposal of university lands  
6 may be made without the approval of the Board of Regents of the Univer-  
7 sity of Alaska.

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

14 (e) The sale, lease or other disposal of school lands under the  
15 jurisdiction of the department shall be made by the commissioner in  
16 accordance with the provisions of this chapter and ch. 50 of this title.  
17 However, disposal of school lands under this subsection, other than  
18 disposal by lease for a term of years or by exchange for a purpose  
19 authorized in AS 38.50.010, shall be made only for sites for school  
20 facilities or for public park and public recreation purposes. [SCHOOL  
21 LANDS MAY BE EXCHANGED FOR (1) STATE LANDS, (2) VACANT, UNAPPROPRIATED  
22 AND UNRESERVED PUBLIC LANDS AND (3) LANDS OWNED BY A CITY, BOROUGH OR  
23 OTHER PUBLIC ENTITY. IN THE CASE OF UNEQUAL VALUES, CASH MAY BE USED TO  
24 EQUALIZE LAND VALUES.] When the department determines that it is in the  
25 best interest of the state to dispose of the school lands located within  
26 Sections 16 and 36 in an organized borough or city of any class, the  
27 borough or city is authorized, and has preference for six months after  
28 notice, to acquire the land at the appraised value by purchase or  
29 exchange of land acceptable to the department. No sale, lease, exchange

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or other disposal of school lands may be made without the approval of  
the State Board of Education.

\* Sec. 3. AS 38.95.060 is repealed.

\* Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-  
070(c).

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