

Original sponsor: Resources Committee

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1 IN THE SENATE

BY THE FREE CONFERENCE COMMITTEE

2 FREE CONFERENCE CS FOR HOUSE CS FOR CS FOR SENATE BILL NO. 726

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 regardless of  
27 the authority under which the land or interest was obtained by the  
28 state. The conveyance of university land and school land shall be  
29 approved in the manner prescribed in AS 38.05.030, and the conveyance of

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

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

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

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

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

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

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

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

22           Sec. 38.50.100. FINDING REQUIREMENT AS TO ALTERNATIVES. Before  
23 circulating notice under sec. 110 of this chapter, the director shall  
24 consider other alternatives to achieve the objectives of the proposed  
25 exchange in an effort to determine whether the proposed exchange will  
26 best serve the public interest. In making this determination, the  
27 director shall consider, among other things, the advantages and dis-  
28 advantages of acquiring the land or interest in land for the state by  
29 means of purchase, lease, or selection under the Alaska Statehood Act,

1 or condemnation. In addition, he shall consider alternatives to the  
2 disposal through exchange of the state land or interest in land, includ-  
3 ing, but not limited to, lease or sale.

4 Sec. 38.50.110. NOTICE OF PROPOSED EXCHANGE. (a) Not more than  
5 60 days nor less than 30 days before a public hearing is scheduled under  
6 sec. 120 of this chapter the director shall circulate a notice con-  
7 taining the information specified in (b) of this section. The director  
8 shall

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

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

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

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

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

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

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

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

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

5 (1) a statement of the proposed action and a legal or other  
6 appropriate description of the tracts and potential uses of land in-  
7 volved in the proposed exchange;

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

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

13 (4) a statement that any person asserting a claim to the  
14 property involved or desiring to comment or to obtain further informa-  
15 tion concerning the exchange should contact the office designated in the  
16 notice;

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

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

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

27 Sec. 38.50.130. REPORT ON PROPOSED EXCHANGE. (a) In conjunction  
28 with the public notice required by sec. 110 of this chapter, the direc-  
29 tor shall prepare and distribute the report required by this section to

1 the parties listed in sec. 120(a)(2) - (8) of this chapter and to any  
2 other party who requests it. The report shall contain, among other  
3 things, a copy of the notice required by sec. 110 of this chapter and a  
4 discussion in a concise format designed to facilitate public under-  
5 standing of the issues of

6 (1) the physical characteristics of the land involved,  
7 including the surface and mineral resources associated with the  
8 land;

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

12 (3) the benefits and detriments which can be expected to  
13 accrue, including possible social, economic, and environmental impacts;  
14 and

15 (4) alternatives to the proposed exchange.

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

21 Sec. 38.50.140. LEGISLATIVE REVIEW. Within 10 days of the con-  
22 vening of a regular legislative session, the governor shall transmit to  
23 the president of the senate and the speaker of the house of representa-  
24 tives any proposal for a land exchange for other than equal appraised  
25 fair market value which is scheduled to occur before the next legisla-  
26 tive session. If, in his view, exigent circumstances seriously affect-  
27 ing state interests so require, the governor may submit the proposed  
28 exchange to the legislature at some other time. A finding of exigent  
29 circumstances shall be carefully documented in the letter of trans-

1 mittal. The director is authorized to conclude a proposed exchange  
2 agreement unless either house of the legislature by simple resolution  
3 disapproves of the exchange within 60 legislative days of transmittal  
4 by the governor. A decision by the legislature to disapprove a proposed  
5 exchange shall be accompanied by a recommendation to the governor with  
6 respect to future actions which the director should take concerning the  
7 exchange.

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

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

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

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

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

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

1 the land.

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

3 (a) The sale, lease or other disposal of university lands shall be  
4 made by the commissioner in accordance with the provisions of this  
5 chapter and ch. 50 of this title. [UNIVERSITY LANDS MAY BE EXCHANGED  
6 FOR (1) STATE LANDS, (2) PRIVATELY OWNED LANDS, (3) VACANT, UNAPPRO-  
7 PRIATED AND UNRESERVED PUBLIC LANDS AND (4) LANDS OWNED BY A CITY,  
8 BOROUGH OR OTHER PUBLIC ENTITY. HOWEVER, ALL LANDS EXCHANGED FOR  
9 UNIVERSITY LANDS MUST HAVE THE SAME FAIR MARKET VALUE AS THE UNIVERSITY  
10 LANDS.] No sale, lease, exchange or other disposal of university lands  
11 may be made without the approval of the Board of Regents of the Univer-  
12 sity of Alaska.

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

19 (e) The sale, lease or other disposal of school lands under the  
20 jurisdiction of the department shall be made by the commissioner in  
21 accordance with the provisions of this chapter and ch. 50 of this title.  
22 However, disposal of school lands under this subsection, other than  
23 disposal by lease for a term of years or by exchange for a purpose  
24 authorized in AS 38.50.010, shall be made only for sites for school  
25 facilities or for public park and public recreation purposes. [SCHOOL  
26 LANDS MAY BE EXCHANGED FOR (1) STATE LANDS, (2) VACANT, UNAPPROPRIATED  
27 AND UNRESERVED PUBLIC LANDS AND (3) LANDS OWNED BY A CITY, BOROUGH OR  
28 OTHER PUBLIC ENTITY. IN THE CASE OF UNEQUAL VALUES, CASH MAY BE USED TO  
29 EQUALIZE LAND VALUES.] When the department determines that it is in the

1 best interest of the state to dispose of the school lands located within  
2 Sections 16 and 36 in an organized borough or city of any class, the  
3 borough or city is authorized, and has preference for six months after  
4 notice, to acquire the land at the appraised value by purchase or  
5 exchange of land acceptable to the department. No sale, lease, exchange  
6 or other disposal of school lands may be made without the approval of  
7 the State Board of Education.

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

9 Sec. 38.05.125. RESERVATION. Each contract for the sale, lease or  
10 grant of state land, and each deed to state land, properties or interest  
11 in state land, made under secs. 315 - 325 of this chapter, [OR] secs.  
12 45 - 120 of this chapter, or ch. 50 of this title except as provided  
13 in AS 38.50.050 is [EXCEPT FOR THOSE LANDS ORIGINALLY ACQUIRED BY PUR-  
14 CHASE, EXCHANGE, CONDEMNATION, GIFT, ESCHEAT OR FORECLOSURE ARE] subject  
15 to the following reservations: "The party of the first part, Alaska,  
16 hereby expressly saves, excepts and reserves out of the grant hereby  
17 made, unto itself, its lessees, successors, and assigns forever, all  
18 oils, gases, coal, ores, minerals, fissionable materials, and fossils of  
19 every name, kind or description, and which may be in or upon said lands  
20 above described, or any part thereof, and the right to explore the same  
21 for such oils, gases, coal, ores, minerals, fissionable materials, and  
22 fossils, and it also hereby expressly saves and reserves out of the  
23 grant hereby made, unto itself, its lessees, successors, and assigns  
24 forever, the right to enter by itself, its or their agents, attorneys,  
25 and servants upon said lands, or any part or parts thereof, at any and  
26 all times for the purpose of opening, developing, drilling, and working  
27 mines or wells on these or other lands and taking out and removing  
28 therefrom all such oils, gases, coal, ores, minerals, fissionable  
29 materials and fossils, and to that end it further expressly reserves out

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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.