

SENATE BILL NO. 178

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS PEARCE, Menard

Introduced: 3/6/91
Referred: Resources and Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the management and protection of state land and its resources, and
2 establishing remedies to enforce laws against unauthorized use of state land and its
3 resources."

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

5 * **Section 1. FINDINGS AND INTENT.** (a) The legislature finds that

6 (1) Alaska's status as an owner state derives from its eventual ownership of more than
7 105,000,000 acres of land and the associated resources;

8 (2) the Department of Natural Resources enjoys general responsibility to manage, inspect,
9 and control state land and resources and improvements on most land belonging to the state;

10 (3) there is an ever increasing number of illegal occupancies and uses of state land and
11 an ever growing volume of illegal takings of and committing of waste of state resources;

12 (4) requiring the Department of Natural Resources to rely exclusively on the Alaska court
13 system to challenge these illegal occupancies, uses, takings, and waste is an expensive, time-consuming,
14 and ineffective process; and

1 (5) there is a need to refine the administrative enforcement mechanism within the
2 Department of Natural Resources to more timely and effectively protect the state's land and resources
3 consistent with constitutional due process requirements, and to clarify the availability of other remedies
4 available to the state to protect land and resources.

5 (b) The Department of Natural Resources currently authorizes certain uses of state-owned public
6 domain land to take place without a permit requirement by listing them as "generally allowed uses."
7 The provisions of this Act are not intended to impose a permit requirement for these uses or to limit the
8 department's authority to designate or redesignate generally allowed uses. The generally allowed
9 activities and uses on state land on the effective date of this Act include off-road travel by horse,
10 dogsled, bicycle, snowmachine, four-wheel-drive vehicles, and all-terrain vehicles; installing access
11 improvements such as trails, mooring buoys, docks, or floats; hunting, fishing, trapping, or harvesting
12 wild plants for personal use; recreational mining; and campsites for personal use.

13 * Sec. 2. AS 38 is amended by adding a new chapter to read:

14 CHAPTER 55. PROTECTION OF STATE LAND AND RESOURCES.

15 ARTICLE 1. UNAUTHORIZED USE OF STATE LAND AND RESOURCES.

16 Sec. 38.55.010. UNAUTHORIZED USE OF STATE LAND. Unless authorized in
17 advance in writing by the department or by a regulation adopted under this chapter, a person may
18 not

19 (1) reside on or occupy state land;

20 (2) enter onto or remain on state land

21 (A) if state law or the commissioner has restricted entry onto the land; or

22 (B) if state law or the commissioner regulates the mode of access to the
23 land and the person's entry occurs by a mode of access that has been restricted or
24 prohibited;

25 (C) in violation of a regulation or order issued under this chapter;

26 (3) place or construct an improvement or structure on state land;

27 (4) place or leave personal property or refuse on state land;

28 (5) remove a resource from state land; or

29 (6) cause damage to state land or to a resource on state land.

30 Sec. 38.55.020. POWERS OF THE COMMISSIONER. The commissioner may

31 (1) issue notices of trespass;

- 1 (2) issue compliance orders;
- 2 (3) levy civil fines;
- 3 (4) assess damages and levy civil penalties;
- 4 (5) impound personal property used in or in aid of a violation of this chapter as
- 5 security for damages, fines, and penalties;
- 6 (6) use, destroy, or otherwise dispose of property acquired under this chapter in
- 7 the manner authorized by AS 38.55.050; and
- 8 (7) adopt regulations and take other administrative actions necessary to carry out
- 9 the purposes of this chapter.

10 Sec. 38.55.030. NOTICE OF TRESPASS. (a) A notice of trespass issued by the

11 commissioner shall identify the location and nature of the unauthorized use of state land and the

12 specific action or actions necessary to stop the violation.

13 (b) The notice of trespass may be served upon the violator

- 14 (1) by certified mail;
- 15 (2) by delivering the notice personally;
- 16 (3) by delivering the notice to the violator's dwelling house or usual place of
- 17 abode and leaving the notice in the mail receptacle or with some person residing there of suitable
- 18 age and discretion;
- 19 (4) by posting the notice in a conspicuous place at the site of the unauthorized
- 20 use; or
- 21 (5) by publication four times during four consecutive calendar weeks, once in
- 22 each week, in a newspaper published in the judicial district in which the unauthorized use is
- 23 occurring, or if a newspaper is not published in the judicial district, then in a newspaper
- 24 published in the state that circulates in the judicial district.

25 Sec. 38.55.040. COMPLIANCE ORDERS. (a) A compliance order issued by the

26 commissioner to a person who violates AS 38.55.010 may require the person to

- 27 (1) cease the unauthorized use;
- 28 (2) remove any unauthorized improvements, structures, personal property, or
- 29 refuse;
- 30 (3) restore the land to the specifications required by the commissioner; and
- 31 (4) take any other action the commissioner determines to be necessary or

1 appropriate.

2 (b) The compliance order may be served upon the violator in a manner authorized by
3 AS 38.55.030(b).

4 (c) At the discretion of the commissioner, if the violator fails to comply with the
5 compliance order issued under (a)(2) - (4) of this section, the commissioner may remove any
6 unauthorized improvement, structure, personal property, or refuse and may restore the land to the
7 specifications required in the order. The violator is liable for the state's full costs of the removal
8 and restoration, including reasonable administrative costs.

9 Sec. 38.55.050. STATE TITLE TO UNAUTHORIZED IMPROVEMENTS. At the
10 discretion of the commissioner, an unauthorized improvement, structure, or personal property on
11 state land that is not removed within the period allowed by the commissioner in a compliance
12 order issued under AS 38.55.040(a)(2) - (4) becomes state property. The commissioner

13 (1) may retain for the use of the department or the public an improvement,
14 structure, or item of personal property for which the commissioner believes there is a prospective
15 public use;

16 (2) may destroy an improvement, structure, or item of personal property;

17 (3) shall transfer an improvement, structure, or item of personal property not
18 retained under (1) of this section or destroyed under (2) of this section to the Department of
19 Administration for disposal under AS 44.68.110.

20 Sec. 38.55.060. CIVIL FINE. (a) In addition to or in lieu of a civil penalty that may
21 be sought or imposed under AS 38.55.070 or a criminal penalty that may be sought or imposed
22 under AS 38.55.200, a person who knowingly violates AS 38.55.010 or a compliance order of
23 the commissioner issued under AS 38.55.040 is subject to a civil fine.

24 (b) A citation for the fine may be issued by a peace officer or by personnel of the
25 department designated by the commissioner and served upon the violator. The citation must
26 identify the violation, where the violation occurred, and the official or other individual with
27 knowledge of the violation. A single citation with multiple fines may be issued for multiple or
28 recurring offenses.

29 (c) A civil fine levied under this section may not exceed

30 (1) \$100 per violation, the amount to be determined and assessed by the
31 commissioner; or

1 (2) \$1,000 per violation, the amount to be determined and assessed by the
2 commissioner, if the commissioner determines that a violator knowingly used the state land or
3 resource for economic gain in connection with a commercial operation.

4 (d) For continuing violations, each day that a violation of AS 38.55.010 or a compliance
5 order of the commissioner issued under AS 38.55.040 occurs constitutes a separate violation.

6 (e) The commissioner may provide for the payment of civil fines imposed under this
7 section by mail.

8 Sec. 38.55.070. CIVIL PENALTY FOR LOSS OR DAMAGE. (a) In addition to a civil
9 fine imposed under AS 38.55.060 or a criminal penalty imposed under AS 38.55.200, a person
10 who knowingly violates AS 38.55.010 or a compliance order of the commissioner issued under
11 AS 38.55.040 may be assessed a civil penalty equal to three times the loss or damage resulting
12 from the violation, the amount to be determined and assessed by the commissioner.

13 (b) In the commissioner's discretion, determination and assessment of the loss or damage
14 as the basis of a civil penalty imposed by this section may be calculated as the greater of

15 (1) the estimated value of the resources taken, including a reasonable estimate of
16 the rental value of the land and a reasonable estimate of the cost of restoring damaged state land
17 or resources, plus reasonable administrative costs; or

18 (2) a reasonable estimate of the economic gain realized by the violator.

19 ARTICLE 2. APPEAL AND ENFORCEMENT OF NOTICES AND ORDERS.

20 Sec. 38.55.100. ADMINISTRATIVE APPEALS. (a) When a notice of trespass or a
21 compliance order, civil fine, or civil penalty is provided to a violator, the violator may within 30
22 days file an appeal in writing with the commissioner under applicable regulations, stating the
23 grounds for the appeal, including the reasons that the violator believes the notice, order, fine, or
24 penalty is unjust or incorrect, and requesting a hearing on it. The commissioner may shorten or
25 extend the period for filing an appeal for good cause.

26 (b) Unless the violator initiates a timely proceeding for judicial review, the decision of
27 the commissioner under AS 38.55.010 - 38.55.070 is final and may not be collaterally attacked.

28 Sec. 38.55.110. JUDICIAL REVIEW. (a) Judicial review of a notice of trespass,
29 compliance order, civil fine, or civil penalty issued under the authority of this chapter may be
30 obtained under AS 44.62.560.

31 (b) A notice of trespass, compliance order, civil fine, or civil penalty issued under the

1 authority of this chapter is not subject to judicial review unless and until all available
2 administrative remedies have been exhausted.

3 Sec. 38.55.120. ENFORCEMENT OF NOTICE OR ORDER. After the violator has been
4 granted a reasonable opportunity for administrative appeal and hearing and the time for judicial
5 review has expired, in addition to other enforcement remedies authorized by law, a court may,
6 upon application by the commissioner, issue

7 (1) a writ of assistance to assist the commissioner with enforcement of a
8 compliance order issued under this chapter; and

9 (2) a writ of execution to collect a civil fine or penalty imposed under this
10 chapter.

11 ARTICLE 3. ADDITIONAL ENFORCEMENT REMEDIES.

12 Sec. 38.55.200. CRIMINAL PENALTY. (a) A person who knowingly violates
13 AS 38.55.010 or a compliance order of the commissioner issued under AS 38.55.040 is guilty
14 of a class B misdemeanor.

15 (b) A violation of AS 38.55.010 and a violation of a compliance order of the
16 commissioner to cease that violation may not subject the violator to double jeopardy for the same
17 unauthorized use.

18 Sec. 38.55.210. VIOLATOR'S LIABILITY FOR LOSS OR DAMAGE. A person who
19 violates this chapter or a regulation or order issued under this chapter is liable to the state or to
20 any other person who suffers damages or losses arising out of or resulting from the violation.

21 ARTICLE 4. GENERAL PROVISIONS.

22 Sec. 38.55.300. STATE NOT LIABLE FOR CONSEQUENCES OF VIOLATION.
23 Notwithstanding either the state's ownership of the land or the state's acquisition of a structure,
24 improvement, or personal property on the land under AS 38.55.050, the state is not liable for
25 damages or losses arising out of or resulting from

26 (1) an activity that constitutes an unauthorized use of state land;

27 (2) a structure, improvement, personal property, or refuse located on state land
28 for which a written state land use authorization had not been issued at the time of the damage
29 or loss;

30 (3) a decision of the commissioner to

31 (A) enter state land to investigate a violation of this chapter;

- 1 (B) issue a notice of trespass under AS 38.55.030;
2 (C) enforce or fail to enforce a compliance order issued under
3 AS 38.55.040;
4 (D) use, sell, destroy, or otherwise dispose of unauthorized structures,
5 improvements, or personal property under this chapter; or
6 (E) use or decline to use an enforcement remedy authorized by this
7 chapter.

8 Sec. 38.55.399. DEFINITIONS. In this chapter,

- 9 (1) "commissioner" means the commissioner of natural resources;
10 (2) "department" means the Department of Natural Resources;
11 (3) "improvement" means an addition or alteration to, on, or affecting land,
12 including a road, trail, bridge, ditch, or structure, regardless of the effect on value;
13 (4) "land" means any land, including tideland, submerged land, shoreland, or
14 upland, or interest in land that is owned by the state and managed by the department;
15 (5) "refuse" includes
16 (A) litter, as the term is defined in AS 46.06.150;
17 (B) hazardous substances, as the term is defined in AS 46.03.826;
18 (C) solid waste, as the term is defined in AS 46.03.900;
19 (D) discarded or abandoned equipment; and
20 (E) any other abandoned or discarded materials or substances;
21 (6) "structure" means anything built, constructed, or otherwise placed on state
22 land, including a house, building, barn, shed, cabin, trailer, tower, cache, dam, tent, platform, or
23 other object that is built or constructed, regardless of whether it is intended for permanent,
24 seasonal, or temporary use;
25 (7) "unauthorized use of state land" means action in violation of AS 38.55.010.