

**CS FOR SENATE BILL NO. 178 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION**

BY THE SENATE RESOURCES COMMITTEE

**Offered: 5/10/91
Referred: Judiciary**

Sponsor(s): SENATORS PEARCE, Menard

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the management and protection of state land and its resources,
2 establishing remedies to enforce laws against unauthorized use of state land and its
3 resources, and amending the jurisdiction of the district court to hear appeals of those
4 remedies."

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

6 * **Section 1.** AS 12.25.190(c) is amended to read:

7 (c) The person cited for the crime shall give a written promise to appear in court by
8 signing at least one copy of the written citation prepared by the peace officer and the officer shall
9 deliver a copy of the citation to the person. The written promise requirement of this subsection
10 does not apply to

11 (1) motor vehicle and traffic citations for which a bail or fine schedule has been
12 established under AS 28.05.151;

13 (2) [,] fish and game citations for which a bail schedule has been established
14 under AS 16.05.165;

- 1 (3) [,] citations issued under AS 04.21.065;
2 (4) [,] citations issued under AS 18.35.341;
3 (5) [,] citations issued in state park and recreational facilities under AS 41.21.960;
4 (6) [, OR] littering citations issued under AS 46.06.080; or
5 (7) citations issued for unauthorized use of state land and resources issued
6 under AS 38.55.330 - 38.55.340.

7 * Sec. 2. AS 22.15 is amended by adding a new section to read:

8 Sec. 22.15.065. APPELLATE JURISDICTION. The district court has jurisdiction to
9 review a notice of trespass issued under AS 38.55.120 or a compliance order issued under
10 AS 38.55.130.

11 * Sec. 3. AS 38 is amended by adding a new chapter to read:

12 CHAPTER 55. USE AND PROTECTION OF STATE LAND AND RESOURCES.

13 ARTICLE 1. USE OF STATE LAND AND RESOURCES.

14 Sec. 38.55.010. GENERALLY ALLOWED USES. (a) The following land uses and
15 activities, alone or in combination, are generally allowed uses and may take place on state land
16 without a written authorization by the department:

17 (1) travel, including

18 (A) hiking, backpacking, skiing, climbing, and bicycling; travel by horse
19 or dogsled or with pack stock; snowmobiling;

20 (B) landing or launching a light plane, helicopter, or similar aircraft;

21 (C) use of a boat, raft, canoe, or similar watercraft without disturbing the
22 submerged land or shoreline;

23 (D) use of four-wheel drive vehicle, pickup truck, snowmobile, or all-
24 terrain vehicle, wheeled or tracked, on or off an established right-of-way, provided that
25 the use off a right-of-way does not break the vegetative mat;

26 (E) a livestock drive of any number of reindeer or up to 100 horses, cattle,
27 or other domesticated animals;

28 (2) access improvements, including

29 (A) brushing or cutting a trail less than five feet wide using only hand
30 tools, provided that there is no disturbance of the root system and that cutting the trail
31 does not constitute, and is not intended to establish, a right-of-way;

1 (B) anchoring a mooring buoy in a lake or river or in marine waters for
2 an upland owner's personal, noncommercial use, or placing a float or dock in a lake or
3 in marine waters for an upland owner's personal, noncommercial use, provided that the
4 use does not interfere with public access or other public use; the float or dock must be
5 an open structure without walls or roof, designed and used for access to and from the
6 water rather than for storage or residential use;

7 (3) removal or consumption of resources, including

8 (A) hunting, fishing, or trapping, or placement of a crab pot, shrimp pot,
9 or herring pound, in accordance with regulations of the Board of Game or the Board of
10 Fisheries;

11 (B) harvesting a small number of wild plants for personal use; using dead
12 and down firewood for a cooking or warming fire, unless the commissioner has closed
13 the area to fires during the fire season; and harvesting mushrooms, berries, and other plant
14 material for personal use;

15 (C) grazing not more than five domesticated animals;

16 (D) recreational gold panning; hard-rock mineral prospecting or mining
17 using

18 (i) a hand-operated pick, shovel, pan, earth auger, backpack power
19 drill, or auger or similar light portable field equipment; or

20 (ii) suction dredging if the dredge has a nozzle intake of six inches
21 or less, powered by an engine of 16 horsepower or less, and pumps no more than
22 30,000 gallons of water a day;

23 (4) other structures and improvements, including

24 (A) establishing a camp for personal recreational use, commercial
25 recreational use, or commercial nonrecreational use that does not exceed a period
26 established by the commissioner by regulation, using a tent platform or other temporary
27 structure that can readily be dismantled and removed or a floathouse that can readily be
28 moved; the camp must be moved at least two miles before the end of the period; a cabin
29 or other permanent improvement is not allowed, even if on skids or other nonpermanent
30 foundation, and the camp must not interfere with public access or other public uses and
31 interests, as determined by the commissioner;

1 (B) brushing or cutting a survey line less than five feet wide using only
2 hand tools provided that there is no disturbance of the root system, or setting a survey
3 marker;

4 (C) placing a lawful sewer outfall into marine waters from a residence on
5 contiguous privately owned upland, provided that the effluent volume is less than 500
6 gallons a day, the outfall is located within the projected sidelines of the contiguous upland
7 owner's lot, and the outfall line is buried to the extent possible, or, in bedrock, is secured
8 and covered with rocks to prevent damage;

9 (5) miscellaneous uses, including nonexclusive recreational or other use, for no
10 more than 14 days at a site, if the use does not have a noticeable effect on vegetation, drainage,
11 or soil stability, does not interfere with public access or other public purposes, and does not
12 involve harassment or disturbance of wildlife other than lawful hunting, trapping, and fishing.

13 (b) The provisions of (a) of this section do not

14 (1) apply to

15 (A) land withdrawn from the public domain and no longer managed under
16 this title; and

17 (B) land managed under an interagency land management agreement or
18 an interagency assignment of land management authority under AS 38.04.060(b) if the
19 land subject to the agreement or assignment is 640 acres or more;

20 (2) authorize a use that is prohibited or restricted by an adopted land use plan or
21 management plan;

22 (3) authorize a use that is prohibited or restricted by a special use land
23 designation;

24 (4) authorize a use that is prohibited or restricted by another statute or regulation;

25 (5) exempt a user from the permit requirements of another department; and

26 (6) authorize a use if another person has already acquired an exclusive property
27 right to undertake that use.

28 Sec. 38.55.020. ALLOWED USES REQUIRING AUTHORIZATION. (a) A permit or
29 other written authorization issued by the department is required for the following activities on
30 state land:

31 (1) activity involving

- 1 (A) the use of explosives and explosive devices, except firearms;
2 (B) access, vehicle use, equipment use, occupancy, use or placement of
3 a structure, construction of improvements, placement of fill, or removal of a state-owned
4 resource, that is not exempted by AS 38.55.010(a);
5 (C) the use of hydraulic prospecting or mining equipment methods;
6 (D) drilling to a depth in excess of 300 feet, including exploratory drilling
7 or stratigraphic test wells on state land not under oil or gas lease;
8 (E) geophysical exploration for minerals subject to lease under
9 AS 38.05.135 - 38.05.181;

10 (2) activity that the director determines may result in unnecessary harm to land
11 that has special scenic, historic, archaeological, scientific, biological, recreational, or other special
12 resource values, and that is designated as special management land under (b) of this section; and

13 (3) activity on land under a mineral prospecting permit, lease, or location by a
14 person other than the holder of the prospecting permit, lease, or location, or the holder's
15 authorized representative.

16 (b) The commissioner shall list activities or uses for which a permit is required under
17 (a)(2) of this section and designate the land as special management land on the official records
18 of the division after public notice of the designation is given under AS 38.05.945. The records
19 shall be available in all division offices. Using designated special use land without obtaining a
20 permit or other authorization required for that use is not a violation of this chapter unless

- 21 (1) the user has received written notice of the designation;
22 (2) the land is posted as required by AS 11.46.350(b); or
23 (3) the designation has been effective for 90 days.

24 ARTICLE 2. UNAUTHORIZED USE OF STATE LAND AND RESOURCES.

25 Sec. 38.55.100. UNAUTHORIZED USE OF STATE LAND. Unless authorized by
26 AS 38.55.010 or 38.55.020, a person may not

- 27 (1) reside or be domiciled on state land;
28 (2) establish occupancy of state land;
29 (3) place or construct an improvement or structure on state land;
30 (4) place or leave personal property or refuse on state land;
31 (5) remove a resource that is regulated by the department under this title from

1 state land; or

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

3 Sec. 38.55.110. POWERS OF THE COMMISSIONER. Under this chapter the
4 commissioner may

5 (1) issue notices of trespass;

6 (2) issue compliance orders;

7 (3) issue citations;

8 (4) determine and recommend to the court whether a violation of AS 38.55.100
9 is part of a commercial operation;

10 (5) assess damages;

11 (6) impound personal property used in or in aid of a violation of this chapter as
12 security for fines and penalties;

13 (7) use, destroy, or otherwise dispose of property acquired under this chapter in
14 the manner authorized by AS 38.55.140; and

15 (8) adopt regulations and take other administrative actions necessary to carry out
16 the purposes of this chapter.

17 Sec. 38.55.120. NOTICE OF TRESPASS. (a) A notice of trespass issued under this
18 chapter shall identify the location and nature of the unauthorized use of state land and the
19 specific action or actions necessary to stop the violation.

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

21 (1) by

22 (A) certified mail or by delivering the notice to the violator personally;

23 and

24 (B) posting the notice in a conspicuous place at the site of the
25 unauthorized use; or

26 (2) by publication if notice of trespass provided under (1)(A) of this subsection
27 is not actually received by the person to whom the notice is addressed; the publication shall occur
28 four times during four consecutive calendar weeks, once in each week, in a newspaper published
29 in the judicial district in which the unauthorized use is occurring, or if a newspaper is not
30 published in the judicial district, then in a newspaper published in the state that circulates in the
31 judicial district.

1 Sec. 38.55.130. COMPLIANCE ORDERS. (a) A compliance order issued by the
2 commissioner to a person who violates AS 38.55.100 may require the person to

3 (1) cease the unauthorized use;

4 (2) remove any unauthorized improvements, structures, or refuse; and

5 (3) restore the land to the specifications required by the commissioner.

6 (b) The compliance order shall be served upon the violator in a manner authorized by
7 AS 38.55.120(b).

8 (c) In a compliance order issued under this section, the commissioner shall give the
9 person to whom the order is issued reasonable time to meet a requirement of the order, and may
10 grant an extension of the time in which the person must conform to a requirement of the order
11 if the person requests the extension and if unusual or extenuating circumstances prevent the
12 person's ability or effort to meet the requirement within the time originally given. The
13 commissioner shall refuse an extension if the commissioner determines that the violation presents
14 a significant public or environmental hazard.

15 (d) At the discretion of the commissioner, if the violator fails to comply with the
16 compliance order issued under (a)(2) or (3) of this section, the commissioner may remove any
17 unauthorized improvement, structure, or refuse and may restore the land to the specifications
18 required in the order.

19 (e) The violator is liable for the state's full costs of the removal and restoration made
20 under (d) of this section, including actual administrative costs.

21 Sec. 38.55.140. STATE TITLE TO UNAUTHORIZED IMPROVEMENTS. At the
22 discretion of the commissioner, an unauthorized improvement or structure on state land that is
23 not removed within the period allowed by the commissioner in a compliance order issued under
24 AS 38.55.130(a)(2) becomes state property. The commissioner

25 (1) may retain for the use of the department or the public an improvement or
26 structure for which the commissioner believes there is a prospective public use;

27 (2) may destroy an improvement or structure;

28 (3) shall transfer an improvement or structure not retained under (1) of this
29 section or destroyed under (2) of this section to the Department of Administration for disposal
30 under AS 44.68.110.

31 ARTICLE 3. APPEAL AND ENFORCEMENT OF NOTICES AND ORDERS.

1 Sec. 38.55.200. JUDICIAL REVIEW. (a) Judicial review of a notice of trespass or
2 compliance order issued under this chapter may be obtained under AS 44.62.560, except that
3 review shall be obtained in the district court.

4 (b) The district court may modify an order of the department as necessary to ensure that
5 an order issued under this chapter is reasonable, taking into account the nature and severity of
6 the violation and the state and public interests served by the decision.

7 (c) Unless the violator initiates a timely proceeding for judicial review, a decision of the
8 department under AS 38.55.100 - 38.55.140 is final and may not be collaterally attacked.

9 Sec. 38.55.210. ENFORCEMENT OF COMPLIANCE ORDER. After expiration of the
10 time provided to a person to conform to the requirements of a compliance order issued under
11 AS 38.55.130, including any extension of that time, the commissioner may

12 (1) exercise the power authorized by AS 38.55.130(a)(2) and (3) and 38.55.140
13 to enforce the compliance order;

14 (2) secure the assistance of a peace officer to exercise an enforcement power.

15 ARTICLE 4. ADDITIONAL ENFORCEMENT REMEDIES.

16 Sec. 38.55.300. COMMERCIAL OPERATION OFFENSES; CRIMINAL PENALTY.

17 A person is guilty of a class B misdemeanor if the person knowingly violates

18 (1) AS 38.55.100 and the violation is part of a commercial operation; or

19 (2) a compliance order of the commissioner issued under AS 38.55.130 and the
20 violation is part of a commercial operation.

21 Sec. 38.55.310. OTHER OFFENSES; NONCRIMINAL PENALTY. A person is guilty
22 of a violation, as that term is defined by AS 11.81.900, if the person knowingly violates

23 (1) AS 38.55.100 and the violation is not part of a commercial operation; or

24 (2) a compliance order of the commissioner issued under AS 38.55.130 and the
25 violation is not part of a commercial operation.

26 Sec. 38.55.320. DOUBLE JEOPARDY BARRED. A violation of AS 38.55.100 and a
27 violation of a compliance order of the commissioner to cease that violation may not subject the
28 violator to double jeopardy for the same unauthorized use.

29 Sec. 38.55.330. ENFORCEMENT AUTHORITY. (a) For offenses committed to state
30 land and resources subject to the department's supervision, the following persons are peace
31 officers of the state and they shall enforce the provisions of this chapter and the regulations

1 adopted under this chapter:

- 2 (1) an employee of the department authorized by the commissioner;
3 (2) a peace officer in the state;
4 (3) to the extent permitted by law, any other person authorized by the
5 commissioner.

6 (b) Each person designated in (a) of this section may, when enforcing the provisions of
7 this chapter or a regulation adopted under this chapter,

- 8 (1) execute a warrant or other process issued by a court of competent jurisdiction;
9 (2) administer or take an oath, affirmation, or affidavit; and
10 (3) issue a citation to a person who violates a provision of this chapter or a
11 regulation adopted under this chapter.

12 Sec. 38.55.340. FORM AND ISSUANCE OF CITATION. (a) When a peace officer
13 stops or contacts a person concerning a violation committed to state land or resources subject to
14 the department's supervision, the officer may issue a citation to the person, subject to the
15 provisions of AS 12.25.180 - 12.25.230. The person receiving the citation may not be required
16 to endorse the citation. If the offense for which the citation is issued is one that may be disposed
17 of without court appearance under (b) of this section, the citing officer shall write on the citation
18 the amount of bail applicable to the cited offense.

19 (b) After consultation with the commissioner, the Alaska Supreme Court shall identify
20 those offenses that are amenable to disposition without court appearance and shall establish by
21 rule or order a schedule of bail amounts, not to exceed fines prescribed by law, for those
22 offenses. In preparing a rule or order under this subsection, the court shall consider the
23 seriousness of the violation.

24 (c) A person cited for an offense for which a bail amount has been established under (b)
25 of this section may, within 15 days from the date of the citation, mail or personally deliver to
26 the clerk of the court having jurisdiction over the place where the offense occurred

- 27 (1) the amount of bail indicated on the citation for that offense; and
28 (2) a copy of the citation indicating the offender's waiver of appearance, plea of
29 no contest, and direction to forfeit the bail and any items seized from the offender.

30 (d) When bail has been forfeited under this section, a judgment of conviction shall be
31 entered. Bail forfeited under this section and the forfeiture of items seized from the offender is

1 a complete satisfaction for the offense, and the clerk of the court shall provide the offender with
2 a receipt stating that fact.

3 (e) If the person cited fails to pay the bail amount or appear in court as required, the
4 citation shall be considered a summons for a misdemeanor charge and the offender shall be
5 proceeded against in the manner prescribed by law.

6 (f) Notwithstanding other provisions of law, if a person cited for a violation of this
7 chapter for which a bail amount has been established under (b) of this section appears in court
8 and is found guilty, the penalty that is imposed for the offense may not exceed the bail amount
9 for that offense established under (b) of this section.

10 Sec. 38.55.350. CIVIL PENALTY FOR LOSS OR DAMAGE. (a) In addition to a
11 penalty imposed under AS 38.55.300 or 38.55.310, the court may assess against a person who
12 knowingly violates AS 38.55.100 or a compliance order of the commissioner issued under
13 AS 38.55.130 a civil penalty equal to three times the gain or loss or damage resulting from the
14 violation.

15 (b) For continuing violations, each day that a violation of AS 38.55.100 or of a
16 compliance order issued under AS 38.55.130 occurs constitutes a separate violation for which a
17 civil fine may be levied under this section.

18 (c) The court shall determine the amount of the gain or loss or damage and shall assess
19 the civil penalty authorized by (a) of this subsection. In its determination and assessment of the
20 loss or damage as the basis of a civil penalty imposed by (a) of this section, the court may
21 calculate the penalty as the greater of

22 (1) the estimated value of the resources taken, including a reasonable estimate of
23 the rental value of the land and a reasonable estimate of the cost of restoring damaged state land
24 or resources, plus actual administrative costs; or

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

26 Sec. 38.55.360. STATE LIABLE FOR WRONGFUL PROSECUTION. (a)
27 Notwithstanding AS 09.50.250(a)(1), a person charged under AS 38.55.300 who gives notice to
28 the court of an intent to do so at the time the person appears before the court to enter a plea to
29 the offense may, at the conclusion of a proceeding under AS 38.55.300 - 38.55.340 in which the
30 person is found not guilty of an alleged violation, file with the court a motion to recover the
31 greater of

1 (1) the amount of the bail applicable to the cited offense for which the person was
2 found not guilty; or

3 (2) the costs incurred by the person during proceedings under this chapter,
4 including

5 (A) wages lost as an employee due to the person's absence from work to
6 attend the proceedings;

7 (B) net profits lost as a business owner due to the person's

8 (i) absence from the business to attend the proceedings;

9 (ii) conformance to the requirements of a compliance order
10 directing the person to cease an unauthorized use; and

11 (C) damages, as measured by

12 (i) loss of the value of property impounded as security for payment
13 of a fine or penalty; and

14 (ii) lost economic opportunity attributable to the person's
15 conformance to the requirements of a compliance order directing the person to
16 cease an unauthorized use.

17 (b) The court shall consider and decide a motion filed under (a) of this section.

18 ARTICLE 5. GENERAL PROVISIONS.

19 Sec. 38.55.400. VIOLATOR'S LIABILITY FOR LOSS OR DAMAGE. A person who
20 violates this chapter or a regulation adopted or order issued under this chapter is liable to the
21 state or to any other person who suffers damages or losses arising out of or resulting from the
22 violation.

23 Sec. 38.55.410. STATE NOT LIABLE FOR CONSEQUENCES OF VIOLATION.
24 Notwithstanding either the state's ownership of the land or the state's acquisition of a structure
25 or improvement on the land under AS 38.55.140, and except as provided in AS 38.55.360, the
26 state is not liable for damages or losses arising out of or resulting from

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

28 (2) a structure, improvement, or refuse located on state land for which a written
29 state land use authorization had not been issued at the time of the damage 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 38.55.120;
2 (C) enforce or fail to enforce a compliance order issued under
3 AS 38.55.130;
4 (D) use, sell, destroy, or otherwise dispose of unauthorized structures,
5 improvements, or refuse under this chapter; or
6 (E) use or decline to use an enforcement remedy authorized by this
7 chapter.

8 Sec. 38.55.499. DEFINITIONS. In this chapter,

- 9 (1) "commercial operation" means an endeavor or project providing or intended
10 to provide goods or services and yielding or intended to yield economic gain or financial profit;
11 (2) "commissioner" means the commissioner of natural resources;
12 (3) "department" means the Department of Natural Resources;
13 (4) "improvement" means an addition or alteration to, on, or affecting land,
14 including a road, trail, bridge, ditch, or structure, regardless of the effect on value;
15 (5) "land" means
16 (A) any land, including tideland, submerged land, shoreland, or upland,
17 or interest in land that is owned by the state and managed by the department; and
18 (B) includes water of the state that overlies land described in (A) of this
19 paragraph;
20 (6) "refuse" includes
21 (A) litter, as the term is defined in AS 46.06.150;
22 (B) hazardous substances, as the term is defined in AS 46.03.826;
23 (C) solid waste, as the term is defined in AS 46.03.900;
24 (D) discarded or abandoned equipment; and
25 (E) any other abandoned or discarded materials or substances;
26 (7) "structure" means anything built, constructed, or otherwise placed on state
27 land, including a house, building, barn, shed, cabin, trailer, tower, cache, dam, tent, platform, or
28 other object that is built or constructed, regardless of whether it is intended for permanent,
29 seasonal, or temporary use;
30 (8) "unauthorized use of state land" means action in violation of AS 38.55.100.