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344

SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: *SB 344*

BILL NAME: *Defects in title of state to land*

SPONSOR(S): *Eliason*

DATE INTRODUCED: *1-11-84*

REFERRALS: *Resources  
Judiciary*

RELATED BILLS PENDING:

*HB 455 - Goll  
1-19-84  
Resources*

INITIAL RESEARCH:

BILL SUMMARY COMPLETED:

SPONSOR CONTACTED FOR  
BACKUP MATERIALS:

AGENCY RESPONSE:

SUMMARY BY LEGAL DIVISION:

DEPT. OF LAW SUMMARY:

FISCAL NOTE:

OTHER INTERESTED SENATORS OR  
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS/GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

STAFF MEMO TO COMMITTEE:

BACKGROUND MATERIAL DISTRIBUTED:

LIST OF WITNESSES:

DATE AND PLACE SET:

TELECONFERENCE:

PSA/PRESS RELEASE:

SUGGESTED AMENDMENTS/COMMITTEE  
SUBSTITUTES DRAFTED:

*2/6/89 Merrill Palmer (City of Haines, lobbyist) called in support.  
586-2660 Rm 609 (Baranoff)*

NOTES TO DECISIONS

As the federal government consistently endorsed restrictions on interstate shipment of timber from federal lands to protect the local processing capability of isolated areas, there was implicit approval of this section, authorizing the imposition of conditions on the sale of

state-owned timber that were designed to protect local timber processors from the slack in demand for their services during a temporary suspension of federal timber sales from the area national forests. *South-Central Timber Dev., Inc. v. LeResche*, 693 F.2d 890 (9th Cir. 1982).

**Sec. 38.05.118. Negotiated timber sales in areas of high unemployment.** (a) Notwithstanding any other provision of AS 38.05.110 — 38.05.120, the director, with the approval of the commissioner, may negotiate a sale of timber to a local manufacturer at appraised value. The period of a contract for a sale of timber negotiated under this section may not exceed 25 years. The contract shall provide that the appraised value of timber remaining to be harvested under the provisions of the contract shall be redetermined at least once every five years.

(b) Notice of intent to negotiate a contract authorized by (a) of this section shall be given in accordance with AS 38.05.305.

(c) No sale of timber may be negotiated by the director under this section unless he first finds that, within an area proximate to the business site which the manufacturer may economically serve, there exists

- (1) a high level of local unemployment;
- (2) an underutilized timber manufacturing capacity; and
- (3) an underutilized allowable cut of state timber. (§ 4 ch 73 SLA 1978)

*Editor's notes.* — AS 38.05.305, referred to in (b) of this section, was repealed by § 45, ch. 113, SLA 1981.

NOTES TO DECISIONS

Quoted in *Southeast Alaska Conservation Council, Inc. v. State*, Sup. Ct. Op. No. 2662 (File No. 5855), P.2d (1983).

**Sec. 38.05.120. Disposal procedure.**

NOTES TO DECISIONS

*Primary manufacture.* — See notes under same catchline under AS 38.05.110. *South-Central Timber Dev., Inc. v. LeResche*, 511 F. Supp. 139 (D. Alaska 1981), Notes to Decisions.

Quoted in *Kenai Lumber Co. v. LeResche*, Sup. Ct. Op. No. 2516 (File Nos.

5733, 5755), 646 P.2d 215 (1982).

Cited in *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981); *Southeast Alaska Conservation Council, Inc. v. State*, Sup. Ct. Op. No. 2662 (File No. 5855), P.2d (1983).

Article 5. Reservation of Rights to Alaska.

Section

- 125. Reservation
- 127. Access to navigable or public waters
- 130. Damages and posting of bond

**Sec. 38.05.125. Reservation.** Each contract for the sale, lease or grant of state land, and each deed to state land, properties or interest in state land, made under AS 38.05.315 — 38.05.325, 38.05.045 — 38.05.120, 38.08.010 — 38.08.120, or 38.50.010 — 38.50.170 except as provided in AS 38.50.050 is subject to the following reservations: "The party of the first part. Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times for the purpose of opening, developing, drilling, and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out 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." (§ 1 art VII ch 169 SLA 1959; am § 14 ch 61 SLA 1960; am § 1 ch 42 SLA 1966; am § 3 ch 240 SLA 1975; am § 2 ch 175 SLA 1980)

*Effect of amendments.* — The 1980 amendment inserted the reference to AS 38.08.010 — 38.08.120, and "as" preceding "provided in AS 38.50.050" near the beginning of the section, inserted

"geothermal resources" wherever it appears throughout the section, and substituted "attorneys" for "attorney" near the middle of the section.

*Editor's notes.* — As to declaration of

legislative policy, see § 1, ch. 175, SLA 1980, in the 1980 Temporary and Special Acts and Resolves. AS 38.05.325, referred to above, was repealed by § 45, ch. 85, SLA 1979.

**Sec. 38.05.127. Access to navigable or public waters.** (a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the Department of Natural Resources shall,

(1) under regulations, determine if the body of water or waterway is navigable water, public water, or neither;

(2) upon finding that the body of water or waterway is navigable or public water, provide for the specific easements or rights-of-way, or both, reasonably necessary to insure free access to and along the body of water, unless the department finds that regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) The Department of Natural Resources shall adopt regulations implementing this section.

(c) Nothing in this section affects valid existing rights.

(d) Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.18.011 — 29.18.610 if the commissioner determines the action is consistent with the public interest. (§ 2 ch 117 SLA 1976; am § 32 ch 113 SLA 1981)

*Effect of amendments.* — The 1981 amendment added subsection (d)

**Sec. 38.05.130. Damages and posting of bond.** No rights shall be exercised by the state, its lessees, successors or assigns under the reservation as set out in AS 38.05.125 until the state, its lessees, successors, or assigns make provision to pay the owner of the land full payment for all damages sustained by the owner, by reason of entering upon the land. If the owner for any cause refuses or neglects to settle the damages, the state, its lessees, successors, assigns, or an applicant for a lease or contract from the state for the purpose of prospecting for valuable minerals, or option, contract or lease for mining coal or lease for extracting geothermal resources, petroleum or natural gas, may enter upon the land in the exercise of the reserved rights after posting a surety bond determined by the director, after notice and an opportunity to be heard, to be sufficient as to form, amount, and security to secure to the owner payment for damages, and may institute legal proceedings in a court where the land is located, as may be necessary to determine the damages which the owner may suffer. (§ 2 art VII ch 169 SLA 1959; am § 15 ch 61 SLA 1960; am § 3 ch 175 SLA 1980)

*Effect of amendments.* — The 1980 amendment deleted "or" preceding "until the state," and substituted "provision" for "provisions" near the beginning of the section, inserted a comma between "option" and "contract," and inserted "geothermal

resources" near the middle of the section. *Editor's notes.* — As to declaration of legislative policy, see § 1, ch. 175, SLA 1980, in the 1980 Temporary and Special Acts and Resolves.

**Article 6. Leasing of Mineral Lands.**

- Section**  
 135. Generally  
 140. Limitations  
 145. Leasing procedure  
 180. Oil and gas leasing

- Section**  
 181. Geothermal resources  
 182. Royalty on natural resources  
 183. Sale of royalty

**Sec. 38.05.135. Generally.** (a) Except as otherwise provided, valuable mineral deposits in lands belonging to the state shall be open to exploration, development, and the extraction of minerals. All lands, together with tide, submerged, or shorelands, to which the state holds title to or to which the state may become entitled, may be obtained by permit or lease for the purpose of exploration, development, and the extraction of minerals. Except as specifically limited by AS 38.05.135 — 38.05.181, lands may be withheld from lease application on a first-come, first-served basis, and offered only on a competitive bid basis when determined by the commissioner to be in the best interests of the state. In unproven areas the commissioner may offer additional incentives, including a reduction of royalty to a minimum of five percent in the case of oil and gas, and other terms in and granting permit or lease for exploration and development whenever it appears to be in the best interests of the state to do so.

(b) When mineral land is to be leased, in addition to any other notice given, notice must also be given as provided in AS 38.05.305 and 38.05.345. (§ 1 art VIII ch 169 SLA 1959; am § 1 ch 30 SLA 1964; am § 1 ch 91 SLA 1967; am § 2 ch 71 SLA 1971; am § 10 ch 257 SLA 1976; am § 2 ch 155 SLA 1978)

*Effect of amendments.* — The 1978 amendment rewrote subsection (b), referred to in subsection (b), was repealed by § 15, ch. 113, SLA 1981.

*Editor's notes.* — AS 38.05.305,

**Sec. 38.05.140. Limitations.** (a) No person may take or hold coal leases or permits during the life of coal leases on state lands exceeding an aggregate of 46,080 acres, except that a person may apply for coal leases or permits for acreage in addition to 46,080 acres, not exceeding a total of 5,120 additional acres of state land. The additional area applied for shall be in multiples of 40 acres and the application shall contain a statement that the granting of a lease for additional lands is necessary for the person to carry on business economically and is in the public interest. On the filing of the application, the coal deposits in the

(d) Real property acquired by, and under the management of, the agencies referred to in (a) and (b) of this section, which is no longer needed for its intended use, shall be returned to the jurisdiction of the division of lands, except that the Department of Highways may dispose of real property acquired by it under AS 19.05.040(2) and AS 19.05.080 — 19.05.120.

(e) Repealed by § 20 ch 182 SLA 1978. (§ 3(a) — (d) art XIII ch 169 SLA 1959; am §§ 20, 21 ch 61 SLA 1960; am § 1 ch 27 SLA 1967; am § 1 ch 253 SLA 1970; am §§ 1, 2 ch 35 SLA 1971; am § 2 ch 240 SLA 1976; am § 2 ch 267 SLA 1976; am § 20 ch 182 SLA 1978)

**Effect of amendments.** — The 1978 amendment repealed subsection (e).

**Editor's note.** — Sections 5 and 6, ch. 182, SLA 1978, purported to amend this section by deleting "(a) and" preceding "(b) of this section" in subsections (c) and (d), respectively, and § 20 of ch. 182 purported to repeal subsection (a). Section 27 of ch. 182 made these amendments and repeal effective on the date that the Board of Regents voted to approve the matters under consideration as provided in § 24 of the act. The Board of Regents disapproved all matters on August 17, 1978. Consequently, these amendments were ineffective.

**Opinions of attorney general.** — The

interaction of AS 38.05.030(b), 38.05.035(a), (7) and (12), AS 35.05.040(1), and AS 35.20.010 was examined to determine (1) which agency of the state had authority to accept title to land transferred by the federal government and (2) which agency had authority to manage the land, which was conveyed for airport and other purposes. The division of lands is the proper agency for acceptance of title. The division of aviation in the (former) Department of Public Works possesses the authority to manage the granted land for airport and directly related purposes while the division of lands possesses the authority to manage the land for other public purposes. April 14, 1977, Op. Att'y Gen.

NOTES TO DECISIONS

**Scope of subsection (a).** — Subsection (a) of this section only covers disposals of land by the commissioner of natural resources. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

**Creation of state park including university lands.** — Since creation of a state park which included university lands was a disposal by the legislature, not by administrative action, subsection (a) of this section was inapplicable. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

By enacting AS 41.20.210, creating

Chugach State Park, the legislature did not impliedly repeal subsection (a) of this section, which prevents disposal of university lands by the commissioner of natural resources without the approval of the Board of Regents of the University of Alaska. AS 41.20.210 withdrew the particular university land involved from the operation of the management mechanism created by subsection (a) and AS 14.40.170(a)(4), which grants certain management powers to the Board of Regents. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

**Sec. 38.05.032. School land disposition procedures.**

Repealed by § 20 ch 182 SLA 1978.

**Editor's notes.** — The repealed section derived from § 1, ch. 257, SLA 1976.

**Sec. 38.05.035. Powers and duties of the director.** (a) The director shall

(1) have general charge and supervision of the division and may exercise the powers specifically delegated to him; may employ and fix the compensation of assistants and employees necessary for the operations of the division; and is the certifying officer of the division, with the consent of the commissioner, and may approve vouchers for disbursements of money appropriated to the division;

(2) manage, inspect and control state lands and improvements on them belonging to the state and under the jurisdiction of the division;

(3) execute laws, rules, regulations and orders adopted by the commissioner;

(4) prescribe application procedures and practices for the sale, lease or other disposition of available lands, resources, property, or interest in them;

(5) prescribe fees or service charges, with the consent of the commissioner, for any public service rendered;

(6) under the conditions and limitations imposed by law and the commissioner, issue deeds, leases or other conveyances disposing of available lands, resources, property or any interests in them;

(7) have jurisdiction over state lands, except those lands acquired by the Alaska World War II Veterans Board and the Agricultural Loan Board or the departments or agencies succeeding to their respective functions through foreclosure or default; to this end the director possesses the powers and, with the approval of the commissioner, shall perform the duties necessary to protect the state's rights and interest in state lands, including the taking of all necessary action to protect and enforce the state's contractual or other property rights;

(8) Repealed by § 20 ch 182 SLA 1978.

(9) maintain such records as the commissioner considers necessary, administer oaths, and do all things incidental to the authority imposed; the following records and files shall be kept confidential upon request of the person supplying the information;

(A) the name of the person nominating or applying for the sale, lease, or other disposal of lands by competitive bidding;

(B) before the announced time of opening, the names of the bidders and the amounts of the bids;

(C) all geological, geophysical and engineering data supplied, whether or not concerned with the extraction or development of natural resources;

(D) except as provided in AS 38.05.036, cost data and financial information submitted in support of applications, bonds, leases and similar items;

(E) applications for rights-of-way or easements;

(F) requests for information or applications by public agencies for

*lands which are being considered for use for a public process;*

(10) account for the fees, licenses, taxes or other money received in the administration of AS 38.05.005 — 38.05.370 including the sale or leasing of land, identify their source, and promptly transmit them to the proper fiscal department after crediting them to the proper fund; receipts from land application filing fees and charges for copies of maps and records shall be deposited immediately in the general fund of the state by the director;

(11) select and employ or obtain at reasonable compensation cadastral, appraisal, or other professional personnel he considers necessary for the proper operations of the division;

(12) be the certifying agent of the state to select, accept and secure by whatever action is necessary in the name of the state, by deed, sale, gift, devise, judgment, operation of law, or other means any lands, of whatever nature or interest, available to the state, and shall be the certifying agent of the state, to select, accept or secure by whatever action is necessary in the name of the state any lands, or title or interest to lands available, granted, or subject to being transferred to the state for any purpose;

(13) Repealed by § 15 ch 181 SLA 1978; § 20 ch 182 SLA 1978.

(14) when he makes a written finding that the interests of the state will be best served, he may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available lands, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, he may impose additional conditions or limitations in the contracts as he, with the consent of the commissioner, determines will best serve the interests of the state; and no contract for the sale, lease, or other disposal of available lands or interests in them, is legally binding on the state until the commissioner formally records his consent to the contract; but if the appraised value is not greater than \$50,000 in the case of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or interest in land, the director may approve and issue the contract without the consent or approval of the commissioner; the written finding shall be available to the public upon request; before a public hearing, if held, or in any case no less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them, the director shall make available to the public a written decision in which he sets out the facts and applicable law upon which he based his determination that the sale, lease, or other disposal will best serve the interests of the state; a written finding is not required before the approval of

(A) a contract for a negotiated sale authorized by AS 38.05.115;

(B) the lease of land for a shore fishery site under AS 38.05.082;

(C) a permit or other authorization revocable by the department.

(b) The director may

(1) delegate the administrative duties, functions or powers imposed upon him to a responsible employee in the division;

(2) grant preference rights for the lease or purchase of state land without competitive bid in order to correct the past or future errors or omissions of a state or federal administrative agency when inequitable detriment would otherwise result to a diligent claimant or applicant due to situations over which the claimant or applicant had no control; the exercise of this discretionary power operates only to divest the state of its title to or interests in land and may be exercised only with the express approval of the commissioner;

(3) grant a preference right to a claimant who shows bona fide improvement of state land, or federal land subsequently acquired by the state, and who has in good faith sought to obtain title to the land but who, through error or omission of others, has been denied title to it; upon a showing satisfactory to the commissioner, the claimant may lease or purchase the land at the price set on the date of original entry on the land or, if a price was not set at that time at a price determined by the division to fairly represent the value of unimproved land at the time the claim was established, but in no event less than the cost of administration including survey; the error or omission of a predecessor in interest or an agent, administrator, or executor which has clearly prejudiced the claimant may be the basis for granting a preference right;

(4) sell lands by lottery for less than their appraised value when, in his judgment, past scarcity of land suitable for private ownership in any particular area has resulted in unrealistic land values;

(5) when he determines it is in the best interest of the state and will avoid injustice to a person or his heirs or devisees, dispose of land, by direct negotiation to that person who presently uses and who used and made improvements to that land before January 3, 1959 or his heirs or devisees; the amount paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director; a parcel of land disposed of under this paragraph shall be of a size consistent with the person's prior use, but may not exceed five acres;

(6) dispose of an interest in land limited to use for agricultural purposes by lottery;

(7) convey to an adjoining landowner a parcel of land created by a highway right-of-way alignment or realignment, or a parcel created by the vacation of a state-owned right-of-way if

(A) he determines that it is in the best interests of the state;

(B) the parcel does not exceed the minimum lot size under an applicable zoning code; and

(C) the director and the platting authority having land use planning jurisdiction agree that conveyance of the parcel to the adjoining landowner will result in boundaries that are convenient for the use of the land by the landowner and compatible with municipal

*land use plans;*

(8) for good cause extend for up to 90 days the time for rental or installment payments by a lessee or purchaser of state land under AS 38.05.005 — 38.05.370 if reasonable penalties and interest set by the director are paid.

(c) A parcel of land may be conveyed under (b) of this section without classification or reclassification under AS 38.05.300.

(d) A parcel of land described in (b) (7) of this section must be sold at its fair market value as determined by the director on the basis of an appraisal completed as provided in AS 38.05.310. Nothing in this subsection prevents the sale of land under AS 38.05.055 or 38.05.057 to a person not qualifying as an adjoining landowner if the adjoining landowner declines to purchase the land. (§ 5 art II ch 16 SLA 1959; am § 1 ch 57 SLA 1960; am §§ 2 — 4 ch 61 SLA 1960; am § 1 ch 55 SLA 1962; am § 1 ch 56 SLA 1964; am § 1 ch 98 SLA 1964; am § 1 ch 5 SLA 1965; am § 1 ch 58 SLA 1965; am § 1 ch 194 SLA 1968; am § 1 ch 164 SLA 1972; am §§ 2, 3 ch 257 SLA 1976; am §§ 1, 2 ch 176 SLA 1978; am § 15 ch 181 SLA 1978; am § 20 ch 182 SLA 1978; am § 1 ch 61 SLA 1980; am §§ 9 — 13 ch 113 SLA 1981)

**Revisor's notes.** — In subsection (b) (7), the word "convey" was substituted for "dispose" at the beginning of the paragraph and in subsection (d), the words "of land" were added following "parcel" by the revisor of statutes under AS 01.05.031.

**Effect of amendments.** — The first 1978 amendment, in subsection (b), substituted "sell lands by lottery" for "dispose of lands by competitive bid" in paragraph (4) and inserted "suitable for private ownership" in paragraph (4).

The second 1978 amendment, in subsection (a), repealed paragraph (13), which related to the powers of the director to select, administer, and dispose of mental health lands for the support of the mental health program. The third 1978 amendment, in subsection (a), repealed paragraphs (8) and (13), which related to the power of the director to administer the Land Registration Law and to select, administer, and dispose of mental health land for support of the mental health program, respectively. Section 28 of this amendatory act makes the repeal of paragraph (13) effective July 1, 1978, while § 30 of the act makes the repeal of paragraph (8) effective July 19, 1978.

The 1980 amendment added "except as provided in AS 38.05.036" at the beginning of subparagraph (a)(9)(D).

The 1981 amendment substituted "\$50,000" for "\$10,000" preceding "in the case of the sale of land," substituted "\$5,000" for "\$1,000" preceding "in the

case of the annual rental of land," substituted semicolons for periods preceding "the written finding" and preceding "before a public hearing," added "a written finding is not required before the approval of" following "interest of the state" and added subparagraphs (A)-(C) in subsection (a)(14). In subsection (b)(3), the amendment added "the price set on the date of original entry on the land or, if a price was not set at that time at" preceding "a price determined by the division." In subsection (b)(5), the amendment substituted "on the date that the person first entered the land" for "as of that date" preceding "as determined by the director." The amendment also added paragraphs (7) and (8) of subsection (b) and added subsections (c) and (d).

**Editor's notes.** — Section 7, ch. 182, SLA 1978, purported to amend this section by adding a paragraph (7) of subsection (b). Section 27 of ch. 182 made this amendment effective on the date that the Board of Regents voted to approve the matters under consideration as provided in § 24 of the act.

The Board of Regents disapproved all matters on August 17, 1978. Consequently, this amendment was ineffective.

**Opinions of attorney general.** — The interaction of AS 38.05.030(b), 38.05.035(a)(7) and (12), AS 35.05.040(1), and AS 35.20.010 was examined to determine (1) which agency of the state had authority to accept title to land transferred

by the federal government and (2) which agency had authority to manage the land, which was conveyed for airport and other purposes. The division of lands is the proper agency for acceptance of title. The division of aviation in the (former) Depart-

ment of Public Works possesses the authority to manage the granted land for airport and directly related purposes while the division of lands possesses the authority to manage the land for other public purposes. April 14, 1977, Op. Att'y Gen.

#### NOTES TO DECISIONS

Applied in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982).

Cited in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982); *State v.*

*Bering Strait Regional Educ. Attendance Area School Dist.*, Sup. Ct. Op. No. 2625 (File No. 6381), 658 P.2d 784 (1983); *Chevron U.S.A., Inc. v. LeResche*, Sup. Ct. Op. No. 2659 (File Nos. 6396, 6648), P.2d (1983).

**Sec. 38.05.036. Audit of royalty and net profit payments.** (a) The Department of Revenue shall audit reports, payments, and payments due relating to royalty and net profits under oil and gas contracts, agreements, or leases under AS 38.05.005 — 38.05.370.

(b) The Department of Revenue may inspect all reports and other information filed in support of or relating to royalty and net profits payments, whether or not that information is confidential, and shall hold that information confidential to the extent required under oil and gas agreements, contracts, or leases, or by AS 38.05.005 — 38.05.370 or AS 43.05.230.

(c) All information obtained by the Department of Revenue relating to royalty and net profits payments, including information obtained under AS 43.05.010 — 43.80.040, may be made available to the department, in the form of summaries and, when in furtherance of the department's royalty and net profits functions, relevant portions of the audits. Information made available to the department that was obtained under AS 43.05.010 — 43.80.040 is confidential and subject to the provisions of AS 43.05.230.

(d) The Department of Revenue may conduct audits under this section concurrently with audits or investigations under AS 43.05.010 — 43.80.040, and may use information obtained from the department in tax audits, investigations, or proceedings under AS 43.05.010 — 43.80.040.

(e) In this section, "audit" means the process of obtaining sufficient competent evidentiary matter through inspection, observation, inquiry, and confirmation to afford a reasonable basis for ascertaining the compliance by the subject of the audit with the applicable law, regulation, lease, agreement, and contract terms; it does not include any other actions necessary to administer AS 38.05.005 — 38.05.370 pertaining to oil and gas royalty and net profits payments, including daily accounting functions, certification procedures associated with those accounting functions, and enforcement of payments of royalties and net profits (§ 2 ch 61 SLA 1980).