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SENATE RESOURCES COMMITTEE
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: *SB 356*

BILL NAME: *Establishing a preference right to land*

SPONSOR(S): *Josephson*

RELATED BILLS PENDING:

DATE INTRODUCED: *1-17-84*

REFERRALS: *Resources
Finance*

INITIAL SEARCH:

BILL SUMMARY COMPLETED:

SUMMARY BY LEGAL DIVISION:

SPONSOR CONTACTED FOR
BACKUP MATERIALS:

DEPT. OF LAW SUMMARY:

FISCAL NOTE:

AGENCY RESPONSE:

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:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE:

BACKGROUND MATERIAL DISTRIBUTED:

PSA/PRESS RELEASE:

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/COMMITTEE
SUBSTITUTES DRAFTED:

*Ned Feltgen, DWR
Sen. Josephson*

BILL SUMMARY

SB 356 - preference right to land
SPONSOR: Sen. Josephson

The Statute affected by SB 356 is AS 38.05.035 which provides for the powers and duties of the director of the Division of Land and Water Management, DNR.

Within .035 is a subsection which specifically provides the director with "the authority to 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..."

SB 356, primarily by adding a new subsection (.036), provides a definition for errors and omissions which is currently neither clarified in statute nor defined in regulations.

Introduction of the bill was prompted by a request to the State from a Mr. Meslier for the granting of a preference right under .035. The request was denied, and though the case is involved, the deciding factor for the rejection was its failure to fall within the Department's interpretation of error and/or omission.

ALASKA STATE SENATE

JOE P. JOSEPHSON
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1526 F STREET
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COMMITTEES

HEALTH, EDUCATION & SOCIAL SERVICES (CHAIR)
JUDICIARY (VICE-CHAIR)
FINANCE
MAJORITY CAUCUS (CHAIR)

February 24, 1984

The Honorable Bettye Fahrenkamp
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

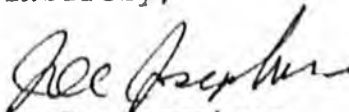
In regard to my letter of February 21, 1984, to Commissioner Wunnicke concerning preference rights, I would appreciate your scheduling a hearing on this issue on or after March 5. This would allow enough time for Commissioner Wunnicke to respond to my letter.

The bill in question is SB 356, "An Act establishing a preference right to land".

Thank you for your attention to this matter.

With best wishes, I am

Sincerely,


Joe P. Josephson
State Senator

JPJ:kbk

ALASKA STATE SENATE

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COMMITTEES
HEALTH EDUCATION & SOCIAL SERVICES (CHAIR)
JUDICIARY (VICE CHAIR)
FINANCE
MAJORITY CAUCUS (CHAIR)

March 7, 1984

Honorable Bettye Fahrenkamp
Chairman, Senate Resources Committee
Alaska State Senate
Juneau

Dear Bettye:

As per our conversation, I am requesting a hearing on my bill, Senate Bill 356, relating to preference rights to land. I will want to testify on this matter personally, so if possible, would prefer that the matter not be scheduled on a Monday, Wednesday or Friday afternoon when I hold meetings of the Committee on Health, Education and Social Services.

I would also be pleased to brief your Committee staff before the hearing, so that staff may be aware of the history of the matter which prompted the introduction of Senate Bill 356. I have some extensive "back-up" which can be reproduced as well.

With thanks and best wishes,

Sincerely,



Joe P. Josephson

SB 356

ALASKA STATE SENATE

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COMMITTEES
HEALTH EDUCATION & SOCIAL SERVICES (CHAIR)
JUDICIARY (VICE CHAIR)
FINANCE
MAJORITY CAUCUS (CHAIR)

February 21, 1984

The Honorable Esther C. Wunnicke
Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Esther:

Thank you for your letter of February 1 concerning preference rights.

I understand, of course, that the preference right provisions of AS 38.05.035 create a mechanism which calls for thorough consideration and justification. But it remains my judgment that the case of Mr. Messerli, my constituent, is one which calls for the exercise of the discretion authorized by the legislature in favor of the preference right. In viewing his case as one in which the equities cry out for relief, I am merely following the perspectives of people like Jack Sedwick and the late E. L. ("Bob") Bartlett.

I know you recognize my own long-standing commitment to a land management regime that serves the broad public interest. In supporting Mr. Messerli's preference right application, I found no inconsistency with that commitment.

In one of your letters of February 1, you mentioned that up to 200 cases might be affected by the passage of the legislation I have sponsored. In one sense, I was startled to hear that, because Mr. Dale Tubbs had opined that Mr. Messerli's case was almost unique, and because the bill has been drafted so as to meet only cases which have all the unusual equities presented by Mr. Messerli's long history of interest since the 1950's.

In another sense, I am pleased to know that there are so many other Alaskans of that number who might be beneficiaries of remedial legislation.

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The Honorable Esther C. Wunnicke
February 21, 1984
Page Two

It would be helpful for me to have the names and addresses of the other Alaskans who might be directly affected. From that information, I could determine whether they meet the criteria, and if so, I could make them aware of the pendency of my bill and invite them to offer input to the legislature.

Alternatively a review of their cases could suggest that the language of my bill is unnecessarily broad. If so, I would be open to specific proposals for amendment which the Department might wish to propose to me.

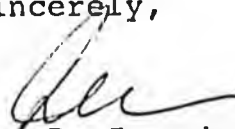
Obviously, the possibility of 200 cases is not necessarily an argument against the passage of the bill, but may suggest that there is a significant number of Alaskans with equally meritorious preference rights claims which an equitable state policy ought to recognize.

I am asking Senator Fahrenkamp to schedule an early hearing. Again, I regret we do not agree about how the public interest should be served in this matter. Frankly, no convincing rationale against the exercise of the preference right provisions in the case of Mr. Messerli has been proffered to me. I will not reiterate the arguments I made in earlier submissions on Mr. Messerli's behalf, but as I see it, the Department has elected not to refute them, preferring to reiterate its conclusionary statements such as that "there is no reason to grant Mr. Messerli a preference right".

I would appreciate your usual expeditious treatment of a request for information so that I may have the names and addresses. Should you or your staff wish to discuss this matter with me, or to review the files and records that are involved with members of my staff, please don't hesitate to let me know.

With best wishes, I am

Sincerely,


Joe P. Josephson
State Senator

JPJ:rak
cc: Senator Fahrenkamp ✓
Loyd Messerli

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

file SB 356
BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

March 2, 1984

The Honorable Joe Josephson
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Josephson:

Thank you for your letter about preference rights and your proposed amendments (SB 356) to AS 38.05.035.

My estimate that up to 200 cases may be affected by the proposed legislation is based upon the expertise and knowledge of the Department's land managers. We have not reviewed our casefiles -- of which approximately 50,000 are active -- to determine which might be affected. Thus I regret that I cannot supply you with the names and addresses that you have requested. If it would be useful, I would be pleased to arrange a briefing for you so that the Department's staff can explain the issues involved and how the number was estimated.

Please allow me to offer some additional comments on SB 356.

✓ In SB 356 you propose requiring the grant of a preference right under certain conditions. I strongly believe that any grant of preference rights by the Commissioner should remain discretionary. Each application needs thorough consideration by the Department and the Commissioner, particularly to provide the best interest finding required of the Commissioner under AS 38.05.035(a)(14) prior to the conveyance of any interest in state land.

✓ In SB 356, you propose to make the recognition of claims retroactive to July 1959, but other preference right subsections go back to Statehood (January 3, 1959). Also, you should be aware that I support the proposal in SB 375 (Senator Fahrenkamp's bill on land disposals and management) that would require application for preference rights within three years of an error or omission.

The bill raises a number of questions. For instance, in defining errors and omissions, should the Commissioner rely only on the written record, or upon the applicant's averment of error or omission? When an agency is unable to adjudicate claims (valid or not) promptly, does delay

March 2, 1984

constitute error? Does the third party holder have no right to protect a valid, legal interest in land, whatever the actual or intended use? Is the Legislature willing to budget funds for obligatory acquisition/exchange of lands claimed by preference right?


An issue I have not addressed in detail is cost. In Mr. Messerli's case, the land he claims is probably worth hundreds of thousands of dollars. If, in his case, federal administrative error were determined to have occurred and the Department were obliged (by SB 356) to obtain and reconvey the lands to him, he would receive the land at well below fair market value. The State (in kind or in funds) would have to pay for the difference in value between 1959 and 1984. Even a few such cases would present substantial costs to the State.

The proposal to acquire preference claim lands from a third party by an exchange of State lands would also prove expensive and complicated. Generally, land exchanges are difficult to accomplish.

In this review of the proposed legislation, I have presented only a few of the concerns of this department. The existing law permits the consideration of the public's best interest in land conveyance and provides for review and judgment by the Commissioner and the Department's professional land managers. It does not bind the State to expensive, complicated preference right processing. These important features commend the current law. I would urge you to consider them.

I much appreciate your interest in the subject. Please let me know if my staff and I can provide any further background or can answer questions.

Sincerely,


Esther C. Wunnicke
Commissioner

Enclosure

cc: The Honorable Bettye Fahrenkamp,
Chair, Senate Committee on Resources

(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 notes. — 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 land 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 14.40.120(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

(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.

(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

(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 11 ch 169 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

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