

HB 134

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 15, 1991

FURTHER REFERRALS:

Date of Committee Action: 4.15.91

The FINANCE Committee considered:

HB 134

HOUSE BILL NO. 134

APPLICABILITY OF VET LAND DISCOUNT

"An Act relating to the effective date of the veterans' land discount applicable to state land and to land discounts allowed under that program; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 134 (RES) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact DNR

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Eileen P. MacLean	✓	Kay Brown		✓	
Mike Savary	✓				
Maxter Boyer					
Korona	X				
Steve Sorely	✓				
Teresa Barnes	✓				
Bob Mung	X				
KEVIN J. HARRIS	✓				
Donald J. Turner	X				
J. Wilson	X				



 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS HB 134 (RES)

Revision Date: 4/15/91 Department Affected: Natural Resources
 Title: Veterans Land Discount BRU: Land & Water Management
Applicable to state land Component: Land & Water Management
 Sponsor: House Military & Veteran Affairs
 Requestor: HOUSE FINANCE COMMITTEE COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	12.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	12.0	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	12.0	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	12.0	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Representative Mike Navarre, Co-Chair *Mike Navarre* 465-3706
Representative Eileen MacLean, Co-Chair *Eileen MacLean* Phone: 465-3722
 Division: HOUSE FINANCE COMMITTEE Date: April 15, 1991

Approved by Commissioner: _____
 Agency: _____ Date: April 15, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CS FOR HOUSE BILL NO. 134 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 3/15/91
Referred: Finance

Sponsor(s): HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the effective date of the veterans' land discount applicable to state
2 land and to land discounts allowed under that program; and providing for an effective
3 date."

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

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

6 (1) AS 38.05.058, enacted by sec. 6, ch. 181, SLA 1978, established a land discount
7 program. The state's land discount program authorized a progressively reduced purchase price for state
8 land acquired for residential use based on the applicant's number of years of residence in the state. The
9 program established a maximum discount on the purchase price of the land that an applicant might claim.

10 (2) In 1979, the state's land discount program authorized by AS 38.05.058 was amended
11 by secs. 23 - 25, ch. 85, SLA 1979, to increase the maximum discount that an applicant who was a
12 qualified veteran could claim under that program.

13 (3) In *Gilman v. Martin*, 662 P.2d 120 (Alaska 1983), the Alaska Supreme Court
14 considered the granting of a land discount by a municipal ordinance based on the applicant's length of

1 residence. Applying the conclusion reached in *Zobel v. Williams*, 457 U.S. 55, 102 S.Ct. 2309,
2 72 L.Ed.2d 672 (1982), the court determined that the municipal ordinance establishing a land discount
3 program was unconstitutional as a violation of the equal protection clauses of the United States and
4 Alaska Constitutions. The decision, published April 1, 1983, did not involve the examination of the
5 analogous state land discount statute, AS 38.05.058.

6 (4) Following publication of the opinion, the Department of Natural Resources, acting
7 on advice from the Department of Law, determined that the state's residential land discount provisions
8 of AS 38.05.058, including the veterans' land discount provision, would no longer be implemented.

9 (5) The First Session of the Thirteenth Alaska State Legislature substantially revised state
10 laws that were based on residency and residence requirements. In sec. 19, ch. 67, SLA 1983, the
11 legislature eliminated the land discount program, repealing AS 38.05.058 effective July 16, 1983.

12 (6) The Second Session of the Thirteenth Alaska State Legislature established the current
13 veterans' land discount benefit, AS 38.05.940, by sec. 48, ch. 152, SLA 1984. The provision took effect
14 July 6, 1984.

15 (7) Taken together, the court opinion, administrative decision of the Department of
16 Natural Resources, and legislative revision of the veterans' land discount left certain veterans without
17 the opportunity to claim a land discount benefit provided by state law.

18 (b) The purpose of this Act is to ensure that all veterans are treated equally and that the veterans
19 who purchased land from the state after March 31, 1983, and before July 6, 1984, are not denied the
20 veterans' discount that was available to all other veterans purchasing land from the state. Granting this
21 retroactive discount serves the public purpose of making clear to those who contemplate joining the
22 nation's armed forces in the future that the state will honor their sacrifice on behalf of the nation and
23 grant benefits to them in the same manner that it has granted benefits to other veterans.

24 (c) The effect of this Act is to provide the benefit of the veterans' land discount of current law
25 to certain veterans who did not receive a discount under the former land discount program due to the
26 administrative decision of the Department of Natural Resources based on the decision in *Gilman v.*
27 *Martin*. The provision is particularly intended to apply to veterans who had submitted applications
28 claiming the veterans' land discount of former law, including but not limited to persons who were unable
29 to claim the benefit of the veterans' land discount on land offered for sale at the June 4, 1983, lottery
30 sale.

31 * Sec. 2. AS 38.05.940, as enacted by sec. 48, ch. 152, SLA 1984, is retroactive to April 1, 1983.

1 * Sec. 3. APPLICABILITY. (a) This Act applies only to persons who qualified for the veterans'
2 land discount of AS 38.05.940, enacted by sec. 48, ch. 152, SLA 1984, and made retroactive to April 1,
3 1983, by sec. 2 of this Act, and who, after March 31, 1983, and before July 6, 1984, purchased from
4 the state land for which the discount may apply.

5 (b) For land that a person purchased from the state after March 31, 1983, and before July 6,
6 1984, to which the veterans' land discount of AS 38.05.940, enacted by sec. 48, ch. 152, SLA 1984, and
7 made retroactive to April 1, 1983, by sec. 2 of this Act, applies, a person may not claim both the benefit
8 of the maximum land discount authorized to veterans by the provisions of former AS 38.05.058, enacted
9 by secs. 23 - 25, ch. 85, SLA 1979, and the benefit of the veterans' land discount of AS 38.05.940.

10 (c) The Department of Natural Resources shall credit, without interest, to the account of a person
11 who qualifies for the veterans' land discount under sec. 2 of this Act an amount equal to the difference
12 between the amount of the original purchase price of the land and an amount equal to that purchase price
13 with application of the discount authorized by AS 38.05.940. If the amount of the credit exceeds the
14 persons's remaining payment obligation to the state, or if the person does not have a remaining payment
15 obligation to the state, the Department of Natural Resources shall pay, without interest, to the person the
16 amount in excess of the person's remaining payment obligation.

17 (d) The veterans' land discount authorized by the retroactive application of AS 38.05.940.
18 authorized by sec. 2 of this Act, applies to land transferred to the University of Alaska. As to the
19 application of the discount to this land,

20 (1) the University of Alaska shall provide the credit authorized by (c) of this section to
21 persons who qualify for it; and

22 (2) the commissioner of natural resources shall reimburse the University of Alaska for
23 the total amount of all credits allowed for persons under (1) of this subsection.

24 (e) The provisions of this Act do not apply to a person who

25 (1) obtained land using a veterans' land discount under former AS 38.05.058 or under
26 AS 38.05.940 whether the person obtained the discount directly or by assignment;

27 (2) obtained land for which the discount authorized by this Act may apply if the person
28 has relinquished the land or the land has been the subject of default or foreclosure; or

29 (3) obtains land by assignment.

30 * Sec. 4. IMPLEMENTATION OF THIS ACT. (a) The commissioner of natural resources shall
31 publish, at least once a week for at least four successive weeks in newspapers of general circulation

1 within the state, a notice of the availability of the veterans' land discount authorized by sec. 2 of this
2 Act.

3 (b) A person who at the time of purchase of state land was eligible for the veterans' land
4 discount authorized by sec. 2 of this Act

5 (1) shall apply to the Department of Natural Resources for the discount;

6 (2) may not obtain the veterans' land discount authorized by sec. 2 of this Act unless the
7 person submits a complete application for the veterans' land discount not later than one year after the
8 effective date of this Act.

9 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS HB 134 (Res)

Revision Date: Feb. 25, 1991 Department Affected: Natural Resources
 Title: Veterans Land Discount Applicable BRU: Land & Water Management
to state land Components: Land & Water Management
 Sponsor: House Military & Veterans Affairs
 Requestor: House Military & Veterans Affairs COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	14.2	21.3				
TRAVEL						
CONTRACTUAL	12.0					
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	26.2	21.3	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	26.2	21.3				
FEDERAL FUNDS						
OTHER						
TOTAL	26.2	21.3	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	1.0	1.0				

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Ron Swanson Phone: 762-2680
 Division: Land & Water Management Date: Feb. 25, 1991

Approved by Commissioner: Harold Heinze Date: March 15, 1991
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,
& Impacted Agency(ies).

Fiscal Note for CS HB 134 (Res), continued

Approximately 850 parcels of land were sold by the department between April 1, 1983 and July 6, 1984, the period of retroactivity established by this bill. Based on the results of past state land sales, approximately 35% of the 850 parcels could have been sold to veterans.

This fiscal note will allow the hire of a temporary Natural Resource Officer I (pay range 14) for 4 months in FY 92 and 6 months in FY 93. During FY 92, this person would prepare advertisements for display in newspapers throughout the state, as well as veteran's publications, and work with the Department of Military and Veterans Affairs to ensure that eligible veterans are notified about this retroactive land discount program. In FY 92 and FY 93, this person will process and adjudicate applications, and provide refunds to those who qualify for the program.

The contractual monies (300) will pay for the display ads in newspapers.

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4712
465-4968/4986
(SESSION)

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spennard, Upper Midtown Anchorage

MEMORANDUM

DATE: February 19, 1991

TO: Members of the Special Committee on Military and
Veterans' Affairs

FROM: Representative Max F. Gruenberg, Jr.

SUBJECT: HB 134, Veteran's Land Bill

I am pleased we have introduced HB 134 as a committee bill. This legislation grew out of a constituent problem in my district. Mr. Jeff Sisson brought it to my attention that he and his brother Glen were denied their twenty-five percent veteran's discount when they purchased state land in a lottery on June 4, 1983.

The discount for veterans on state land was discontinued on April 1, 1983 by order of the Commissioner of Natural Resources. Her decision was based on an attorney general's opinion growing out of an Alaska Supreme Court case, Gilman v. Martin, 662 P.2d 120 (Alaska 1983.) Pursuant to the commissioner's order, no discounts were given in the land lottery on June 4, 1983. The unconstitutional land discount statute, AS 38.05.058, was repealed July 16, 1983.

The veterans' discount was reinstated effective July 6, 1984 (AS 38.05.940.) HB 134 seeks to compensate veterans caught in the time window between April 1, 1983 to July 6, 1984 by making the effective date of AS 38.05.940 retroactive to April 1, 1983.

We estimate that approximately one third of the parcels sold between April 1, 1983 and July 6, 1984 will qualify for a veterans discount under HB 134. However, because only one discount per lifetime is allowed, it is likely not all veterans will take advantage of this statutory change.

Alaska State Legislature

House of Representatives

Rep. Ivan, Chair
Rep. Davidson
Rep. Foster
Rep. Gruenberg
Rep. M.W. Miller



P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4527

Special Committee on Military & Veterans Affairs

CHANGES ADOPTED IN CS for HB 134 (RES)

The following changes were incorporated into the Resources CS for HB 134:

Page 3, line 10: This change allows for the granting of a payment credit to be applied to each account in the amount of the discount. This will be a non-cash application to the account that would satisfy accrued interest to the date of application and the balance to reduce the remaining principal balance. This would require less work than issuing a warrant and significantly alters the appropriation amount found in HB 176 from \$100,000 to \$50,000. The appropriations are still required to satisfy those accounts with a zero balance or accounts where the credit amount is greater than remaining balance.

Page 3, line 17: Applies the veterans discount to land transferred to the University of Alaska. The University will provide the credit and the department will reimburse the university for the total amount of credits allowed.

Page 3, line 24: This provision limits applicability of the discount. The discount can be applied only one time per parcel and cannot be applied to another veteran if the land is assigned or obtained through default or foreclosure or if the land has been relinquished. Parts of this provision were found in section 4 of the original Military and Veterans Affairs committee substitute.

Alaska State Legislature

House of Representatives

Rep. Ivan, Chair
Rep. Davidson
Rep. Foster
Rep. Gruenberg
Rep. M.W. Miller



P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-1527

Special Committee on Military & Veterans Affairs

SECTIONAL ANALYSIS FOR CS FOR HB 134 (Res)

SECTION 1: The seven paragraphs of subsection (a) briefly recount the history of the land discount program as applicable to veterans.

Subsection (b) announces the purpose of the act: assistance to veterans who may have qualified for the benefits of the veterans land discount program by April 1, 1983, whose rights were suspended because of the administration's setting aside of the residential land discount program after issuance of the Gilman v. Martin decision of that date and who did not again eligibility for a land discount until the current program was enacted effective July 6, 1984.

Subsection (c) announces the effect of the act: provide the benefit of the veterans' land discount of current law to those veterans who did not receive a discount under the former land discount program due to the administration's suspension of land discounts.

SECTION 2: Makes the current veterans' land discount retroactive to April 1, 1983.

SECTION 3: Sets out the parameters on the applicability of the previous sections. This section also directs the commissioner of the Department of Natural Resources to compensate or allow credits to a qualified veteran who may have paid the state for land obtained during the period the discounts were not applicable. This section also details how discounts apply to university lands and how DNR and the university will apply a discount. It also establishes those who would not be eligible for a discount.

SECTION 4: Describes the publication and application process. Also establishes a one year period for which a veterans' land discount can be applied.

SECTION 5: Establishes an immediate effective date.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

March 15, 1991

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

The Honorable Eileen MacLean, Co-Chair
The Honorable Mike Navarre, Co-Chair
House Finance Committee
P.O. Box V
Juneau, AK 99811

Dear Representatives MacLean and Navarre:

Subject: CSHB 134 (Resources), which relates to the effective date for a state veteran's land discount program.

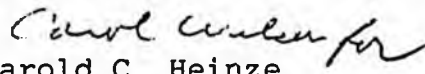
Position: The Department of Natural Resources supports this bill.

Background: In 1978, AS 38.05.058, which allowed residents a 5% discount on state land lottery purchases for each year of Alaska residency (up to 50% of the parcel purchase price), was enacted. In 1979, this law was amended to allow veterans an additional discount of up to 75% or \$37,500, whichever was less. The Kenai Peninsula Borough, under borough ordinance, offered a similar discount to purchasers of borough land. The borough program was challenged in court, and ruled unconstitutional by the Alaska Supreme Court on April 1, 1983. As a result of the court's ruling, and based on advice from the Attorney General, the Commissioner of Natural Resources determined that state land purchase discounts would be discontinued as of April 1, 1983.

The Legislature subsequently established a new veteran's land discount program that took effect on July 6, 1984. CSHB 134 (Resources) would allow veterans who purchased state land between April 1, 1983 and July 6, 1984, but were not permitted to claim the veteran's discount, to retroactively claim that discount. The discount would be credited to the amount due on the land. If the land has been paid for, the discount amount would be refunded. Discount applicants will be required to document their eligibility for the program. The department will notify the public about the program through newspaper advertisements and veteran's publications.

Please let me know if you need additional information related to this bill.

Sincerely,


Harold C. Heinze
Commissioner

enclosure

cc: Committee members
Bruce Kendall, Legislative Liaison, Office of the Governor
Major General Hugh L. Cox Commissioner, Department of Military and Veterans Affairs

MEMORANDUM

State of Alaska

TO: Richard LeFebvre, Deputy Director DATE: October 23, 1984
 Division of Land & Water Management
 Department of Natural Resources FILE NO: 166-137-85

TELEPHONE NO: 276-3550

FROM: Norman C. Gorsuch SUBJECT: Treatment of applications for residency
 Attorney General land discounts after
 repeal of AS 38.05.058

By: Barbara J. Miracle *BJM*
 Assistant Attorney General
 Natural Resources-Anchorage

In a memorandum dated September 10, 1984, you have asked whether the Department still has the authority to give land discounts to certain categories of purchasers of state land under AS 38.05.058 which was repealed by the legislature in 1983.

The short answer to your question is that the department may only grant residency discounts to purchasers of state land whose right to purchase the land and receive a land discount was fully vested prior to the repeal of AS 38.05.058.

BACKGROUND

In 1978 the legislature enacted AS 38.05.058, the residency land discount program, which gave Alaskan residents a 5% discount off the price of state land for every year they had resided in the state up to a maximum of a 50% discount or \$25,000 whichever was less. 1/ The Kenai Peninsula Borough adopted a similar residency discount program for the purchase of borough land. The borough program was challenged in court as an unconstitutional denial of the equal protection of the law. The Alaska Supreme Court invited the state to write an amicus curiae brief defending the discount program in the Kenai Peninsula Borough case since the state had a similar program. The court held in Gilman v. Martin, 662 P.2d 120 (Alaska 1983), that the borough discount program was unconstitutional. The court stated that its decision did not terminate the state program but noted that the borough and state programs were similar. 662 P.2d 127 n.9, 129 n.11.

1/ The discount was greater for veterans. See Appendix A for text of AS 38.05.058.

Div. of Land & Water Mgmt. Controlling Authority

Richard LaFebvre, Deputy Director
Division of Land & Water Management
Department of Natural Resources
166-137-85

October 23, 1984
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On April 8, 1984, the Commissioner of the Department of Natural Resources decided, upon the advice of the Attorney General's Office, that the state discount program was unconstitutional and must be discontinued as of April 1, 1983, the date of the Gilman v. Martin opinion. The commissioner allowed a rather broad category of applicants to continue to receive a residency land discount on various equitable grounds. I assume this generosity was based on the fact that while it seemed likely that the state land discount program was unconstitutional, it had not been declared such by the court in the Gilman v. Martin case. 2/ I will not analyze the commissioner's April 8, 1983 decision in this memorandum. This discussion will be limited to the effect of the repeal of AS 38.05.058 by the legislature on July 16, 1983 sec. 19, ch. 67 SLA 1983.

LEGAL ANALYSIS

The effect of the repeal of a statute is to terminate the right to act under that statute in the future. LA Sutherland. Statutory Construction, § 23.33 (4th ed. Sands). Alaska has a general savings provision, AS 01.10.100(a), which preserves rights which have already vested under repealed statutes. AS 01.10.100(a) states:

The repeal or amendment of any law does not release or extinguish any penalty, forfeiture, or liability incurred or right accruing or accrued under such law, unless the repealing or amending act so provides expressly. The law shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture, or liability. (Emphasis added).

The phrase "right accruing or accrued" has been construed by the Alaska Supreme Court to mean a vested right. Dowling v. Dowling, 679 P.2d 480, 482 (Alaska 1984); Alaska Public Utilities

2/ The court in Gilman v. Martin mentioned somewhat ambiguously that the fact that the state discount program, unlike the Kenai Borough program, had been in effect for five years might raise "special considerations" if the court were considering the state discount statute.

Richard LeFebvre, Deputy Director
Division of Land & Water Management
Department of Natural Resources
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Commission v. Chugach Electric Association, Inc., 580 P.2d 687, 692 (Alaska 1978); Sidwell v. Scheele, 355 P.2d 584, 586 (Alaska 1960). In Dowling v. Dowling, 679 P.2d at 482, the Alaska Supreme Court stated "the term 'vested' means 'fixed; accrued; settled; absolute.'"

With these legal principles in mind I will examine your ability to continue to apply the repealed discount statute to several state land programs: applications by a lessee to purchase land held in a state lease under AS 38.05.102, purchase of a remote parcel leasehold, and purchase of an open to entry leasehold.

Lessee preference.

Under AS 38.05.102, the commissioner may allow the holder of a state lease to purchase the land in the leasehold for its fair market value at the termination of the lease if the land is offered for sale or long-term lease and if he determines that it is in the best interest of the state. ^{3/} The decision to allow a state lessee to purchase is solely within the discretion of the commissioner.

You have inquired whether an individual who applied to purchase under AS 38.05.102 may still be given a land discount under AS 38.05.058 if the application was made prior to April 1, 1983 (the date of Gilman v. Martin), between April 1, 1983 and July 16, 1983 (the date of the repeal of AS 38.05.058), or after July 16, 1983. An application to purchase under AS 38.05.102 does not vest any right whatsoever in the applicant to purchase the land. The commissioner may choose not to exercise his discretion to grant the request. Unless the commissioner entered a final decision to grant the purchase request and the applicant had filed a proper application for a residency discount prior to the repeal of the discount statute, the applicant may not receive a discount once the authorizing statute is repealed. Until the application to purchase is granted and the discount application filed, the ability to purchase the land at a discount price is

^{3/} The text of AS 38.05.102 is at Appendix B.

Richard LaFebvre, Deputy Director
Division of Land & Water Management
Department of Natural Resources
166-137-85

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not "settled"; it is not a vested right preserved by the Alaska saving statute. 4/

Open To Entry Lease Purchase

The open to entry program, under AS 38.05.077 5/ authorized applicants to lease up to 5 acres of state land in designated areas for a period of 10 years. At the end of the 10 year period, the lessee had the option of purchasing the land for its fair market value at the time the lease was entered. The decision to purchase was solely that of the lessee. The commissioner could not refuse to sell the land if the lessee exercised his purchase option. Most open to entry parcels were leased in the late 1960's through 1973. The department did not hold another OTE land disposal until 1979. The OTE statute was repealed in 1979. Section 31, ch. 85 SLA 1979.

Most individuals who participated in the early OTE program must necessarily have entered into a contract to purchase the land by 1983, prior to the repeal of the discount program and the Gilman v. Martin decision. They will, therefore, either have a patent to the land or a sales contract incorporating a land discount if they were eligible and applied for the discount. Such individuals have a vested right to the land discount.

It is possible that a few individuals who participated in the early OTE program were still leasing their parcels in 1983 when the discount program was repealed. The discount program was not in effect during the early OTE program because AS 38.05.058 was not adopted until 1978. Therefore neither the early OTE leases or the advertising for those sales mention a discount. Once the discount statute was repealed, the early OTE participant, who had not already entered into a sale contract with the state at a discounted purchase price, was ineligible to receive a residency discount.

4/ Although your request segregates University leases from other state leases, I have not discussed them separately since the applicable legal principles are the same.

5/ The text of former AS 38.05.077 is contained in Appendix C.

Richard LaFebvre, Deputy Director
Division of Land & Water Management
Department of Natural Resources
166-137-85

October 23, 1984
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The status of individuals who participated in the last OTE disposal in 1979 is more complicated. The disposal brochure for the sale states that eligible applicants would receive a land discount on the purchase price of parcels offered in the disposal. However, the state OTE lease agreement does not mention the land discount. Certainly there is no problem with individuals who entered into a sale contract prior to the repeal of the discount statute. As discussed above, their contract gives them a vested right to a discount. Individuals who are still leasing their OTE parcel are more problematical. They do not have a written contract provision guaranteeing the land discount. However such applicants could make a good argument that once a lease is entered into the advertised terms of the sale (including a discounted sale price) are necessarily incorporated in the sale contract.

The OTE lease is intended to be the final embodiment of the lease agreement between the state and the OTE applicant. The issue is whether the terms of the disposal promised in the disposal brochure (such as the purchase option and residency discount) which are not incorporated in the agreement are nevertheless part of the agreement. The question turns upon whether the lease agreement is a complete integration of the contract terms or only partial so that it cannot be contradicted but can be supplemented by evidence of additional consistent terms contained in the disposal brochure. J. Calamari and J. Perillo, Contracts at § 40 (1970). It could be argued that the OTE lease agreement does not contain all the terms of the OTE disposal. The purchase option and the residency discount were terms of the disposal omitted from the lease agreement but agreed upon by the state and OTE lessee at the time the lease was entered into.

Remote Parcel

The remote parcel program succeeded the OTE program in 1979 at AS 38.05.077 - .078. 6/ For the purpose of your inquiry, the two programs are quite similar. The remote parcel program authorized successful applicants to lease state land for a period up to 10 years with an option to purchase the land at its fair

6/ The text of the remote parcel statute is contained in Exhibit D.

Richard LaFebvre, Deputy Director
Division of Land & Water Management
Department of Natural Resources
166-137-85

October 23, 1984
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market value at the date the lease was entered. The commissioner cannot refuse to sell the land if the remote parcel lessee exercises his purchase option.

The remote parcel program was repealed by the legislature in 1984. Section 7, ch. 103, SLA 1983. The legal analysis concerning the applicability of a land discount to the remote parcel program is the same as the OTE program. If an individual had either patent to the land obtained at a discounted price or a sale contract incorporating the land discount, he has a vested right to the discount. If a remote parcel lessee did not exercise his option to purchase until after the discount was repealed, the analysis, as in the case of late OTE purchasers, is more complicated. The disposal brochures for the remote parcel program which you sent for my review all state that eligible applicants would receive a land discount on the purchase price of parcels offered in the sale. However, the state remote parcel lease agreement does not mention the land discount. As in the case of the OTE lessee, the remote parcel lessee can make a good argument that once a lease is entered into the advertised terms of the sale, including the discounted sale price, are necessarily incorporated in the sales contract.

Conclusion

In conclusion only vested rights are saved when a statute is repealed. An application to purchase land in a state leasehold under AS 38.05.102 does not confer any right upon the applicant either to purchase land or to receive a discount on the purchase. Where a discount is incorporated in a purchase agreement for state land, the purchaser has a vested right to receive the discount. Although the remote parcel and OTE lease agreements do not mention the residency discount program, the provision of the disposal brochures which promises the discount to eligible applicants would probably be considered a term of the sale not integrated into the final lease agreement, giving the remote and OTE lessees a vested right to a discount on the purchase price.

BJM/jmo
Attach:

cc: Edward Barber, Contract Administration
Division of Land and Water Manager

DEPARTMENT OF NATURAL RESOURCES

DECISION AND ORDER CONCERNING

LAND SALES DISCOUNTS UNDER

AS 38.05.05B.

The Attorney General's Office has advised the Department of Natural Resources that under a recent Alaska Supreme Court decision (Gilman v. Martin, Opinion No. 2652 - April 1, 1983), the State's land sales residency discount statute (AS 38.05.05B) is unconstitutional and that, except for certain cases, the department must discontinue the allowance of purchase discounts effective as of April 1, 1983.

Therefore:

1. There will be no change in the current lottery filing period (Lottery #12, Homesite No. 10, and Remote Parcel No. 8), which will close at 4:30 p.m. on April 22, 1983. However, no land sales residency discounts will be allowed on the sale of parcels from that disposal.
2. In the case of subdivision or agricultural parcel sales through lottery, auction or over-the-counter, land sales residency discounts will apply to the purchase price only if the sale took place prior to close of business on April 1, 1983, and residency discount applications were submitted with the deposits.
3. In the case of the remote parcel and the open to entry programs, land sales residency discounts will apply to the purchase price only if the lease application was postmarked or actually, physically received by the department by close of business on April 13, 1983. Remote parcels must have been staked by April 1, 1983. (Law gives stakers 15 days; April 15 falls on Saturday, so they are normally given until the following Monday.)
4. Land sales residency discounts for lessee preferences under AS 38.05.102 will be considered by the department only if written application to purchase was postmarked or actually, physically received by the department prior to close of business on April 1, 1983. Exceptions will be reviewed on a case by case basis only when application of this ruling would result in gross unfairness or extreme hardship.
5. Land sales residency discounts applicable to preference rights to purchase land under AS 38.05.035 will be considered only if a written application to purchase was postmarked or actually, physically received by the department prior to close of business on April 1, 1983.
6. If the State prevails in the current Potlatch Ponds litigation and the disposal can be consummated, applicants will receive whatever terms and conditions, including land discounts that they would have received had there been no litigation.

7. Discounts will be awarded to successful applicants for lottery parcels in the Excursion Inlet Subdivision, Lottery #8, if contract issue has been delayed by Native allotment applications on those parcels.
8. In general, discounts will be granted in cases where all actions required of the applicant have been completed by April 1, but final steps by the State to award the discount have not been completed.
9. Since there may be some rare and exceptional cases or cases not covered by any of the above, such cases will be reviewed on a case-by-case basis and residency discounts will be awarded only in instances of extreme hardship or to avoid gross unfairness.
10. In the case of parcels eventually purchased as described above, no additional accumulation of residency for discount purposes will be allowed after March 31, 1983.

Esther C. Hunnicke

ESTHER C. HUNNICKE
Commissioner
Department of Natural Resources

April 8, 1983

Date