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145

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERY

DATE: 2/27/91

FURTHER: Finance

DATE OF 5-DAY NOTICE: 3/21/91  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-25-91

Resources Committee considered SB 145

Sale or disposal of state land for use as a cemetery or as a solid or hazardous waste facility.

and a majority of the committee recommends it be replaced with

and recommended:

replace with \_\_\_\_\_ CS SB 145 (RES.)  same title

attached amendment(s) and do pass  new title

\_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

20/154

ATTACHES NEW FISCAL NOTE(S):

<input type="checkbox"/> fiscal note(s) _____	Dept/Date _____	<input type="checkbox"/> zero fiscal note(s) _____	Dept/Date _____
_____	_____	DEC 5 3/18/91	_____
_____	_____	DEC 5 3/22/91	_____
_____	_____	_____	_____

appropriation-no fiscal note  Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

<u>John Collier</u>	<u>Collier</u>	<u>(2)</u>	<u>Paul Johnson (No Rec)</u>
<u>Conrad</u>	<u>Shenad</u>		
<u>William</u>	<u>Elicum</u>		
<u>Frank</u>	<u>Frank</u>		

(1) [Signature]  
Chair: Signature and Recommendation

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

March 25, 1991

**SUBJECT:** Public or Charitable Use of State Land Under AS 38.05.810(a)  
(SB 145) (Work Order No. 7LS-0798A)

**TO:** Senator Lloyd Jones  
Attn: Paula

**FROM:** Jerry Luckhaupt *JL*  
Legislative Counsel

Question Presented: Does AS 38.05.810(a) allow for the sale, lease, or other disposal of state land to a state or federal agency or political subdivision of the state for less than the appraised value?

Answer: Yes.

Discussion: AS 38.05.810(a) provides:

(a) Except as otherwise provided in AS 38.05.183(h), the lease, sale, or other disposal of state land or resources may be made to a state or federal agency or political subdivision, or the lease, sale, or disposal of coal deposits suitable for mining may be made to a utility owned and operated by a government agency or nonprofit cooperative association organized to participate under the Federal Rural Electrification Act for the purpose of generating electric power and energy or the production of process steam, or both, for less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration given to the nature of the public services or function rendered by the agency, subdivision, or utility making application, and of the terms of the grant under which the land was acquired by the state.

Subsection (a) as it currently exists provides that state land may be sold, leased, or disposed for less than the appraised value to: (1) "a state or federal agency or political subdivision" including a municipality; or (2) "a utility owned or operated by

Senator Lloyd Jones

March 25, 1991

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a government agency or nonprofit cooperative association." A sale, lease, or disposal under this subsection can occur when it is:

approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration given to the nature of the public services or function rendered by the agency, subdivision, or utility.

This interpretation is consistent with the development of the subsection since its original enactment in 1959. In 1959, AS 38.05.810(a) was enacted as chapter 169, § 4 of SLA 1959 (copy attached). That section provided that:

the lease, sale, or other disposal of any Alaska lands or resources may be made to any Alaska or Federal agency or political subdivision for less than the appraised value. . . .

That section was amended by chapter 137, § 1, SLA 1962 (copy attached), to include the lease, sale, or other disposal of coal lands to a utility operated by a government agency or a nonprofit cooperative association. The lease, sale, or other disposal of state land to a state or federal agency or a political subdivision of the state for less than the appraised value was not affected by the 1962 amendment. Other than for codification and a numbering change, AS 38.05.810(a) has remained virtually unchanged to date.

An interpretation that the language of AS 38.05.810(a) pertaining to the lease, sale, or other disposal of state land for less than the appraised value only applies to the lease, sale, or other disposal of coal lands to a utility is untenable. The statute does not limit itself to such an interpretation and to reach such a conclusion one must assume that the comma after "political subdivision" should be read as a period. Such a conclusion is not consistent with the rules of statutory construction or with the statutory history of the act.

GPL:pl  
91-204.plm

as he, with the consent of the Commissioner, determines will best serve the interests of Alaska. No contract respecting the sale, lease, or other disposal of available lands or any interest therein, shall be legally binding on Alaska until the Commissioner has formally recorded his consent to any contract; provided, however, if the appraised value is not greater than \$10,000.00 in the case of the sale of any land or an interest therein, or \$1,000.00 in the case of the rental of any land or interest therein, the Director may approve and issue such contracts without the consent or approval of the Commissioner being necessary. Nor shall this subsection apply to other exceptions set forth in this Act.

(15) The Director may delegate any of the administrative duties, functions or powers imposed upon him to any responsible employee within the Division.

**Sec. 6. Director Shall Be Bonded.** Prior to entering upon the performance of his duties, the Director shall execute a corporate surety bond to Alaska in the sum of \$150,000.00 conditioned among other things upon the faithful performance of his duties under this Act and upon the prompt and faithful accounting of all monies collected by him or his deputies, assistants, employees or agents. The said bond, together with any additional conditions or limitations as may be deemed necessary, shall be approved by the Attorney General and filed in the office of the Governor. The premium upon said bond shall be payable from such monies as may be appropriated for operation of the Division.

### Article III

#### General

**Section 1. Classification.** The Director shall make a preliminary classification for surface use of all lands in areas where he deems it necessary and proper for future development. Such classification, together with a land use plan, shall be transmitted to the Commissioner for his approval, modification or rejection. Nothing herein shall prevent reclassification of any lands where the public interest warrants such action, nor preclude multiple purpose use of all lands whenever the different uses are com-

patible. No Alaska land, water, or land and water area shall, except by act of the State Legislature, be (1) withdrawn from settlement, location, sale or entry; (2) reserved for special use; or (3) restricted from operation of the mining and mineral leasing provisions of this Act, if the area involved in such withdrawal, reservation, or restriction exceeds in the aggregate 640 acres.

**Sec. 2. Review.** Except for land disposed of under the provisions of Sections 4, 5 and 6 of this Article, no land within or adjacent to an incorporated municipality or other organized community may be sold or leased, or a renewal lease issued, until the proposed use of the land has been studied and reviewed jointly by the Director and local authorized planning agencies.

**Sec. 3. Notice and Appraisal.** No lands shall be sold or leased, or a renewal lease issued, without public notice as provided hereafter, unless the same, except in the case of an oil or gas or mineral lease, has been appraised within ninety days prior to the date fixed for the sale or leasing, provided that when lands have been offered at public sale but were not sold and are available at private sale, no reappraisal is required unless the Director deems that a change in value of the lands may have occurred. No such lands shall be sold or leased for less than the approved, appraised market value, except as provided in Sections 4 and 5 of this Article.

**Sec. 4. Public Use.** The lease, sale, or other disposal of any Alaska lands or resources may be made to any Alaska or Federal agency or political subdivision for less than the appraised value, as may be determined by the Director and approved by the Commissioner, to be fair and proper and in the best interests of the public, with due consideration being given to the nature of the public services or function rendered by the said agency or subdivision making application therefor, and of the terms of the grant under which the land was acquired by Alaska.

**Sec. 5. Occupied Tide Lands and Submerged Lands.**

(1) It is the policy of the State to allow preference rights as hereinafter defined for the acquisition of tide lands

the division of agriculture, Department of Natural Resources;

(2) "board" means the milk control advisory board;

(3) "handler" means a person or firm engaged in selling, marketing, or distributing milk to persons other than the ultimate consumer, and includes producers who perform these functions;

(4) "producer" means any person or firm in this state who produces or causes to be produced milk for market.

Sec. 9. This Act pertains only to fresh

whole milk and shall not mean any of the by-products of fresh whole milk.

Sec. 10. Unauthorized Actions. No action is authorized by this Act which is intended to or which does fix prices at an artificially high level, or which places an undue burden upon interstate commerce.

Sec. 11. Penalties. Any person who violates any provision of this Act or any order made pursuant to this Act is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$100 nor more than \$2,000.

Approved April 18, 1962

## CHAPTER 137

### AN ACT

Relating to the Alaska Lands Act; and providing for an effective date.

(S.B. 217)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Art. III, Sec. 4, Ch. 169, SLA 1959, as amended by Sec. 1, Ch. 155, SLA 1960, is amended to read:

Sec. 4. Public and Charitable Use. (a) The lease, sale, or other disposal of any Alaska lands or resources may be made to any Alaska or federal agency or political subdivision, or the lease, sale, or other disposal of coal deposits suitable for mining may be made to any utility owned and operated by a government agency or nonprofit cooperative association organized to participate under the Federal Rural Electrification Act for the purpose of generating electric power and energy or the production of process steam, or both, for less than the appraised value as may be determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration being given to the nature of the public services or function rendered by the said agency, subdivision, or utility making application therefor, and of the terms of the grant under which the land was acquired by Alaska.

(b) Notwithstanding the provisions of Secs. 1, 5, and 6, Art. V, Ch. 169, SLA 1959, and Sec. 2, Art. V, Ch. 169, as

amended by Sec. 1, Ch. 74, SLA 1961, the director upon application filed by an applicant eligible under this subsection may, by negotiation and without public auction in the manner prescribed in this subsection, lease any lands of the state for a term not in excess of 55 years. Before leasing, the director shall prepare a land use plan and a land classification to insure that the proposed use is compatible with area utilization. Before the land may be leased under this subsection, it must be shown to the satisfaction of the director that the land is to be used for an established or definitely proposed project, and that the eligible applicant, as hereinafter described, has the financial ability to carry out the project. The commissioner may establish limitations on the acreage which may be leased pursuant to this subsection to any applicant.

(1) Eligible applicants under this subsection shall be limited to nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific, or educational purposes, or for the promotion of social welfare, if the project for which the land is desired conforms to those objectives. In every case the applicant shall submit evidence that it is exempt from payment of federal income tax.

**FISCAL NOTE**

**STATE OF ALASKA  
1991 LEGISLATIVE SESSION**

BILL NO. SB 145

Revision Date: \_\_\_\_\_  
 Title: State land as cemeteries and  
hazardous facilities  
 Sponsor: Senator Curt Menard  
 Requestor: Senator Curt Menard

Department Affected: DEC  
 BRU: Environmental Quality  
 Component: EQ Projects

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	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: NONE

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Janice Adair  
 Division: Commissioner's Office

Phone: 465-2600  
 Date: \_\_\_\_\_

Approved by: *Menard*  
 Agency: Dept. of Environmental Conservation

Date: 3/14/91

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

WALTER J. HICKEL, GOVERNOR

**DEPARTMENT OF NATURAL RESOURCES**

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

March 22, 1991

OFFICE OF THE COMMISSIONER

The Honorable Lloyd Jones, Chair  
Senate Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Senator Jones:

Subject: SB 145, which allows the state to sell or dispose of state land, for less than the appraised value, to a nonprofit corporation or association organized to manage a cemetery or solid or hazardous waste facility.

Position: The Department of Natural Resources supports the portions of this bill relating to the sale of state land for a cemetery or solid waste facility, but believes disposals for hazardous waste facilities should be more carefully examined and treated as a separate issue.

Background: At this time, the department can lease but not sell land to municipalities or non-profit organizations for public or charitable purposes at less than fair market value. We would, however, prefer to sell rather than lease land for a cemetery or solid waste facility because of the associated long term liability problems. Because of the broad policy issues related to hazardous waste facilities, and because the state retains the subsurface estate for land it sells, hazardous waste facility disposals should be considered separately.

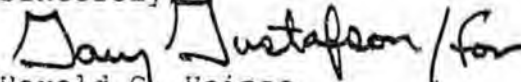
Examples of local needs for cemetery or solid waste sites:

The Trapper Creek Community Services Organization has requested state land for a local cemetery. This bill would allow the organization to purchase state land, at less than fair market value, for the cemetery.

The Tolsona and Nelchina community councils have formed to provide fire protection and operate solid waste disposal facilities. The councils have identified local sites for the facilities and are willing to operate them. We are reluctant to lease land for the facilities because of the liability problem, and the communities cannot afford to pay fair market value to purchase the land.

Recommendation: Delete references to hazardous waste facilities from this bill.

Sincerely

  
Harold C. Heinze  
Commissioner

cc: Committee Members  
Senator Menard  
Bruce Kendall, Legislative Liaison, Office of the Governor  
John Sandor, Commissioner, Department of Environmental  
Conservation

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 145

Revision Date: 22-Mar-91 Department Affected: Natural Resources  
 Title: Disposal of state land BRU: Land & Water Management  
 Components: Land & Water Management  
 Sponsor: Senator Menard  
 Requestor: Senate Resources COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Gary Gustafson Phone: 762-2692  
 Division: Land & Water Management Date: 22-Mar-91  
 Approved by Commissioner: Harold Heinze Date: 22-Mar-91  
 Agency: Department of Natural Resources

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