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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 25, 1994

*The Honorable Ramona L. Barnes
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Speaker Barnes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making amendments to the Alaska Land Act, also referred to as Title 38.05. The bill also makes other amendments to the same title.

The Alaska Land Act dictates how the Department of Natural Resources manages state land. Since 1959, this set of statutes has been added to and amended so that it now exceeds 180 pages in length. This past summer, I asked Commissioner Noah to review the Alaska Land Act to recommend changes that would bring greater efficiency to the management of state lands without sacrificing public involvement in land use decisions. This legislation is the result of that effort.

This legislation will result in increased delivery of state government services to the citizens of Alaska at no additional costs. It will streamline procedures for mining and land actions, clarify definitions for agriculture, allow greater flexibility for managing our forests, provide for exchange of native allotments located within state park units, and make other changes necessary for cost effective and sound land management.

This legislation is not intended to be a comprehensive overhaul of the Alaska Land Act, but rather the first step in a process that will continue to review the requirements of law, the needs of Alaskans, and the cost effective operation of government. I look forward to working with you to assure your prompt consideration and passage of this bill.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel".

Walter J. Hickel
Governor

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 515

Revision Date: Original Dept Affected: Natural Resources
 Title: "Title 38 Revision" BRU: ALL
 Component: ALL
 Sponsor: Governor
 Requestor: _____ Component Serial No. ALL

(Thousands of Dollars)

Expenditures/Revenues	FY95	FY96	FY97	FY98	FY99	FY00
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1004)*	100.0	100.0	100.0	100.0	100.0	100.0

(Thousands of Dollars)

FUND SOURCE	FY95	FY96	FY97	FY98	FY99	FY00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
 Bill would lower administrative costs for Division of Land (deletes duplicative land bank, travel to hold lotteries at remote sites, special procedures for set net sites/aquatic farmsites, loopholes that let ex-lessees transfer site cleanup costs to state, enforcement of reconveyance restrictions on remote parcels/homesteads). It would increase revenue by ensuring fair market value for most state land sales and leases under AS 38.05.070-.105, and at least some rental payment to hold homesites/homestead entry permits.
 *Revenue of \$100.0 depends on maintaining current level of staffing in FY95.

Prepared by: Jerry Gallagher, Legislative Liaison Phone: 465-2400
 Division: Commissioner's Office Date: 1-Feb-94
 Approved by Commissioner: Harry A. Noah Date: 1-Feb-94
 Agency: Natural Resources

Date: March 1, 1994

Prepared By: Department of Natural Resources

Contact: Jerry Gallagher 465-2400

Neil Johannsen 762-2600

Senate Bill 339 and House Bill 515 relate to the management of state land and resources and to certain remote parcel and homestead entry land purchase contracts and patents. The bill amends or repeals provisions in AS 38 to simplify and clarify them, and to provide greater efficiency in the management of state land and resources.

Sections 1 through 7 of the bill would amend AS 38.04.020 to delete the land disposal bank for potential state land sales, recast the land bank as a land disposal program, revise planning and classification requirements, and make appropriation requests for land disposals discretionary by the commissioner of the Department of Natural Resources (DNR). Currently, existing AS 38.04.020 requires the land bank to have at least 500,000 acres classified and available for disposal into private ownership. That statute also requires an annual report on the status of the land bank and mandates that the commissioner annually submit an appropriation request to the legislature to administer surveys and disposals of land. The land bank system is outdated because regional land use plans have now classified over 2,000,000 acres of state land for disposal. Section 35 of the bill repeals existing AS 38.04.020(c),

(f), (j), and (k), the requirements of which have become unnecessary due to the amount of land now classified for disposal. Section 8 of the bill makes a conforming amendment to AS 38.04.021(b)(1).

Sections 9 and 10 of the bill amend existing AS 38.04.030 and AS 38.04.035 to simplify the methods that DNR can use to design state land disposals. Section 9 amends existing AS 38.04.030 by authorizing DNR to develop additional disposal programs by regulation. A program established by regulation would have to provide for competitive disposal at no less than fair market value, but would not necessarily have to conform to existing programs in AS 38.

Section 10 amends AS 38.04.035 by making a fair market value return to the state mandatory, rather than discretionary, when state land is conveyed to private parties, unless a conveyance for less than fair market value is specifically authorized by statute or regulation.

Section 11 of the bill amends existing AS 38.05.035(b)(9) to allow DNR to reconvey substitute land for state land that is subject to a pending Native allotment application. This amendment is designed to give DNR the ability to relocate Native allotment claims from state parks and recreation areas to less sensitive areas. Existing AS 38.05.035(b)(9) only allows the reconveyance of land wrongfully

conveyed by the federal government to the state, such as land subject to Native use and occupancy predating state selection. The amendment is intended to allow DNR to take advantage of a 1992 amendment to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1617(c), which authorizes the relocation of pending Native allotment claims to substitute state land with the commissioner of DNR's concurrence.

Sections 13 and 14 of the bill delete from existing AS 38.05.055 and AS 38.05.057(a) the requirement that a purchaser appear in person at a lottery or auction for state land. In Chambers v. State, No. 3AN-88-4634 CI (1989), that requirement was held to violate the equal protection clause of the Constitution of Alaska because it discriminates between local and non-local residents. Section 12 of the bill amends existing AS 38.05.050 to remove the requirement that the lottery or auction be held in a community near the land to be disposed. Such a decision would, instead, be discretionary. Section 35 of the bill repeals existing AS 38.05.057(g) and AS 38.05.057(j), which are premised on the existing requirements in AS 38.05.050, AS 38.05.055, and AS 38.05.057(a) that are being deleted. Section 32 of the bill amends AS 38.09.010(g) to remove language related to personal appearance at a lottery and local site for a lottery.

In addition, sec. 14 of the bill deletes a provision of AS 38.05.057(a) that requires the commissioner of DNR to consult

with the municipal assessor before determining the purchase price for state land located in that municipality. Because the appraisal required by existing AS 38.05.840 gives the commissioner an accurate valuation, the consultation requirement is unnecessary.

Section 15 of the bill repeals and reenacts AS 38.05.069(e) (2). Existing AS 38.04.069(e) (2) defines "approximate vicinity," a term that is not used elsewhere in existing AS 38.05.069, the agricultural preference right statute. The bill would replace "approximate vicinity" with a definition of "adjacent," a term that is used elsewhere in that statute.

Changes made by secs. 16 through 18 and sec. 35 of the bill eliminate special procedures for leasing setnet and aquatic farming sites contained in existing AS 38.05.082, 38.05.083, and 38.05.856. Sections 29 and 35 revise the public notice requirements of existing AS 38.05.945 accordingly, by repealing AS 38.05.945(a) (5) and (6) and amending AS 38.05.945(d). Section 16 amends existing AS 38.05.082(b), which requires DNR to award set net leases between two or more competing applicants on the basis of a complex analysis of the "most qualified applicant." This procedure is highly dependent on DNR's ability to make factual determinations as to each applicant's tenure in the fishery, present ability to utilize the location to its maximum potential, and "other factors relevant to the equitable assignment of the disputed area." The amendment would replace this procedure with the options of either a public

auction under AS 38.05.075(a) or, if only one application is received and the value of the lease is \$5,000 a year or less, a negotiated lease under AS 38.05.070(b). In secs. 3 and 5, ch. 27, SLA 1991, the legislature amended AS 38.05.082(b), effective January 1, 1997, regarding language that refers to DNR land use plans. Section 34 of the attached bill clarifies that the changes in the bill regarding new procedures for determining the qualifications of setnet lease applicants, contained in sec. 16 of the bill, do not affect the changes made to AS 38.05.082(b) by secs. 3 and 5, ch. 27, SLA 1991.

In sec. 18 of the bill, AS 38.05.083 is repealed and reenacted to set out aquatic farm and hatchery site leasing procedures. In the repeal and reenactment, many of the existing permit provisions in AS 38.05.856 are moved to AS 38.05.083 as leasing provisions. AS 38.05.856 is repealed by sec. 35 of the bill. Section 35 of the bill also repeals existing AS 38.05.855, which requires DNR to identify and propose sites for aquatic farms and hatcheries, and AS 38.05.946(b), which requires DNR to hold public hearings on those proposed sites. The purpose of these changes is to bring the leasing of setnet and aquatic farming sites into conformity with the procedures governing other state land uses. Section 36 of the bill makes clear that the changes made to existing AS 38.05.083 and 38.05.856 by secs. 18 and 34 of the bill do not impair the legal rights of a person who holds a permit under those statutes.

Section 19 of the bill repeals and reenacts AS 38.05.090 to make a lessee of state land responsible for returning a former leasehold to a marketable condition. The amendment would also provide for the automatic vesting of title in the state of any personal property, buildings, or fixtures that are not removed by the lessee within a specified time. Under the existing statute, a lessee who leaves buildings or personal property on state land when a lease expires is not subject to any penalty and is not responsible for the costs of restoring the property to a condition suitable for subsequent leasing. The changes made by sec. 19 would address this statutory deficiency.

Sections 20 and 21 of the bill give the commissioner of DNR new authority regarding the sale of state timber. A new statute, AS 38.05.117, would permit the commissioner of DNR, after making a best interests determination, to sell timber that will quickly lose substantial economic value or perpetuate insect or disease epidemics unless salvaged. Cases of damage due to insects, disease, or fire, or when the land is to be cleared of timber and converted to some nonforest use, often fall outside of the normal five-year sale schedule mandated by AS 38.05.113 and the limitations on sales set out in AS 38.05.115. This new section providing for salvage sales would exempt those sales from the limitations of AS 38.05.113 and, in certain circumstances, from the limitations of AS 38.05.115. The amendment made by sec. 21 of the bill would permit the commissioner of DNR to negotiate timber sales

in certain areas if the commissioner finds that the specified circumstances "will exist" within two years, and adds, as a circumstance: "that timber will lose substantial economic value due to insects, disease, fire, or land use conversion."

Section 22 of the bill amends existing AS 38.05.180(c) to remove restrictions on DNR's ability to delay an oil and gas lease sale for more than 90 days after the sale's scheduled date in the five-year oil and gas leasing schedule submitted annually to the legislature. Under the existing statute, an oil and gas lease sale may be delayed only for a maximum of 90 days after the last day of the calendar quarter for which the sale was scheduled. After that time, the sale must be delayed until the sale has again appeared in the annual five-year leasing schedules submitted to the legislature for two calendar years. Although the purpose of the 90-day restriction was to prevent arbitrary delays in lease sales, that has not been shown to be a problem. The Department of Natural Resources has concerns that administrative appeals and court challenges to lease sales might cause the 90-day limit to be exceeded. Also, DNR might wish to extend the comment period for a lease sale beyond 90 days to facilitate unique needs of residents in the area. For instance, the comment period might otherwise occur during peak subsistence hunting or fishing seasons. The amendment would delete the 90-day restriction to accommodate unavoidable delays, while still allowing for timely scheduling of lease sales. Timely scheduling of future sales is important in

encouraging development.

Section 23 of the bill amends existing AS 38.05.185(a) to eliminate overly broad provisions allowing land to be closed to mining. The existing statute allows DNR to determine which state land should be closed to mining or mineral entry. The commissioner of DNR must first find that mining would be incompatible with significant surface uses of the land. Although not defined in AS 38.05, the term "mining" generally refers to the activities and operations involved in extracting, processing, and marketing minerals. "Mining" presupposes the existence of valid mining rights under mining claims or leases. Existing AS 38.05.185(a) is overly broad because it allows land to be closed to mining without provision for valid existing mining rights. The existing statute could be viewed as effecting a "taking" of valid mining rights, since it authorizes a mineral closure without requiring an eminent domain action or providing for compensation; it may therefore run afoul of AS 37.05.170 and art. IX, sec. 13, of the Alaska Constitution. The amendment would provide that land may be closed to location under AS 38.05.185 - 38.05.275, which would prevent the acquisition of new mining rights, thus avoiding these potential pitfalls.

Section 24 amends existing AS 38.05.190(a) to clarify the qualifications for mining claim ownership by aliens and foreign corporations. Under the existing statute, an alien at least 18 years old from a country that grants "like privileges" to United

States citizens may acquire or hold exploration and mining rights. A corporation in which more than 50 percent of the stock is owned or controlled by aliens whose country does not grant reciprocal rights to United States citizens may not acquire or hold exploration and mining rights. However, determinations of which countries grant "like privileges" to United States citizens have never been made or enforced in any consistent manner due to the number and complexity of mining laws worldwide. The federal mining laws, upon which Alaska laws were initially based, allow an alien to form a domestic corporation that would be qualified to obtain mining rights, without inquiry into "like privileges." The Alaska laws governing the acquisition and holding of oil and gas rights also do not inquire into "like privileges." Amending AS 38.05.190(a) to delete these requirements would be consistent with modern business practices, similar federal laws, and state laws affecting other types of mineral rights.

The bill makes several changes regarding mining operations. Section 35 of the bill repeals AS 38.05.207 in its entirety. That statute requires a production license for every mining operation. This provision was added in 1982 in an effort to resolve issues arising under sec. 6(i) of the Alaska Statehood Act. In Trustees for Alaska v. State, 736 P.2d 324 (Alaska 1987), AS 38.05.207 was held not to satisfy the Statehood Act provision and the existing rent and royalty measures in AS 38.05.211 and AS 38.05.212 subsequently were enacted. The production license requirement in

AS 38.05.207 is thus outmoded and serves no public purpose at this time.

Section 25 of the bill would repeal and reenact AS 38.05.211(d) to simplify the adjustments to be made in the annual rental amounts due on mining claims and leases. The existing statute requires the rental amounts to be adjusted every 10 years based on changes in the consumer price index for Anchorage. This statutory adjustment would most likely result in odd rental amounts that would make calculating, accounting, and collection more difficult. Additionally, adjusting rental amounts only at 10-year intervals could result in large changes at one time. The repeal and reenactment would allow rent adjustments to be made whenever the change in the consumer price index for all urban consumers in the Anchorage area equals or exceeds \$5, and would restrict the change to multiples of \$5. Both DNR and the mining claim or lease owners would appear to be better served if changes can be made more often, and in smaller increments than at cumulative 10-year intervals. The amendment also more clearly identifies the consumer price index on which changes are to be based.

Section 26 of the bill amends AS 38.05.255 to provide a more workable surface use authorization for mine millsites. The existing statute requires a millsite permit for millsites and tailings disposal. Millsites and tailings disposal sites involve large, long-term structures such as mills, dams, and tailing

impoundments, often constructed or installed at considerable expense. However, the term "permit" traditionally refers to an authorization to use land for a limited purpose, with the authorization revocable at the will of the grantor of the permit. A permit does not accommodate the realistic needs of a mining project, which requires long-term surface occupancy and some certainty of continuance if the authorization is maintained in good standing. A prudent operator would obviously be reluctant to invest the large amounts of capital and time necessary for a major mining project if the millsite authorization could be revoked without cause at any time. The amendment substitutes "lease" for "permit" in AS 38.05.255 and provides other conforming changes relating to that change of term. A lease provides for use of the land for a definite period of time if the leasehold is maintained in good standing. A lease generally requires good cause and notice for cancellation. The amendment also exempts millsite leases from the requirements of AS 38.05.070 - 38.05.105, which govern leases not for the extraction of natural resources. Those statutes require competitive bidding as the disposal method. A millsite lease, however, should not be competitively bid since there will almost always be only one party, the mine operator, applying for a particular tract for a millsite lease, and the characteristics of each mine probably will not generate more than one or two acceptable millsite tracts for disposal. Instead, the bill requires the commissioner of DNR to adopt regulations establishing appropriate procedures and annual rent amounts for millsite leases.

Section 27 of the bill amends existing AS 38.05.265 to eliminate the failure to file a lease application within a prescribed period of time as grounds for abandonment of a mining claim. In areas open to mining only under lease, a person who locates a mining claim first must record the certificate of location with DNR under AS 38.05.205(a). DNR then issues a public notice of the proposed mining lease and mails a lease application to the locator. The locator of the mining claim is required to return the lease application within 90 days after receipt of it. Under existing AS 38.05.265, if a lease applicant fails to file the application within 90 days after receipt, the mining claims included within the proposed lease area are abandoned. The 90-day deadline for return of the lease application appears to be for the purpose of issuing a lease timely after the required public notice, so that the notice is not "stale" when the lease is finally issued. However, if the application is not timely filed, the notice period could be repeated without the severe penalty of loss of the mining applicant's leasehold property rights. Under this bill, an applicant would still be prohibited from mining the claims, except for testing or sampling purposes, until a lease is issued and other filing requirements are met.

Section 28 of the bill amends AS 38.05.850(a) to clarify that the use of revokable permits is allowable to authorize certain uses of limited value.

Sections 30, 31, and 33 of the bill amend existing AS 38.08.030, 38.08.040, and AS 38.09.030, respectively, to increase fees for the use of homesites and homesteads before patent, to defray DNR's administrative costs. Existing AS 38.08.030(b) sets a maximum \$10 application fee for the use of a homesite. Existing AS 38.09.030(a) limits the application fee for homesteads to \$5 per acre. These minimal fees presently paid by permittees for the use of state land do not even cover DNR's administrative costs. This proposal would amend AS 38.08.030(b) by increasing the fee for new homesite applications to the maximum of \$25 set out in AS 38.05.057(d), and would amend AS 38.08.040(a) to establish a \$100 annual fee to receive and hold a homesite permit before patent. AS 38.09.030(a) would be amended to increase the application fee for homesteads to \$20 per acre if the land is not classified as agricultural. The fee increases would apply only to new applications filed after the effective date of this bill. Section 36 of the bill makes clear that the new requirement in AS 38.08.040 for payment of an annual rental fee for a homesite entry permit does not apply to a person who was issued a permit under that statute's existing guarantee that the \$10 "application fee is the sole rent chargeable on the permit for its duration."

In addition, secs. 30 and 31 make amendments to clarify that homesite entry permits are issued under lottery procedures in AS 38.05.057(e), (f), and (h). Under DNR regulations, lottery procedures apply to issuance of the permits, but AS 38.05.057 and

AS 38.08 are not clear regarding the applicable procedures.

Section 35 of the bill would repeal existing AS 38.09.050(d) and (e), which prohibit the sale of homesteads for five years after the issuance of patent and the subdivision of homesteads for either five or 10 years after patent, depending on whether the land was purchased under AS 38.09.090. Section 38 of the bill would prohibit DNR from including the conditions of former AS 38.05.078(d) (prohibiting sale or subdivision of the parcel for 10 years after purchase) in a remote parcel purchase contract issued after the effective date of this bill. This section also would require DNR to amend a remote parcel or homestead purchase contract or patent issued before the effective date of the bill if the holder of the contract or patent pays (1) the administrative costs of the amendment, and (2) the difference between the land's fair market value before and after the conditions on the land are removed. The latter requirement is proposed because the fair market value of remote parcel land and homestead entry land sold by the state under existing law has been reduced by 50 percent to account for the conditions in AS 38.05.078 and AS 38.09.050. Removal of the conditions under secs. 34 and 37 of the bill is designed to increase revenue from state land sales and to allow private landowners greater use of the land.

Section 37 of the bill, and its immediate effective date (sec. 39 of the bill), allow for timely adoption of regulations needed to

implement the changes made by the bill. Section 40 of the bill provides for an effective date of July 1, 1994 for the remainder of the bill.

In addition to the changes described above, numerous "housekeeping" amendments are contained in many sections of the bill.



HOUSE COMMUNITY AND REGIONAL AFFAIRS

SUBJECT OF MEETING:

HB 515

DATE: 3/8/94

PLACE: Rm. 124

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Ron Swanson	DAIR	PO Box 167005 Anch	99510	762-2692 →		(Y) N	
Jerry Collesler	DNR	400 Willoughby JNO		465-2400 →		(Y) N	
Neil Johannsen	DAIR	PO Box 167005 Anch	99510	762-2600 →		(Y) N	
Tom Bostrom Bostin	DAIR	400 Willoughby JNO			465-3379	(Y) N	
John Walsh	DCRA	Box 112100 Jnn	99511		465-4898	Y (N)	HB 515
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	