

HB

191

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 10, 1995

FURTHER REFERRALS:

Date of Committee Action: 4/27/95

The FINANCE Committee considered:

SSHB 191

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 191

MANAGEMENT OF STATE LAND AND RESOURCES

"An Act relating to the management and disposal of state land and resources; relating to certain remote parcel and homestead entry land purchase contracts and patents; and providing for an effective date."

recommends it be replaced with the following committee substitute (S HB) 191 (FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) DNR

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) Fish: 9/10/95 4/10/95

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Richard Foster</i>	FOSTER	X			
<i>Robert Muller</i>	MULLER			X	
<i>Jean Parnell</i>	Parnell	X			
<i>W. Kohring</i>	Kohring	X			
<i>Ben Grussendorf</i>	Grussendorf			X	
<i>Mike Navarre</i>	Navarre			X	
<i>Fay Brown</i>	Brown	X			
<i>Pat Kelly</i>	Kelly				X
<i>Gene Therrawlt</i>	Therrawlt	X			

CO CHAIR'S SIGNATURE _____

Richard Foster
FOSTER

FISCAL NOTE

No. 2

(H) Version: CSSSHB 191 (RES)

(H) Publish Date: 4/10/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____	Dept. Affected: <u>Fish and Game</u>
Title: <u>Management of State Land and Resources</u>	BRU: <u>Habitat and Restoration</u>
Sponsor: <u>Representative Thernault</u>	Component: <u>Habitat</u>
Requester: <u>Resources, Finance</u>	COMPONENT SERIAL NO. <u>486</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
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	0.0	0.0	0.0	0.0	0.0	0.0
--------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1000 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1000 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1000 GF	0.0	0.0	0.0	0.0	0.0	0.0
1000 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1000 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill is anticipated to have little or no affect on the department's programs. It may have a long-term positive fiscal impact by reducing land use conflicts and thereby reducing the department's workload pertaining to review and response to the Department of Natural Resources' actions.

Prepared by: Ellen Fritts, Acting Director
 Division: Habitat and Restoration
 Approved by Commissioner: *Frank...*
 Agency: ADFS

Phone: 465-4105
 Date: _____
 Date: 3.15.95

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA

BILL NO. SSHB191

1995 LEGISLATIVE SESSION

Revision Date: 24-Apr-95 Dept Affected: Natural Resources
 Title: An Act relating to the management and disposal of BRU: Resource Development
state land and resources; relating to certain remote parcels and ... Component: Land Development
 Sponsor: Representative Theriault
 Recuestor: _____ Component Serial No. 431

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
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 (1005)	213.3	213.3	213.3	213.3	213.3	213.3

FUND SOURCE	(Thousands of Dollars)					
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 (FY95) cost: \$ None

POSITIONS	FY96	FY97	FY98	FY99	FY00	FY01
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)

The changes proposed in this bill will generate more revenues for the State, with the current estimate at approximately \$213.8 more annually than budgeted restricted revenues.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 24-Apr-95
 Approved by Commissioner: [Signature] Date: 4-25-95
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING AND WATER MANAGEMENT

Attachment 1
4/27/95
State of Alaska

(3805.130)

TO: Sara Fisher
Rep. Therriault's Office

DATE: April 18, 1995

THRU: Jules Tileston
Director

FILE NO:

TELEPHONE NO.: 762-2145

FROM: Kerwin Krause *KIC*
Mineral Property Manager

SUBJECT: Title 38

In a recent Superior Court decision (Case No. 1JU-82-2048), involving the AJ rock dump near Juneau, the court ruled that a would-be locator of minerals reserved to the state, but situated in or on land owned by another, is required to obtain "consent" and a damage agreement or bond as a condition precedent to staking a valid location. The decision has been appealed to Supreme Court (Case No. S-6736), and the State in the filing of a Amicus Curiae brief, is requesting the Supreme Court reverse the superior court on the issue in which the superior court determined that "consent" was required from the surface owner of the AJ rock dump prior to mineral claimant staking a claim.

AS 38.05.130 requires an agreement for damages or a surety bond with respect to the exercise of the reserved rights under AS 38.05.125. AS 38.05.125 is silent with respect to claim staking. The State does not oppose the superior court's determination that it is reasonable that a surface owner have notice of entry and be assured of protection from damage due to mineral exploratory activity which leads to staking. The State believes that the superior court erred in it's ruling that a surface owner's "consent" is required under AS 38.05.130. "Consent" implies that the state, or a would be locator must have the surface owner's permission to exercise the rights reserved by the state in AS 38.05.125. That permission is implicitly given when the surface is conveyed. AS 38.05.130 provides only for an agreement regarding damages, not consent.

The superior court's application of AS 38.05.130 to claim staking has the potential to vest the surface owner with power to dictate, among competing locators, whether mineral rights to develop the state's minerals will be exercised. The mineral claimant on the rock dump contends there is several million dollars in "unrecovered" gold remaining in the old tailings. Upon learning that the mineral claimant wanted to mine the remaining gold in the rock dump, the surface owner staked their own junior claims and blocked the senior mineral claimant from receiving the necessary mineral lease by asserting conflicting mineral interests and requested the lease not be issued. The surface owner stopped senior claimant as a would-be developer from developing the state's reserved mineral resource. Later the surface owner dropped their junior claims.

The Superior Court agreed with the surface owner that the claimants claims were invalid because the claimant did not get "consent" to stake. Rights in minerals in property subject to mineral location may be acquired by making a discovery, staking a location, posting a location notice, and recording the certificate of location. The claimant did all this according to law. The Superior Court reasoned that because mineral exploratory activity precedes discovery, a valid location cannot be made unless the would-be locator has made arrangements under AS 38.05.130 even before a claim is staked. Not all mineral exploratory activity is subject to AS 38.05.130. Take for example the hundreds of recent claims staked since January 1955, covering an area of 80 square miles north of Fairbanks. These stakings were based on the release of a state aeromagnetic survey. No ground disturbing mineral exploratory activities occurred. Some of these claims may underlay private or Fairbanks North Star Borough land.

"Consent", as used by the superior court, appears to mean that a mineral claimant must have the surface owner's permission to exercise the rights under AS 38.05.125. This is wrong, and we do not think the legislature would agree with this either. The State has an absolute right to enter land on which it has reserved minerals. Creating a requirement of "consent" significantly diminishes the bundle of rights that the state owns in its reserved mineral estate.

The State reserves the right of access and therefore, the legislature needs to make it clear in this Title 38 amendment package that a surface owner does not receive the right to exclude the state or its lessees, successors or assigns from its reserved mineral estate. The fact that the surface owner has no right to exclude a mineral rights owner from exercising rights associated with the reserved mineral estate complies with the common law theory of mineral estate dominance intended by the Legislature and recognized by the Supreme Court.

If the ambiguity in the law is not fixed, and the superior court decision is not reversed, the exercising of the state's mineral rights on split estate lands is severely diminished.

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

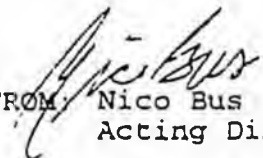
SUPPORT SERVICES DIVISION

TO: John Shively
Commissioner

DATE: February 15, 1995

FILE NO.: landintr

TELEPHONE NO.: 465-2406


FROM: Nico Bus
Acting Director

SUBJECT: Interest Rate
Charged Under
AS 38.05.065

The working group that was established to review the interest rate charged under AS 38.05.065 has completed its work. The findings of the work group are summarized below.

FINDINGS:

1. General Information

The Alaska Lands Act provides for the disposal of State land for private use. Commercial banks and lending institutions normally will not finance the acquisition of unimproved land, especially in remote areas. To reduce the instances of speculation and promote the transfer of State land to the broadest spectrum of the Alaskan population, AS 38.05.065 was passed by the legislature to allow the purchase of land on an installment basis. The contract obligors are not subject to a credit check. A five percent down payment is the only requirement. Title to the land is not conveyed until the installment contract is completely paid.

2. History of Interest Rate Charged

In 1979, the statute (AS 38.05.065) was changed to establish how the interest rate on land sale contracts should be determined. The statute allows for installment payments over a period of 20 years, with interest at the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed.

The federal land bank was superseded by the Farm Credit Service (FCS) in the 1980's. From 1979 to 1987, only one rate was furnished each month to Division of Land (DOL) by either the federal land bank or FCS. In 1987, FCS provided DOL three variable interest rates classified as Tier I, II, or III. The rates varied from 9.75% for Tier I to 12.25% for Tier III. FCS used the Tier I rate for the most credit worthy applicants. DOL chose to use the Tier III rate since credit information was not required from the contract applicant.

In 1988, FCS replaced the three variable rate tier system. The new system for agriculture loans included four variable interest rates for each of eight different terms (one to thirty years). Each of the 32 rates was subject to a rate code adjustment for credit worthiness. A credit of .61% was allowed for a 5% buy down of the principal (down payment). On November 28, 1988, DOL Director's Policy 89-06, established rate code 6 as the rate that

February 15, 1995

DOL would use as the adjustment for the financial condition of the average Alaskan borrower. Rate code 6 increased the base rate by 1%.

FCS again changed their rate methodology in September 1989. They established one base rate for the eight different terms. A variable rate was used for shorter duration loans (one or five years). For long term loans (ten to thirty years) the one rate that was quoted was a fixed interest rate mortgage. FCS continued to use the six rate codes for credit worthiness. Although they offered fixed rate and variable rate loans, most loans issued were variable rate loans. An attorney for FCS, in July 1989, determined that an equitable fixed rate mortgage loan rate would be 1.75% more than the variable rate used by FCS. Therefore, from September 1989 through December 1994, DOL used the base rate provided by FCS for a 20-year mortgage and adjusted this interest rate upwards 1.75% for the variable to fixed rate adjustment, and increased it an additional 1.00% for the rate code 6 adjustment. This 2.75% increase was then reduced by .61% because land sale contract obligors were required to make a 5% down payment.

In April 1991, FCS again changed their rating system for credit worthiness from six rate codes to five alpha ratings (AAA, AA, A, B, C) for both fixed and variable rate mortgages. They continued to offer the eight different terms. A loan with a rating of AAA was reserved for the most credit worthy applicants. At this time, FCS stopped granting a credit for a down payment amount. Since the FCS is not a public lending institution, it can establish its own rates that favor particular markets and customers. It can, and does, discriminate against less credit worthy borrowers.

3. Prevailing Rate

The Attorney General's Office advised the work group that there is more than one possible interpretation of the "prevailing rate" under AS 38.05.065. Under one interpretation, the prevailing rate could be characterized as the rate used "most frequently" by FCS for real estate mortgages. Under this interpretation, the rate numerically used most often would become the "prevailing rate." This interpretation could result in widely fluctuating rates on DNR land sale contracts. Rates would fluctuate not only as market conditions changed, but also as the "prevailing" mix of mortgages made by FCS changed. The shorter the period (daily, weekly, monthly) used, the more DNR's rate would fluctuate.

Under a second interpretation, the prevailing rate could be characterized as the rate FCS would "generally" use if the land sale contract was a mortgage loan. The FCS uses many different rates based upon the terms of the loan and financial condition of the borrowers. Therefore, FCS cannot fairly be characterized as having "one" prevailing interest rate for real estate mortgages. For January 1995, the "prevailing" rate, in terms of "generally

February 15, 1995

current, widespread, or prevalent" is a range of rates, from 14.7% to 11.0% for twenty-year fixed rate mortgages and a broader range for other types of mortgages. The work group believes that this interpretation is best because the interest rate will more accurately reflect the type of credit DNR extends and DNR's interest rate would not fluctuate merely because FCS makes different types of mortgages.

The Attorney General's office considers both interpretations of the "prevailing rate" under AS 38.05.065 are defensible, as neither is clearly correct nor clearly incorrect.

4. Interest Rate Methodology

Because the base methodology for determining the interest rate has changed since the statute was originally passed in 1979 and is now subject to different interpretations, the Attorney General's Office has advised the work group that the method used to determine the interest rate charged on land sale contracts should either be formalized in a regulation or enacted in legislation. The work group is concerned that, for several reasons, adopting regulations using the interest rates provided by FCS may not be in the best interest of the land sale contract obligors or the State. First, the contract obligors cannot independently verify the interest rates. Second, the rates are not decided by market forces; they fluctuate based on internal management decisions of FCS. Third, there has been a lack of consistency in how FCS has presented interest rates to DNR. In the past eight years, the method of presenting rates by FCS has changed four times. Each change introduced new factors from the previous method. Therefore, FCS's methodology to determine the rates was not consistent, causing DNR to make multiple adjustments.

An alternative to writing a regulation would be to change AS 38.05.065. The statute could be amended to charge a rate that is regularly reported in financial publications like the Wall Street Journal. This rate could be based on the prime rate, a universally accepted rate. The prime rate is the rate that banks charge their most credit worthy corporate borrowers. Since land sale contracts are intended for individuals and not for the most credit worthy corporations, and since no credit information is required, an interest rate higher than the prime rate should be charged. An upper limit could be placed on this rate. The current prime rate is 9.0% and the current interest rate for land sale contracts is 13.14%.

Until a regulation is approved or the statute is amended, an internal management decision should be made to address how the interest rate is calculated by DNR. The rate used in this internal management decision should be one of the five rates (AAA, AA, A, B, C) used by FCS for twenty-year, fixed-rate real estate mortgages. The reasons for choosing the "A" rate include:

February 15, 1995

- a. The "A" rate is the midpoint rate. If one standard rate is chosen, then contract obligors at both ends of the credit worthiness spectrum may pay more or less interest than they should; however, using a mid-range will lessen the financial impact to the average contract obligor.
- b. The rating methodology used by FCS to determine the credit worthiness of an applicant is proprietary information and is not known by DNR. Therefore, even if DNR would obtain credit information from the contract obligor, it would be impossible for DNR to match the credit worthiness of a land sale contract obligor to any one of the five rates provided by FCS.
- c. DNR does not require credit information from the contract obligors. Therefore, DNR does not have the information to decide what credit worthiness rate to apply to each land sale contract. Absent a specific rate to charge, a midpoint rate is the logical one to use.
- d. The AAA rate is reserved for the most credit worthy contract obligor. Normally, a borrower who has received the highest credit worthiness rating from a financial institution will not default on loan payments or have the loan terminated because of lack of payment. The average new DNR land sale contract obligor does not meet these high credit worthy criteria. During 1994, DNR issued 1,126 default notices on approximately 3,700 land sale contracts. The default notice is the first action in the foreclosure process. Most of these defaults were cured before DNR took final action to foreclose on the contracts. However, since 1987 approximately 1,000 contracts were relinquished, terminated, or foreclosed on. Therefore, using the midpoint A rate would recognize the implied financial condition of the average DNR land sale contract obligor.

CONCLUSION:

1. The current interest rate charged by DNR on land sale contracts is an acceptable rate. However, an internal management decision should be made on how this rate is calculated in the future. Our suggestion for this rate is that it be the "A" rate provided by FCS for 20-year, fixed-rate real estate mortgages. Impact: The net impact of following the "A" rating is a drop in the interest rate of roughly .5 percent charged under AS 38.05.065.

February 15, 1995

2. DNR should submit a change to AS 13.05.065 that will revise the interest rate charged on land sale contracts.

Eliminate: "... prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska . . . "

Add: "... prime rate as reported in the Wall Street Journal on the first business day of each month, plus 4%, with the total rate not to exceed 13.5% . . . "

3. While the statutory change is preferred, DOL should adopt a regulation on how the interest rate should be determined. The starting point for this process should be as outlined in 1 above. If legislation is passed, the regulation adoption process should be dropped.

DETERMINATION

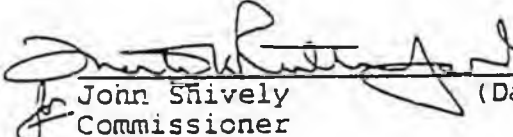


I concur with the conclusions stated in this memo and instruct the Director, Division of Land to implement them

Plus, begin drafting legal language for introduction



I do not concur with the conclusions in this memo


John Shively (Date) 2-24-95
Commissioner

Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT
P O Box 55326
North Pole, Alaska 99705
(907) 488-0862

House District 33



While in Session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797

House Of Representatives

MEMORANDUM

TO: Representative Mark Hanley, Co-Chair
House Finance Committee

FROM: Representative Gene Therriault *Gene*

DATE: April 20, 1995

SUBJECT: Scheduling of HB 191

I respectfully request House Bill 191, "An Act relating to the management and disposal of state land and resources" be scheduled for a hearing in the House Finance Committee.

The Resources committee recommended a committee substitute for HB 191 which expands the bill to address some concerns that were brought up by members of the Resources committee and members of the DNR budget subcommittee. The significant changes include revising the "remote cabin permit program" to a program that would allow for either the sale or lease of land for a remote cabin site. The permit program was never put into action because of the associated administrative costs with a minimal return to the state. The Resources committee substitute also includes a section clarifying that the sale of state land does not obligate the state to provide additional services.

The following information is attached:

1. CS HB 191 (RES)
2. Sectional analysis
3. F&G fiscal note
4. F&G Position paper
5. DNR fiscal note
6. Sponsor statement

I appreciate your consideration of my request.

Attachments (6)

Sectional Analysis of CSSH 191
(9-LS0766\K 4/10/95)

Secs. 1-32, 35-36, and 38-54 affect the Division of Land. Secs. 30 and 32-37 affect the Division of Mining and Water Management. Sec. 31 affects the Division of Oil and Gas. Sec. 51 affects the Division of Parks and Outdoor Recreation.

Sec. 1 would clarify that the department's consideration of timber, firewood, and water supplies before offering land for disposal does not imply that any person has exclusive use of those resources or constitute a limitation on future state disposals. (AS 38.04.010(b).)

Secs. 2-10 are basic housekeeping:

- Secs. 2 and 3 would merge the old "land disposal bank" into the existing state land disposal program. Under laws passed in the last decade, regional land use plans are used to identify land that will be offered for private ownership. More than 2,000,000 acres have been classified through this process, making the land bank obsolete. Related references to the land disposal bank are repealed in Sec. 50. (AS 38.04.020(a)-(b), plus repealers of (c), (f), (j), and (k).)
- Sec. 4 would rewrite AS 38.04.020(d) to retain its substance--a biennial report to the legislature on the current inventory of state land available for disposal--without requiring a separate "land disposal bank." For efficiency, the report would be tailored to the way that inventory is catalogued: by its classification. Land suitable for most commercial, industrial, residential, and private recreational use is grouped together in the "settlement" classification, but is separate from the "agricultural" and "grazing" classifications. (AS 38.04.020(d).)
- Sec. 5 would put the state land disposal program on the same footing as other natural resource sale programs: whether to submit a budget request each year would be discretionary, not mandatory. But each budget proposal would be complete. It would request the full funding needed to get the land disposal projects ready for sale, including any access roads or other capital improvements that might be required. (AS 38.04.020(e).)
- Sec. 6 would make technical corrections, dropping an out-of-order classification reference (land must already be planned and classified for disposal before it is surveyed and platted), an erroneous reference to a homestead "lease," and a reference to homestead staking that would be made obsolete by Secs. 44-45 of this bill. (AS 38.04.020(g).)

- Sec. 7 would make clear that the five-acre limit on subdivision lots applies to land sold for residential and recreational uses, not agricultural parcels, commercial parcels, etc. This clarification is needed because under current law, any division of a tract for purposes of sale constitutes a subdivision. The amendment would also allow larger lots if that would be a better marketing decision for the state. (AS 38.04.020(h).)
- Sec. 8 would update a list of state land disposal programs by adding the homestead law and the remote cabin site lease/sale program, amended by Secs. 22-24 of the bill. (AS 38.04.020(i).)
- Sec. 9 would correct a missing item in the budget appropriation process, clarifying that the commissioner's disposal funding request must go to the governor first, not be sent straight to the legislature. (AS 38.04.021(a).)
- Sec. 10 would delete a cross-reference to an annual land demand study, repealed by this bill. (AS 38.04.021(b).)

Sec. 11 would let the Department of Natural Resources create new land disposal programs by regulation, so long as they provide for competition and produce at least fair market value for the land. (AS 38.04.030.)

Sec. 12 clarifies the legislature's policy that sales of public land to private individuals should be at fair market value unless specifically exempted, and changes a reference to cabin sites in remote areas to conform to Secs. 22-24 of the bill. (AS 38.04.035.)

Sec. 13 deletes language exempting random-staked homesteads and remote parcels from cadastral survey requirements. The remote parcel program was repealed in 1983, effective 1984, and the homestead program was changed in 1988 to preclude random staking. (Remote cabin site leases, as amended by Secs. 22-24 of this section, would be exempt from this statute because they are short-term leases.) (AS 38.04.045(b).)

Secs. 14-16 and 44 respond to a Superior Court decision that it is unconstitutional to make state land purchasers appear in person at a state land sale.

- Sec. 14 would make it discretionary where to hold land auctions and lotteries. (AS 38.05.050.)
- Sec. 15 would delete the personal-appearance requirement for land auctions, allowing bidders to be represented by an agent. (AS 38.05.055.)

- Sec. 16, and a related repealer in Sec. 50, would delete the requirement that purchasers appear in person at land lotteries and pay the down payment on the spot. Instead, they would have 30 days to make the payment. It also drops language about consulting with the local assessor to determine land values, which is unnecessary because AS 38.05.840 requires a formal appraisal before the land can be offered for sale. (AS 38.05.057(a), plus repeal of (g).)
- Sec. 44 deletes the authority to make applicants appear in person at a homestead lottery. (AS 38.09.010(g).)

Secs. 17-19 would change how interest rates are computed for state land sale contracts.

- Secs. 17-18 would repeal the current system that relies on the old Federal Land Bank's "prevailing" rate. (The Federal Land Bank's successor now uses many different rate systems with multiple variables, rather than a single prevailing rate.) It would also change the point at which the rate is determined, solving the problem of the rate changing after the contract is mailed out for signature but before both parties have signed. (State land sale contracts are not signed in a face-to-face closing ceremony.) Sec. 17 would also let contracts for auction parcels be issued for less than 20 years, as already allowed for lottery parcels. (AS 38.05.065(a)-(b).)
- Sec. 19 would replace the old Federal Land Bank interest rate with a new system for state land sale contracts. Interest would be based on the prime rate, the widely quoted market rate used for a bank's most credit-worthy corporate loan customers. A four percent add-on would adjust for the unique circumstances of state land sale contracts, which do not involve any credit check. The total would be capped at 13.5 percent. The rate would be computed monthly and would apply to all contracts prepared that month. (AS 38.05.065(i).)

Sec. 20 would allow agricultural land to be sold at true market value by making it discretionary whether to grant a preference right to adjacent agricultural landowners. A mandatory preference right tends to depress competition or eliminate it altogether, while unaffected parcels are bid up beyond their appraised value. (AS 38.05.069(a).)

Sec. 21 updates the agricultural preference right law (see Sec. 21) by defining the term "adjacent," instead of "approximate vicinity." The latter was removed from the body of the law in 1984. (AS 38.05.069(e)(2).)

Secs. 22-24 would change the remote cabin permit program (a system of 25-year leases with \$100-per-year rental) into a remote cabin site lease/sale program for land disposals in remote, lightly populated areas. At any time during a total term of ten years, the lessee could purchase the site after getting it appraised and surveyed, just as in the former "open-to-entry" and "remote parcel" program (repealed in 1979 and 1993 respectively). (AS 38.05.079(a)-(c), plus a repealer of (d) in Sec. 50.)

Secs. 25-28 and 40, along with certain repealers in Sec. 50, would simplify the process of leasing "shore fishery" (set-net) sites and aquatic farmsites (shellfish and sea vegetable farms). They would repeal requirements that increase administrative costs or keep the state from obtaining a fair return for the use of tidelands and submerged lands.

- Sec. 25 would eliminate a unique leasing process for set-net sites, allowing standard state leasing laws to apply. Negotiated leases could be used up to the standard rental ceiling of \$5,000. Higher-value or contested leases could be awarded at auction, rather than making the director decide who is the "most qualified" applicant. (AS 38.05.082(b).)
- Sec. 26 would eliminate special provisions that prevent the state from obtaining fair market value rental for shore fishery leases. (AS 38.05.082(c).)
- Sec. 27 would amend AS 38.05.082(d), which currently lets the director offer existing lessees a preference right to a renewal lease when it is in the state's best interests. The new language would give existing shore fishery lessees (as of the effective date of the section) the right to a renewal lease.
- Sec. 28 would rewrite the aquatic farmsite law to let standard state leasing laws be used. Sites could be offered directly at auction or by negotiated lease, rather than first being developed under a three-year permit process. As with other types of land disposals and leases, public hearings on the leasing decision would be held as needed, but would not be mandatory. (AS 38.05.083, plus repealers of AS 38.05.855, AS 38.05.856, AS 38.05.946(b).)
- Sec. 40 would delete references in the public notice law to special aquatic farmsite permit procedures repealed by Sec. 40 of the bill: mandatory public hearings and preliminary findings before issuing permits. (AS 38.05.945(a)(5)-(6).)

Sec. 29 would modernize requirements to restore surface lease sites after lease termination, protecting the state against liability and high cleanup costs. Because other provisions of AS 38 apply this leasing statute to terminated homesites, homesteads, remote cabins, etc., special measures of the existing AS 38.05.090 would be retained to compensate individuals for authorized private residential improvements that are not removed from the site and are worth more than \$10,000 net value. (AS 38.05.090.)

Sec. 30 would amend a statute that requires mineral developers to make arrangements with the surface owner, before entering onto the land, to pay for any surface damages that might result. The exception would allow entry to stake the corners of a mining claim, leasehold location, or prospecting site location, an activity that has little or no potential to cause any surface damage. (AS 38.05.130.)

Sec. 31 is a technical amendment narrowing a reference to the "Administration" article of AS 38.05, whose last section (a bonding requirement for the director of the statutory Alaska Division of Lands) would be repealed by Sec. 50 of this bill. (AS 38.05.131(a).)

Sec. 32 would eliminate overly broad language that theoretically allows the department to close state land to "mining," not just to "mineral location" (the act of staking new mining locations). A valid mining claim includes the "exclusive right of ...extraction," i.e. mining rights. The department could not close off already-acquired mining rights without effecting a "taking" of valid existing rights, which would run afoul of Art. I, Sec. 18, and Art. VIII, Sec. 16, of the Alaska Constitution. This amendment would eliminate a potential pitfall. (AS 38.05.185(a).)

Sec. 33 would amend AS 38.05.190(a) to clarify the qualifications for ownership of mining rights 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. U.S. 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." 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. (AS 38.05.190(a).)

Sec. 34 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 is likely to yield 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, possibly causing hardships to mining locators and lessees. The amendment would require the department to check the consumer price index each year and adjust the rate if the adjustment is \$5 or more. Changes could only be made in \$5 increments. The amendment also more clearly identifies the consumer price index on which changes are to be based. (AS 38.05.211(d).)

Sec. 35 would authorize surface leases for certain mineral development uses. Surface use needs for small mines are generally modest enough to meet with a simple land use permit, protected by the underlying "exclusive right of possession and extraction of the [locatable] minerals" acquired by a valid mining location. However, most major mines require large-scale, costly surface improvements such as dams, mills, and tailings impoundments. The mineral developer needs long-term security of tenure to protect this investment, something that cannot be provided by a revocable permit. Surface leases for millsites, tailings disposal sites, and similar purposes would require reasonable annual rental. (AS 38.05.255.)

Sec. 36 would add a new subsection to clarify that mining developers' surface leases are not subject to competitive bidding statutes. Requiring the department to hold a lease auction would serve no purpose, as the mineral developer would be the only party in a position to bid for and use the lease. The department would be required to adopt regulations setting leasing procedures and annual rentals. (AS 38.05.255(b).)

Sec. 37 would eliminate the failure to file a lease application on time as grounds for abandonment of a mining location. In areas open to mining only under lease, a locator must apply for and obtain a lease before gaining the right to mine. AS 38.05.205(a). After the department gives public notice of the proposed mining lease, it must promptly mail an application to the leasehold locator, who then has 90 days to file the application. But under the existing AS 38.05.265, failing to file on time automatically causes "abandonment" (voiding) of the leasehold locations involved, too harsh a penalty for a late application. (AS 38.05.265.)

Sec. 38 would allow the department to convey "common areas" in state subdivisions to the subdivision's homeowners' association for retention and management. Many state subdivisions were platted with certain lots reserved from disposal to provide open space and recreation for subdivision residents. The intention was eventually to transfer these reserved lots to local government. But

where there is no local government or it does not want to assume management responsibility, conveyance to the homeowners' association is a logical substitute. The department would be required to ensure that the conveyance serves a public purpose. (AS 38.05.810(a).)

Sec. 39 would clarify that the division can allow livestock grazing, commercial berry picking or mushroom harvesting, and similar minimal-value consumptive uses by issuing permits, an authority the Department of Law recently questioned. (AS 38.05.850(a).)

Sec. 40: See under Secs. 25-28.

Sec. 41 would raise the application fee for homesites from the current \$10 to a maximum of \$25, the same as for lottery parcels. (AS 38.08.030(b).)

Sec. 42 would add a cross-reference to the lottery process used to select the winner of a homesite entry permit (see Sec. 43). It would also require a token annual rental of \$100 until the permit holder "proves up" or purchases the lot. Because a homesite entry permit is a contract, the rental requirement would not apply to existing entry permits. (AS 38.08.040(a).)

Sec. 43 would add a new subsection directing that homesite entry permits be offered at lottery. Using the lottery procedures of AS 38.05.057 was formerly a statutory requirement, but a 1984 amendment left the connection unclear. The department would be required to adopt regulations as consistent as possible with AS 38.05.057. (AS 38.08.040(f).)

Sec. 44: See under Sec. 14-16.

Sec. 45 would raise the fee to receive a non-agricultural homestead entry permit to \$20 per acre. This is a one-time rental fee, lasting for the entry permit's five-year term. The rental fee for agricultural homesteads would remain at the current \$5 per acre. In combination with repealers in Sec. 50 of the bill, it also eliminates staking and legal-description requirements that became obsolete in 1988. In that year, the homestead law was changed to require the department to do a cadastral survey before offering the parcels, instead of making the homesteader survey it five years later. (AS 38.09.030(a), plus repealers of AS 38.09.010(e), 38.09.020, 38.09.040(a)(2), 38.09.040(a)(4), AS 38.09.060, AS 38.09.070, and 38.09.900(1).)

Secs. 46-47, along with repealers in Sec. 50 of the bill, reduce and simplify the ways to get title to a homestead parcel. (Currently there are three methods. A homesteader can obtain the land for free by living on it and building a house, plus meeting clearing requirements applicable to agricultural homesteads only. Or he can buy the parcel at almost-current fair market value without building a house

and living on it, if he applies within two years. Or he can buy the parcel at current fair market value without living on the parcel, if he builds a house and applies to purchase within five years.) The revised language in Sec. 46 eliminates the house-building requirement and the distinction between two-year and five-year purchase. The homesteader either buys the parcel at fair market value within five years, or "proves up" by living on the parcel for 25 months. With either method, he must reimburse the state for survey and platting costs, and must meet agricultural clearing requirements if the land is classified agricultural. Sec. 47 is a conforming amendment eliminating a reference to a permanent dwelling. (AS 38.09.050(a)-(b), plus repealers of AS 38.09.040(a)(3), 38.09.090, 38.09.900(3), and 38.09.900(4).)

Sec. 48, along with repealers in Sec. 50 of the bill, affects both the remote parcel program and the homestead program. (The remote parcel law was repealed in 1983, effective in 1984, but the program will be alive until at least the year 2016. The last parcels were staked in 1984, and the last leases issued in 1985-1986. The lessees will have until 1996 or later to survey their parcels, and can then enter into 20-year purchase contracts.) This section would prohibit the department from imposing the conditions of the former AS 38.05.078(d) in new remote parcel purchase contracts. These conditions restricted the sale or subdivision of remote parcel land after it was conveyed into private ownership. It would also allow the department to amend existing remote parcel or homestead purchase contracts or patents to remove these restrictions if the holder consents and reimburses the state for the difference in value. (Each parcel's purchase price was cut by 50% to account for the resale restrictions.) (AS 38.09.105, plus repealers of AS 38.09.050(d)-(e).)

Sec. 49 transfers the homesite disclaimer language of AS 38.08.090 (to be repealed by Sec. 50 of this bill) to a general location applicable to all state land disposals: unless specifically provided, the state is not obligated to provide services to the grantee of a state land disposal. An additional disclaimer would make clear that the state is free to dispose of other land or resources in the future, without restrictions as to type, parcel density, etc.

Sec. 50:

- Repealers affecting the land disposal bank (AS 38.04.020) and down payments at land lotteries (AS 38.05.057(g)) are discussed under Secs. 2 and 16.
- Repealing AS 38.05.057(j) eliminates special lottery procedures for an agricultural project statute that was repealed in 1979.

- Repealing AS 38.05.035(e)(6)(F), AS 38.05.207, and AS 38.05.945(g) would eliminate the mining production license program, an early attempt to solve the "6(i) problem" that became moot when AS 38.05.211-.212 were enacted in 1989.
- Repealing AS 38.05.040 would eliminate the requirement for a \$150,000 bond for the director of the statutory Division of Lands, which was subsequently reorganized and subdivided into several different divisions.
- Repealing AS 38.05.079(d) eliminates an optional sale clause no longer needed for remote cabin site leases (see Secs. 22-24), which are designed to result in sale of the site.
- Repealing AS 38.05.855, AS 38.05.856, and AS 38.05.946(b) eliminates requirements associated with aquatic farmsite permits; see Secs. 28 and 40.
- AS 38.08.090 is made unnecessary by Sec. 49, which broadens its language and expands it to other land disposals.
- Repealing 38.09.010(e), 38.09.020, 38.09.040(a)(2), 38.09.040(a)(4), AS 38.09.060, AS 38.09.070, and 38.09.900(1) eliminates requirements related to staking, flagging, brushing, and filing a legal description on a homestead; see Sec. 45. Repealing AS 38.09.040(a)(3), 38.09.090, 38.09.900(3), and 38.09.900(4) eliminates homestead dwelling requirements and the distinction between two- and five-year purchase; see Sec. 46. Repealing AS 38.09.050(d) and (e) would remove restrictions on selling or subdividing land after it has been conveyed to a homesteader; see related changes under Sec. 39.

Sec. 51 would authorize railroad, highway, and utility line rights-of-way within Chugach State Park necessitated by a Seward Highway relocation project at Bird Point (between Anchorage and Girdwood).

Sec. 52 would specify that the interest rate changes made by Secs. 17-19 of the bill apply to all contracts sent out to be signed after the bill's effective date.

Sec. 53 would ensure that changes made to AS 38.05.082 by Sec. 25 of the bill will continue in effect after 1997, when unrelated changes enacted in 1991 take effect.

Sec. 54 would allow the department to adopt regulations in advance of the bill's effective date, and includes a savings clause for the existing homesite disposal regulations until they can be changed.

Secs. 55-56 are effective date clauses; the regulation clause would take effect immediately, with the remainder of the bill effective July 1, 1995.

DEPARTMENT OF FISH AND GAME POSITION PAPER

BILL NO: HB 191

SPONSOR: Representative Therriault

DIVISION: Habitat and Restoration

DEPARTMENT POSITION:

The department supports the passage of HB191.

This is a housekeeping bill that would clarify certain Title 38 statutes governing DNR's land disposal program, surface uses of mining properties, and permits for rights-of-way. Among other things, the bill contains provisions strengthening the use of the state's land planning process to identify lands suitable for disposal and improves the ability of state to condition ancillary activities (millsites and tailings disposal) associated with the development of mining claims.

The provisions of this bill would have a positive effect on fish and wildlife resources and the management of public lands.

COMMISSIONER'S SIGNATURE



DATE 3.15.95

Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT
P O Box 55326
North Pole, Alaska 99705
(907) 488-0862

House District 33



Write in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797

House Of Representatives

SS HB 191 "An Act relating to the management and disposal of state land and resources; relating to certain remote parcel and homestead entry land purchase contracts and patents; and providing and effective date."

SPONSOR: Rep. Gene Therriault

SPONSOR STATEMENT:

This bill is a housekeeping measure intended to clarify certain Title 38 statutes governing DNR's management of state land and resources. SS HB 191 is intended to bring greater efficiency to the management of state lands without sacrificing public involvement in land use decisions.

As the House finance subcommittee chairman for the DNR budget, I have worked with the Department to come up with changes to Title 38 that would simplify programs and reduce costs to DNR. The passage of this bill will result in a more administratively efficient agency.

Although this bill is not intended to be a complete rewrite of Title 38, I believe it is a positive effort, supported by the administration to streamline state government.

FISCAL NOTE

No. 1
 Bill Version: CSSSHB 191 (RES)
 (H) Publish Date: 4/10/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: 20-Mar-95 Dept Affected: Natural Resources
 Title: An Act relating to the management and disposal of BRU: Resource Development
state land and resources; relating to certain remote parcels and ... Component: Land Development
 Sponsor: Representative Theriault
 Requestor: _____ Component Serial No. 431

Expenditures/Revenues		(Thousands of Dollars)				
	FY96	FY97	FY98	FY99	FY00	FY01
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 ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE		(Thousands of Dollars)				
	FY96	FY97	FY98	FY99	FY00	FY01
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 (FY95) cost: \$ None

POSITIONS		FY96	FY97	FY98	FY99	FY00	FY01
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)

See attached sectional analysis.

Replaced

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 20-Mar-95
 Approved by Commissioner: [Signature] Date: 3-20-95
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office

9-LS0766M
Luckhaupt
4/25/95

* Delete Sect 29 add.

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 191()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES THERRIAULT, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the management and disposal of state land and resources;
2 rel' ng to certain remote parcel and homestead entry land purchase contracts and
3 ts; and providing for an effective date."

4 BE A ' ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 38.04.010(b) is amended to read:

6 (b) State land that is located beyond the range of existing schools and other
7 necessary public services, or that is located where development of sources of
8 employment is improbable, may be made available for seasonal recreational purposes
9 or for low density settlement. The seasonal recreation use or low density settlement
10 shall have sufficient separation between residences so that public services will not be
11 necessary or expected. The availability of timber, firewood, and water resources shall
12 be considered in determining separation between residences. Bv considering the
13 availability of timber, firewood, and water under this subsection or in making any
14 disposal decision, the state does not by virtue of that consideration imply any

1 right of the person receiving the disposal to an exclusive or other right to the
2 timber, firewood, or water, that the state will not make any other disposals in the
3 area, or that any disposals made will be limited in type or any other manner.

4 * Sec. 2. AS 38.04.020(a) is amended to read:

5 (a) The state [COMMISSIONER SHALL ESTABLISH A] land disposal
6 program consists of [BANK CONTAINING] state land identified and classified
7 under adopted regional land use plans for disposal into private ownership.

8 * Sec. 3. AS 38.04.020(b) is amended to read:

9 (b) The state land disposal program [BANK] does not include

- 10 (1) land nominated for selection or selected by a municipality to satisfy
11 a general grant land entitlement under AS 29.65 or former AS 29.18.201 - 29.18.213;
12 (2) land retained in state ownership for multiple-use management;
13 (3) land where less than a fee simple title has been conveyed;
14 (4) land retained in state ownership under an enactment of the
15 legislature or by the governor or a state agency under authority of law.

16 * Sec. 4. AS 38.04.020(d) is repealed and reenacted to read:

17 (d) On January 15 of the first regular session of each legislature, the
18 commissioner shall report to the legislature on the total acreage of land planned and
classified as suitable under this title for

- 19 (1) settlement purposes, including homestead, commercial, or industrial
20 disposal;
21 (2) agricultural disposal; and
22 (3) grazing leases.

23 * Sec. 5. AS 38.04.020(e) is repealed and reenacted to read:

24 (e) The commissioner may annually submit to the governor an appropriation
25 request for the entire amount of funding estimated to be necessary for each project
26 proposal to allow survey and disposal of land proposed to be offered for (1) homestead
27 staking under AS 38.09; (2) agricultural, commercial, industrial, or other uses under
28 AS 38.05.055 or 38.05.057; or (3) other subdivisions. Each project proposal shall
29 include the general location of the land and the estimated cost of preliminary feasibility
30 studies, engineering design work, right-of-way acquisition, and construction of access
31

1 roads and capital improvements required by municipal subdivision ordinance or
2 regulation of the platting authority or otherwise necessary to develop and market the
3 land.

4 * Sec. 6. AS 38.04.020(g) is amended to read:

5 (g) The [AFTER JULY 1 OF EACH YEAR, THE] commissioner shall direct
6 the expenditure of money appropriated for the disposal of land in response to requests
7 made under (e) [AND (f)] of this section for the following:

8 (1) land [LAND] designated as suitable for homestead disposal shall
9 be [CLASSIFIED AND] surveyed under this chapter and AS 38.05 and made available
10 for entry [STAKING AND LEASE] under AS 38.09; [.]

11 (2) land [LAND] designated as suitable for subdivision and homesite
12 disposal shall be surveyed, subdivided, [CLASSIFIED,] and disposed of under this
13 chapter, AS 38.05, and AS 38.08; [.]

14 (3) land [LAND] designated agricultural, commercial, industrial, or
15 suitable for other disposal shall be sold under AS 38.05.055 or 38.05.057.

16 * Sec. 7. AS 38.04.020(h) is amended to read:

17 (h) Individual parcels disposed of in subdivisions intended for private
18 residential or recreational use may not exceed five acres unless the commissioner
19 determines that a larger size is necessary to comply with municipal ordinances; [.] to
20 permit the design of a viable subdivision because of topographical features, soil
21 conditions, on-site sewage disposal requirements, or water drainage or supply
22 considerations that are unique to the subdivision; to increase the return to the state
23 from the sale of the parcels; [.] to minimize adverse effect on wildlife, fishery, public
24 recreation, timber, or other significant resources in the area; [.] or to minimize adverse
25 effect on other residential uses in the area.

26 * Sec. 8. AS 38.04.020(i) is amended to read:

27 (i) Nothing in this section prevents the disposal of other land by the
28 commissioner in accordance with AS 38.05.055, 38.05.057, 38.05.070, the issuance of
29 remote recreational cabin site leases or sales [PERMITS] under AS 38.05.600
30 [AS 38.05.079], AS 38.08, AS 38.09, or other law.

31 * Sec. 9. AS 38.04.021(a) is amended to read:

1 (a) A municipality may apply for financial assistance for the execution of a
2 land disposal program of general grant land entitlements received from the state under
3 AS 29.65 or former AS 29.18.201 - 29.18.213 by submitting a request to the
4 commissioner for inclusion in the request submitted to the governor [LEGISLATURE]
5 under AS 38.04.020(e). A municipality may request financial assistance for expenses
6 of surveying land, designing subdivision plats, installing improvements required by
7 municipal ordinance or regulation of the local platting authority, and other reasonable
8 direct costs of land disposal.

9 * Sec. 10. AS 38.04.021(b) is amended to read:

10 (b) A request by a municipality under this section must be accompanied by

11 (1) a schedule for the disposal of municipal land for the next five years;
12 the schedule shall be based on an assessment of the demand for private land within the
13 municipality [AND INCLUDED IN THE ASSESSMENT SUBMITTED UNDER
14 AS 38.04.020(f)];

15 (2) an estimate of the number of acres of municipal land that the
16 municipality plans to dispose of during each fiscal year of the five-year period;

17 (3) a description of the methods to be used for the disposal of
18 municipal land and the terms under which it will be offered to the public; and

19 (4) a description of the municipal land that the municipality plans to
20 dispose of each fiscal year during the five-year period.

21 * Sec. 11. AS 38.04.030 is amended to read:

22 Sec. 38.04.030. LAND AVAILABILITY PROGRAMS. Programs that may
23 be used by the director to make the state's land surface available for private use under
24 AS 38.04.020 - 38.04.055 include sale of whole or partial rights to the fee simple
25 estate, including conveyance of agricultural use rights; leasing; [OPEN-TO-ENTRY;]
26 homesiting; homesteading; permitting for construction and occupation of cabins in
27 isolated locations on land retained in state ownership; and other methods as provided
28 by regulation or other law. Notwithstanding a contrary provision of this title, a
29 land availability program adopted by regulation must provide for competitive
30 disposal, based on no less than fair market value, to serve the best interests of the
31 state.

1 * Sec. 12. AS 38.04.035 is amended to read:

2 Sec. 38.04.035. CRITERIA FOR PROGRAM SELECTION. In determining
3 which land availability program is appropriate for state land in different locations, the
4 director shall be guided by the following criteria:

5 (1) to cover public costs associated with private land use and to provide
6 the public with a fair return for publicly owned property, conveyance of state land to
7 private parties shall [SHOULD] be at fair market value except where otherwise
8 authorized by statute, or by an administrative regulation the adoption of which is
9 specifically permitted by statute;

10 (2) sale or lease programs should be used where land is readily
11 accessible to a major community center or where, because of a prime location on
12 waterfront or a transportation route or some other location characteristic, land has
13 relatively high real estate value;

14 (3) sale programs are preferred but lease programs should be used

15 (A) where special land use controls are required and there is a
16 high public interest in having certain types of land used for particular purposes;

17 (B) when the intended use is a temporary one;

18 (C) in commercial or industrial situations when a leasehold can
19 provide cash flow advantages to the lessee;

20 (D) when a unique location with special public values is
21 involved, as in a deep water port, hydroelectric site, or aquaculture facility;

22 (E) where current demand for private use is high, but
23 projections suggest that, in the future, the land may be more valuable for public
24 use, as in accessible waterfront recreation areas;

25 (4) [FOR ENABLING ISOLATED CABIN DEVELOPMENT IN
26 REMOTE LOCATIONS WHERE SURVEY AND CONVEYANCE IS
27 IMPRACTICAL, OR WHERE DISPOSAL OF LAND WOULD CAUSE POTENTIAL
28 CONFLICTS WITH OTHER RESOURCES AND USES, OR WHERE A LONG-
29 RANGE INTEREST IN PUBLIC OWNERSHIP AND USE EXIST, A SYSTEM FOR
30 CABIN PERMITS ON PUBLIC LAND MAY BE USED;

31 (5)] limited or conditional title may be granted when the state's best

1 interest so dictates; among other things, title limitations may include grants of
2 agricultural interest only, retention of development rights, and retention of scenic or
3 other easements; a conditional title may be tied to a development schedule or other
4 standards of performance.

5 * Sec. 13. AS 38.04.045(b) is amended to read:

6 (b) Before the issuance of a long-term lease under AS 38.05.070 or of a patent
7 for state land, an official cadastral survey shall be accomplished, unless a comparable,
8 approved survey exists that has been conducted by the federal Bureau of Land
9 Management. Before land may be offered under AS 38.05.055, 38.05.057, AS 38.08,
10 or AS 38.09, an official rectangular survey grid shall be established. The rectangular
11 survey section corner positions shall be monumented and shown on a cadastral survey
12 plat approved by the state. For those areas where the state may wish to convey
13 surface estate outside of an official rectangular survey grid, the commissioner may
14 waive monumentation of individual section corner positions and substitute an official
15 control survey with control points being monumented and shown on control survey
16 plats approved by the state. The commissioner may not issue more than one
17 conveyance for each section within a township outside of an official rectangular survey
18 grid. No portion of land to be conveyed may be located more than two miles from an
19 official survey control monument except that the commissioner may waive this
20 requirement on a determination that a single purpose use does not justify the
21 requirement if the existing status of the land is known with reasonable certainty. The
22 lots and tracts in state subdivisions shall be monumented and the cadastral survey and
23 plats for the subdivision shall be approved by the state. Where land is located within
24 a municipality with planning, platting, and zoning powers, plats for state subdivisions
25 shall comply with local ordinances and regulations in the same manner and to the same
26 extent as plats for subdivisions by other landowners. State subdivisions shall be filed
27 and recorded in the district recorder's office. The requirements of this section do not
28 apply to land made available [THROUGH A CABIN PERMIT SYSTEM,] for material
29 sales, for short-term leases, or for parcels adjoining a surveyed right-of-way, [OR FOR
30 LAND THAT HAS BEEN OPEN TO RANDOM STAKING UNDER THE REMOTE
31 PARCEL PROGRAM OR HOMESTEAD PROGRAM IN THE PAST]; however, for

1 short-term leases the lessee must comply with local subdivision ordinances unless
2 waived by the municipality under procedures specified by ordinance. In this subsection,
3 "a single purpose use" includes a communication site, an aid to navigation, and a park
4 site.

5 * Sec. 14. AS 38.05.050 is amended to read:

6 Sec. 38.05.050. DISPOSAL OF LAND FOR PRIVATE OWNERSHIP. The
7 commissioner shall determine the land to be disposed of for private use. The
8 commissioner shall determine the time and place of disposal. An auction sale, a
9 lottery sale, or a disposal of land for homesites may [SHALL] be held in a community
10 that is near the land to be sold or disposed of.

11 * Sec. 15. AS 38.05.055 is amended to read:

12 Sec. 38.05.055. AUCTION SALE PROCEDURES. Unless another method of
13 sale is required under this chapter, [AS 38.07, OR] AS 38.08, or AS 38.09, the sale
14 of state land shall be made at public auction to the highest qualified bidder as
15 determined by the director. The director may accept bids and sell state land under this
16 section at no less than 70 percent of the appraised fair market value of the land. [A
17 BIDDER MUST APPEAR IN PERSON AT THE AUCTION UNLESS MEDICAL
18 REASONS, ATTENDANCE AT SCHOOL, OR MILITARY SERVICE OUTSIDE
19 THE STATE PREVENT ATTENDANCE.] A bidder may be represented by an
20 attorney or agent at the auction [IF THE LAND OFFERED FOR DISPOSAL IS
21 COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL LAND]. An aggrieved
22 bidder may appeal to the commissioner within five days after the sale for a review of
23 the director's determination. The sale shall be conducted by the director and at the
24 time of sale the successful bidder shall deposit an amount equal to five percent of the
25 purchase price. The director shall immediately issue a receipt containing a description
26 of the land or property purchased, the price bid, and the amount deposited. The
27 receipt shall be acknowledged in writing by the bidder.

28 * Sec. 16. AS 38.05.057(a) is amended to read:

29 (a) The commissioner may dispose of land, including land limited to use for
30 agricultural purposes, by lottery. The purchase price of land sold by lottery shall be
31 the fair market value of the land as determined by the commissioner. The

1 commissioner may sell land by lottery for less than the fair market value of the land
2 on a determination that scarcity of land for private use in the area of the land to be
3 sold has resulted in unrealistic land values. [THE COMMISSIONER SHALL
4 CONSULT WITH THE ASSESSOR OF A MUNICIPALITY BEFORE
5 DETERMINING THE PURCHASE PRICE FOR LAND THAT IS LOCATED IN
6 THE MUNICIPALITY AND THAT IS TO BE SOLD UNDER THIS SECTION.] The
7 lottery shall be conducted in public by the commissioner. A [AN APPLICANT MAY
8 NOT BE SELECTED TO PURCHASE LAND UNLESS THE APPLICANT IS
9 PRESENT ON THE DATE AND AT THE PLACE THAT THE LOTTERY IS
10 CONDUCTED UNLESS MEDICAL REASONS, ATTENDANCE AT SCHOOL, OR
11 MILITARY SERVICE OUTSIDE THE STATE PREVENT ATTENDANCE. AN
12 APPLICANT MAY BE REPRESENTED BY AN AGENT ON THE DAY OF THE
13 LOTTERY IF THE LAND OFFERED FOR SALE IS COMMERCIAL,
14 INDUSTRIAL, OR AGRICULTURAL LAND. ON THE DAY OF THE LOTTERY
15 A] purchaser selected by lot shall deposit an amount equal to five percent of the
16 purchase price within 30 days after receiving notification of the selection.

17 * Sec. 17. AS 38.05.065(a) is amended to read:

18 (a) The contract of sale for land sold at public auction under AS 38.05.055
19 shall require the remainder of the purchase price to be paid in monthly, quarterly, or
20 annual installments over a period of not more than 20 years, with interest at the
21 [PREVAILING] rate provided in (i) of this section [FOR REAL ESTATE
22 MORTGAGE LOANS MADE BY THE FEDERAL LAND BANK FOR THE FARM
23 CREDIT DISTRICT FOR ALASKA AT THE TIME THE CONTRACT IS SIGNED].
24 Installment payments plus interest shall be set on the level-payment basis.

25 * Sec. 18. AS 38.05.065(b) is amended to read:

26 (b) The contract of sale for land sold under AS 38.05.057 or under former
27 AS 38.05.078 shall require the remainder of the purchase price to be paid in monthly,
28 quarterly, or annual installments over a period of not more than 20 years. Installment
29 payments plus interest shall be set on the level-payment basis. The interest rate to be
30 charged on installment payments is the [PREVAILING] rate provided in (i) of this
31 section [FOR REAL ESTATE MORTGAGE LOANS MADE BY THE FEDERAL

1 LAND BANK FOR THE FARM CREDIT DISTRICT FOR ALASKA AT THE TIME
2 THE CONTRACT IS SIGNED].

3 * Sec. 19. AS 38.05.065 is amended by adding a new subsection to read:

4 (i) The interest rate for contracts under this section is the prime rate as
5 reported in the Wall Street Journal on the first business day of the month in which the
6 contract is sent to the purchaser for signature, plus 4 percent; however, the total rate
7 of interest may not exceed 13.5 percent.

8 * Sec. 20. AS 38.05.067(d) is amended to read:

9 (d) This section does not apply to the sale of state land under AS 38.05.057,
10 AS 38.08. or [AS 38.04.020(g)(2) AND] AS 38.09.

11 * Sec. 21. AS 38.05.069(a) is amended to read:

12 (a) On a determination that the highest and best use of unoccupied land is for
13 agricultural purposes and that it is in the best interests of the state to sell or lease the
14 land, the commissioner may [SHALL] grant to an Alaska [ALASKAN] resident
15 owning and using or leasing and using land for agricultural purposes a first option at
16 the auction to purchase or lease the unoccupied land situated adjacent to land presently
17 held by the Alaska [ALASKAN] resident for the amount of the high bid received at
18 public auction. If more than one Alaska [ALASKAN] resident qualifies for a first
19 option under this section, eligibility for the first option shall be determined by lot and
20 the option must be exercised on the conclusion of the public auction. A parcel of
21 agricultural land sold under this section may not be less than 20 acres and a parcel of
22 agricultural land that is acquired by exercise of the option granted in this subsection
23 may not exceed 320 acres. Agricultural land that is acquired under this section must
24 be used for agricultural purposes as required by law.

25 * Sec. 22. AS 38.05.069(e)(2) is repealed and reenacted to read:

26 (2) "adjacent" means that a tract of land has one common boundary
27 point with presently held land or is separated from the presently held land only by a
28 physical barrier such as a road or stream.

29 * Sec. 23. AS 38.05.075(a) is amended to read:

30 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, [38.05.079,]
31 38.05.082, 38.05.083, 38.05.087, 38.05.102, 38.05.600, 38.05.810, and this section,

1 leasing shall be made at public auction to the highest qualified bidder as determined
2 by the commissioner. In the public notice of a lease to be offered at public auction,
3 the commissioner shall specify a minimum acceptable bid and the lease compensation
4 method. The lease compensation method shall be designed to maximize the return on
5 the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).
6 An aggrieved bidder may appeal to the commissioner within five days for a review of
7 the determination. The leasing shall be conducted by the commissioner and the
8 successful bidder shall deposit at the auction the first year's rental or other lease
9 compensation as specified by the commissioner, or that portion of it that the
10 commissioner requires in accordance with the bid. The commissioner shall require,
11 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or
12 appraisal costs reasonably incurred by another qualified bidder acting in accordance
13 with the regulations of the commissioner or incurred by the department under
14 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal
15 costs is determined by the commissioner to be the highest qualified bidder under this
16 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those
17 costs or to the department if the department incurred the costs. All costs for survey
18 and appraisal shall be approved in advance in writing by the commissioner. The
19 commissioner shall immediately issue a receipt containing a description of the land or
20 interest leased, the price bid, and the terms of the lease to the successful qualified
21 bidder. If the receipt is not accepted in writing by the bidder under this subsection,
22 the commissioner may offer the land for lease again under this subsection. A lease,
23 on a form approved by the attorney general, shall be signed by the successful bidder
24 and by the commissioner within the period specified in the auction notice.

25 * Sec. 24. AS 38.05.082(b) is amended to read:

26 (b) The director may classify land as subject to leases for fisheries
27 development. In an area or region of the state for which a land use plan has not been
28 adopted under AS 38.04.065, the director may classify land for lease under this section
29 after notice under AS 38.05.945. The director may [SHALL] publicly invite
30 applications for lease of the selected areas. Each application shall be accompanied by
31 an affidavit to the effect that the applicant presently intends to personally utilize the

1 leased area for fishing purposes throughout the term of the lease [THE
2 FOLLOWING SEASON]. If two or more applications are received for the same shore
3 area, the director may offer [SHALL AWARD] the lease at public auction under
4 AS 38.05.075(a). If only one application is received and the appraisai value of the
5 lease is \$5.000 a year or less, the commissioner may issue a negotiated lease under
6 AS 38.05.070(b) [TO THE MOST QUALIFIED APPLICANT. IN DETERMINING
7 THE QUALIFICATIONS OF APPLICANTS, THE DIRECTOR SHALL CONSIDER
8 THE LENGTH OF TIME DURING WHICH THE APPLICANT HAS BEEN
9 ENGAGED IN SET NETTING, THE PROXIMITY OF THE PAST FISHING SITES
10 OF THE APPLICANT TO THE LAND TO BE LEASED, THE PRESENT ABILITY
11 OF THE APPLICANT TO UTILIZE THE LOCATION TO ITS MAXIMUM
12 POTENTIAL, AND OTHER FACTORS RELEVANT TO THE EQUITABLE
13 ASSIGNMENT OF THE DISPUTED AREA. IF THE DIRECTOR CANNOT
14 DETERMINE A PREFERENCE BETWEEN CONFLICTING APPLICANTS FOR
15 THE SAME LEASE SITE ON THE BASIS OF QUALIFICATIONS, THE
16 DIRECTOR SHALL SELECT BETWEEN THE APPLICANTS BY LOT. AN
17 AGGRIEVED APPLICANT MAY APPEAL TO THE COMMISSIONER WITHIN 30
18 DAYS FOR A REVIEW OF THE DIRECTOR'S DETERMINATION].

19 * Sec. 25. AS 38.05.082(c) is amended to read:

20 (c) A lease for set net fishing may be issued for any period not exceeding 10
21 years. If the commissioner determines that the land is not being utilized for the
22 purpose for which the lease is issued, the lease may be declared void. [THE
23 DIRECTOR SHALL ESTABLISH A REASONABLE RENTAL FOR THE LEASE,
24 EQUAL TO THE ADMINISTRATIVE COSTS INVOLVED IN PROCESSING THE
25 LEASEHOLD APPLICATIONS.]

26 * Sec. 26. AS 38.05.082(d) is amended to read:

27 (d) Subleasing and renewals of leases are governed by AS 38.05.095 and
28 38.05.102. Notwithstanding (b) of this section, a lease held under this section on
29 the effective date of this bill section may be renewed under terms and conditions
30 prescribed by the commissioner.

31 * Sec. 27. AS 38.05.083 is repealed and reenacted to read:

1 Sec. 38.05.083. AQUATIC FARMING AND HATCHERY SITE LEASES.

2 (a) The commissioner may offer to the public for lease at public auction under
3 AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic farming or
4 related hatchery operations. Before a final decision to issue or renew a lease under
5 this section, the commissioner shall give notice and allow opportunity for comment in
6 accordance with AS 38.05.945, and may hold a hearing to take testimony. Before a
7 final decision to issue or renew a lease under this section, the commissioner shall
8 consider all relevant comment or testimony submitted under this section, AS 38.05.945,
9 or 38.05.946.

10 (b) The commissioner, for good cause, may deny an application for issuance
11 or renewal of a lease under this section, but shall provide the applicant with written
12 findings that explain the reasons for the denial.

13 (c) A site may be leased under this section for not less than the appraised fair
14 market value of the lease. The value of the lease shall be reappraised every five years.

15 (d) A lease under this section may be assigned, but if the assignee changes the
16 use of the site the lease reverts to the state.

17 (e) Before entering into a lease under this section, the commissioner shall
18 require the lessee to post a performance bond or provide other security to cover the
19 costs to the department of restoring the leased site in the event the lessee abandons the
20 site.

21 (f) The commissioner shall adopt regulations establishing criteria for the
22 approval or denial of leases under this section and for limiting the number of sites for
23 which leases may be issued in an area in order to protect the environment and natural
24 resources of the area. The regulations must provide for the consideration of upland
25 management policies and whether the proposed use of a site is compatible with the
26 traditional and existing uses of the area in which the site is located.

27 * Sec. 28. AS 38.05.090 is repealed and reenacted to read:

28 Sec. 38.05.090. REMOVAL OR REVERSION OF IMPROVEMENTS UPON
29 TERMINATION OF LEASES. (a) Unless otherwise agreed to in writing by the
30 commissioner, a lessee shall remove from a former leasehold

31 (1) all personal property, including above-ground and below-ground

1 tanks, transportable buildings, equipment, machinery, tools, and other goods, not
2 belonging to the state, within 30 days after termination of the lease; and

3 (2) all buildings and fixtures, including gravel pads, foundations, and
4 slabs, not belonging to the state, within 60 days after termination of the lease.

5 (b) Unless otherwise agreed to in writing by the commissioner, the lessee shall
6 restore the leasehold to a good and marketable condition, acceptable to the
7 commissioner, within 120 days after termination of the lease.

8 (c) If the lessee does not remove personal property, buildings, and fixtures as
9 required within the time specified under (a) of this section, title to the personal
10 property, buildings, and fixtures that remain automatically vests in the state unless the
11 commissioner elects to remove and dispose of the remaining personal property,
12 buildings, and fixtures of the lessee. The commissioner may assess upon the lessee
13 the cost of removing and disposing of personal property, buildings, and fixtures
14 remaining upon the land.

15 (d) If the lessee does not restore the land within the time period specified
16 under (b) of this section, the commissioner may have the land restored and assess the
17 costs upon the lessee.

18 (e) As part of a lease agreement, and in order to protect the public interest, the
19 commissioner may require terms for removal or reversion of improvements additional
20 to those specified in (a) - (d) of this section.

21 (f) Private residential improvements of a lessee that have become fixtures of
22 the land and that are not removed by that lessee upon termination of the lease shall be
23 purchased by the subsequent purchaser of the land if the improvements were
24 authorized in the former lease or by permit from the director and if they have a net
25 value of more than \$10,000. The net value is the value of the improvements as
26 determined by an appraisal approved by the commissioner, less all rents due the
27 department, all costs of restoration under (d) of this section, and all department
28 expenses estimated to be incurred in making the sale. After termination of the former
29 lessee's lease, and at additional times as determined necessary by the commissioner,
30 the value of the authorized residential fixtures shall be determined by an independent
31 appraisal made at the cost of the former lessee. A notice or offer by the state to sell

1 formerly leased land under this subsection must state (1) the appraised value of
 2 authorized residential fixtures remaining on the land that must be purchased, and (2)
 3 that that cost is included in the purchase price. Out of the proceeds of the sale, the
 4 department shall pay to the former lessee the appraised value of the residential
 5 improvements, less all rents due the department, all costs of restoration due the
 6 department under (d) of this section, and all department expenses incurred in making
 7 the sale.

8 (g) Personal property described in (c) of this section is not subject to AS 34.45
 9 (Uniform Unclaimed Property Act).

Deleted ← * Sec. 29. AS 38.05.130 is amended to read:

11 Sec. 38.05.130. DAMAGES AND POSTING OF BOND. Except for entry
 12 to post mining location corners under AS 38.05.195, 38.05.205, or 38.05.245, rights
 13 [RIGHTS] may not be exercised by the state, its lessees, successors or assigns under
 14 the reservation as set out in AS 38.05.125 until the state, its lessees, successors, or
 15 assigns make provision to pay the owner of the land full payment for all damages
 16 sustained by the owner, by reason of entering upon the land. If the owner for any
 17 cause refuses or neglects to settle the damages, the state, its lessees, successors,
 18 assigns, or an applicant for a lease or contract from the state for the purpose of
 19 prospecting for valuable minerals, or option, contract or lease for mining coal or lease
 20 for extracting geothermal resources, petroleum, or natural gas, may enter upon the land
 21 in the exercise of the reserved rights after posting a surety bond determined by the
 22 director, after notice and an opportunity to be heard, to be sufficient as to form,
 23 amount, and security to secure to the owner payment for damages, and may institute
 24 legal proceedings in a court where the land is located, as may be necessary to
 25 determine the damages that [WHICH] the owner may suffer.

26 * Sec. 30. AS 38.05.131(a) is amended to read:

27 (a) Unless specifically provided otherwise in AS 38.05.132 - 38.05.134, the
 28 provisions of AS 38.05.005 - 38.05.037 [AS 38.05.005 - 38.05.040], 38.05.140(f),
 29 38.05.180, 38.05.182 - 38.05.184, and 38.05.920 - 38.05.990 apply to the issuance of
 30 oil and gas exploration licenses and leases under AS 38.05.132 - 38.05.134.

31 * Sec. 31. AS 38.05.185(a) is amended to read:

1 (a) The acquisition and continuance of rights in and to deposits on state land
2 of minerals, which on January 3, 1959, were subject to location under the mining laws
3 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in
4 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to
5 mineral deposits owned by any other person or government. The director, with the
6 approval of the commissioner, shall determine that land from which mineral deposits
7 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that
8 land that shall be closed to location under AS 38.05.185 - 38.05.275 [MINING].
9 State land may not be closed to [MINING OR MINERAL] location under
10 AS 38.05.185 - 38.05.275 except as provided in AS 38.05.300 and unless the
11 commissioner makes a finding that mining would be incompatible with significant
12 surface uses on the state land. State land may not be restricted to mining under lease
13 unless the commissioner determines that potential use conflicts on the state land
14 require that mining be allowed only under written leases issued under AS 38.05.205
15 or the commissioner has determined that the land was mineral in character at the time
16 of state selection. The determinations required under this subsection shall be made in
17 compliance with land classification orders and land use plans developed under
18 AS 38.05.300.

19 * Sec. 32. AS 38.05.190(a) is amended to read:

20 (a) The right to acquire exploration and mining rights under AS 38.05.185 -
21 38.05.275 may be acquired or held only by

22 (1) citizens of the United States at least 18 years of age;

23 (2) legal guardians or trustees of citizens of the United States under 18
24 years of age on behalf of the citizens;

25 (3) persons at least 18 years of age who have declared their intention
26 to become citizens of the United States;

27 (4) [ALIENS AT LEAST 18 YEARS OF AGE IF THE LAWS OF
28 THEIR COUNTRY GRANT LIKE PRIVILEGES TO CITIZENS OF THE UNITED
29 STATES;

30 (5)] corporations organized under the laws of the United States or of
31 any state or territory of the United States and qualified to do business in this state [,

1 EXCEPT THAT IF MORE THAN 50 PERCENT OF THE STOCK OF A
2 CORPORATION IS OWNED OR CONTROLLED BY ALIENS WHO ARE NOT
3 QUALIFIED, THE CORPORATION IS NOT QUALIFIED TO ACQUIRE OR HOLD
4 THE RIGHTS];

5 (5) [(6)] associations of persons described in (1) - (4) [(1) - (5)] of this
6 subsection.

7 * Sec. 33. AS 38.05.211(d) is repealed and reenacted to read:

8 (d) The rental amount established under this section shall be revised by the
9 commissioner as provided in this section based on changes in the Consumer Price
10 Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average)
11 compiled by the Bureau of Labor Statistics, United States Department of Labor, as
12 revised, rebased or replaced by that bureau. The reference base index is the index for
13 January - June, 1989, as revised or rebased by that bureau. The rental amount shall
14 be revised by the commissioner if the change between the index for the first six
15 months of the current year and the most recent index used to revise the rental, or the
16 reference base index if the rental amount has never been revised, equals or exceeds \$5.
17 The rental amount shall be increased or decreased, as appropriate, by an amount equal
18 to the change in the index described in this subsection rounded to the nearest whole
19 \$5 unit. The commissioner shall calculate the change in the index annually and, if the
20 rental amount must be revised, shall adopt a regulation establishing the revised rental
21 amount. A revised rental amount applies to a rental payment if the regulation
22 establishing the revised rental amount took effect at least 90 days before the date the
23 rental payment is due.

24 * Sec. 34. AS 38.05.255 is amended to read:

25 Sec. 38.05.255. SURFACE USE OF LAND OR WATER. Surface uses of
26 land or water included within mining properties by owners of those properties shall be
27 limited to those necessary for the prospecting for, extraction of, or basic processing of
28 mineral deposits and shall be subject to reasonable concurrent uses. Leases
29 [PERMITS] for millsites and tailings disposal may be issued [GRANTED] by the
30 director. The leases [PERMITS] shall be conditioned upon payment of a reasonable
31 annual rent [CHARGE] for the lease [USE] and restriction to [CONTINUANCE OF]

1 the limited use. Timber from land open to mining without lease, except timberland,
2 may be used by a mining claimant or prospecting site locator for the mining or
3 development of the location or adjacent claims under common ownership. On other
4 land, timber may be acquired as provided in this chapter. Use of water shall be made
5 in accordance with AS 46.15.

6 * Sec. 35. AS 38.05.255 is amended by adding a new subsection to read:

7 (b) A lease issued under this section is exempt from the provisions of
8 AS 38.05.075 - 38.05.080. The commissioner, by regulation, shall establish
9 appropriate leasing procedures and annual rent amounts for leases under this section.

10 * Sec. 36. AS 38.05.265 is amended to read:

11 Sec. 38.05.265. ABANDONMENT. Failure to properly record a certificate of
12 location or a statement of annual labor, [FILE WITH THE DIRECTOR WITHIN THE
13 TIME PRESCRIBED A LEASE APPLICATION,] pay any required annual rental, pay
14 any required production royalty, or keep location boundaries clearly marked as
15 required by AS 38.05.185 - 38.05.275 and by regulations adopted under these sections
16 constitutes abandonment of all rights acquired under the mining claim, leasehold
17 location, lease, or site involved, and the claim, location, lease, or site is subject to
18 relocation by others. A locator or claimant of an abandoned location or a successor
19 in interest may not relocate the location until one year after abandonment. A statement
20 of annual labor that does not accurately set out the essential facts is void and of no
21 effect. If an annual rental or a royalty payment is deficient but is otherwise timely
22 paid, abandonment does not result if full payment is made within

23 (1) the period prescribed by a deficiency notice from the commissioner;

24 or

25 (2) 30 days after a final judgment establishing the amount due if the
26 deficiency amount due was contested.

27 * Sec. 37. AS 38.05 is amended by adding a new section to read:

28 **ARTICLE 12A. REMOTE RECREATIONAL CABIN SITE SALES AND LEASES.**

29 Sec. 38.05.600. REMOTE RECREATIONAL CABIN SITES. (a) The
30 commissioner may provide for the sale or lease of state land for remote recreational
31 cabin sites in areas of the state with dispersed populations if the land is classified for

1 that purpose under the procedures required by AS 38.05.300 and 38.05.945. Sales
2 under this section shall be at fair market value and the purchaser shall reimburse the
3 state for the appraisal, survey, and platting costs for the recreational cabin site.

4 (b) The annual fee for a remote recreational cabin site lease shall be set by the
5 commissioner so as to ensure that the state receives a fair return for the use granted
6 by the lease for the term of the lease. The commissioner shall establish regulations
7 that specify the application procedures for and the terms and conditions of a remote
8 recreational cabin site lease. A lease must be for a term of not more than five years,
9 and may be renewed for one additional five-year period. At any time during the lease,
10 the lessee may purchase the remote recreational cabin site by having the site appraised
11 and surveyed in a manner acceptable to the department and by paying to the state the
12 fair market value for the site. The lease may not be assigned by the original lessee
13 during the term of the lease.

14 (c) A remote recreational cabin site lease may be terminated by the
15 commissioner before the expiration of the term of the lease if a permittee fails to use
16 the land under lease in the manner required by the terms of the lease. After
17 termination of a remote recreational cabin site lease, improvements or personal
18 property on the land subject to the lease shall be managed in the same manner as
19 required by AS 38.05.090.

20 * Sec. 38. AS 38.05.810(a) is amended to read:

21 (a) Except as otherwise provided in AS 38.05.183(h), the (1) lease, sale, or
22 other disposal of state land or resources may be made to a state or federal agency or
23 political subdivision, (2) [THE] lease, sale, or disposal of coal deposits suitable for
24 mining may be made to a utility owned and operated by a government agency or
25 nonprofit cooperative association organized to participate under the Federal Rural
26 Electrification Act for the purpose of generating electric power and energy or the
27 production of process steam, or both, (3) [OR THE] sale or other disposal of state land
28 may be made to a tax-exempt, nonprofit corporation, association, club, or society
29 organized and operated exclusively for the management of a cemetery or a solid waste
30 facility, (4) sale or other disposal of land within a state subdivision may be
31 made to that subdivision's nonprofit, tax-exempt homeowners' association, for less

1 than the appraised value as determined by the director and approved by the
2 commissioner to be fair and proper and in the best interests of the public, with due
3 consideration given to the nature of the public services or function rendered by the
4 applicant [AGENCY, SUBDIVISION, TAX-EXEMPT, NONPROFIT
5 CORPORATION, ASSOCIATION, CLUB, OR SOCIETY, OR UTILITY MAKING
6 APPLICATION], and of the terms of the grant under which the land was acquired by
7 the state. The commissioner shall ensure, by regulation, deed restriction, covenant,
8 or otherwise, that disposals of land under this subsection serve a public purpose
9 and are in the public interest.

10 * Sec. 39. AS 38.05.850(a) is amended to read:

11 (a) The director, without the prior approval of the commissioner, may issue
12 permits, rights-of-way or easements on state land for roads, trails, ditches, field
13 gathering lines or transmission and distribution pipelines not subject to AS 38.35,
14 telephone or electric transmission and distribution lines, log storage, oil well drilling
15 sites and production facilities for the purposes of recovering minerals from adjacent
16 land under valid lease, and other similar uses or improvements, or revocable,
17 nonexclusive permits for the [LIMITED] personal or commercial use or removal of
18 resources that the director has determined to be of limited value [OF TIMBER OR
19 MATERIALS]. The commissioner, upon recommendation of the director, shall
20 establish a reasonable rate or fee schedule to be charged for these uses, subject to the
21 exception for nonprofit cooperative associations specified in (b) of this section. In the
22 granting, suspension or revocation of a permit or easement of land, the director shall
23 give preference to that use of the land which will be of greatest economic benefit to
24 the state and the development of its resources. However, first preference shall be
25 granted to the upland owner for the use of a tract of tideland, or tideland and
26 contiguous submerged land, which is seaward of the upland property of the upland
27 owner and which is needed by the upland owner for any of the purposes for which the
28 use may be granted.

29 * Sec. 40. AS 38.05.945(a) is amended to read:

30 (a) This section establishes the requirements for notice given by the department
31 for the following actions:

1 (1) classification or reclassification of state land under AS 38.05.300
2 and the closing of land to mineral leasing or entry under AS 38.05.185;

3 (2) zoning of land under applicable law;

4 (3) issuance of a

5 (A) preliminary written finding under AS 38.05.035(e)(5)(A)
6 regarding the sale, lease, or disposal of an interest in state land or resources for
7 oil and gas subject to AS 38.05.180(b);

8 (B) final written finding under AS 38.05.035(e)(5)(B) regarding
9 the sale, lease, or disposal of an interest in state land or resources for oil and
10 gas subject to AS 38.05 180(b);

11 (C) written finding for the sale, lease, or disposal of an interest
12 in state land or resources under AS 38.05.035(e)(6);

13 (4) a competitive disposal of an interest in state land or resources after
14 final decision under AS 38.05.035(e);

15 (5) [A PUBLIC HEARING UNDER AS 38.05.856(b);

16 (6)] a preliminary finding under AS 38.05.035(e) [AND 38.05.855(c)]
17 concerning sites for aquatic farms and related hatcheries;

18 (6) [(7)] a decision under AS 38.05.132 - 38.05.134 regarding the sale,
19 lease, or disposal of an interest in state land or resources.

20 * Sec. 41. AS 38.08.030(b) is amended to read:

21 (b) Fees for filing an application may not exceed \$25 [\$10].

22 * Sec. 42. AS 38.08.040(a) is amended to read:

23 (a) An applicant meeting the qualifications for homesite entry under
24 AS 38.08.030 and selected under (f) of this section shall be issued a revocable permit
25 to occupy and improve the homesite in order to qualify for issuance of patent as
26 provided in this chapter. The holder of a homesite entry permit shall pay, in
27 advance, an annual rental fee of \$100. [THE APPLICATION FEE IS THE SOLE
28 RENT CHARGEABLE ON THE PERMIT FOR ITS DURATION.]

29 * Sec. 43. AS 38.08.040 is amended by adding a new subsection to read:

30 (f) If only one application for a homesite parcel is received, the commissioner
31 shall offer an entry permit for the parcel to the applicant provided the applicant is

1 otherwise qualified. If more than one application is received for a parcel, the
2 commissioner shall select by lottery the applicant who is entitled to receive the permit
3 for the parcel. The lottery shall be conducted under regulations adopted by the
4 commissioner that are to the maximum extent practicable consistent with the provisions
5 of AS 38.05.057 and the regulations adopted under that section.

6 * Sec. 44. AS 38.09.010(g) is amended to read:

7 (g) The commissioner may limit the number of persons permitted to obtain
8 [STAKE] homestead entries within an area designated under (a) of this section by a
9 lottery of qualified applicants. [THE COMMISSIONER MAY CONDUCT A
10 LOTTERY HELD UNDER THIS SUBSECTION IN THE COMMUNITY THAT IS
11 CLOSEST TO THE AREA DESIGNATED FOR HOMESTEAD ENTRY. THE
12 COMMISSIONER MAY REQUIRE THAT EACH PARTICIPANT IN THE
13 LOTTERY BE PRESENT UNLESS ATTENDANCE AT THE LOTTERY IS
14 PREVENTED BY

15 (1) MEDICAL REASONS, ATTENDANCE AT SCHOOL, OR
16 MILITARY SERVICE OUTSIDE THE STATE; OR

17 (2) A MANDATORY, UNAVOIDABLE EMPLOYMENT
18 COMMITMENT DETERMINED VALID BY THE COMMISSIONER BEFORE THE
19 SALE.]

20 * Sec. 45. AS 38.09.030(a) is amended to read:

21 (a) An applicant for a homestead entry permit shall

22 (1) submit proof acceptable to the commissioner that the applicant is
23 at least 18 years of age and has been a resident of the state for not less than one year
24 immediately before the date of application; and

25 (2) pay a fee of \$5 per acre according to the description provided by
26 the applicant if the entry is on land classified agricultural, or \$20 per acre if the
27 entry is on land not classified agricultural;

28 (3) agree to comply with the requirements of AS 38.09.050 [;

29 (4) CERTIFY THAT THE CORNERS OF THE LAND ENTERED
30 HAVE BEEN STAKED AND THE BOUNDARIES HAVE BEEN FLAGGED; OR

31 (5) ASSUME FULL RESPONSIBILITY FOR THE ACCURACY OF

1 THE DESCRIPTION OF THE LAND FILED WITH THE COMMISSIONER UNDER
2 AS 38.09.020(b)].

3 * Sec. 46. AS 38.09.050(a) is amended to read:

4 (a) The commissioner shall issue a patent to homestead entry land if the permit
5 holder

6 (1) either

7 (A) resides and lives on the homestead entry land for not less
8 than 25 months within five years after the issuance of the homestead entry
9 permit and reimburses the state for the survey and platting of the
10 homestead parcel:

11 (B) within five years pays the state the fair market value of
12 the homestead parcel at the time of patent and reimburses the state for the
13 survey and platting of the homestead parcel; or

14 (C) pays to the state the fair market value of the homestead
15 parcel under the terms of a contract under AS 38.05.065 to purchase the
16 parcel, entered into within five years of the issuance of the permit, and
17 reimburses the state for the survey and platting of the parcel; under this
18 subparagraph, the fair market value of the homestead parcel shall be
19 determined as of the date of the contract; and

20 (2) [SUBMITS AN ALIQUOT PARTS DESCRIPTION OR
21 COMPLETES AN APPROVED SURVEY OF THE LAND IN AN AREA WHERE
22 THE COMMISSIONER WAIVES THE RECTANGULAR SURVEY GRID WITHIN
23 FIVE YEARS AFTER THE ISSUANCE OF THE PERMIT;

24 (3) ERECTS A HABITABLE, PERMANENT DWELLING ON THE
25 HOMESTEAD WITHIN THREE YEARS AFTER THE ISSUANCE OF THE
26 HOMESTEAD ENTRY PERMIT;

27 (4) BRUSHES THE BOUNDARIES OF THE LAND NOT
28 DESCRIBED BY ALIQUOT PARTS OR AS A LOT OF RECORD WITHIN 90
29 DAYS AFTER THE ISSUANCE OF THE PERMIT;

30 (5)] clears and either puts into production or prepares for cultivation
31 either 25 percent of the land classified for agricultural use or 50 percent of the

1 cropland soils, whichever is less, within five years after issuance of the permit.

2 * Sec. 47. AS 38.09.050(b) is amended to read:

3 (b) Nothing in this chapter prohibits a homestead entry permit holder from
4 residing in a temporary dwelling on the homestead [BEFORE ERECTION OF THE
5 PERMANENT DWELLING].

6 * Sec. 48. AS 38.09 is amended by adding a new section to read:

7 Sec. 38.09.105. REMOVAL OF CONDITIONS ON REMOTE PARCEL AND
8 HOMESTEAD ENTRY LAND. (a) The commissioner may not include the
9 conditions of former AS 38.05.078(d) in a remote parcel purchase contract issued on
10 or after the effective date of this section.

11 (b) The commissioner shall amend a remote parcel or homestead entry land
12 purchase contract or patent issued before the effective date of this section to remove
13 the conditions of former AS 38.05.078(d) or former AS 38.09.050(e) if the holder of
14 the purchase contract or patent

15 (1) requests the amendment;

16 (2) pays the reasonable administrative costs of the amendment as
17 determined by the commissioner; and

18 (3) pays the difference, as established by the commissioner, between
19 the land's fair market value before the amendment and the estimated fair market value
20 after the amendment.

21 * Sec. 49. AS 38.95 is amended by adding a new section to read:

22 ARTICLE 7. NO OBLIGATION TO PROVIDE SERVICES TO DISPOSALS
23 OF STATE LAND; NO LIMITATION ON FURTHER DISPOSALS.

24 Sec. 38.95.300. DISCLAIMER APPLICABLE TO STATE DISPOSALS.

25 Except as otherwise specifically provided, nothing in this title

26 (1) obligates the state to provide services to land that is disposed of by
27 the state, or any grantee of the state, or is the subject of any disposal program;

28 (2) limits the authority of the state to dispose of land or any interest
29 in land or resources in the area of the current disposal, provides any exclusive right
30 or interest in the area of the disposal, or implies or requires that any disposals made
31 will be limited in type or any other manner.

1 * **Sec. 50.** AS 38.04.020(c), 38.04.020(f), 38.04.020(j), 38.04.020(k);
2 AS 38.05.035(e)(6)(F), 38.05.040, 38.05.057(g), 38.05.057(j), 38.05.079, 38.05.207, 38.05.855,
3 38.05.856, 38.05.945(g), 38.05.946(b); AS 38.08.090; AS 38.09.010(e), 38.09.020,
4 38.09.040(a)(2), 38.09.040(a)(3), 38.09.040(a)(4), 38.09.050(d), 38.09.050(e), 38.09.060,
5 38.09.070, 38.09.090, 38.09.900(1), 38.09.900(3), and 38.09.900(4) are repealed.

6 * **Sec. 51.** Notwithstanding AS 41.21.120 - 41.21.125, within Township 10 North, Range
7 1 East, Seward Meridian, the commissioner of natural resources may

8 (1) convey a property interest in land to the Alaska Railroad Corporation for
9 the purpose of realigning the railroad in conjunction with the relocation of the Seward
10 Highway, provided that the property interest conveyed must be equivalent to that conveyed
11 to the state-owned railroad under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
12 1982) and shall be held and managed by the Alaska Railroad Corporation under AS 42.40;

13 (2) grant a 300 foot wide highway easement to the Department of
14 Transportation and Public Facilities for the relocated Seward Highway;

15 (3) grant a 100 foot wide utility easement to Chugach Electric Association,
16 Inc., for the relocation of the 115 kilovolt electric transmission line (Federal Power
17 Commission project no. 2170, AA-39417, and ADL 32417) and the electric distribution line
18 (A-029885) located within the Chugach State Park.

19 * **Sec. 52.** A disposal by the Department of Natural Resources of a homesite under
20 AS 38.08 by lottery, on or after July 6, 1984, and before the effective date of this section, is
21 valid and effective, notwithstanding the fact that the disposal was by lottery, if the disposal
22 otherwise complied with the requirements of AS 38.08.

23 * **Sec. 53.** **APPLICABILITY.** The change to the interest rate to be charged on contracts
24 for the sale of land under AS 38.05.065, made by secs. 17 - 19 of this Act, applies to all
25 contracts under AS 38.05.065 sent by the Department of Natural Resources to purchasers for
26 signature on or after the effective date of secs. 17 - 19 of this Act.

27 * **Sec. 54.** **REVISOR'S INSTRUCTION.** The amendments to AS 38.05.082(b), made by
28 sec. 24 of this Act, do not affect the amendments made to that subsection by sec. 3, ch. 27,
29 SLA 1991, effective January 1, 1997. Unless amended or repealed by Act of the legislature
30 after the effective date of this section, the amendments to AS 38.05.082(b), made by sec. 24
31 of this Act, continue in effect after the amendments made by sec. 3, ch. 27, SLA 1991, take

1 effect January 1, 1997.

2 * Sec. 55. TRANSITIONAL PROVISIONS: REGULATIONS. (a) Notwithstanding
3 sec. 56 of this Act, the Department of Natural Resources may proceed to adopt regulations
4 necessary to implement the changes made by this Act. The regulations take effect under
5 AS 44.62 (Administrative Procedure Act), but not before July 1, 1995.

6 (b) To the extent they are consistent with AS 38.08, regulations governing the
7 selection of applicants for homesite parcels under AS 38.08 in effect on the effective date of
8 secs. 42 - 43 of this Act remain in effect notwithstanding the amendment to AS 38.08.040,
9 made by secs. 42 - 43 of this Act, until the regulations are amended, repealed, or superseded.

10 * Sec. 56. Except for sec. 55 of this Act, this Act takes effect July 1, 1995.

11 * Sec. 57. Section 55 of this Act takes effect immediately under AS 01.10.070(c).