

HB

109

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 23, 1997

FURTHER REFERRALS:

Date of Committee Action: 4/28/97

The FINANCE Committee considered:

HB 109

HOUSE BILL NO. 109

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 CS HB109 (FIN) the same title
 a new title

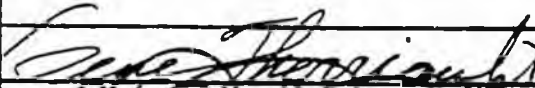

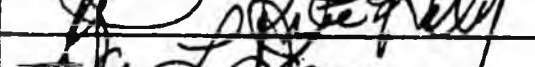
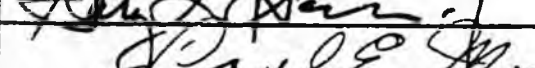
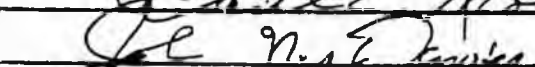
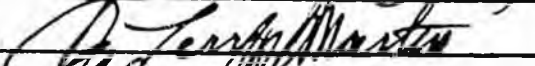


additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____ APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____ fiscal note(s) DNR 4/23/97

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
 Therriault	X			
 Foster	X			
 Kelly	X			
 G. Davis	X			
 Moses	X			
 J. Davies	X			
 Martin	X			
 Mulder	X			

CHAIR'S SIGNATURE


Therriault

FISCAL NOTE

No. 1
 Bill Version: HB 109
 (H) Publish Date: 4/23/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. _____

Revision Date: _____ Dept Affected: Natural Resources
 Title: An Act relating to the management and disposal BRU: Resource Development
of state land and resources; relating to...remote parcels and... Component: Land Development
 Sponsor: Rep. Theriault
 Requestor: H(RES) Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1005)	93.0	93.0	93.0	93.0	93.0	93.0

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY98	FY99	FY00	FY01	FY02	FY03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ None

POSITIONS

POSITIONS	FY98	FY99	FY00	FY01	FY02	FY03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact associated with this legislation based on the assumption that the bill's improvements to land management and disposal laws will allow the division to focus on processing the existing backlog of applications more efficiently.

Change in revenue assumes 200 acres of new homesteads are purchased each year at \$350/acre, \$225/acre more than they would bring under current law (\$45.0), and ten existing homesteads or remote parcels "buy out" their conveyance restrictions at \$4.8 per parcel (\$48.0).

Prepared by: Jane Angvik, Director *[Signature]* Phone: 269-8503
 Division: Land Date: 15-Apr-97
 Approved by Commissioner: *[Signature]* Date: _____
 Agency: Natural Resources

NO OBJ 4/24/97

O-LS0073VH.2
Luckhaupt
4/23/97

1

A M E N D M E N T

Shorelines

OFFERED IN THE HOUSE

TO: HB 109

1 Page 10, following line 21:

2 Insert new bill sections to read:

3 **** Sec. 24.** AS 38.05.075(c) is amended to read:

4 (c) The owner or lessee of land that fronts on shoreland, tideland, [TIDE]
5 or submerged land of the state may be granted a preference right to [IS ENTITLED
6 TO ACQUIRE] a lease for the shoreland, tideland, or [TIDE AND] submerged land
7 without competitive bidding if the director determines that

8 (1) the lease of the shoreland, tideland, [TIDE] or submerged land
9 is necessary to facilitate water transportation of goods, services, or resources to or
10 from the owned or leased upland or for another water-dependent purpose;

11 (2) the proposed use of the shoreland, tideland, [TIDE] or submerged
12 land is compatible with the classification of the land and with any applicable land use
13 plan adopted under AS 38.04.065; and

14 (3) issuance of the lease to the shoreland, tideland, [TIDE] or
15 submerged land will not interfere with prior existing rights to the leased land.

16 *** Sec. 25.** AS 38.05.075(d) is amended to read:

17 (d) If the commissioner issues a lease under (c) of this section, the right of
18 access to the shoreland, tideland, or [TIDE AND] submerged land shall be
19 nonexclusive in the lessee unless the commissioner grants the lessee the exclusive
20 right to use the shoreland, tideland, or [TIDE AND] submerged land."

21 Renumber the following bill sections accordingly.

22 Page 20, line 15:

23 Delete "sec. 47"

1 Insert "sec. 49"

2 Page 20, line 20:

3 Delete "secs. 33 and 34"

4 Insert "secs. 35 and 36"

5 Page 20, line 21:

6 Delete "secs. 33 and 34"

7 Insert "secs. 35 and 36"

8 Page 20, line 25:

9 Delete "sec. 45"

10 Insert "sec. 47"

11 Page 20, line 26:

12 Delete "Section 45"

13 Insert "Section 47"

NO OBJ 4/28/97 #2

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 109

- 1 Page 14, following line 18:
2 Insert a new bill section to read:
3 ** Sec. 29. AS 38.05.840(a) is amended to read:
4 (a) Land may not be sold or leased, or a renewal lease issued, except in the
5 case of an oil or gas or mineral lease, unless it has been appraised within two years
6 [ONE YEAR] before the date fixed for the sale or lease. When land is offered at
7 public sale but is not sold and is available at private sale, a reappraisal is not required
8 unless the director considers that a change in value of the land may have occurred.
9 A grazing lease may be granted to a lessee of federal grazing land without prior
10 appraisal [,] if the federal lease was cancelled to allow the state to select the land
11 under lease. Land may not be sold or leased for less than the approved, appraised
12 market value, except as provided in AS 38.05.055, 38.05.057, 38.05.075 - 38.05.085,
13 38.05.097, 38.05.810, and 38.05.820."
- 14 Renumber the following bill sections accordingly.
- 15 Page 20, line 15:
16 Delete "sec. 47"
17 Insert "sec. 48"
- 18 Page 20, line 20:
19 Delete "secs. 33 and 34"
20 Insert "secs. 34 and 35"
- 21 Page 20, line 21:

1 Delete "secs. 33 and 34"

2 Insert "secs. 34 and 35"

3 Page 20, line 25:

4 Delete "sec. 45"

5 Insert "sec. 46"

6 Page 20, line 26:

7 Delete "Section 45"

8 Insert "Section 46"

NO OBJ 4/28/97
#3

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 109

1 Page 20, following line 5:

2 Insert a new bill section to read:

3 ** Sec. 43. (a) Notwithstanding the decision of the Alaska Supreme Court in Kachemak
4 Bay Watch v. Noah, _____ P.2d _____ (Sup. Ct. No. S-7326; April 11, 1997), the
5 Department of Natural Resources shall issue a lease under AS 38.05.083, as amended by sec.
6 24 of this Act, to a person who, on April 10, 1997, held a lease issued under AS 38.05.083
7 as it read on the day before the effective date of this Act. Notwithstanding AS 38.05.083,
8 as amended by sec. 24 of this Act, the terms and conditions of a lease issued under this
9 subsection shall be substantially similar to the terms of the lease as it read on the day before
10 the effective date of this Act. Notice under AS 38.05.945 and a best interest determination
11 under AS 38.05.035 are not required for the issuance of a lease under this subsection.

12 (b) Notwithstanding the repeal of AS 38.05.856 by sec. 41 of this Act and the
13 decision of the Alaska Supreme Court in Kachemak Bay Watch v. Noah, _____ P.2d _____
14 (Sup. Ct. No. S-7326; April 11, 1997), the Department of Natural Resources shall allow a
15 person who, on April 10, 1997, held a permit issued under former AS 38.05.856 that had not
16 been revoked or for which renewal had not been denied to continue to operate under the
17 terms and conditions of the permit as it read on the day before the effective date of this Act
18 if the person applies within 90 days of the effective date of this Act for a lease under
19 AS 38.05.083, as amended by sec. 24 of this Act. The department shall provide a preference
20 right to a person applying for a lease under this subsection who has developed an aquatic
21 farm site under former AS 38.05.855 by October 1, 1998. The right of a person to continue
22 to operate under the terms and conditions of a previous permit continues until the earlier of
23 the date the person's lease application is denied by the department, the date the person is
24 issued a lease by the department, or July 1, 1999. The right of a person to continue to
25 operate under the terms and conditions of a previous permit as allowed by this subsection is

1 proper notwithstanding a failure of the department to properly identify districts under former
2 AS 38.05.855 before the issuance of the permit."

3 Renumber the following bill sections accordingly.

4 Page 20, line 15:

5 Delete "sec. 47"

6 Insert "sec. 48"

7 Page 20, line 25:

8 Delete "sec. 45"

9 Insert "sec. 46"

10 Page 20, line 26:

11 Delete "Section 45"

12 Insert "Section 46"

Alaska State Legislature

REPRESENTATIVE
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House Of Representatives

House District 33

House Bill 109

"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:

House Bill 109 is a housekeeping measure intended primarily to clarify certain Title 38 statutes governing the Department of Natural Resources' management of state land and resources. This bill is intended to bring greater efficiency to the management of state lands by simplifying programs and reducing costs to DNR.

Some highlights of HB 109 include:

- rewrite of 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 implemented because of the associated administrative costs with only a minimal return to the state.
- Clarifies that the sale of state land does not obligate the state to provide additional services.
- Simplifies the methods to receive a homestead parcel title by requiring that within five years, a parcel must be lived on for 25 months or purchased at fair market value.

Although HB 109 is not intended to be a complete rewrite of Title 38, I believe it is a positive step in the effort to streamline state government.

Sectional Analysis of HB 109

Sec

- 1 adds new subsection, lifts six year statute of limitations for the state to bring action to confirm the state's interests in real property or protect public resources (AS 09.10.120)
- 2 clarifies 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))
- 3-4 removes the requirement of a "land disposal bank." 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. Subsections c, f, j, and k relating to the land disposal bank are repealed in Sec.41. (AS 38.04.020(a)-(b))
- 5 rewrites subsection: the report available to the legislature will contain information on the current inventory of state land available for disposal, tailored to the way the inventory is catalogued. Land is classified as suitable for settlement purposes including homestead, commercial, and industrial disposals; agricultural disposal; and grazing leases. (AS 38.04.020(d))
- 6 puts the state land disposal program on the same footing as other natural resource sale programs, submitting a budget request each year would not be 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))
- 7 makes 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" is removed, and a reference to homestead staking is removed to conform with repeals in sec 41. (AS 38.04.020(g))
- 8 clarifies 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 it would increase the return to the state. (AS 38.04.020(h))
- 9 updates a list of state land disposal programs by adding the homestead law and the remote recreational cabin site lease/sale program enacted by Sec. 27 of the bill. (AS 38.04.020(i))
- 10 clarifies that the commissioner's disposal funding request must go to the governor not to the legislature. (AS 38.04.021(a))
- 11 deletes a cross-reference to an annual land demand study, repealed by this bill. (AS 38.04.021(b))
- 12 allows the Department of Natural Resources to create new land disposal programs by regulation, provided they are competitive and produce at least fair market value for the land. (AS 38.04.030)
- 13 clarifies that sales of public land to private individuals shall be at fair market value unless specifically exempted, sale programs are preferred although lease programs may be used under certain circumstances, and removes a reference to remote cabin permits (repealed by this bill), . (AS 38.04.035)
- 14 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 recreational cabin site leases, as enacted by Sec. 27 of the bill, would be exempt from this statute because they are short-term leases. The statute would not apply until the remote recreational cabin site was ready to sell.) (AS 38.04.045(b))
- 15 allows discretion on where to hold land auctions and lotteries. (AS 38.05.050)

- 16 deletes the personal-appearance requirement for land auctions, allowing bidders to be represented by an agent. (AS 38.05.055)
(personal appearance requirement found unconstitutional)
- 17 along with repealer, deletes 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))
- 18- repeals the current system for sale contract interest rates that relies on the old Federal Land Bank's
19 "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. 18 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).)
- 20 replaces 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 9.5% for agricultural use contracts and 13.5% for other contracts. The rate would be computed monthly and would apply to all contracts prepared that month. (AS 38.05.065(i))
- 21 corrects a 1984 error, restoring the original intent of the veterans' preference auction law. It clarifies that although that law does not apply to the lottery, homesite, or homestead programs, a veterans' preference auction must be held before restricted residential lots can be sold at auction to the general public. A combination of amendments in 1984 had made veterans' preference sales inapplicable to all subdivision sales. (AS 38.05.067(d))
- 22 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))
- 23 updates programs exempt from the general standard that state land leases must be offered at auction. It removes a reference to remote cabin permits (repealed by this bill), and substitutes a reference to remote cabin site recreational leases (enacted by Sec. 27 of this bill) (38.05.075(a))
- 24 rewrites the aquatic farm site 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))
- 25 modernizes 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 cabin sites, 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)
- 26 conforming amendment needed due to repeal of 38.05.040 bonding requirement for the director of the statutory Alaska Division of Lands) would be repealed by Sec. of this bill. (AS 38.05.131(a))
- 27 creates a remote recreational 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" programs (repealed in 1979 and 1993 respectively). (AS 38.05.600)

- 28 allows "other public" facilities, beyond cemetery or solid waste facility that may be disposed of to a tax-exempt, non-profit corporation, or other organization to operate for a public purpose and allows 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))
- 29 clarifies that the division may 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))
- 30- deletes references in the public notice law to special aquatic farm site permit procedures repealed by Sec. of
31 the bill: mandatory public hearings and preliminary findings before issuing permits. (AS 38.05.945(a)(5)-(6), d)
- 32 raises 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))
- 33 adds a cross-reference to the lottery process used to select the winner of a homesite entry permit (see Sec.). 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))
- 34 adds 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))
- 35 deletes the authority to make applicants appear in person at a homestead lottery. (AS 38.09.010(g))
- 36 Raises 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 addition, combined with repealers in the bill, it would eliminate 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))
- 37 along with repealers, reduces and simplifies the ways to receive title to a homestead parcel. (Currently there are three methods. A homesteader may 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.) Repealers eliminate the house-building requirement and the distinction between two-year and five-year purchase. Within five years the homesteader either "proves up" by living on the parcel for 25 months, or purchases the parcel at fair market value. (As with all state land sales, the purchaser may pay cash for the homestead, or enter into an installment contract under AS 38.05.065.) With either method, the homesteader must reimburse the state for survey and platting costs, and must meet agricultural clearing requirements if the land is classified agricultural.
- 38 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))

- 39 New section along with repealers in Sec. 41 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))
- 40 the homesite disclaimer language is made 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. Also clarifies that the state is free to dispose of other land or resources in the future, without restrictions as to type, parcel density, etc. (38.95)
- 41 Repealers affecting the land disposal bank (AS 38.04.020) and down payments at land lotteries (AS 38.05.057(g))
- Repealing AS 38.05.057(j) eliminates special lottery procedures for an agricultural project statute that was repealed in 1979.
- 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 eliminates the remote cabin permit program, which provided for 25-year leases for cabin sites.
- Repealing AS 38.05.855, AS 38.05.856, and AS 38.05.946(b) eliminates requirements associated with aquatic farm site permits
- AS 38.08.090 is made unnecessary by Sec. 40 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. 36. 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;
- Repealing AS 38.09.050(d) and (e) would remove restrictions on selling or subdividing land after it has been conveyed to a homesteader
- 42 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)
- 43 adds a savings clause protecting homesite entry permits (and subsequent patents) granted by lottery after July 6, 1984. Which was the effective date of an amendment that dropped a reference to the lottery statute, leaving no statutory guidance on how to issue homesite entry permits.
- 44 specifies that the interest rate changes made by Secs. 18-20 of the bill apply to all contracts sent out to be signed after the bill's effective date.
- 45 allows the department to adopt regulations in advance of the bill's effective date, but may not take effect until July 1, 1997. Includes a savings clause for the existing homesite disposal regulations until they can be changed.
- 46 retroactive clause for sec 1

47- are effective dates
48