

**HB**

**361**

<TARGET><BILL>HB 361</BILL><SUBJECT>HB  
361</SUBJECT><COMM>SFIN27</COMM></TARGET>

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/14/12

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

**Finance Committee** considered CS FOR HOUSE BILL NO. 361(FIN) am

## HB 361-DISPOSALS OF STATE RESOURCES/ROYALTIES

"An Act relating to the Alaska Land Act, including certain leases, sales, and other disposals of state land and materials; relating to production royalties from miners; and providing for an effective date."

and recommends:

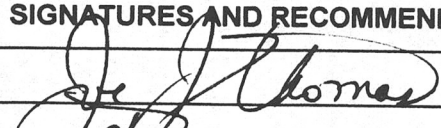

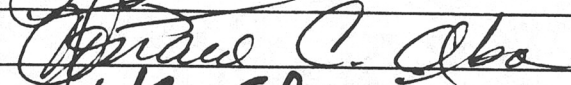
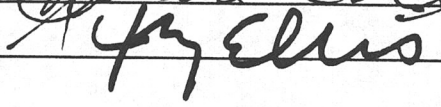
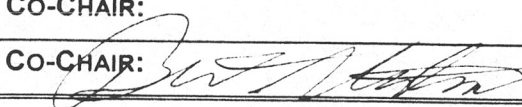
- be replaced with SCS CS HB 361 (FIN)  Same Title  Technical Title Change  New Title/SCR No. \_\_\_\_\_
- adopt previous SCS \_\_\_\_\_ (\_\_\_\_\_)  Same Title  Technical Title Change  New Title/SCR No. \_\_\_\_\_
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

Dept Abbr.	
ADM	LEG
CED	LAW
COR	LWF
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DNR			X	

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DOT			X	2
DFG			X	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Thomas	✓			
	E. C. ...	✓			
	Orson			✓	
	Ellis			✓	
CO-CHAIR:					
	Stedman				

# FISCAL NOTE

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

Bill Version HB361CS(FIN)AM  
Fiscal Note Number \_\_\_\_\_  
( ) Publish Date \_\_\_\_\_

Identifier (file name) HB361CS(FIN)AM-DNR-MLW -04-13-12 Dept. Affected Department of Natural Resources  
Title Disposal of State Resources Appropriation Land & Water Resources  
Allocation Mining Land & Water  
Sponsor Rules by Request of the Governor  
Requester (S)FIN OMB Component Number 3002

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>	<b>FY13</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Prgm (DGF)							
1037 GF/MH (UGF)							
1178 temp code (UGF)							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS**

Full-time							
Part-time							
Temporary							

<b>CHANGE IN REVENUES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**Why this fiscal note differs from previous version (if initial version, please note as such)**

In the bill analysis section, this fiscal note reflects the changes made on the House Floor. The exemption on small miners from paying production royalties was removed.

Prepared by Brent Goodrum, Director  
Division Mining, Land & Water  
Approved by Daniel S. Sullivan, Commissioner  
Department of Natural Resources

Phone 269-8600  
Date/Time 4/13/12 3:00 PM  
Date 4/13/2012

FISCAL NOTE

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. HB361CS(FIN)AM

**Analysis**

CSHB361(RLS) proposes to make changes to the Alaska Land Act that are intended to increase efficiency, certainty and timeliness of DNR's land permitting, leasing, mining and land sales programs to permitting applicants.

These proposed changes are not anticipated to have a fiscal impact on the department or the State with the exception of the proposed revision to AS 35.05.555(f) in Section 18, the state would provide incentives for the development of peat as a source of heat or power. Currently, peat is not being sold by the state and thus the sale of peat is bringing in no revenue. However, with this additional subsection, assuming that the sale of peat is negotiated, the state would lose the potential for revenue up to the thresholds stated in the bill. For personal use, up to 200 cubic yards/yr would be provided for free; for commercial use not more than 30,000 cubic yards during a single 10-year period would be provided for free; and if more than 30,000 cubic yards is sold for commercial use, the user would pay 20% of the representative regional sales price or 20% of the fair market value as determined by an appraisal for which the applicant pays for up to 10 years. Assuming peat is successfully used as an energy source, the state ***stands to gain revenues in the future but currently would not gain or lose revenues in incentivizing the use of peat.***

The other sections of the bill will either create efficiencies or prevent inefficiencies, which will allow the Division of Mining, Land, and Water re-allocate staff time to other permits and authorizations thus helping to reduce the backlog. The revisions will benefit both the applicant and the State. The applicant will also be saved both time and cost by the changes.

# CAL NOTE

STATE OF ALASKA 2-21-12  
2012 LEGISLATIVE PERIOD

Bill Version  
Fiscal Note Number  
Publish Date

HB 361  
2  
2/29/12 (H)

Identifier (file name) Permit Reform  
Title

Sponsor Governor  
Requester Rules by Request of the Governor

Dept. Affected DOT&PF  
Appropriation Design, Engineering & Construction

Stwd Design & Eng Services

OMB Component Number 2357  
(Thousands of Dollars)

Expenditure include inflation unless otherwise noted below.  
Note: A/

OPERATING EXPENDITURES		FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
	FY13	FY13	FY14	FY15	FY16	FY17	FY18	
Personal Services	0.0		0.0					
Travel	0.0		0.0					
Services	0.0		0.0	0.0				
Commodities	0.0		0.0	0.0	0.0	0.0	0.0	
Capital Outlay	0.0		0.0	0.0	0.0	0.0	0.0	
Grants, Benefits	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	
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	

FUND SOURCE		FY13	FY14	FY15	FY16	FY17	FY18
1002 Federal Receipts		0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match		0.0	0.0	0.0	0.0	0.0	0.0
1004 GF		0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Prgm (DGF)		0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/MH (UGF)		0.0	0.0	0.0	0.0	0.0	0.0
1178 temp code (UGF)		0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS		FY13	FY14	FY15	FY16	FY17	FY18
Full-time							
Part-time							
Temporary							
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CHANGE IN REVENUES		FY13	FY14	FY15	FY16	FY17	FY18
Estimated SUPPLEMENTAL (FY12) operating costs (discuss reasons and fund source(s) in analysis section)		0.0	0.0	0.0	0.0	0.0	0.0
Estimated CAPITAL (FY13) costs (discuss reasons and fund source(s) in analysis section)							

(separate supplemental appropriation required)  
(separate capital appropriation required)

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Brenda Hewitt, Legislative Liaison  
Division DOT&PF  
Approved by Marc Luiken  
Commissioner

Phone 465-4772  
Date/Time 2/21/12 5:00 PM  
Date 2/21/12 5pm

FISCAL NOTE #2

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. HB 361

**Analysis**

This legislation relates to the Alaska Land Act and the disposal of state land and materials expanding options for the method of sale. The department does not see any fiscal impact from the changes proposed in this legislation.

# FISCAL NOTE

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

cost # codes

Bill Version HB 361  
Fiscal Note Number 1  
Publish Date 2/29/12 (H)

Identifier (file name) 0717-DFG-SFD-2-22-12 Dept. Affected ADF&G  
Title PERMIT REFORM Appropriation Sport Fisheries  
Allocation Sport Fisheries  
Sponsor GOVERNOR  
Requester Rules by Request of the Governor OMB Component Number 464

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES								

Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version.

Prepared by Charles O. Swanton, Director  
Division Sport Fish Division  
Approved by Cora Campbell  
Commissioner

Phone 465-6189  
Date/Time 2/22/2012 3:18PM  
Date 2/22/2012

FISCAL NOTE #1

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. HB 361

**Analysis**

There is no anticipated fiscal impact upon the Sport Fish Division.

ADOPTED 4/15/12

27-GH2717E  
Bailey  
4/15/12

SENATE CS FOR CS FOR HOUSE BILL NO. 361( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Land Act, including certain leases, sales, and other  
2 disposals of state land and materials; relating to production royalties from miners;  
3 providing for the conveyance of certain land to the City and Borough of Juneau for the  
4 construction of the Auke Bay commercial loading facility; and providing for an effective  
5 date."

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

7 \* Section 1. AS 38.05.050 is amended to read:

8           **Sec. 38.05.050. Disposal of land for private ownership.** The commissioner  
9 shall determine the land to be disposed of for private use. The commissioner shall  
10 determine the time and place of disposal. A public [AN] auction sale, sale by sealed  
11 bid, a lottery sale, or a disposal of land for homesites may be held in a community that  
12 is near the land to be sold or disposed of.

13 \* Sec. 2. AS 38.05.055 is amended to read:

1           **Sec. 38.05.055. Auction sale or sealed bid procedures.** Unless another  
2 method of sale is required under this chapter, AS 38.08, or AS 38.09, the sale of state  
3 land shall be made at public auction or by sealed bid, at the discretion of the  
4 director, to the highest qualified bidder as determined by the director. The director  
5 may accept bids and sell state land under this section at **not** [NO] less than 70 percent  
6 of the appraised fair market value of the land. To qualify to participate under this  
7 section in a public auction or sale by sealed bid of state land that is other than  
8 commercial, industrial, or agricultural land, a bidder shall have been a resident of the  
9 state for at least one year immediately preceding the date of the **sale** [AUCTION] and  
10 submit proof of that fact, as the commissioner requires by regulation. A bidder may be  
11 represented by an attorney or agent at **a public** [THE] auction. An aggrieved bidder  
12 may appeal to the commissioner within five days after the sale for a review of the  
13 director's determination. The sale shall be conducted by the director, and, at the time  
14 of sale, the successful bidder shall deposit an amount equal to five percent of the  
15 purchase price. The director shall immediately issue a receipt containing a description  
16 of the land or property purchased, the price bid, and the amount deposited. The receipt  
17 shall be acknowledged in writing by the bidder.

18 \* **Sec. 3.** AS 38.05.065(a) is amended to read:

19           (a) The contract of sale for land sold at public auction or by sealed bid under  
20 AS 38.05.055 shall require the remainder of the purchase price to be paid in monthly,  
21 quarterly, or annual installments over a period of not more than 20 years, with interest  
22 at the rate provided in (i) of this section. Installment payments plus interest shall be set  
23 on the level-payment basis.

24 \* **Sec. 4.** AS 38.05.069(a) is amended to read:

25           (a) After consulting with the Board of Agriculture and Conservation  
26 (AS 03.09.010), on a determination that the highest and best use of unoccupied land is  
27 for agricultural purposes and that it is in the best interests of the state to sell or lease  
28 the land, the commissioner shall grant to an Alaska resident owning and using or  
29 leasing and using land for agricultural purposes a first option [AT THE AUCTION] to  
30 purchase or lease the unoccupied land situated adjacent to land presently held by the  
31 Alaska resident for the amount of the high bid received at public auction or by sealed

1 bid. If more than one Alaska resident qualifies for a first option under this section,  
2 eligibility for the first option shall be determined by lot, and the option must be  
3 exercised on the conclusion of the public auction or opening of sealed bids. A parcel  
4 of agricultural land sold under this section may not be less than 20 acres, and a parcel  
5 of agricultural land that is acquired by exercise of the option granted in this subsection  
6 may not exceed 320 acres. Agricultural land that is acquired under this section must be  
7 used for agricultural purposes as required by law.

8 \* **Sec. 5.** AS 38.05.069(c) is amended to read:

9 (c) Under this section,

10 (1) the director may transfer state land classified for agriculture only  
11 for agricultural purposes;

12 (2) the sale or lease shall be at public auction or by sealed bid.

13 \* **Sec. 6.** AS 38.05.070(b) is amended to read:

14 (b) The director, with the approval of the commissioner, shall determine the  
15 land to be leased and the limitations, conditions, and terms of the lease. The director  
16 shall preserve reasonable and traditional access to state land and water. If the  
17 appraised value of the transaction is \$10,000 [\$5,000] a year or less the director may  
18 negotiate a lease for a period not to exceed 10 years, and on the limitations,  
19 conditions, and terms that the director considers are in the best interests of the state. A  
20 lease negotiated under this subsection is not eligible for a preference under  
21 AS 38.05.102.

22 \* **Sec. 7.** AS 38.05.070 is amended by adding new subsections to read:

23 (d) If, after notice under AS 38.05.945 soliciting interest for a competitive  
24 auction, the department determines that only one potential bidder has expressed  
25 interest in bidding, the director may cancel the competitive auction and negotiate a  
26 lease and its conditions and terms that the director determines to be in the best  
27 interests of the state.

28 (e) The director may renew a lease issued under this section, AS 38.05.075, or  
29 38.05.810 upon its expiration if the lease is in good standing and the lease renewal is  
30 determined to be in the best interests of the state. A renewal issued under this  
31 subsection is not subject to AS 38.05.035(e). A lease may be renewed only once for a

1 term not longer than the initial term of the lease. The director shall provide notice of  
2 the lease renewal decision.

3 \* **Sec. 8.** AS 38.05.073(g) is amended to read:

4 (g) After soliciting proposals under (e) of this section, if the commissioner  
5 determines that two or more potential lessees are acceptable, the commissioner may  
6 select the potential lessee who submits the highest bid during **a public** [AN] auction or  
7 by sealed bids, whichever method the commissioner chooses. The minimum bid must  
8 equal the amount established by the commissioner plus the administrative fee  
9 established under (k) of this section. The commissioner shall also require the potential  
10 lessee to make an earnest money deposit under AS 38.05.860(b). After the  
11 commissioner selects a potential lessee, the commissioner may begin negotiations with  
12 the potential lessee to develop the terms and conditions for the lease.

13 \* **Sec. 9.** AS 38.05.075(a) is amended to read:

14 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.082,  
15 38.05.083, 38.05.087, 38.05.102, 38.05.565, 38.05.600, 38.05.810, and this section,  
16 when competitive interest has been demonstrated or the commissioner  
17 determines that it is in the state's best interests, leasing shall be made at public  
18 auction or by sealed bid, at the discretion of the director, to the highest qualified  
19 bidder as determined by the commissioner. A bidder may be represented by an  
20 attorney or agent at a public auction. In the public notice of a lease to be offered at  
21 public auction or by sealed bid, the commissioner shall specify a minimum  
22 acceptable bid and the lease compensation method. The lease compensation method  
23 shall be designed to maximize the return on the lease to the state and shall be a form of  
24 compensation set out in AS 38.05.073(m). An aggrieved bidder may appeal to the  
25 commissioner within five days for a review of the determination. The leasing shall be  
26 conducted by the commissioner, and the successful bidder shall deposit at the **public**  
27 auction or with the sealed bid the first year's rental or other lease compensation as  
28 specified by the commissioner, or that portion of it that the commissioner requires in  
29 accordance with the bid. The commissioner shall require, under AS 38.05.860,  
30 qualified bidders to deposit a sum equal to any survey or appraisal costs reasonably  
31 incurred by another qualified bidder acting in accordance with the regulations of the

1 commissioner or incurred by the department under AS 38.04.045 and AS 38.05.840. If  
2 a bidder making a deposit of survey or appraisal costs is determined by the  
3 commissioner to be the highest qualified bidder under this subsection, the deposit shall  
4 be paid to the unsuccessful bidder who incurred those costs or to the department if the  
5 department incurred the costs. All costs for survey and appraisal shall be approved in  
6 advance in writing by the commissioner. The commissioner shall immediately issue a  
7 receipt containing a description of the land or interest leased, the price bid, and the  
8 terms of the lease to the successful qualified bidder. If the receipt is not accepted in  
9 writing by the bidder under this subsection, the commissioner may offer the land for  
10 lease again under this subsection. A lease, on a form approved by the attorney general,  
11 shall be signed by the successful bidder and by the commissioner [WITHIN THE  
12 PERIOD SPECIFIED IN THE AUCTION NOTICE].

13 \* **Sec. 10.** AS 38.05.075(e) is amended to read:

14 (e) The commissioner may require prequalification of bidders for a lease to be  
15 issued under AS 38.05.070. If the commissioner determines to require  
16 prequalification, the procedures established by this section and the notice including  
17 **prequalification** [PRE-QUALIFICATION] requirements required to be given under  
18 AS 38.05.945 shall be completed within 75 days of the receipt of the first lease  
19 application unless the commissioner grants additional time for the completion of the  
20 procedures. Within the 75-day period or the additional time granted by the  
21 commissioner, the commissioner shall complete

22 (1) classification under AS 38.05.300;

23 (2) the procedures required by AS 38.05.035(e);

24 (3) any other action required by law for the disposal of the lease to a  
25 bidder except survey, appraisal, and the auction **or sealed bid**.

26 \* **Sec. 11.** AS 38.05.075(g) is amended to read:

27 (g) Notice of an auction **or sealed bid** required under this section shall be  
28 made by certified mail to all prequalified bidders.

29 \* **Sec. 12.** AS 38.05.083(a) is amended to read:

30 (a) The commissioner may offer to the public for lease at public auction **or by**  
31 **sealed bid** under AS 38.05.075 or by negotiation under AS 38.05.070 a site for

1 aquatic farming or related hatchery operations. Before a final decision to issue or  
2 renew a lease under this section, the commissioner shall give notice and allow  
3 opportunity for comment in accordance with AS 38.05.945 and may hold a hearing to  
4 take testimony. Before a final decision to issue or renew a lease under this section, the  
5 commissioner shall consider all relevant comment or testimony submitted under this  
6 section, AS 38.05.945, or 38.05.946.

7 \* **Sec. 13.** AS 38.05.110(a) is amended to read:

8 (a) The commissioner shall provide for cruises of timber on [AND  
9 APPRAISALS OF OTHER MATERIALS IN OR UPON] state land and shall assess  
10 the supply of and current markets for timber on [AND OTHER MATERIALS IN]  
11 privately owned land in close proximity to state land to determine

12 (1) the timber [AND OTHER MATERIALS] that should be offered for  
13 sale; and

14 (2) the terms of sale of the timber [OR OTHER MATERIALS].

15 \* **Sec. 14.** AS 38.05.115 is amended to read:

16 **Sec. 38.05.115. Limitations and conditions of sale.** (a) The commissioner  
17 shall determine the timber [AND OTHER MATERIALS] to be sold [,] and the  
18 limitations, conditions, and terms of sale. The limitations, conditions, and terms shall  
19 include the utilization, development, and maintenance of the sustained yield principle,  
20 subject to preference among other beneficial uses. The commissioner may negotiate  
21 sales of timber [OR MATERIALS] without advertisement and on the limitations,  
22 conditions, and terms that are considered to be in the best interests of the state. Within  
23 a one-year period, the commissioner may not negotiate a sale without advertisement to  
24 the same purchaser of

25 [(1)] more than 500 M.B.M. or equivalent other measure of timber [;

26 (2) EXCEPT AS PROVIDED IN (3) OF THIS SUBSECTION,  
27 MORE THAN 25,000 CUBIC YARDS OF MATERIALS; OR

28 (3) MORE THAN 100,000 CUBIC YARDS OF MATERIALS TO A  
29 COMMON CARRIER HOLDING A LEASE UNDER AS 38.35].

30 (b) Negotiated sales not exceeding 50 M.B.M. or the equivalent other measure  
31 of timber [OR 2,500 CUBIC YARDS OF MATERIALS] are exempt from the

1 provisions of AS 34.15.150.

2 (c) The limitations of this section are not applicable to timber that [WHICH]  
3 becomes state property under the provisions of AS 45.50.210 - 45.50.235.

4 \* Sec. 15. AS 38.05.120 is amended to read:

5 **Sec. 38.05.120. Disposal procedure.** Timber [AND OTHER MATERIALS]  
6 shall be sold either by sealed bids or public auction, depending on which method is  
7 determined by the commissioner to be in the best interests of the state, to the highest  
8 qualified bidder as determined by the commissioner. An aggrieved bidder may appeal  
9 to the commissioner within five days after the sale for a review of the determination.  
10 The sale shall be conducted by the commissioner, and, at the time of sale, the  
11 successful bidder shall deposit the amount specified in the terms of sale. The means by  
12 which the amount of deposit is determined shall be prescribed by appropriate  
13 regulation. The commissioner shall immediately issue a receipt containing a  
14 description of the timber [OR MATERIALS] purchased, the price bid, and the terms  
15 of sale. The receipt shall be accepted in writing by the bidder. A contract of sale, on a  
16 form approved by the attorney general, shall be signed by the purchaser and the  
17 contract shall be signed by the commissioner on behalf of the state. The commissioner  
18 may impose conditions, limitations, and terms considered necessary and proper to  
19 protect the interests of the state. Violation of any provision of this chapter or the terms  
20 of the contract of sale subjects the purchaser to appropriate legal action.

21 \* Sec. 16. AS 38.05.212(a) is amended to read:

22 (a) In exchange for and to preserve the right to extract and possess the  
23 minerals produced, the holder of a mining claim, leasehold location, or mining lease,  
24 including a mining lease under AS 38.05.250, shall pay a royalty on all minerals  
25 produced from land subject to the claim, leasehold location, or mining lease during  
26 each calendar year, or each fiscal year if the miner does not file the mining license  
27 tax on a calendar year basis.

28 \* Sec. 17. AS 38.05.250(c) is amended to read:

29 (c) Each submerged land mining lease shall be for a period of up to 20 years  
30 and for so long as there is production in paying quantities from the leased area. A  
31 submerged land mining lease may be renewed for a period of up to 20 years at

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the discretion of the director if the director determines that the renewal is in the best interests of the state.

\* Sec. 18. AS 38.05 is amended by adding new sections to read:

**Article 13A. Material Sales.**

**Sec. 38.05.550. Disposal of materials.** (a) All materials owned by the state may be sold or conveyed as provided in AS 38.05.550 - 38.05.565.

(b) Materials may only be sold or removed from sources or sites designated by the department. The department shall issue a decision under AS 38.05.035(e) that the sale and extraction of materials from that location is in the best interests of the state at the time each source or site is designated. The department shall give notice, in accordance with AS 38.05.945, of the department's decision to designate a source or site for the sale and extraction of materials. After decision and notice, the department may sell materials continuously, without further finding or notice, from that designated source or site under this section until the source or site is closed by the department.

(c) Each sale of materials must be made through a materials sales contract on a form that has been approved by the attorney general. At the time of each sale, the department shall determine

- (1) the location of the source or site from which materials are to be removed;
  - (2) the method of disposal as provided in AS 38.05.555 - 38.05.565;
- and
- (3) the limitations, conditions, and terms of sale, which shall address the utilization, development, and maintenance of the source of the materials.

(d) The commissioner shall provide for valuation of materials in or upon state land. Materials sold or conveyed under AS 38.05.550 - 38.05.565 may, at the director's discretion, be sold at

- (1) representative regional sales prices periodically determined by the commissioner for each type of material and for defined geographic regions, under procedures established by regulation; public notice under AS 38.05.945 must be made whenever the commissioner revises the representative regional sales prices;

1 (2) fair market value determined by appraisal completed and approved  
2 within two years of the date of sale; or

3 (3) a price less than appraised value, determined under  
4 AS 38.05.810(a).

5 **Sec. 38.05.555. Negotiated sales and personal use of materials.** (a)  
6 Notwithstanding any other provision of AS 38.05.550 - 38.05.565, the director may  
7 negotiate the sale of any amount of materials from a source or site designated under  
8 AS 38.05.550(b). The period of a contract for a sale of materials negotiated under this  
9 section may not exceed five years.

10 (b) Sales of materials under this section must be made at a representative  
11 regional sales price set by the commissioner under AS 38.05.550(d)(1) unless

12 (1) the director determines that it is in the best interests of the state to  
13 sell the materials at fair market value determined by an appraisal provided by the  
14 department;

15 (2) the applicant, at its own cost, elects to provide an appraisal,  
16 acceptable to the department, determining the fair market value of the materials to be  
17 sold; or

18 (3) the sale is to a state or federal agency or political subdivision under  
19 AS 38.05.810(a) and the material to be extracted and removed is used for public  
20 purposes; sales under this paragraph may be at a price less than appraised value as  
21 determined by the director.

22 (c) Subsequent sales of similar materials from the same source or site may be  
23 made by the department at the price established by an appraisal provided under (b) of  
24 this section.

25 (d) Individual negotiated contracts for the sale of materials authorized by (a)  
26 of this section are not subject to AS 38.05.035(e) or 38.05.945.

27 (e) Materials from a source or site designated under AS 38.05.550(b) may be  
28 extracted and removed for personal use without cost up to a limit of two cubic yards a  
29 person within a one-calendar-year period. Extraction and removal of materials under  
30 this subsection must be approved by the department before extraction operations.

31 (f) Notwithstanding (a) - (e) of this section, for the purpose of creating

1 incentives for the development of peat as a source of heat or power, the director may  
2 negotiate the sale of peat to individuals, organized or unorganized communities, tribal  
3 governments, or private profit or nonprofit organizations. Under this subsection, the  
4 director may provide

5 (1) for personal use by an individual, not more than 200 cubic yards of  
6 peat a year at no cost;

7 (2) for commercial use, not more than 30,000 cubic yards of peat  
8 during a single 10-year period at no cost; or

9 (3) for commercial use requiring more than 30,000 cubic yards of peat,  
10 the amount required by the user during a 10-year period beginning when the user uses  
11 more than 30,000 yards of peat at the price of

12 (A) 20 percent of the representative regional sales price  
13 determined by the director under AS 38.05.550(d)(1); or

14 (B) 20 percent of the fair market value determined by an  
15 appraisal completed under AS 38.05.550(d)(2), if the applicant provides the  
16 appraisal at the applicant's expense and the appraisal is approved by the  
17 commissioner.

18 **Sec. 38.05.560. Competitive sales of materials.** (a) The department shall offer  
19 materials from a source or site designated under AS 38.05.550(b) for competitive sale  
20 if the department determines that

21 (1) the sale would result in an exclusive use by the purchaser of a  
22 designated source or site;

23 (2) materials available at a designated source or site are insufficient to  
24 supply all anticipated buyers;

25 (3) the size of the designated source or site is too small to  
26 accommodate the extraction operations of all anticipated buyers; or

27 (4) it is in the best interests of the state.

28 (b) Notice of a competitive sale of materials from a source or site designated  
29 under AS 38.05.550(b) shall be given under AS 38.05.945(a)(4) and shall

30 (1) describe the location of the designated source or site, and the type  
31 and quantity of the materials to be sold;

1 (2) solicit potential bidders to register with the department to  
2 participate in the proposed sale; only persons registered to bid at a proposed sale of  
3 materials may bid; and

4 (3) include the minimum bid for materials to be sold.

5 (c) A notice of competitive sale required under (b) of this section may be  
6 combined with a notice required under AS 38.05.550.

7 (d) If, after notice under (b) of this section, only one potential bidder has  
8 registered to bid at a proposed competitive sale, the competitive sale may be cancelled  
9 and the materials sold by negotiation under AS 38.05.555.

10 (e) Materials sold under this section may be sold either by sealed bid or by  
11 public outcry or online auction, in the discretion of the department, to the highest  
12 qualified bidder as determined by the department. An aggrieved bidder may appeal to  
13 the commissioner under AS 44.37.011 within five days after the sale for a review of  
14 the determination. The sale shall be conducted by the director or the director's  
15 designee, and, at the time of sale, the successful bidder shall deposit the amount  
16 specified in the terms of sale. The means by which the amount of deposit is  
17 determined shall be prescribed by regulation. The director shall immediately issue a  
18 receipt containing a description of the materials purchased, the price bid, and the terms  
19 of sale. The receipt shall be accepted in writing by the bidder. A contract of sale, on a  
20 form approved by the attorney general, shall be signed by the purchaser, and the  
21 contract shall be signed by the director on behalf of the state. The director may impose  
22 conditions, limitations, and terms considered necessary and proper to protect the  
23 interests of the state.

24 **Sec. 38.05.562. Violations.** Violation of any provision of AS 38.05.550 -  
25 38.05.565 or the terms of the contract of sale subjects the purchaser to appropriate  
26 legal action.

27 **Sec. 38.05.565. Sale or disposal of materials for special purposes.** (a) The  
28 department may negotiate the sale or otherwise dispose of materials from sources or  
29 sites other than those designated under AS 38.05.550(b) to

30 (1) municipalities, other state and federal agencies, or other entities  
31 under AS 38.05.872; sales under this paragraph may be at less than fair market value,

1 and materials may be disposed of free of charge if the director determines that the  
2 disposal is in the public interest;

3 (2) a licensed public utility or a licensed common carrier under  
4 AS 38.05.810(e); sales under this paragraph shall be at representative regional sales  
5 prices determined under AS 38.05.550(d)(1); or

6 (3) a holder of a permit, land lease, or right-of-way issued by the  
7 department, if the materials to be extracted and removed during the construction, use,  
8 or maintenance of a facility authorized by a permit, land lease, or right-of-way, are  
9 necessary and incidental to the primary purpose of the permit, land lease, or right-of-  
10 way, and the materials are put to beneficial use in a way that alters the character,  
11 usefulness, or availability of the materials in their native forms; the department may  
12 authorize the sale of materials under terms of the permit, land lease, or right-of-way;  
13 sales of materials under this paragraph must be at

14 (A) the representative regional sales price established under  
15 AS 38.05.550(d)(1) unless the sale is to a state or federal agency, political  
16 subdivision, or other entity under AS 38.05.810(a); or

17 (B) a price less than appraised value as determined by the  
18 director if the sale is to a state or federal agency, political subdivision, or other  
19 entity under AS 38.05.810(a) and the materials to be extracted and removed  
20 are used for public purposes.

21 (b) If materials are moved within and not removed from the boundaries of a  
22 permit, land lease, or right-of-way issued by the department without altering the  
23 character, usefulness, or availability of the materials in their native forms, the  
24 applicant may not be required to purchase the materials.

25 (c) In this section, "land lease"

26 (1) means a lease issued under AS 38.05.070 - 38.05.105;

27 (2) does not include a lease issued under AS 38.05.131 - 38.05.275.

28 \* **Sec. 19.** AS 38.05.810(b) is amended to read:

29 (b) Notwithstanding AS 38.05.070 - 38.05.080 and 38.05.095, the director,  
30 upon application filed by an applicant eligible under (b) - (d) of this section, may, by  
31 negotiation and without competitive bid [PUBLIC AUCTION] in the manner

1 prescribed in (b) - (d) of this section, lease state land for a term of not more than 55  
2 years. Before leasing, the director shall prepare a land use plan and a land  
3 classification to ensure [INSURE] that the proposed use is compatible with area  
4 utilization. Before the land may be leased under (b) - (d) of this section, it must be  
5 shown to the satisfaction of the director that the land is to be used for an established or  
6 definitely proposed project, and that the eligible applicant has the financial ability to  
7 carry out the project. The commissioner may establish limitations on the acreage that  
8 [WHICH] may be leased under (b) - (d) of this section to an applicant.

9 \* **Sec. 20.** AS 38.05.810(e) is amended to read:

10 (e) The lease, sale, or other disposal of state land at appraised fair market  
11 value may be negotiated with a licensed public utility or a licensed common carrier by  
12 the director with the approval of the commissioner if the utility or carrier reasonably  
13 requires the land for the conduct of its business under its license. Notwithstanding  
14 AS 38.05.550 - 38.05.565, the sale of materials necessary for construction, use, or  
15 maintenance of property leased, sold, or disposed of under this section may be  
16 negotiated by the director. A lease with a licensed public utility that is an electric  
17 utility entered into under this subsection may not include, as part of the rent or other  
18 fee that is negotiated or charged, an amount that is based on or determined by a  
19 percentage of gross revenue for renewable energy produced by the electric utility.

20 \* **Sec. 21.** AS 38.05.872 is repealed and reenacted to read:

21 **Sec. 38.05.872. Disposition of state land and resources for flood control**  
22 **projects.** (a) The department may make conveyances of title or other interests in state  
23 land, provide for exchange of land, or make other arrangements with respect to state  
24 land, as necessary to meet federally established requirements of flood control projects  
25 authorized inside the state by the United States.

26 (b) The commissioner may convey materials at less than fair market value to  
27 municipalities, other state and federal agencies, or other entities, and make other  
28 arrangements for land and materials as mitigation of a flooding area where excess  
29 material deposition significantly contributes to the flooding, consistent with a site-  
30 specific flood mitigation plan approved by the commissioner and determined to be in  
31 the best interests of the public.

1 \* **Sec. 22.** AS 38.05.945(b) is amended to read:

2 (b) When notice is required to be given under this section,

3 (1) the notice must contain sufficient information in commonly  
4 understood terms to inform the public of the nature of the action and the opportunity  
5 of the public to comment on it;

6 (2) if the notice is of a preliminary written finding described in  
7 (a)(3)(A) of this section, the department shall give notice at the beginning of the public  
8 comment period for the preliminary written finding, notifying the public of the right to  
9 submit comments; the department shall give notice by

10 (A) posting notice on the Alaska Online Public Notice  
11 System for at least 30 consecutive days [PUBLICATION OF A LEGAL  
12 NOTICE IN NEWSPAPERS OF STATEWIDE CIRCULATION AND IN  
13 NEWSPAPERS OF GENERAL CIRCULATION IN THE VICINITY OF  
14 THE PROPOSED ACTION AT LEAST ONCE A WEEK FOR TWO  
15 CONSECUTIVE WEEKS];

16 (B) publication of a notice in display advertising form  
17 describing the proposed action and referencing the online notice required  
18 in (A) of this paragraph in newspapers of statewide circulation and in  
19 newspapers of general circulation in the vicinity of the proposed action, if  
20 available, [IN THE NEWSPAPERS DESCRIBED IN (A) OF THIS  
21 PARAGRAPH] at least once a week for two consecutive weeks;

22 (C) public service announcements on the electronic media  
23 serving the area to be affected by the proposed action; and

24 (D) one or more of the following methods:

25 (i) publication of a legal notice in newspapers of  
26 statewide circulation or in newspapers of general circulation in the  
27 vicinity of the proposed action, if available, at least once a week for  
28 two consecutive weeks;

29 (ii) posting in a conspicuous location in the vicinity of  
30 the action;

31 (iii) [(ii)] notification of parties known or likely to be

1 affected by the action; or

2 (iv) [(iii)] another method calculated to reach affected  
3 parties;

4 (3) if the notice is of an action described in (a) of this section, other  
5 than notice of an action under (a)(3)(A) of this section, the department shall give  
6 notice at least 30 days before the action by posting notice on the Alaska Online  
7 Public Notice System for at least 30 consecutive days [PUBLICATION IN  
8 NEWSPAPERS OF STATEWIDE CIRCULATION AND IN NEWSPAPERS OF  
9 GENERAL CIRCULATION IN THE VICINITY OF THE PROPOSED ACTION]  
10 and by one or more of the following methods:

11 (A) publication of a notice in display advertising form  
12 describing the proposed action and referencing the online notice required  
13 in this paragraph in newspapers of statewide circulation and in  
14 newspapers of general circulation in the vicinity of the proposed action, if  
15 available, at least once a week for two consecutive weeks;

16 (B) publication through public service announcements on the  
17 electronic media serving the area affected by the action;

18 (C) [(B)] posting in a conspicuous location in the vicinity of  
19 the action;

20 (D) [(C)] notification of parties known or likely to be affected  
21 by the action;

22 (E) publication of a legal notice, at least 30 days before the  
23 action, briefly describing the proposed action and referencing the online  
24 notice required in this paragraph in newspapers of statewide circulation  
25 and in newspapers of general circulation in the vicinity of the proposed  
26 action, if available; or

27 (F) [(D)] another method calculated to reach affected persons.

28 \* Sec. 23. AS 38.05.945(b), as amended by sec. 22 of this Act, is amended to read:

29 (b) When notice is required to be given under this section,

30 (1) the notice must contain sufficient information in commonly  
31 understood terms to inform the public of the nature of the action and the opportunity

1 of the public to comment on it;

2 (2) if the notice is of a preliminary written finding described in  
3 (a)(3)(A) of this section, the department shall give notice at the beginning of the public  
4 comment period for the preliminary written finding, notifying the public of the right to  
5 submit comments; the department shall give notice by

6 (A) posting notice on the Alaska Online Public Notice System  
7 for at least 30 consecutive days;

8 (B) publication of a notice in display advertising form  
9 describing the proposed action and referencing the online notice required in  
10 (A) of this paragraph in newspapers of statewide circulation and in newspapers  
11 of general circulation in the vicinity of the proposed action, if available, at least  
12 once a week for two consecutive weeks;

13 (C) public service announcements on the electronic media  
14 serving the area to be affected by the proposed action; and

15 (D) one or more of the following methods:

16 (i) publication of a legal notice in newspapers of  
17 statewide circulation or in newspapers of general circulation in the  
18 vicinity of the proposed action, if available, at least once a week for  
19 two consecutive weeks;

20 (ii) posting in a conspicuous location in the vicinity of  
21 the action;

22 (iii) notification of parties known or likely to be  
23 affected by the action; or

24 (iv) another method calculated to reach affected parties;

25 (3) if the notice is of an action described in (a) of this section, other  
26 than notice of an action under (a)(3)(A) of this section, the department shall give  
27 notice at least 30 days before the action by posting notice on the Alaska Online Public  
28 Notice System for at least 30 consecutive days and by one or more of the following  
29 methods:

30 (A) publication of a notice in display advertising form  
31 describing the proposed action and referencing the online notice required in

1 this paragraph in newspapers of statewide circulation and in newspapers of  
2 general circulation in the vicinity of the proposed action, if available, at least  
3 once a week for two consecutive weeks;

4 (B) publication through public service announcements on the  
5 electronic media serving the area affected by the action;

6 (C) posting in a conspicuous location in the vicinity of the  
7 action;

8 (D) notification of parties known or likely to be affected by the  
9 action; or

10 (E) [PUBLICATION OF A LEGAL NOTICE, AT LEAST 30  
11 DAYS BEFORE THE ACTION, BRIEFLY DESCRIBING THE PROPOSED  
12 ACTION AND REFERENCING THE ONLINE NOTICE REQUIRED IN  
13 THIS PARAGRAPH IN NEWSPAPERS OF STATEWIDE CIRCULATION  
14 AND IN NEWSPAPERS OF GENERAL CIRCULATION IN THE  
15 VICINITY OF THE PROPOSED ACTION, IF AVAILABLE; OR

16 (F)] another method calculated to reach affected persons.

17 \* **Sec. 24.** AS 38.05.965(10) is repealed and reenacted to read:

18 (10) "materials"

19 (A) means all common variety rock and minerals of any  
20 quality, that are saleable and not subject to location under state or federal  
21 mining laws;

22 (B) includes aggregate, riprap, railroad ballast, road ballast,  
23 road metal, peat, silt, loam, sand, gravel, stone, pumice, and common clay;

24 \* **Sec. 25.** AS 41.23.470(b) is amended to read:

25 (b) The commissioner may conduct only a negotiated timber [OR  
26 MATERIAL] sale under AS 38.05.115 to provide for personal use, including house  
27 logs and firewood, or for a use incidental to the construction of access, or for habitat  
28 enhancement.

29 \* **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to  
30 read:

31 AUTHORIZING LAND CONVEYANCE. The Department of Natural Resources

1 shall convey all right, title, and interest to the following described parcel to the City and  
2 Borough of Juneau, subject to the reservations described in AS 38.05.125 and the provisions  
3 of AS 38.05.127, for the purpose of meeting permit mitigation requirements relating to  
4 construction of the Auke Bay commercial loading facility.

5 The following parcel is located within Section 21, Township 40 South, Range 65 East,  
6 of the Copper River Meridian, Alaska, and within the City and Borough of Juneau and is  
7 more particularly described as follows:

8 Commencing at meander corner 1 of U.S. Survey 1370, as shown on the official  
9 Subdivision Plat, Indian Cove recorded as plat No. 363 in the Juneau Recording District, State  
10 of Alaska, from which meander corner 2 of said plat bears South 28 degrees 06 minutes 00  
11 seconds West, a distance of 605.22 feet thus being the Basis of bearing for this legal  
12 description. Said corner 1 is identical to corner 2 of lot 1 U.S. Survey 3911. Said corner is the  
13 True Point of Beginning for this description. Thence along the meander line of U.S. Survey  
14 3811 North 44 degrees 46 minutes 00 seconds East, a distance of 150.48 feet; thence  
15 continuing on said meander line North 70 degrees 34 minutes 00 seconds East, a distance of  
16 593.34 feet; thence North 79 degrees 06 minutes 00 second East, a distance of 284.46 feet;  
17 thence South 31 degrees 54 minutes 00 seconds West, a distance of 225.06 feet; thence South  
18 80 degrees 04 minutes 00 seconds East, a distance of 126.72 feet; thence South 48 degrees 07  
19 minutes 00 seconds East, a distance of 318.78 feet; thence South 77 degrees 47 minutes 00  
20 seconds East, a distance of 91.74 feet; thence North 74 degrees 06 minutes 00 seconds East, a  
21 distance of 88.44 feet leaving the northeast boundary of U.S. Survey 3811, thence North 11  
22 degrees 19 minutes 05 seconds West, a distance of 519.03 feet; thence North 32 degrees 21  
23 minutes 39 seconds West, a distance of 600.96 feet; thence North 89 degrees 49 minutes 53  
24 seconds West, a distance of 501.10 feet; thence North 15 degrees 08 minutes 37 seconds  
25 West, a distance of 99.62 feet to the Glacier Highway right-of-way and a point of cusp on a  
26 curve concave to the south having a radius of 1808.97 feet and being subtended by a chord  
27 that bears South 65 degrees 06 minutes 30 seconds West, 316.06 feet; thence westerly along  
28 said right-of-way curve, a distance of 316.46 feet; thence along said right-of-way South 60  
29 degrees 05 minute 48 seconds West, a distance of 702.26 feet to a point of cusp on a right-of-  
30 way curve concave to the south having a radius of 1809.19 feet and being subtended by a  
31 chord that bears South 54 degrees 27 minutes 34 seconds West, 355.43 feet; thence along said

1 right-of-way curve a distance of 356.01 feet to a point on the northern boundary of U.S.  
2 Survey 1370; thence along said boundary South 15 degrees 16 minute 27 seconds East, a  
3 distance of 430.26 feet; thence continuing along said boundary North 52 degrees 29 minutes  
4 14 seconds East, a distance of 283.96 feet; thence continuing along said boundary South 28  
5 degrees 01 minutes 44 seconds East, a distance of 211.14 feet; thence continuing along said  
6 boundary North 78 degrees 52 minutes 46 seconds East, a distance of 144.82 feet to the True  
7 Point of Beginning, containing 31.96 acres, more or less.

8 \* **Sec. 27.** The uncodified law of the State of Alaska is amended by adding a new section to  
9 read:

10 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change

11 (1) the heading of art. 4 of AS 38.05 from "Disposal of Timber and Materials"  
12 to "Disposal of Timber";

13 (2) the catch line of AS 38.05.110 from "Sale of timber and materials;  
14 account" to "Sale of timber."

15 \* **Sec. 28.** Section 23 of this Act takes effect July 1, 2017.

16 \* **Sec. 29.** Except as provided in sec. 28 of this Act, this Act takes effect July 1, 2012.

# CSHB 361(FIN)AM: DISPOSALS OF STATE RESOURCES

## BRIEFING PAPER

APRIL 13, 2012

The Division of Mining, Land and Water in the Department of Natural Resources has identified over 30 statutory changes that would help reduce applicant costs, create efficiencies by streamlining processes, reduce redundancies, and reduce opportunities for legal challenges. These changes would reduce the permitting burden on the applicant and free more time for staff to work on processing applications. Department of Law has drafted a bill that includes some of the highest priority changes that relate to the certain leasing and disposal programs and to water rights that are administered by the Department of Natural Resources.

### **The bill would accomplish the following primary objectives:**

- 1) Give the department more flexibility on when to issue negotiated land leases, as opposed to using a competitive bid process
  - The proposed changes would give DNR more flexibility to negotiate leases after solicitation of competitive interest where only one party seeks the lease.
  - Negotiating leases rather than conducting the full process for a competitive lease will improve processing times and decrease administrative expenses.
  - Monetary caps would be raised from \$5,000 to \$10,000 on negotiated leases. The consumer Price Index and land values have increased statewide over the last decade and the monetary cap for negotiating leases has not been adjusted to reflect these changes in value. This would allow more leases to be negotiated rather than having to be offered competitively, which is more time consuming and delays the issuance of the lease.<sup>1</sup>
  - Offering more negotiated leases reduces the time it takes to issue leases and reduces costs to the applicant. This will help us reduce the backlog, and help ensure we are not hampering private-sector development by unnecessarily delaying lease issuances.
  - This change does not apply to oil and gas or mineral leases.
- 2) Allow department discretion in renewing one time certain land leases if in good standing for a term equal to initial term
  - Significantly reduces the administrative cost to the state for executing a new lease at the end of the primary term for these types of lease.

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1. Often leases that are offered competitively do not receive any competitive bidders, thus the time does not add any benefit to the process. This change would not prevent the state from offering competitively if it determined there was a competitive interest.

- Includes the requirement for a lease to be used for purpose of original decision in order to be considered in good standing.
  - Reduces cost and processing time for lessee at point of renewal when lessee is in good standing and following all the terms of their initial authorization.
  - This change does not apply to oil and gas or mineral leases.
- 3) Separate out the respective rules and procedures for timber sales and material sales (such as for rock and gravel)
- Timber and material sale statutes are intertwined, which has led to misinterpretations because many of the existing statutes are specific to only timber or material sales, but not both.
  - The proposed changes would provide clarity and efficiency for the material sales process by:
    - Allowing the state to solicit competitive interest in material sales, and if there is none, avoid the longer competitive process. This would allow sales to be offered through a more efficient negotiated sale process
    - Eliminating multiple duplicative decision processes for material sites that will have multiple sales
    - Establishing how prices would be determined and allowing for more use of the representative regional sales price rather than requiring appraisals of the material, thus reducing cost and processing time for applicants
    - Clarifying that material may be sold at less than fair market value for certain instances that are in the public interest
    - Allowing material use that is incidental to other authorizations to be sold without a separate material sale authorization, reducing processing time and cost for applicants
    - Defining materials in such a way as to add clarity and avoid lengthy disputes
    - Allowing the department to convey materials as needed for certain flood control purposes
  - The proposed statute changes would ease the permitting burden on the private sector by allowing material sales to be issued more quickly and efficiently. Also, these changes would improve access to state materials for public benefit, such as to municipalities.
- 4) Allow the department to use sealed bid procedures, rather than public auction, where appropriate
- This change would clarify that DNR can use sealed bids to facilitate public auctions. The sealed-bid auction option is a more efficient and often more revenue positive option. Using this option will reduce the time it takes to sell or lease state land.

- Without this change, DNR could be challenged on the fact that it cannot utilize sealed bid auctions for public auctions, creating inefficiencies, and making it more difficult for the private sector to obtain state land.
  - This change addresses statutes that affect land sales, land leasing, contracts, agricultural preferences, and aquatic farm leasing, but does not affect oil and gas leasing.
- 5) Modernize public notice requirements for disposals of property rights
- Enables the department to notice disposals of property rights via the Alaska Online Public Notice System and de-emphasize notice given in printed media.
  - Helps to limit the cost of public noticing, as the cost for noticing in newspapers is continuing to increase as the use of print media decreases.
  - Increases flexibility for the department on how we issue public notice.
  - Existing statutes require 30 day public notice for disposals of property rights.
- 6) Revise a portion of the mining royalty law to allow companies to file their mining royalty by either calendar year or fiscal year
- Allows for a simplified process and administrative savings for filing, both for the state and the company.
  - Helps to coordinate mining royalty processing between the state and company, which creates efficiencies.
- 7) Allow the director of the Division of Mining, Land and Water to extend or renew a submerged land mining lease for up to a period of 20 years
- Significantly reduces the administrative cost to the state for executing a new lease at the end of the primary term for these types of lease.
  - Benefits the lessee by providing them more certainty in renewing their lease, pending that they are in good standing with the state with adequate production and in compliance with the terms of their lease.

Information provided by the Department of Natural Resources, Division of Mining, Land and Water.

# CSHB 361(FIN)AM: DISPOSALS OF STATE RESOURCES

## SECTIONAL ANALYSIS

APRIL 13, 2012

**Sections 1 through 5** of the bill revise land sales statutes to clarify that the Division of Mining, Land, and Water can use sealed bids instead of public auctions as the Department of Natural Resources has done for many years.

**Sec. 6** revises leasing statutes to increase the appraised value of the transaction from \$5,000 to \$10,000 per year in order to qualify for negotiated leases.

**Sec. 7** revises the statute by adding new subsections to the land leasing laws:

(d) This section revises land leasing laws to provide for conversion of a public, competitive offering process to a negotiated, non-competitive process if after public notice only one interested party expresses interest in acquiring the lease.

(e) This section revises land leasing laws to provide for renewals upon expiration of a lease issued under AS 38.05.070, 38.05.075, or 38.05.810. This would allow for a lease to be renewed one time at the discretion of the director of MLW if certain established conditions are satisfied.

**Sections 8 through 12** revise land leasing statutes to clarify that MLW can use sealed bids instead of public auctions.

**Sections 13 through 15** separate material sales from timber sales in the statutes. Timber sales would remain under AS 38.05.110 – 123 and a new section would be established for material sales (sand, gravel, rip-rap, stone etc.) under Section 18 of this bill. This will clarify the purposes, methods and procedures for these two different types of property sales, which would provide more certainty to the sales processes.

**Sec. 16** changes this statute to conform to the Department of Revenue's mining license tax laws and allow miners to pay their mining royalty either by calendar year or the company's fiscal year, whichever year they file their mining license tax.

**Sec. 17** revises mining statutes to allow the director of the Division of Mining, Land and Water to extend or renew a submerged land mining lease for up to a period of 20 years.

**Sec. 18** revises the Alaska Land Act by adding new sections under a new Article (13A) to deal specifically with Material Sales. This proposed change, associated with proposed changes under Sections 13 through 15, is intended to separate the two very different types of property sales.

The substantive changes to the material sales statutes under this section separate out the respective rules and procedures for timber sales and material sales (such as for rock and gravel).

The proposed changes would:

- Allow the state to solicit competitive interest in material sales, and if there is none, avoid the longer competitive process;
- Establish how prices would be determined and allow for more use of the representative regional sales price rather than requiring appraisals of the material for each sale;
- Clarify that material may be sold at less than fair market value for certain instances that are in the public interest as related to conditions set in AS 38.05.872;
- Allow material use that is incidental to other authorizations to be sold without a separate material sale authorization; and
- Allow the use and sale of peat to create another alternative fuel for heat and power generation for personal and commercial use.

**Sec. 19** revises public and charitable use statutes to clarify that DNR may negotiate the lease of state land without competitive bid as opposed to public auction. This change amends this section of the law to conform to changes proposed in Sections 1-5, and 8-12 of the bill.

**Sec. 20** revises public and charitable use statutes to allow DMLW to negotiate within the leasing process the sale of material necessary for construction, use, maintenance of property leased under AS 38.05.810.

**Sec. 21** repeals and reenacts the statute that allows the department to convey materials as needed for certain flood control purposes.

**Sec. 22** revises public notice statutes in order to modernize public notice requirements for disposals of property rights.

**Sec. 23** repeats Sec. 22 except that it removes the option to post a legal notice referencing the online notification in a newspaper of statewide circulation as of July 1, 2017 per section 25. That option was included as a transitional option to help the public transition to online methods.

**Sec. 24** changes the definition of “materials” within the Alaska Lands Act.

**Sec. 25** separates out material sales from AS 41.23.470(b). There was a conflict with a reference to AS 38.05.115 once material sales were separated out in that section.

**Sec. 26** provides instruction to the revisor of statutes to make organizational changes to correspond with the proposed separation of timber sales and material sales being proposed in Sections 13, 14, 15 and 18 of this bill.

**Sec. 27** provides that Section 23 of the Act takes effect on July 1, 2017.

**Sec. 28** provides that, except as provided in sec. 27 of the Act, the Act takes effect July 1, 2012.

# CSHB 361(FIN)AM: DISPOSALS OF STATE RESOURCES

## SUMMARY OF CHANGES

APRIL 13, 2012

**This document summarizes the changes between the original version HB 361 (27-GH2717\A) and CSHB361(FIN)am (27-GH2717\I.A). Unless otherwise noted, all page references are to CSHB361(FIN)am\I.A.**

During the drafting of HB361, there were some drafting differences between Department of Law and Legislative Legal. Changes were made in both House Resources and House Finance to address these differences. However, this document summarizes substantive changes made in committee.

Legislative Legal found that not all references to auctions made a distinction between a public auction and sealed bid. DNR agreed that these statutes could be further clarified.

Therefore, the following references to auctions were added to include either sealed bid sale or public auction:

- Section 1 was added to amend AS 38.05.050, on page 1, lines 5-10
- Section 10 amends AS 38.05.075(e)(3) on page 5, lines 9-21; and
- Section 11 amends 38.05.075(g) on page 5, lines 22-24.

With the addition of new sections, the sections that followed were renumbered.

The other change made in the CS was in Section 9, which adds AS 38.05.565 on page 4, line 11 to the number of sections listed as exceptions to normal leasing procedures (i.e. leasing shall be given to highest qualified bidder). In creating Article 13A [*previously 14A*] governing material sales, the newly created section AS 38.05.565, which allows materials to be sold for the representative regional sales price, was not omitted from AS 38.05.075(a). If we do not include this reference, it would cause confusion in how DNR should sell materials under 38.05.565.

**Section 14** starting on page 6, line 11 is a new section that amends AS 38.05.115 to make it consistent with other changes captured in HB361 that separate the timber and material sales. All provisions necessary for material sales have already been addressed in AS 38.05.550 – 565, AS 38.05.810 and AS 38.05.872.

The limitations of volumes on timber sales have not been carried over because of the revised process for material sales. Material sites will be designated through best interest decisions and with public notice per AS 38.05.550. When designating a site with a defined boundary, DNR will notify the public that all the materials will be sold from the site through subsequent sales. The subsequent negotiated material sales made at the representative regional sales price from those designated sites will not need a size limitation as long as the extraction is from the existing designated site.

**Section 16** was amended to remove the exemption for small mining operations from paying production royalty.

**Section 18** was modified in the following two ways:

In **AS 38.05.550(a)**, the words "in fee" (page 6, line 22 in version A) were removed to eliminate the unintended consequence of limiting material sales where the state does not own the land "in fee". This terminology is typically used to explain that the owner does not own all of the rights. For instance, if the state owns the surface estate but not the mineral estate, it can be stated that the state does not own the land in fee; however, DNR would be able to sell material from that land. In the realm of ownership, the state can sell material from any surface estate land that it owns, whether Tentatively Approved or Patented.

A new subsection **AS 38.05.555(f)** was inserted (starting on page 9, line 27) to incentivize the use and sale of peat to create another alternative fuel for heat and power generation. This amendment addresses three levels of use. First it provides personal use of a limited amount of peat at no cost to encourage more people to use peat. Second it allows commercial use of peat at no cost for an initial volume of less than 30,000 cubic yards in a 10 year period in order to encourage businesses to invest in product and market development of commercial peat production. So as to not dampen those developing markets, the amendment further allows the next ten years of peat extraction or those applicants who initially apply for over 30,000 cubic yards to be sold at a 20% value.

**Section 24** starting on page 17, line 13 was amended in order to revert part of the materials definition language back to the original language that exists in statute. This is mostly precautionary so that the public does not infer by the replacement of "stone, pumice, and common clay" with "quarry stone" as being a legislative action to remove pumice, common clay and non-quarry stone as being included in the definition. This does not change the legal implications because the word "includes" is legally read as "the following are examples but are not limited to these examples".

**Section 25** on page 17, lines 20-24 is a new section that separates out material sales from AS 41.23.470(b). This statute guides actions in the Recreational Rivers Public Use Area. There was a conflict with a reference to AS 38.05.115 once material sales were separated out in that section. Nothing in the allowable management of these lands is affected by the removal of the reference to materials in this statute.

Changes were made to section references to reflect renumbering in **Sec. 27 and Sec. 28**.

Also, a section of the bill was removed (Sec. 21 in HB361\A on page 15, line 24), which included clarifying language on the commissioner's authority to authorize the temporary use of a significant (over 5000 gallons) of water. With this removal, the current law is not changed and the commissioner retains the ability to issue temporary water use authorizations.

Examples of Land Leases under HB 361

10 Year Leases

ADL	Name	Industry	Size	Length
1	<u>220410</u> Susitna Duck Club	Commercial rec	< 1 acre	10 Years
2	<u>228642</u> US F&G	Small comm site	<1 acre	10 Years
3	<u>225566</u> Mountaineering Club of AK	Mt. hut	< 1 acre	10 Years
4	<u>221799</u> Mark's Guide Service	Guide site	1 acre	10 Years
5	<u>227956</u> Alaska Rainbow Lodge	Guide site	1 acre	10 Years
6	<u>222642</u> USFWS Comm Site	Small comm site	1 acre	10 Years

Mid length Leases

ADL	Name	Industry	Size	Length
1	<u>44350</u> AT&T Comm Site	Large comm site	< 1 acre	25 Years
2	<u>44351</u> AT&T Comm Site	Large Comm site	< 1 acre	25 Years
3	<u>229762</u> FAA-Rainy Pass	Weather station	< 1 acre	20 Years
4	<u>229109</u> Backcountry Adventures	Guide site	3.54 acres	30 Years
5	<u>228829</u> Copper River EMA	Ambulance station	2 acres	30 Years
6	<u>227818</u> Iditarod Area School District	Science Camp	2 acres	20 Years
7	<u>60911</u> P&C Lease, Alascom	Large comm site	3.67 acres	20 Years
8	<u>67915</u> P&C Lease, USDHS Coast Guard	Small dock	87.3 acres	20 Years
9	<u>221779</u> Negotiated Lease	Shore Fishery	1 acres	20 Years
10	<u>223655</u> Tideland Lease	Small dock	< 1 acre	20 Years

55 Year Leases

ADL	Name	Industry	Size	Length
1	<u>230925</u> CINGSA	Gas Injection	7 acres	55 Years
2	<u>223351</u> TDX Dock at St. Paul	Crab Processing	10 acres	55 Years
3	<u>64269</u> Amerada Hess Pipeline Corp	Dock	435.2 acres	55 Years
4	<u>32549</u> Hilcorp Alaska-Cook Inlet	O&G Dock	170 acres	55 Years
5	<u>36127</u> Subdivision Lease	Residential-1963	1.6 acres	55 Years
6	<u>57396</u> Mt. Eyak Ski Resort	City of Cordova	508 acres	55 Years
7	<u>60211</u> William Wren	Dock	7.9 acres	55 Years

Leasing actions required by CSHB361(FIN)am

Lease Application defines request	Below \$10,000 and less than 10 year term	Over \$10,000 or over 10 year term
	Option to Negotiate without soliciting competitive interest	Through public notice solicit for competitive interest
		<i>No competitive interest expressed</i>
	Requires best interest decision	Negotiate any terms
	Requires formal public notice	Requires best interest decision
		Requires formal public notice, although initial notice would suffice
		Requires formal public notice both at the outset and for auction
		Requires publication of auction brochure
		Requires additional 30 day public notice of auction

Process for Lease Issuance and Renewal under CSHB361(FIN):

Issue Original lease AS 38.05.035(e)	Re-issue under current Law	Reissue under Revised Law for existing leases	Reissue under Revised Law for new leases
Agency Notice	Agency Notice	Agency Notice	Initially decide if going to renew; other more important use? Another use would warrant full AS 38.05.035(e) decision process
Preliminary Decision	Preliminary Decision	Public Notice	Public Notice was given at initial lease but will also be done at renewal
Public Notice	Public Notice	Administrative Record of Decision	Administrative Record of Decision
Final Decision	Final Decision	Appeal	Appeal
Appeal	Appeal	Appraisal every 5 years	Appraisal every 5 years
Early Entry Authorization	Appraisal every 5 years	Issue Lease Renewal	Issue Lease Renewal
Survey and Appraisal	Issue new Lease		
Issue Lease			

Under current law, DMLW is not able to issue a lease renewal and instead has to issue an entirely new lease. CSHB361(FIN) amends statutes to allow the reissuance of leases (2 columns to the far right).

Information provided by the Department of Natural Resources, Division of Mining, Land and Water.

CSHB361(FIN)am Lease Renewal Chart

Issue Original lease	Reissue under current Law	Reissue under Revised Law for existing leases	Reissue under Revised Law for new leases
Agency Notice	Agency Notice	Agency Notice	Initially decide if going to renew; other more important use? Another use would warrant full AS 38.05.035(e) decision process
Preliminary Decision	Preliminary Decision	Public Notice	Public Notice was given at initial lease but will also be done at renewal
Public Notice	Public Notice	Administrative Record of Decision	Administrative Record of Decision
Final Decision	Final Decision	Appeal	Appeal
Appeal	Appeal	Appraisal every 5 years	Appraisal every 5 years
Early Entry Authorization	Appraisal every 5 years	Issue Lease Renewal	Issue Lease Renewal
Survey and Appraisal	Issue new Lease		
Issue Lease			

Under current statutes, the Division of Mining, Land and Water are unable to renew leases and instead have to reissue new leases.