

SB

219

<TARGET><BILL>SB 219</BILL><SUBJECT>SB
219</SUBJECT><COMM>SRES27</COMM></TARGET>



MEMORANDUM
Department of Natural Resources

STATE OF ALASKA
Office of the Commissioner

TO: Sen. Joe Paskvan, Co-Chair
Sen. Tom Wagoner, Co-Chair

DATE: March 21, 2012

TELEPHONE: 465-4730

FROM: Esther Tempel, Legislative Liaison

SUBJECT: Bill Hearing Request—SB 219: Disposals of State Resources

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I respectfully request a Senate Resources Committee hearing on SB 219: Disposals of State Resources at your earliest convenience.

SB 219 makes statutory changes that would help reduce applicant costs, create efficiencies by streamlining processes, reduce redundancies, and reduce opportunities for legal challenges. The Division of Mining, Land, and Water in the Department of Natural Resources has worked to address 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.

Accompanying this memo, you will find:

- 1) A copy of SB 219
- 2) Transmittal Letter
- 3) Briefing Paper
- 4) Sectional Analysis
- 5) Fiscal Notes

A finalized list of witnesses will be forthcoming.

If you need any additional information, please contact Esther Tempel, Legislative Liaison for the Department of Natural Resources at 907-465-4730 or Wyn Menefee, Deputy Director of the Division of Mining, Land, and Water at 907-269-8501.



SENATE BILL NO. 219

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/29/12

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Land Act, including certain lease, sale, and other
 2 disposal of state land and materials; relating to production royalties from miners;
 3 (relating to rights to use state water); and providing for an effective date."

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

5 * Section 1. AS 38.05.055 is amended to read:

6 **Sec. 38.05.055. Auction sale or sealed bid procedures.** Unless another
 7 method of sale is required under this chapter, AS 38.08, or AS 38.09, the sale of state
 8 land shall be made at public auction **or by sealed bid, at the discretion of the**
 9 **director,** to the highest qualified bidder as determined by the director. The director
 10 may accept bids and sell state land under this section at no less than 70 percent of the
 11 appraised fair market value of the land. To qualify to participate under this section in a
 12 public auction **or sale by sealed bid** of state land that is other than commercial,
 13 industrial, or agricultural land, a bidder shall have been a resident of the state for at
 14 least one year immediately preceding the date of the **sale** [AUCTION] and submit

1 proof of that fact, as the commissioner requires by regulation. A bidder may be
 2 represented by an attorney or agent at **a public** [THE] auction. An aggrieved bidder
 3 may appeal to the commissioner within five days after the sale for a review of the
 4 director's determination. The sale shall be conducted by the director, and, at the time
 5 of sale, the successful bidder shall deposit an amount equal to five percent of the
 6 purchase price. The director shall immediately issue a receipt containing a description
 7 of the land or property purchased, the price bid, and the amount deposited. The receipt
 8 shall be acknowledged in writing by the bidder.

9 * **Sec. 2.** AS 38.05.065(a) is amended to read:

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

15 * **Sec. 3.** AS 38.05.069(a) is amended to read:

16 (a) After consulting with the Board of Agriculture and Conservation
 17 (AS 03.09.010), on a determination that the highest and best use of unoccupied land is
 18 for agricultural purposes and that it is in the best interests of the state to sell or lease
 19 the land, the commissioner shall grant to an Alaska resident owning and using or
 20 leasing and using land for agricultural purposes a first option [AT THE AUCTION] to
 21 purchase or lease the unoccupied land situated adjacent to land presently held by the
 22 Alaska resident for the amount of the high bid received at public auction **or by sealed**
 23 **bid**. If more than one Alaska resident qualifies for a first option under this section,
 24 eligibility for the first option shall be determined by lot and the option must be
 25 exercised on the conclusion of the public auction **or opening of sealed bids**. A parcel
 26 of agricultural land sold under this section may not be less than 20 acres, and a parcel
 27 of agricultural land that is acquired by exercise of the option granted in this subsection
 28 may not exceed 320 acres. Agricultural land that is acquired under this section must be
 29 used for agricultural purposes as required by law.

30 * **Sec. 4.** AS 38.05.069(c) is amended to read:

31 (c) Under this section,

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

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

4 * **Sec. 5.** AS 38.05.070(b) is amended to read:

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

13 * **Sec. 6.** AS 38.05.070 is amended by adding new subsections to read:

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

19 (e) The director may renew a lease issued under this section, AS 38.05.075, or
20 38.05.810 upon its expiration if the lease is in good standing and the lease renewal is
21 determined to be in the best interests of the state. A renewal issued under this
22 subsection is not subject to AS 38.05.035(e). A lease may only be renewed once for a
23 term no longer than the initial term of the lease.

24 * **Sec. 7.** AS 38.05.073(g) is amended to read:

25 (g) After soliciting proposals under (e) of this section, if the commissioner
26 determines that two or more potential lessees are acceptable, the commissioner may
27 select the potential lessee who submits the highest bid during a public [AN] auction or
28 by sealed bids, whichever method the commissioner chooses. The minimum bid must
29 equal the amount established by the commissioner plus the administrative fee
30 established under (k) of this section. The commissioner shall also require the potential
31 lessee to make an earnest money deposit under AS 38.05.860(b). After the

1 commissioner selects a potential lessee, the commissioner may begin negotiations with
 2 the potential lessee to develop the terms and conditions for the lease.

3 * **Sec. 8.** AS 38.05.075(a) is amended to read:

4 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.082,
 5 38.05.083, 38.05.087, 38.05.102, 38.05.600, 38.05.810, and this section, **when**
 6 **competitive interest has been demonstrated or the commissioner determines that**
 7 **it is in the state's best interests,** leasing shall be made at public auction **or by sealed**
 8 **bid, at the discretion of the director,** to the highest qualified bidder as determined by
 9 the commissioner. **A bidder may be represented by an attorney or agent at a**
 10 **public auction.** In the public notice of a lease to be offered at public auction **or by**
 11 **sealed bid,** the commissioner shall specify a minimum acceptable bid and the lease
 12 compensation method. The lease compensation method shall be designed to maximize
 13 the return on the lease to the state and shall be a form of compensation set out in
 14 AS 38.05.073(m). An aggrieved bidder may appeal to the commissioner within five
 15 days for a review of the determination. The leasing shall be conducted by the
 16 commissioner and the successful bidder shall deposit at the **public** auction **or with the**
 17 **sealed bid** the first year's rental or other lease compensation as specified by the
 18 commissioner, or that portion of it that the commissioner requires in accordance with
 19 the bid. The commissioner shall require, under AS 38.05.860, qualified bidders to
 20 deposit a sum equal to any survey or appraisal costs reasonably incurred by another
 21 qualified bidder acting in accordance with the regulations of the commissioner or
 22 incurred by the department under AS 38.04.045 and AS 38.05.840. If a bidder making
 23 a deposit of survey or appraisal costs is determined by the commissioner to be the
 24 highest qualified bidder under this subsection, the deposit shall be paid to the
 25 unsuccessful bidder who incurred those costs or to the department if the department
 26 incurred the costs. All costs for survey and appraisal shall be approved in advance in
 27 writing by the commissioner. The commissioner shall immediately issue a receipt
 28 containing a description of the land or interest leased, the price bid, and the terms of
 29 the lease to the successful qualified bidder. If the receipt is not accepted in writing by
 30 the bidder under this subsection, the commissioner may offer the land for lease again
 31 under this subsection. A lease, on a form approved by the attorney general, shall be

1 signed by the successful bidder and by the commissioner [WITHIN THE PERIOD
2 SPECIFIED IN THE AUCTION NOTICE].

3 * **Sec. 9.** AS 38.05.083(a) is amended to read:

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

12 * **Sec. 10.** AS 38.05.110(a) is amended to read:

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

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

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

20 * **Sec. 11.** AS 38.05.120 is amended to read:

21 **Sec. 38.05.120. Disposal procedure.** Timber [AND OTHER MATERIALS]
22 shall be sold either by sealed bids or public auction, depending on which method is
23 determined by the commissioner to be in the best interests of the state, to the highest
24 qualified bidder as determined by the commissioner. An aggrieved bidder may appeal
25 to the commissioner within five days after the sale for a review of the determination.
26 The sale shall be conducted by the commissioner, and at the time of sale the successful
27 bidder shall deposit the amount specified in the terms of sale. The means by which the
28 amount of deposit is determined shall be prescribed by appropriate regulation. The
29 commissioner shall immediately issue a receipt containing a description of the timber
30 [OR MATERIALS] purchased, the price bid, and the terms of sale. The receipt shall
31 be accepted in writing by the bidder. A contract of sale, on a form approved by the

1 attorney general, shall be signed by the purchaser and the contract shall be signed by
 2 the commissioner on behalf of the state. The commissioner may impose conditions,
 3 limitations, and terms considered necessary and proper to protect the interests of the
 4 state. Violation of any provision of this chapter or the terms of the contract of sale
 5 subjects the purchaser to appropriate legal action.

6 * **Sec. 12.** AS 38.05.212(a) is amended to read:

7 (a) In exchange for and to preserve the right to extract and possess the
 8 minerals produced, the holder of a mining claim, leasehold location, or mining lease,
 9 including a mining lease under AS 38.05.250, shall pay a royalty on all minerals
 10 produced from land subject to the claim, leasehold location, or mining lease during
 11 each calendar year, or each fiscal year if the miner does not file the mining license
 12 tax on a calendar year basis. The department may exempt, by regulation, small
 13 operations from the production royalty otherwise required by this section.

14 * **Sec. 13.** AS 38.05.250(c) is amended to read:

15 (c) Each submerged land mining lease shall be for a period of up to 20 years
 16 and for so long as there is production in paying quantities from the leased area. A
 17 submerged land mining lease may be renewed for a period of up to 20 years at
 18 the discretion of the director if the director determines that the renewal is in the
 19 best interests of the state.

20 * **Sec. 14.** AS 38.05 is amended by adding new sections to read:

21 **Article 14A. Material Sales.**

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

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

delete
A-6
Amend #4

Two sentences not tied ...

1 department.

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

5 (1) the location of the source or site from which materials are to be
6 removed;

7 (2) the method of disposal as provided in AS 38.05.555 - 38.05.565;
8 and

9 (3) the limitations, conditions, and terms of sale, which shall address
10 the utilization, development, and maintenance of the source of the materials.

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

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

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

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

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

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

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

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

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

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

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

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

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 section may be at less than fair market value and

1 materials may be disposed of free of charge if the director determines that such a
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 section 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. 15.** 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 insure that the proposed use is compatible with area utilization. Before
 4 the land may be leased under (b) - (d) of this section, it must be shown to the
 5 satisfaction of the director that the land is to be used for an established or definitely
 6 proposed project, and that the eligible applicant has the financial ability to carry out
 7 the project. The commissioner may establish limitations on the acreage which may be
 8 leased under (b) - (d) of this section to an applicant.

9 * **Sec. 16.** 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. 17.** 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. 18.** 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)** [(i)] posting in a conspicuous location in the vicinity
30 of 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) [(A)] publication through public service announcements on
17 the 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. 19.** AS 38.05.945(b), as amended by sec. 18 of this Act, is further 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. 20.** 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, and quarry stone;

24 * **Sec. 21.** AS 46.15.155(a) is amended to read:

25 (a) Notwithstanding any contrary provision of this chapter, the commissioner
 26 may authorize the temporary use of a significant amount of water, as determined by
 27 the department by regulation, for a period of time not to exceed five consecutive years
 28 for each authorization, if the water applied for has not been appropriated in
 29 accordance with this chapter. In the commissioner's discretion, a new authorization
 30 for the temporary use of a significant amount of water may be issued for a
 31 project at or before the expiration of the existing authorization issued for the

1 same project.

2 * **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

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

5 (1) the heading of Article 4 of AS 38.05 from "Disposal of Timber and
6 Materials" to "Disposal of Timber";

7 (2) the catchline of AS 38.05.110 from "Sale of timber and materials; account"
8 to "Sale of timber".

9 * **Sec. 23.** Section 19 of this Act takes effect July 1, 2017.

10 * **Sec. 24.** Except as provided in sec. 23 of this Act, this Act takes effect July 1, 2012.

STATE CAPITOL
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Governor Sean Parnell
STATE OF ALASKA

February 27, 2012

The Honorable Gary Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens,

Under the authority of Article III, Section 18 of the Alaska Constitution, I am transmitting a bill relating to the Alaska Land Act, including certain lease, sale, and other disposal of State land and materials; relating to production royalties from miners; and relating to rights to use State water. This bill will reduce the permitting burden and costs of applicants by creating efficiencies, streamlining, and eliminating redundancies in the permit application process.

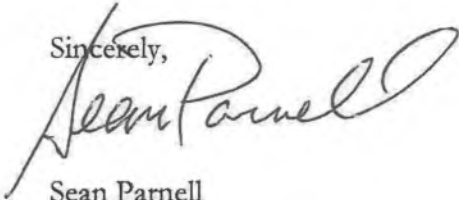
This bill would accomplish the following:

- (1) Allow the Department of Natural Resources to use sealed bid procedures, rather than public auction, if appropriate, for certain leasing and disposal of State land;
- (2) Raise the monetary cap for negotiating leases of State land from \$5,000 to \$10,000;
- (3) Give the Department of Natural Resources more flexibility regarding when to issue negotiated leases of land, as opposed to using a competitive bid process;
- (4) Allow the Department of Natural Resources to renew mineral and land leases under certain conditions without conducting the same process for initiating a new lease;
- (5) Separate out the respective rules and procedures for timber sales and material sales, such as for rock and gravel;
- (6) Allow the Department of Natural Resources to convey materials as needed for flood control purposes;
- (7) Allow the Department of Natural Resources to exempt small mining operations from having to pay production royalties; and

- (8) Provide more flexibility to the Department of Natural Resources in how they notify the public of proposed decisions.

Collectively, these various changes represent an effort by the Department of Natural Resources to make its administration of these programs more efficient. If enacted, these changes will help the Department improve its ability to responsibly manage the State's land and resources in accordance with constitutional principles and statutory directives.

Sincerely,



Sean Parnell
Governor

Enclosure

royalty exemptions for small scale miners -
how much freedom to give DNR.

Jessie - removes a lot of the public process -
gives the Dept. the ability to make
a judgement call...

removing written public notice & simply
posting on website → full text
on website rather than flyer or
ad.

- o Dick's amend → some peeps in w. AK who
want to use peat w/o paying fees...
- o other amends to make bill consistent...

SB 219: DISPOSALS OF STATE RESOURCES

SECTIONAL ANALYSIS

FOR THE SENATE RESOURCES COMMITTEE

Sections 1 through 4 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. 5 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. 6 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 7 through 9 revise land leasing statutes to clarify that MLW can use sealed bids instead of public auctions.

Sections 10 and 11 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 14 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. 12 changes this statute to conform to the Department of Revenue's mining license tax laws and allow miners to file MLT either by calendar year or the company's fiscal year. This section also gives DNR the authority to exempt, by regulation, small operations from the production royalty.

Sec. 13 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. 14 proposes to revise the Alaska Land Act by adding new sections under a new Article (14A) to deal specifically with Material Sales. This proposed change, associated with proposed changes under Sections 10 and 11, 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; and
- Allow material use that is incidental to other authorizations to be sold without a separate material sale authorization.

Sec. 15 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 1-4, and 7-9 of the bill.

Sec. 16 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. 17 repeals and reenacts the statute that allows the department to convey materials as needed for certain flood control purposes.

Sec. 18 revises public notice statutes in order to modernize public notice requirements for disposals of property rights.

Sec. 19 repeats Sec. 18 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 23. That option was included as a transitional option to help the public transition to online methods.

Sec. 20 changes the definition of "materials" within the Alaska Lands Act.

Sec. 21 changes Alaska Water Law to clarify that temporary water use permits may be renewed.

Sec. 22 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 10, 11, and 14 of this bill.

Sec. 23 provides that Section 19 of the Act takes effect on July 1, 2017.

Sec. 24 provides that, except as provided in sec. 23 of the Act, the Act takes effect July 1, 2012.

10 leases/yr processed

SB219: DISPOSALS OF STATE RESOURCES

BRIEFING PAPER

FOR THE SENATE RESOURCES COMMITTEE

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.¹
- 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 leases.

Comp
leases
per year

2) Allow department discretion in renewing certain land leases in good standing for 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.

MAX
55 YRS

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 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) Clarify that temporary water use permits may be renewed

- Under current statutes, a permittee must reapply for a Temporary Water Use Authorization (TWUA) permit if their project lasts longer than five years. The application must be submitted at the five-year mark and re-adjudicated by staff, even if the use is for the same amount of water from the same source for the same purposes.

- The proposed change would allow the division to provide a new TWUA at the five-year mark—if the water use is the same—without a formal decision process. This would allow applicants to avoid delays during renewal, and would save the division staff time which could be utilized for processing other authorizations.
- TWUA are not permanent water rights. The division may change or revoke TWUA as necessary.

5) 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.

6) 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 popularity 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.

7) Give the department the authority to exempt small mining operations from having to pay production royalties

- Creates a savings for small-production miners and the state—amounts of locatable minerals being produced from these operations are diminutive and the state's cost to complete the accounting and processing of the royalty is more than the revenue collected.

8) 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.

\$12
\$10,000
gross
602

*None
only place*

5/23

9) 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.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version SB 219
Fiscal Note Number 1
(S) Publish Date 2/29/12

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				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

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. SB 219

Analysis

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

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version SB 219
 Fiscal Note Number 2
 (S) Publish Date 2/29/12

Identifier (file name) LL0717-DOT-SWD-2-21-12 Dept. Affected DOT&PF
 Title Permit Reform Appropriation Design, Engineering & Construction
Stwd Design & Eng Services
 Sponsor Governor
 Requester Rules by Request of the Governor OMB Component Number 2357

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
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services	0.0		0.0	0.0	0.0	0.0	0.0
Travel	0.0		0.0	0.0	0.0	0.0	0.0
Services	0.0		0.0	0.0	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
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS							
Full-time							
Part-time							
Temporary							

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

Estimated CAPITAL (FY13) costs _____ (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 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. SB 219

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

Bill Version SB 219
 Fiscal Note Number 3
 (S) Publish Date 2/29/12

Identifier (file name) LL0717-DNR-MLW -02-27-12 Dept. Affected Department of Natural Resources
 Title DNR Permitting Efficiency Bill Appropriation Land & Water Resources
 Allocation Mining Land & Water
 Sponsor Governor
 Requester Rules by Request of the Governor 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
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time	0	0	0	0	0	0	0
Part-time	0	0	0	0	0	0	0
Temporary	0	0	0	0	0	0	0

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

Phone 269-8600
 Date/Time 2/27/12 2:00 PM
 Date 2/27/2012

FISCAL NOTE #3

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SB 219

Analysis

LL 0717 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 38.05.212(a), Section 12 of the bill. Under that proposed revision the department would have the authority to exempt, by regulation, small operations from the production royalty. While the definition and threshold level for consideration would need to be established through regulation, DNR anticipates that the net reduction in actual royalties paid to the state under this exemption could be around \$10,000 per year. This is because mining operations are allowed to deduct certain operating costs against any royalty due to the state and it is anticipated that the deductions allowed most small operations would equal or exceed any royalty due. Most small operations actually pay no royalty but are still required to go through the accounting and filing operations. The primary benefit of this proposed statute change would come from the cost savings of both DNR and the small operators' administrative efforts to track, calculate and report minimal royalty payments. DNR would then be able to apply this savings in staff time to other, more pressing mining issues.

Because the number of small operations and the threshold level for this exemption must be established through the regulatory process, and because of the variability of the price of metals, DNR cannot provide an estimate of the actual reduction in royalty income at this time. As such the actual reduction to the state's revenue is indeterminate.

The other sections of the bill will either create efficiencies or prevent inefficiencies. The revisions will benefit both the applicant and the State. The applicant will be saved time and cost by the changes.



MEMORANDUM
Department of Natural Resources

STATE OF ALASKA
Office of the Commissioner

TO: Rep. Eric Feige, Co-Chair
Rep. Paul Seaton, Co-Chair

DATE: March 13, 2012

TELEPHONE: 465-4730

FROM: Esther Tempel, Legislative Liaison

SUBJECT: HB 361 Follow-Up

During the March 5, 2012 hearing on HB 361, the following questions were raised. Please find below the responses from the Division of Mining, Land and Water along with the original questions that were asked (bolded).

Please let me or Dep. Director Wyn Menefee know if you require any further information or have any additional questions.

Note all references to the bill are working off of version 27-GH2717A

How many leases would be affected by point one of the briefing paper (allowing more leases to be negotiated)?

Let us first clarify that this does not retroactively affect any existing leases. It only applies to future applications for leases. We can not accurately predict how many leases will be applied for and where. We can only look at the historical data and generalize the response.

The goal is to move more lease application processing from full competitive process to negotiated process. There are two parts of the bill that address this effort to shorten the processing time and reduce costs to the applicants. A negotiated process avoids the necessity to prepare an auction brochure, wait 30 additional days after posting notice of the auction, hold the auction and then issue the lease. (See attached chart)

On the first part under Section 5 (on page 3 line 5): the intent is to raise the initial threshold for allowing the director discretion to negotiate leases when the yearly appraised value of the transaction (i.e., rental value) does not exceed \$10,000 and the term will not exceed 10 years. The vast majority of our leases do not exceed this value. Most leases are already below the existing \$5000 threshold and only a handful of leases would be affected by this change each year. For example, certain larger tracts near communities or on the North Slope (leases of land outside of oil and gas lease boundaries or for non-oil and gas development) could exceed the \$5,000 value. Raising the threshold to \$10,000 would not automatically move the leases to the negotiated process, but rather provide the director discretion to use the negotiated process.

The second part under Section 6 (on page 3 line 14) would affect many more leases. The intent of part (d) is to first solicit competitive interest in an area where we have a lease application, and if there is no interest other than the applicant, we would begin to negotiate the lease with the applicant, thus avoiding the competitive auction process. We get between 10 – 20 lease applications per year that could potentially be affected by this revision.

Why not specify in law then instead of leaving up to "discretion of director"?

Currently these revisions would allow this type of negotiated process for any lease that falls under AS 38.05.070. This includes leasing of uplands, and tide, submerged or shorelands except for resource extraction such as timber, mining or oil and gas leasing. The revisions are broad enough to be applicable for recreational facilities development, aquatic farm, hatchery, and shore fishery leasing. Where more specific statutes are applicable, such as in the shore fishery leasing under AS 38.05.082, the more specific statutes would prevail if there was a conflict.

Under briefing paper point 2, list what types of leases would be affected by this renewal clause?

This revision in Section 6 (on page 3 line 19) allows the director to renew leases that are in good standing one time. Because this revision is in AS 38.05.070 and includes direct references to leases issued under AS 38.05.075 (leasing procedures) and those issued under AS 38.05.810 (public and charitable leases), the renewal clause affects leases of uplands, and tide, submerged or shorelands except

for resource extraction such as timber, mining or oil and gas leasing. This could include everything from docks to lodges to energy production to storage facilities. It is applicable for recreational facilities development, aquatic farm, hatchery, and shore fishery leasing. It would not include leases under the Remote Recreational Cabin Site Program or agricultural preference rights.

Can renewals be applied for before the expiration of the lease?

There are three sections of HB361 that addresses renewals, sections 6 (general leases), 13 (submerged mineral leases), and 21 (temporary water use authorizations). There was concern expressed that lessees should have the ability to apply for renewal sooner than at the point of lease expiration. In all cases the statute would allow leases to be applied for before point of expiration. DNR would seek a determination of whether the lessee would want a renewal in sufficient time before expiration to allow for the renewal decision to be made before expiration. In some cases there may be some reasonable restrictions that would limit how far before the date of expiration a request for renewal could be received. For instance in aquatic farming and mineral leasing, there are requirements of annual reporting of production. DNR would not consider renewal of the lease more than a year before date of expiration to allow time for review of the last year's production reports to determine if the lessee was still in good standing following the stipulations in the lease. Note existing AS 38.05.250(c) allows for submerged mineral leases to be renewed year by year as long as there is production in paying quantities from the leased area, but does not allow for renewals of 20 year terms. This revision under section 13 allows the longer term renewal that provides more certainty for the lessee in business planning.

Do current land leases provide any first right of refusal to give the current lessee the upper hand on reissuance?

Under the current statutes, any reissuance of a lease at the end of a term would require a competitive process. If there was competitive interest and a new applicant were to win the auction, they would be required to reimburse the previous lessee for any of the improvements that the first lessee had built provided that they want to continue in the same use of the land. But the first lessee does not have the first right of refusal.

Under briefing paper point 4, verify that you could issue TWUA before end of term if it makes sense.

As mentioned before, under the revision in section 21, the temporary water use authorizations can be issued at or before the end of the lease.

Clarification of briefing paper point 8: it is mining royalty not mining license tax.

As a reminder, point 8 on the briefing paper is incorrect in saying that we are revising mining licensing tax law referring to Section 12 on page 6 of the bill. We are instead revising the mining royalty law. The statute revision is correct but the briefing paper used an incorrect term when referring to Section 12. The change in Section 12 does not conflict with the Department of Revenue's regulations which state that the mining license tax year is the same as that person's tax year for federal income tax purposes.

Follow up on Agricultural preference right auction question from Representative Seaton

The committee questioned whether the changes suggested in Section 3 (on page 2 line 22) adversely affected the state getting adequate compensation and would be used to stifle bidding. Upon further review of this section, DNR does not believe that the revision to allow the use of sealed bids in any way alters the probable outcome of an agricultural auction held under this section of statute. This area of statute in AS 38.05.069 provides an agricultural preference right. The apparent reason for the existence of this section is to allow agricultural land owners the right to broaden their land ownership if adjacent agricultural land becomes available. This preference right only comes into play when the commissioner has determined that the highest and best use of the unoccupied land to be leased is for agricultural use, and the adjacent owner is an Alaskan resident already using that adjacent parcel for agricultural purposes. This provides the right of the existing farmer to meet high bid to expand their farm. Whether the auction occurs through sealed bid or outcry auction, the adjacent land owner knows they can match high bid to purchase adjacent land through the preference right. They have no incentive to put in a high bid through sealed bid or to drive up the price through an outcry auction. They would wait to match the high bid in either event. Therefore it would not affect the outcome of the auction.

The revision DNR suggests does not address the underlying issue of whether the agricultural preference under the existing statute is the best policy; rather we seek to bring consistency in statute regarding the use of sealed bids or auctions. If there is a desire by the committee to address the underlying policy question of whether the state should offer the agricultural preference in the first place, we suggest that it be done in a separate statute revision.



ALASKA STATE LEGISLATURE

SENATOR THOMAS H. WAGONER

Co-Chair: Senate Resources Committee

Member: C&RA Committee

Member: LB&A Committee

Member: Regulatory Review

Member: World Trade

Official Business

Session: January - May

State Capitol, #427

Juneau, AK 99801

Phone: 907-465-2828 Fax: 907-465-4779

Interim: May - December

145 Main Street Loop, Suite 226

Kenai, AK 99611

Phone: 907-283-7996 Fax: 907-283-8127

DATE: April 3, 2012
TO: Leg. Legal
FROM: Mary Jackson
RE: Final Committee Bills - SB 145 & SB 219

The Senate Resources Committee met on April 2 and acted on SB 145 and SB 219.

Please provide a CS for those bills, per the Committee's actions, as follows:

SB 145 – adopted the following amendments to Draft CS SB 145 version \D:

27-LS1078\D.3 offered by Wielechowski & French (Amend #1)

27-LS1078\D.5 offered by French

French amended from "four" years to "five" years, no objection by committee. Amended amendment was no objection.

SB 219 – adopted the following amendments to version \A

27-GS2717\A.1 offered by Wagoner

27-GS2717\A.2 offered by French

27-GS2717\A.4 offered by French

27-GS2717\A.6 offered by Wielechowski

LEGAL SERVICES

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Juneau, Alaska 99801-1182
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MEMORANDUM

April 2, 2012

SUBJECT: Does an exemption from paying mining production royalties violate sec. 6(i) of the Statehood Act (SB 219, Work Order No. 27-GS2717A)

TO: Senator Bill Wielechowski
Attn: Michelle Sydeman

FROM: Dennis C. Bailey *DCB*
Legislative Counsel

You have requested an opinion concerning whether a provision in SB 219 authorizing the department to exempt small operations from production violates sec. 6(i) of the Statehood Act.¹

Section 12 of SB 219 provides:

* **Sec. 12.** AS 38.05.212(a) is amended to read:

(a) In exchange for and to preserve the right to extract and possess the minerals produced, the holder of a mining claim, leasehold location, or mining lease, including a mining lease under AS 38.05.250, shall pay a royalty on all minerals produced from land subject to the claim, leasehold location, or mining lease during each calendar year, or each fiscal year if the miner does not file the mining license tax on a calendar year basis. The department may exempt, by regulation, small operations from the production royalty otherwise required by this section.

The last sentence is the subject of your question.

Your request suggested that the Alaska Supreme Court may have addressed this issue. The case is *Trustees for Alaska v. State*, 736 P.2d 324 (Alaska 1987), cert. den. 486 U.S. 1032, 108 S.Ct. 2013, 100 L.Ed.2d 601 (1988), where the court, following a detailed basis for its conclusion, decided that the leasing requirement in section 6(i) of the Alaska Statehood Act, considered in the context of the School Lands Act, the Mineral Leasing Act, other statehood mineral grants, and mineral leasing systems in other states, mandates

¹ The state constitution was adopted containing a provision expressly consenting to the terms of the Statehood Act. *Trustees for Alaska v. State*, 736 P.2d 324 (Alaska 1987), cert denied, 486 U.S. 1032, 108 S.Ct. 2013, 100 L.Ed.2d 601 (1988).

Senator Bill Wielechowski

April 2, 2012

Page 2

a system under which the State of Alaska must receive rent or royalties for its mining leases. The decision determined that the state could not forego or fail to charge and collect rents and royalties. The court stated that the state hard rock mineral leasing laws that did not require rents or royalties did not meet the leasing requirements of sec. 6(i). *Trustees* at 339. The proposed amendment to AS 38.05.212(a) in SB 219, sec. 12, apparently provides for a circumstance where small operations would be exempt from royalties. Therefore it likely to be found to violate the terms of Statehood Act.

Let me know if you would like a copy of the case.

If I may be of further assistance, please advise.

DCB:ljw
12-245.ljw

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING, LAND AND WATER

SB 219 INFO

SEAN PARNELL, GOVERNOR

550 WEST 7TH AVENUE, SUITE 1070
ANCHORAGE, ALASKA 99501-3579
PHONE: (907) 269-8600
FAX: (907) 269-8904

The Honorable Senator Wagoner, Co-Chair Senate Resources Committee
State Capitol Room 427
Juneau AK, 99801

March 30, 2012

Dear Representative Wagoner and members of the Senate Resources Committee,

The following questions were asked during Senate Resources on 3/28/12. I have attempted to answer the questions to the best of my ability while attempting to provide a timely response.

Land Leasing:

- **What is the renewal process for leases? What changes result if we were to pass this bill?**

An attached chart (1) shows some things that will be considered during the lease renewal process.

- **What are some examples of leases that fall into the various ranges (lease term) and uses/types of operations from big to small?**

The attached chart (2) shows some examples of the types of leases that have been issued for different lengths of term. The types of projects that require leases range in size and complexity, including but not limited to communication sites, long term gravel pads, commercial recreation facilities, docks, industrial processing facilities, public and charitable facilities, ski area, log transfer facilities, setnet leases and mariculture operations.

- **How many leases are 55 years long?**

We do not have a database that tracks the length of the lease specifically so I can not readily pull that information. DMLW has many 55 year leases. The division evaluates the nature of infrastructure investment to determine the length of lease. The vast majority of leases are issued for 35 years or less. However, in the earlier years of the state, there were slightly different standards and we will see 55 year leases coming up for renewal.

- **How many leases does DNR process or administer yearly?**

DNR administers 1650 land leases at this time. This does not include oil and gas or mining leases. In FY11 DMLW received 88 applications and processed 39 leases. In FY10 DMLW received 70 applications and processed 64 leases. During testimony the figures I provided were for just the upland and tideland leases and failed to include aquatic farm, set net, public and charitable and log transfer leases. In FY11, DMLW received 12 applications and processed 8 upland and tideland leases. I have attached a spreadsheet (3) that shows the statistics for the last several years.

Temporary Water Use Authorizations:

- **What is the legal standard for appeal process (in context of renewing TWUA)?**

Because renewal of a Temporary Water Use Authorization would likely be viewed by a reviewing court as a discretionary agency action not requiring formal procedures, the

"To responsibly develop Alaska's resources by making them available for maximum use and benefit consistent with the public interest."

applicable standard of review would be the "arbitrary and capricious or abuse of discretion" standard. Under that standard, the Court determines whether the agency's decision was based on consideration of the relevant factors, and whether there has been a clear error of judgment by the agency. If the appeal of the agency's decision raises a legal issue, such as how the governing statute or regulation should be interpreted, different and less deferential standards of review may apply instead.

- ***How will the public know that DMLW has issued a TWUA in order to potentially avail themselves of the right to appeal?***

DNR has a website where those interested can search for TWUAs. This can be either done by company name, status date or MTRS. The public can access this site from the DNR website under Water Rights and then a link for Water Maps and Data. Once you have obtained the results you can export them into an excel spreadsheet.

http://dnr.alaska.gov/mlw/mapguide/water/twup_start_tok.cfm

- ***Why is repetitively issuing a TWUA not defacto the same as obtaining a permanent water right?***

A permanent water right is a property right. A TWUA is not a right to water. It can be changed, revoked, additional conditions may be added, reduction in water quantities or use period, suspended to protect the public interest, etc. None of this can be done to a water right without consent of the water right appropriator or abandonment of the water use/source. Therefore the TWUA is designed to allow the DMLW to manage the water use in Alaska whereas a water right is a process where a company or individual can protect their water source from others from adversely affecting their use.

- ***Check on the details of Pioneer's difficulty in getting water from ConocoPhillips Incorporated Alaska (CPIA), mentioned an AOGCC hearing and if it was a TWUA issue. Are there water shortage issues where issuing TWUA would exclude the independents who are trying to enter the North Slope?***

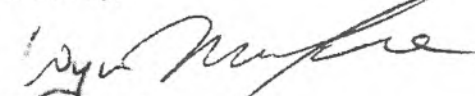
Pioneer's issue with receiving water from CPIA is in regard to the amount of water the desalination facility CPIA owns can produce verses how much water CPIA needs. When CPIA's needs are low they can provide more water to Pioneer, but when CPIA's needs are higher, then they reduce or stop the quantity of water supplied to Pioneer. The solution to this is either for CPIA to expand their facility or Pioneer to build one of their own.

- ***Are there water shortage issues where issuing TWUA would exclude the independents who are trying to enter the North Slope?***

As stated in testimony, there are not water shortage issues that we know of that have prevented development. However we recognize that certain areas of the North Slope do have less water in surface systems. Development companies incorporate water use into their planning on the North Slope, and where there is concern over competition to limited resources it is typically in the business' best interest to seek to obtain a water right versus a TWUA.

If you have any further questions, please do not hesitate to contact me.

Sincerely,



Wyn Menefee
DMLW Chief of Operations

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			

Division of Mining, Land and Water Data for Other Actions

Authorization Type	FY06				FY07				FY08				FY09				FY10				FY11				As of 12/30/11	
	Appl Rec'd	Qty Issued	End of Year Backlog	Cycle Time	Appl Rec'd	Qty Issued	End of Year Backlog	Cycle Time	Appl Rec'd	Qty Issued	End of Year Backlog	Cycle Time	Appl Rec'd	Qty Issued	End of Year Backlog	Cycle Time	Appl Rec'd	Qty Issued	End of Year Backlog	Cycle Time	Appl Rec'd	Qty Issued	End of Year Backlog	Cycle Time	Qty Administered	Backlog
Easement Vacations	42	31	71	16.8 M	25	21	75	18.7 M	26	29	72	16.8 M	26	9	89	17.5 M	22	21	90	23 M	23	17	91	9.8 M	789	115
Plat Approval Unorganized Borough	82	77	132	8.7 M	88	57	163	8.2 M	75	81	157	7.7 M	64	54	167	7.8 M	55	46	176	9.9 M	51	48	178	9.7 M	646	178
Interagency Land Management Assignments	23	24	94	5.6 M	12	13	93	3.8 M	17	18	92	Missing Data	9	6	95	1.5 M	25	23	97	Missing data	13	11	98	missing data	1105	100
Trespass	40	27	533	60.6 M	47	18	562	21 M	42	25	579	21.8 M	69	17	631	47.9 M	42	20	653	30.9 M	36	21	676	29 M	680	680
Totals	187	159	830		172	109	893		160	153	900		168	86	982		144	110	1016		123	97	1043		3220	1055

10 Year Leases

	ADL	Name	Industry	Size	Length
1	220410	Susitna Duck Club	Commercial rec	< 1 acre	10 Years
2	228642	US F&G	Small comm site	<1 acre	10 Years
3	225566	Mountaineering Club of AK	Mt. hut	< 1 acre	10 Years
4	221799	Mark's Guide Service	Guide site	1 acre	10 Years
5	227956	Alaska Rainbow Lodge	Guide site	1 acre	10 Years
6	222642	USFWS Comm Site	Small comm site	1 acre	10 Years
7					
8					
9					
10					
11					
12					
13					
14					
15					

Mid length Leases

	ADL	Name	Industry	Size	Length
1	44350	AT&T Comm Site	Large comm site	< 1 acre	25 Years
2	44351	AT&T Comm Site	Large Comm site	< 1 acre	25 Years
3	229762	FAA-Rainy Pass	Weather station	< 1 acre	20 Years
4	228109	Backcountry Adventures	Guide site	3.54 acres	30 Years
5	228829	Copper River EMA	Ambulance station	2 acres	30 Years
6	227818	Iditarod Area School District	Science Camp	2 acres	20 Years
7	60911	P&C Lease, Alascom	Large comm site	3.67 acres	20 Years
8	67915	P&C Lease, USDHS Coast Guard	Small dock	87.3 acres	20 Years
9	221779	Negotiated Lease	Shore Fishery	1 acres	20 Years
10	223655	Tideland Lease	Small dock	< 1 acre	20 Years
11					
12					
13					
14					
15					

55 Year Leases

	ADL	Name	Industry	Size	Length
1	230925	CINGSA	Gas Injection	7 acres	55 Years
2	223351	TDX Dock at St. Paul	Crab Processing	10 acres	55 Years
3	64269	Amerada Hess Pipeline Corp	Dock	435.2 acres	55 Years
4	32549	Hilcorp Alaska-Cook Inlet	O&G Dock	170 acres	55 Years
5	36127	Subdivision Lease	Residential-1963	1.6 acres	55 Years
6	57396	Mt. Eyak Ski Resort	City of Cordova	508 acres	55 Years
7	60211	William Wren	Dock	7.9 acres	55 Years
8					
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SB 219 Amendments

Senate Resources

4-2-12

AMENDMENT

OFFERED IN THE SENATE
TO: SB 219

BY SENATOR WAGONER

1 Page 1, line 1:

2 Delete "lease, sale and other disposal"

3 Insert "leases, sales, and other disposals"

4

5 Page 1, following line 4:

6 Insert a new bill section to read:

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

14 Page 1, line 5:

15 Delete "Section 1"

16 Insert "Sec. 2"

17

18 Renumber the following bill sections accordingly.

19

20 Page 1, line 10:

21 Delete "no"

22 Insert "not [NO]"

23

1 Page 3, line 22:

2 Delete "only be renewed"

3 Insert "be renewed only"

4

5 Page 3, line 23:

6 Delete "no"

7 Insert "not"

8

9 Page 4, line 5, following "38.05.102,":

10 Insert "38.05.565,"

- less the PMV sale

11

12 Page 5, following line 2:

13 Insert new bill sections to read:

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

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

23 (1) classification under AS 38.05.300;

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

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

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

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

30

31 Renumber the following bill sections accordingly.

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Page 5, following line 19:

Insert a new bill section to read:

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

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

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

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

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

(b) Negotiated sales not exceeding 50 M.B.M. or the equivalent other measure of timber [OR 2,500 CUBIC YARDS OF MATERIALS] are exempt from the provisions of AS 34.15.150.

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

Renumber the following bill sections accordingly.

Page 6, line 21:

Delete "14A"

Insert "13A"

Page 6, line 22:

1 Delete "in fee"

2

3 Page 7, line 13:

4 Delete "either"

5

6 Page 8, line 15:

7 Delete "per person within a one calendar year"

8 Insert "a person within a one-calendar-year"

9

10 Page 8, following line 17:

11 Insert a new subsection to read:

12 "(f) Notwithstanding (a) - (e) of this section, for the purpose of creating
13 incentives for the development of peat as a source of heat or power, the director may
14 negotiate the sale of peat to individuals, organized or unorganized communities, tribal
15 governments, or private profit or nonprofit organizations. Under this subsection, the
16 director may provide

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

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

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

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

26 (B) 20 percent of the fair market value determined by an
27 appraisal completed under AS 38.05.550(d)(2), if the applicant provides the
28 appraisal at the applicant's expense and the appraisal is approved by the
29 commissioner."

30

31 Page 9, line 31:

- 1 Delete "section"
- 2 Insert "paragraph"
- 3
- 4 Page 10, line 1:
- 5 Delete "such a"
- 6 Insert "the"
- 7
- 8 Page 10, line 4:
- 9 Delete "section"
- 10 Insert "paragraph"
- 11
- 12 Page 11, line 3:
- 13 Delete "insure"
- 14 Insert "**ensure** [INSURE]"
- 15
- 16 Page 11, line 7:
- 17 Delete "which"
- 18 Insert "**that** [WHICH]"
- 19
- 20 Page 12, line 12:
- 21 Delete "[i]"
- 22
- 23 Page 13, line 16:
- 24 Delete "[A]"
- 25
- 26 Page 13, line 28:
- 27 Delete "sec. 18"
- 28 Insert "sec. 22"
- 29 Delete "further"
- 30
- 31 Page 15, line 23:

1 Delete "and quarry stone"

2 Insert "stone, pumice, and common clay"

3

4 Page 15, following line 23:

5 Insert a new bill section to read:

6 "* **Sec. 25.** AS 41.23.470(b) is amended to read:

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

11

12 Renumber the following bill sections accordingly.

13

14 Page 16, line 5:

15 Delete "Article"

16 Insert "art."

17

18 Page 16, line 7:

19 Delete "catchline"

20 Insert "catch line"

21

22 Page 16, line 9:

23 Delete "Section 19"

24 Insert "Section 23"

25

26 Page 16, line 10:

27 Delete "sec. 23"

28 Insert "sec. 28"

AMENDMENT #2

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: SB 219

- 1 Page 3, line 23, following "lease.":
- 2 Insert "The director shall provide public notice of the lease renewal decision."

AMENDMENT

W/Drawn

OFFERED IN THE SENATE
TO: SB 219

BY SENATOR FRENCH

1 Page 6, line 18, following "if":

2 Insert "the leased area produces paying quantities of ore, the lessee is in
3 compliance with the terms of the lease, and"

4

5 Page 6, line 19, following "state":

6 Insert "A lease under this section may be renewed only once. The director shall
7 provide public notice of the lease renewal decision."

AMENDMENT #3

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: SB 219

- 1 Page 1, line 3:
- 2 Delete "relating to rights to use state water;"
- 3
- 4 Page 15, line 24, through page 16, line 1:
- 5 Delete all material.
- 6
- 7 Renumber the following bill sections accordingly.
- 8
- 9 Page 16, line 10:
- 10 Delete "sec. 23"
- 11 Insert "sec. 22"

AMENDMENT 24

OFFERED IN THE SENATE
TO: SB 219

BY SENATOR WIELECHOWSKI

1 Page 6, lines 12 - 13:

2 Delete "The department may exempt, by regulation, small operations from the
3 production royalty otherwise required by this section"



\$10,000

1000 acres

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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Juneau, Alaska 99801-1182
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MEMORANDUM

April 2, 2012

SUBJECT: Does an exemption from paying mining production royalties violate sec. 6(i) of the Statehood Act (SB 219, Work Order No. 27-GS2717\A)

TO: Senator Bill Wielechowski
Attn: Michelle Sydeman

FROM: Dennis C. Bailey *DOB*
Legislative Counsel

You have requested an opinion concerning whether a provision in SB 219 authorizing the department to exempt small operations from production violates sec. 6(i) of the Statehood Act.¹

Section 12 of SB 219 provides:

* **Sec. 12.** AS 38.05.212(a) is amended to read:

(a) In exchange for and to preserve the right to extract and possess the minerals produced, the holder of a mining claim, leasehold location, or mining lease, including a mining lease under AS 38.05.250, shall pay a royalty on all minerals produced from land subject to the claim, leasehold location, or mining lease during each calendar year, **or each fiscal year if the miner does not file the mining license tax on a calendar year basis. The department may exempt, by regulation, small operations from the production royalty otherwise required by this section.**

The last sentence is the subject of your question.

Your request suggested that the Alaska Supreme Court may have addressed this issue. The case is *Trustees for Alaska v. State*, 736 P.2d 324 (Alaska 1987), *cert. den.* 486 U.S. 1032, 108 S.Ct. 2013, 100 L.Ed.2d 601 (1988), where the court, following a detailed basis for its conclusion, decided that the leasing requirement in section 6(i) of the Alaska Statehood Act, considered in the context of the School Lands Act, the Mineral Leasing Act, other statehood mineral grants, and mineral leasing systems in other states, mandates

¹ The state constitution was adopted containing a provision expressly consenting to the terms of the Statehood Act. *Trustees for Alaska v. State*, 736 P.2d 324 (Alaska 1987), *cert denied*, 486 U.S. 1032, 108 S.Ct. 2013, 100 L.Ed.2d 601 (1988).

Senator Bill Wielechowski

April 2, 2012

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a system under which the State of Alaska must receive rent or royalties for its mining leases. The decision determined that the state could not forego or fail to charge and collect rents and royalties. The court stated that the state hard rock mineral leasing laws that did not require rents or royalties did not meet the leasing requirements of sec. 6(i). *Trustees* at 339. The proposed amendment to AS 38.05.212(a) in SB 219, sec. 12, apparently provides for a circumstance where small operations would be exempt from royalties. Therefore it likely to be found to violate the terms of Statehood Act.

Let me know if you would like a copy of the case.

If I may be of further assistance, please advise.

DCB:ljw
12-245.ljw

Anna Sorensen

From: Lissa Hughes <Lissa@northern.org>
Sent: Monday, April 02, 2012 2:19 PM
To: Jeff Stepp
Cc: Anna Sorensen; Pamela Miller
Subject: SB 145 - to Paskvan for hearing at 3_30 pm today

Jeff,

Here are some basic concerns the Northern Alaska Environmental Center has on SB 145. Can you put these questions in front of Sen. Paskvan before he goes into Resources Committee?

The proposed expansion of this bill by ADNR's presented information and the filed amendments to include other regions of the state besides Nenana greatly expands the geographic reach of this bill and potential state subsidy to corporations. This is of concern from a fiscal standpoint. There did not appear to be a fiscal note for the expanded version of the bill.

How would this energy generation meet the needs of these communities in light of the fact that oil refining would not likely take place locally? What incentives for renewable energy projects in those communities are underway, or have been requested and not yet funded to date? How do the rate of funding of renewable energy projects requested by communities compare to this corporate subsidy?

The geographic expansion, beyond Nenana basin, is a concern from an environmental standpoint and public transparency standpoint since Doyon and others have not made their current proposed exploration plans public.

There has been considerable opposition to Doyon's oil and gas development over many years within the Yukon Flats by the tribal government at Fort Yukon and others within that community, and there has been no news about this new effort to expand the subsidy to drill in the Yukon Flats to inform the general public what is going on.

The geographic expansion of the state subsidy to cover wells drilled on federal lands within the newly added regions, such as Yukon Flats National Wildlife Refuge, makes the bill far more controversial.

Many Thanks!
Lissa

desal plant purchase

SB 219 – Disposals of State Resources – Issues

Temp Water Use permits
2011 - 672 administered active
conflict w/ water rights
is there a concern at this time
as to ~~the~~ water volumes Capacity

A. Section 6, page 3, lines 19-23.

Allows the director of Mining, Land and Water to renew land use leases that are in good standing one time if the renewal is determined to be in the best interests of the state. Exempts renewals from undergoing a detailed best interest finding required under AS 38.05.035(e). Affects leases on uplands, and tide, submerged or shore lands except for resource extraction such as timber, mining or oil and gas leasing. Examples: docks, lodges, shore fishery leasing, aquatic farms, hatcheries, recreational facilities, other facilities.

as to likely water needs in any ~~area~~ segment

1. What is the potential maximum term for a lease renewal?
2. What is the procedure for a lease renewal?
 - a. Will a renewal decision be public noticed?
 - b. Will there be an opportunity for public comment on a lease renewal?
 - c. Could someone opposing the renewal appeal the renewal decision?
3. What bond requirements will apply to lease renewals?
4. Will there be regulations addressing the procedure for a lease renewal?

force to purchase from holder either water rights or they would use permit
= limitation
on d. slope

B. Section 13, page 6, lines 14-19.

Currently a 20-year submerged land mining lease may be extended on a year-to-year basis as long as there is production in paying quantities from the leased area. This section gives the director the discretion to renew a submerged land mining lease for up to a period of 20 years if the director determines the renewal is in the best interests of the state. According to DNR, under the lease terms, a lease may be terminated if there is no production in paying quantities. There is no limit to the number of times a lease may be renewed.

1. What is the procedure for a lease renewal?
 - a. Will a renewal decision be public noticed?
 - b. Will there be an opportunity for public comment on a lease renewal?

A

- c. Could someone opposing the renewal appeal the renewal decision?
2. What bond requirements will apply to lease renewals?
3. Will there be regulations addressing the procedure for a lease renewal?

It's not entirely clear that a renewal may be approved only if there is production in paying quantities at the time of the renewal. Possible amendment to make this clearer:

On line 16, after "leased area." delete "A" and insert "If there is production in paying quantities from the leased area, a"

The section would read as follows:

(c) Each submerged land mining lease shall be for a period of up to 20 years and for so long as there is production in paying quantities from the leased area. **If there is production in paying quantities from the leased area, a submerged land mining lease may be renewed for a period of up to 20 years at the discretion of the director if the director determines that the renewal is in the best interests of the state.**

C. Section 21, page 15-16, lines 24-31.

Temporary water use permits are currently issued for a period of time not to exceed five consecutive years. There is no specified limit to the size of allowable withdrawals – limits are determined by the size of the source. This section gives the commissioner the discretion to issue a new authorization for the same project. There are no limits as to how many times a new authorization may be issued.

1. Are there any sidebars to the commissioner's discretion? For example, current regulations say a temporary water use authorization may be extended for one time for "good cause." (11 AAC 93.210). And the former coastal program exempted from coastal program review extensions to temporary water use permits when no changes were proposed to the existing project and the permittee had demonstrated compliance with all previously required coastal program stipulations. Will there be similar conditions for a renewal?
2. What is the procedure for an authorization renewal?
 - a. Will a new authorization decision be public noticed?
 - b. Will there be an opportunity for public comment on a new authorization?

- c. Could someone opposing the new authorization appeal the decision?
- 3. Will there be regulations addressing the procedure for issuing a new authorization?
- 4. What laws govern the size of a withdrawal?
- 5. How does this not become a defacto permanent water use appropriation?

SB 219
HB 361 SB 219

Possible Problem with Renewal of Temporary Water Use Permits

One of the controversies surrounding Temporary Water Use Permits (TWUPs) is that there is no requirement for public notice of a proposed authorization (AS 46.15.133). Added to that, a TWUP is also exempt from issuance criteria such as that the water use is in the public interest, is beneficial, does not unduly effect fish and wildlife or public health, etc (AS 46.15.080).

The current statute states that a Temporary Water Use Permit should not exceed five consecutive years in duration. After all, if you are going to call a permit as temporary, you have to draw the line somewhere. Logically, if an entity's need for a significant amount of water continued for a period of more than five consecutive years, that entity should be required to apply for a regular permit to appropriate water—a permit that would have to be publically noticed and would have to meet statutory issuance criteria.

One of the governor's proposed changes in HB 361 would allow TWUPs to be renewed again and again. This may be an attempt to make TWUPs de facto permanent water use appropriations—appropriations that are permitted time after time at the discretion of the commissioner, with no public notice, without adhering to criteria that requires that the appropriation be in the public interest, and with no opportunity for an "interested person" to file an objection to the appropriation.

See HB 361 excerpt followed by relevant statutes below:

SEC. 21
SB 219

FROM HB 361:

* **Sec. 23. AS 46.15.155(a) is amended to read:**

- 5 (a) Notwithstanding any contrary provision of this chapter, the commissioner
- 6 may authorize the temporary use of a significant amount of water, as determined by
- 7 the department by regulation, for a period of time not to exceed five consecutive years
- 8 **for each authorization**, if the water applied for has not been appropriated in
- 9 accordance with this chapter. **In the commissioner's discretion, a new authorization**
- 10 **for the temporary use of a significant amount of water may be issued for a**
- 11 **project at or before the expiration of the existing authorization issued for the**
- 12 **same project.**

RELEVANT STATUTES:

Sec. 46.15.155. Authorization for temporary use of water.

(a) Notwithstanding any contrary provision of this chapter, the commissioner may authorize the temporary use of a significant amount of water, as determined by the department by regulation, for a period of time not to exceed five consecutive years, if the water applied for has not been appropriated in accordance with this chapter.

(b) Notwithstanding any contrary provision of this chapter, an authorization for a temporary use of less than a significant amount of water is not required under this section unless the commissioner has determined by regulation that the use may have an adverse effect on other water uses and that an authorization must be obtained from the department.

(c) The issuance of an authorization for temporary use of water under this section does not establish a right to appropriate water. The temporary use of water under an authorization remains subject to appropriation under this chapter.

(d) Notwithstanding any contrary provision of this chapter, the commissioner is not required to provide public notice under AS 46.15.133 of a proposed authorization for temporary use of water; however, the commissioner shall request comment on an application for temporary use of water from the Department of Fish and Game and the Department of Environmental Conservation.

(e) The provisions of AS 46.15.080 do not apply to the issuance under this section of an authorization for temporary use of water.

(f) The commissioner may impose reasonable conditions or limitations on an authorization for temporary use of water to protect the water rights of other persons or to protect fish and wildlife habitat, human health, or other public interests.

(g) Upon approval by the department, an authorization under this section may be transferred to another person under the same conditions and limitations under which the authorization was issued.

(h) A person to whom an authorization for temporary use of water was issued under this section may allow another person to use the authorization, consistent with the conditions and limitations of the authorization.

(i) The commissioner may modify, suspend, or revoke an authorization issued under this section if the commissioner determines it necessary to protect the water rights of other persons or the public interest.

Sec. 46.15.133. Notices; objections.

(a) If the commissioner proposes a sale of water or receives an application for appropriation or removal, the commissioner shall prepare a notice containing the location and extent of the proposed sale, appropriation, or removal, the name and address of the applicant, if applicable, and other information the commissioner considers pertinent. The notice shall state that within 15 days of publication or service of notice, persons may file with the director written objections, stating the name and address of the objector, and any facts tending to show that rights of the objector or the public interest would be adversely affected by the proposed sale, appropriation, or removal.

(b) The commissioner shall publish the notice in one issue of a newspaper of general distribution in the area of the state in which the water is to be appropriated, removed, or sold. The commissioner shall also have notice served personally or by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the division of lands, may be affected by the proposed sale, appropriation, or removal and may serve notice upon any governmental agency, political subdivision, or person; notice shall also be served upon the Department of Fish and Game and the Department of Environmental Conservation. An applicant for an appropriation or removal shall pay the commissioner's costs in providing publication and notice under this subsection. The commissioner may require as a condition of a sale of water under AS 46.15.037, that a purchaser of water reimburse the department for the costs associated with providing notice of the proposed sale.

(c) Within 15 days of publication or service of notice, an interested person may file an objection. The commissioner may hold hearings upon giving due notice and shall grant, deny, or condition the proposed sale or application for appropriation or removal in whole or in part within 30 days of receipt of the last objection or, if the commissioner elects to hold hearings, within 180 days of receipt of the last objection. Notice of the order or decision shall be served personally or mailed to any person who has filed an objection.

(d) If no objection is filed, the commissioner may proceed to make a determination upon the application for appropriation or removal or the proposal for sale.

(e) A person aggrieved by the action of the commissioner or by the failure of the commissioner to grant, deny, or condition a proposed sale or an application for appropriation or removal in accordance with (c) of this section may appeal to the superior court.

(f) The commissioner may, by regulation, designate types of appropriations that are exempt from this section and provide simplified procedures for ruling on the applications. The commissioner may not exempt under this subsection appropriations for removal under AS 46.15.035, appropriations by the state for sale or sales by the state under AS 46.15.037, or removals of water under AS 46.15.035 and 46.15.037.

Sec. 46.15.080. Criteria for issuance of permit.

(a) The commissioner shall issue a permit if the commissioner finds that

(1) rights of a prior appropriator will not be unduly affected;

(2) the proposed means of diversion or construction are adequate;

(3) the proposed use of water is beneficial; and

(4) the proposed appropriation is in the public interest.

(b) In determining the public interest, the commissioner shall consider

(1) the benefit to the applicant resulting from the proposed appropriation;

(2) the effect of the economic activity resulting from the proposed appropriation;

(3) the effect on fish and game resources and on public recreational opportunities;

(4) the effect on public health;

(5) the effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation;

(6) harm to other persons resulting from the proposed appropriation;

(7) the intent and ability of the applicant to complete the appropriation; and

(8) the effect upon access to navigable or public water.