

HB 77

(FILE 1)

<TARGET><BILL>HB 77</BILL><SUBJECT>HB 77 (FILE
1)</SUBJECT><COMM>SRES28</COMM></TARGET>



**LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE INFORMATION OFFICE**
201 Katlian Street, Suite 103, Sitka, AK 99835
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Email: sitka.lio@akleg.gov

DATE: March 12, 2014

TO: Senator Giessel and the Senate Resources Committee

RE: As requested/testimony & numbers of testifiers
10 pages including cover

Dear Sen. Giessel,

Thank you so much for going from one LIO to another. It seems a very fair way to hear from all over the State.

Please find attached 10 pages of written testimony from some of the 17 constituents that came to testify.

Sitka LIO had 17 listed testifiers, 4 were able to testify and of the 13 remaining they said they would have testified in opposition to the bill.

We had one listen only.

Thank you,

A handwritten signature in black ink, appearing to read "Marie Murray".

Sincerely,

Marie Murray

Sitka Legislative Information Officer

3/12/14 LIO Tally (Individuals who didn't get to testify)

Juneau LIO

4 Supp, 4 Opp

Dillingham LIO

4 Opp

Fairbanks LIO

3 Opp

Sitka LIO

13 Opp

Kenai LIO

14 Opp, 1 Supp

Homer LIO

19 Opp

Lindsay Williams

From: LIO Dillingham
Sent: Wednesday, March 12, 2014 5:12 PM
To: Lindsay Williams
Subject: Senate Resources Committee response

As per Chair Sen. Giessel's request to count the citizens who came to testify and were unable to, Dillingham had 4 (four) and all were opposed to House Bill 77. They would still like to testify if another opportunity arises.

Wanda Wahl Fulton, Information Assistant
Legislative Information Office, PO Box 829, Dillingham, AK 99576
Phone 907-842-5319 **Dillingham.LIO@akleg.gov**

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From: Alyson Stogsdill

Sent: Wednesday, March 12, 2014 5:23 PM

To: Sen. Cathy Giessel

Subject: HB77

Senator Giessel, Bill Warren, Nikiski asked me to email you with his opposition of HB77. His contact information is bwarren99611@gmail.com and his phone is 776-8551.

Also of the participants at the Kenai LIO for the hearing on 31314, 14 people were against HB77 and 1 person was in favor.

Thank you.

Alyson Stogsdill

Kenai Legislative Information Officer

907-283-2030

1-855-583-2030 toll free

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From: LIO Homer

Sent: Wednesday, March 12, 2014 5:22 PM

To: Sen. Cathy Giessel

Subject: Testimony on HB 77, 3/12/13, Senate Resources

All 19 people signed up to testify at the Homer LIO oppose HB 77.

Charlene Ditton

Homer LIO

270 W. Pioneer Ave.

Homer, AK 99603

235-7878 FAX: 235-4008

Homer_LIO@akleg.gov

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28-GH1524D
Bullock
3/13/14

2d SENATE CS FOR CS FOR HOUSE BILL NO. 77(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Land Act, including certain authorizations, contracts,
2 leases, permits, or other disposals of state land, resources, property, or interests; relating
3 to authorization for the use of state land by general permit; relating to exchange of state
4 land; relating to procedures for certain administrative appeals and requests for
5 reconsideration to the commissioner of natural resources; relating to the Alaska Water
6 Use Act; and providing for an effective date."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * **Section 1.** AS 38.05.020 is amended by adding a new subsection to read:

9 (c) The department may authorize an activity on state land that the department
10 may authorize already through permit under AS 38.05 or AS 38.95 or a regulation
11 adopted under AS 38.05 or AS 38.95 by the issuance of a general permit if the
12 department finds that the activity is unlikely to result in significant or irreparable harm
13 to state land or resources. The department shall provide public notice and opportunity

1 for public comment on a proposed general permit for a period of not less than 30 days.
2 After the public comment period for a proposed general permit, if the department
3 decides to issue the general permit, the department shall make available to the public a
4 written decision issuing the general permit. The decision shall describe the scope of
5 activity authorized by the general permit and contain a finding that the activity is
6 unlikely to result in significant or irreparable harm to state land or resources. The
7 decision to issue a general permit is appealable under AS 44.37.011. A decision not to
8 issue a general permit may not be appealed. After a general permit is issued and the
9 appeal period has ended, the general permit may not be appealed on the basis of
10 subsequent activities that adhere to the terms of the general permit. An activity that
11 adheres to the terms of an issued general permit does not require separate public
12 notice. This subsection does not apply to land designated or authorizations issued
13 under AS 16.20, AS 27.21, AS 41.17, or AS 41.21. If there is a conflict between this
14 subsection and AS 38.04, AS 38.05, or AS 38.95, then the provisions of this
15 subsection apply.

16 * **Sec. 2.** AS 38.05.030(c) is amended to read:

17 (c) The [IN ADDITION TO THE REQUIREMENTS SPECIFIED IN
18 AS 38.50.090, THE] agencies referred to in (b) of this section and other state agencies
19 with authority to acquire or dispose of land shall give written notification of the fact of
20 acquisition, lease, disposal, or exchange to the commissioner within three months after
21 the date that they make the acquisition, lease, disposal, or exchange.

22 * **Sec. 3.** AS 38.05.035(e) is amended to read:

23 (e) Upon a written finding that the interests of the state will be best served, the
24 director may, with the consent of the commissioner, approve contracts for the sale,
25 lease, or other disposal of available land, resources, property, or interests in them. In
26 approving a contract under this subsection, the director need only prepare a single
27 written finding. In addition to the conditions and limitations imposed by law, the
28 director may impose additional conditions or limitations in the contracts as the director
29 determines, with the consent of the commissioner, will best serve the interests of the
30 state. The preparation and issuance of the written finding by the director are subject to
31 the following:

1 (1) with the consent of the commissioner and subject to the director's
2 discretion, for a specific proposed disposal of available land, resources, or property, or
3 of an interest in them, the director, in the written finding,

4 (A) shall establish the scope of the administrative review on
5 which the director's determination is based, and the scope of the written
6 finding supporting that determination; the scope of the administrative review
7 and finding may address only reasonably foreseeable, significant effects of the
8 uses proposed to be authorized by the disposal;

9 (B) may limit the scope of an administrative review and finding
10 for a proposed disposal to

11 (i) applicable statutes and regulations;

12 (ii) the facts pertaining to the land, resources, or
13 property, or interest in them, that the director finds are material to the
14 determination and that are known to the director or knowledge of which
15 is made available to the director during the administrative review; and

16 (iii) issues that, based on the statutes and regulations
17 referred to in (i) of this subparagraph, on the facts as described in (ii) of
18 this subparagraph, and on the nature of the uses sought to be authorized
19 by the disposal, the director finds are material to the determination of
20 whether the proposed disposal will best serve the interests of the state;
21 and

22 (C) may, if the project for which the proposed disposal is
23 sought is a multiphased development, limit the scope of an administrative
24 review and finding for the proposed disposal to the applicable statutes and
25 regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that
26 pertain solely to the disposal phase of the project when

27 (i) the only uses to be authorized by the proposed
28 disposal are part of that phase;

29 (ii) the disposal is a disposal of oil and gas, or of gas
30 only, and, before the next phase of the project may proceed, public
31 notice and the opportunity to comment are provided under regulations

1 adopted by the department;

2 (iii) the department's approval is required before the
3 next phase of the project may proceed; and

4 (iv) the department describes its reasons for a decision
5 to phase;

6 (2) the director shall discuss in the written finding prepared and issued
7 under this subsection the reasons that each of the following was not material to the
8 director's determination that the interests of the state will be best served:

9 (A) facts pertaining to the land, resources, or property, or an
10 interest in them other than those that the director finds material under (1)(B)(ii)
11 of this subsection; and

12 (B) issues based on the statutes and regulations referred to in
13 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
14 subsection;

15 (3) a written finding for an oil and gas lease sale or gas only lease sale
16 under AS 38.05.180 is subject to (g) of this section;

17 (4) a contract for the sale, lease, or other disposal of available land or
18 an interest in land is not legally binding on the state until the commissioner approves
19 the contract, but if the appraised value is not greater than \$50,000 in the case of the
20 sale of land or an interest in land, or \$10,000 [\$5,000] in the case of the annual rental
21 of land or interest in land, the director may execute the contract without the approval
22 of the commissioner;

23 (5) public notice requirements relating to the sale, lease, or other
24 disposal of available land or an interest in land for oil and gas, or for gas only,
25 proposed to be scheduled in the five-year oil and gas leasing program under
26 AS 38.05.180(b), except for a sale under (6)(F) of this subsection, are as follows:

27 (A) before a public hearing, if held, or in any case not less than
28 180 days before the sale, lease, or other disposal of available land or an interest
29 in land, the director shall make available to the public a preliminary written
30 finding that states the scope of the review established under (1)(A) of this
31 subsection and includes the applicable statutes and regulations, the material

1 facts and issues in accordance with (1)(B) of this subsection, and information
2 required by (g) of this section, upon which the determination that the sale,
3 lease, or other disposal will serve the best interests of the state will be based;
4 the director shall provide opportunity for public comment on the preliminary
5 written finding for a period of not less than 60 days;

6 (B) after the public comment period for the preliminary written
7 finding and not less than 90 days before the sale, lease, or other disposal of
8 available land or an interest in land for oil and gas or for gas only, the director
9 shall make available to the public a final written finding that states the scope of
10 the review established under (1)(A) of this subsection and includes the
11 applicable statutes and regulations, the material facts and issues in accordance
12 with (1) of this subsection, and information required by (g) of this section,
13 upon which the determination that the sale, lease, or other disposal will serve
14 the best interests of the state is based;

15 (6) before a public hearing, if held, or in any case not less than 21 days
16 before the sale, lease, or other disposal of available land, property, resources, or
17 interests in them other than a sale, lease, or other disposal of available land or an
18 interest in land for oil and gas or for gas only under (5) of this subsection, the director
19 shall make available to the public a written finding that, in accordance with (1) of this
20 subsection, sets out the material facts and applicable statutes and regulations and any
21 other information required by statute or regulation to be considered upon which the
22 determination that the sale, lease, or other disposal will best serve the interests of the
23 state was based; **the director may make available to the public a preliminary**
24 **written finding and provide opportunity for public comment on the preliminary**
25 **written finding for a period of at least 30 days;** [HOWEVER,] a written finding is
26 not required before the approval of

27 (A) a contract for a negotiated sale authorized under
28 AS 38.05.115;

29 (B) a lease of land for a shore fishery site under AS 38.05.082;

30 (C) a permit or other authorization revocable by the
31 commissioner;

1 (D) a mineral claim located under AS 38.05.195;
2 (E) a mineral lease issued under AS 38.05.205;
3 (F) an exempt oil and gas lease sale or gas only lease sale under
4 AS 38.05.180(d) of acreage subject to a best interest finding issued within the
5 previous 10 years or a reoffer oil and gas lease sale or gas only lease sale under
6 AS 38.05.180(w) of acreage subject to a best interest finding issued within the
7 previous 10 years, unless the commissioner determines that substantial new
8 information has become available that justifies a supplement to the most recent
9 best interest finding for the exempt oil and gas lease sale or gas only lease sale
10 acreage and for the reoffer oil and gas lease sale or gas only lease sale acreage;
11 however, for each oil and gas lease sale or gas only lease sale described in this
12 subparagraph, the director shall call for comments from the public; the
13 director's call for public comments must provide opportunity for public
14 comment for a period of not less than 30 days; if the director determines that a
15 supplement to the most recent best interest finding for the acreage is required
16 under this subparagraph,

17 (i) the director shall issue the supplement to the best
18 interest finding not later than 90 days before the sale;

19 (ii) not later than 45 days before the sale, the director
20 shall issue a notice describing the interests to be offered, the location
21 and time of the sale, and the terms and conditions of the sale; and

22 (iii) the supplement has the status of a final written best
23 interest finding for purposes of (i) and (l) of this section;

24 (G) a surface use lease under AS 38.05.255;

25 (H) a permit, right-of-way, or easement under AS 38.05.850;

26 (7) the director shall include in

27 (A) a preliminary written finding, if issued [REQUIRED], a
28 summary of agency and public comments, if any, obtained as a result of
29 contacts with other agencies concerning a proposed disposal or as a result of
30 informal efforts undertaken by the department to solicit public response to a
31 proposed disposal, and the department's preliminary responses to those

1 comments; and

2 (B) the final written finding a summary of agency and public
3 comments received and the department's responses to those comments.

4 * **Sec. 4.** AS 38.05.035(i) is amended to read:

5 (i) A person who is eligible to file an administrative appeal or a request for
6 reconsideration, as appropriate, under this subsection and who is **substantially and**
7 **adversely affected** [AGGRIEVED] by the final written finding of the director entered
8 under (e)(5) or (6) of this section may, within 20 days after the issuance of the final
9 written finding, file an administrative appeal or request reconsideration of the decision
10 by the commissioner. A person is eligible to file an administrative appeal or a request
11 for reconsideration if the person

12 (1) meaningfully participated in the process set out in this chapter for
13 receipt of public comment by

14 (A) submitting written comment during the period for receipt
15 of public comment; or

16 (B) presenting oral testimony at a public hearing, if a public
17 hearing was held; **or** [AND]

18 (2) is **the applicant** [AFFECTED BY THE FINAL WRITTEN
19 FINDING].

20 * **Sec. 5.** AS 38.05.035(j) is amended to read:

21 (j) An administrative appeal or a request for reconsideration submitted under
22 (i) of this section must specify the written finding complained of and the specific basis
23 upon which it is challenged. [THE COMMISSIONER SHALL GRANT OR DENY
24 THE ADMINISTRATIVE APPEAL OR RECONSIDERATION REQUEST WITHIN
25 30 DAYS AFTER ISSUANCE OF THE FINAL WRITTEN FINDING.] Failure of the
26 commissioner to act on **a** [THE] request for reconsideration within **30 days after**
27 **issuance of the final written finding** [THIS PERIOD] is a denial of the request for
28 reconsideration and a final administrative decision for purposes of appeal to the
29 superior court.

30 * **Sec. 6.** AS 38.05.035(l) is amended to read:

31 (l) A person may appeal a final written finding issued under (e)(5) or (6) of

1 this section to the superior court, but only if the person was eligible to request, and did
2 request, an administrative appeal or reconsideration of that finding under (i) of this
3 section. The person shall initiate the appeal to the court within 30 days from the date
4 that the decision on administrative appeal or reconsideration is mailed or otherwise
5 distributed, or the date the request for reconsideration is considered denied by the
6 commissioner's failure to act on the request, whichever is earlier. The points on appeal
7 to the court are limited to those presented to the commissioner in the person's
8 administrative appeal or request for reconsideration.

9 * **Sec. 7.** AS 38.05.035 is amended by adding a new subsection to read:

10 (p) Where there is a valid municipal entitlement selection on state land under
11 AS 29.65.010 - 29.65.030 that has a state-issued land lease that has been issued
12 competitively under AS 38.05.070 and before the decision to approve the municipal
13 entitlement land selection, the director shall grant a preference right to purchase
14 without further competitive bid of up to five acres of the state land to an individual
15 who has erected a building approved by a lease on the state land and used the land for
16 bona fide business purposes for 10 or more years under a state lease, if the business
17 produced not less than 25 percent of the total income of the applicant for the 10 years
18 preceding the application to purchase the land. An application for a preference right
19 under this section must be filed with the director within 120 days after notice to the
20 lessee of the municipal entitlement land selection. If the director grants the preference
21 right, the director shall sell the land at a price determined by the director to represent
22 the current fair market value of the unimproved land determined by an appraisal under
23 AS 38.05.840 and a survey, both at the cost of the applicant. If the director determines
24 that the purchase of the land would interfere with public use by residents of the area,
25 the director may condition the purchase to mitigate the adverse effects on the public in
26 the written finding under AS 38.05.035(e) or may reject the application if those effects
27 cannot be avoided or mitigated. If the preference right application is approved, the
28 amount of land within the overall municipal entitlement under AS 29.65.010 -
29 29.65.030 shall be reduced by the amount of land covered under this section; however,
30 subject to appropriation, the revenue from the purchase of the parcel will be given to
31 the municipality if the municipal entitlement land selection is approved. In this

1 subsection,

2 (1) "building" means a permanent type of structure not less than 500
3 square feet in size with solid walls, foundation, and roof;

4 (2) "business purposes" means a purpose consistent with the
5 classification of the land at the time the land was entered.

6 * **Sec. 8.** AS 38.05.065(a) is amended to read:

7 (a) **Unless the remainder of the purchase price is paid in full at the time of**
8 **the sale, a** [THE] contract of sale for land **or property** sold [AT PUBLIC AUCTION
9 OR BY SEALED BID] under **this chapter or former AS 38.05.078** [AS 38.05.055]
10 shall require the remainder of the purchase price to be paid in monthly, quarterly, or
11 annual installments over a period of not more than 20 years, with interest at the rate
12 provided in (i) of this section. Installment payments plus interest shall be set on the
13 level-payment basis.

14 * **Sec. 9.** AS 38.05.065(c) is amended to read:

15 (c) The director shall, for **a contract that provides for installment payments**
16 [CONTRACTS] under (a) [, (b),] or (h) of this section, set out in the contract [FOR
17 EACH SALE] the period for the payment of installments and the total purchase price
18 plus interest. The director, with the consent of the commissioner, may also include in **a**
19 **contract** [CONTRACTS] under this section conditions, limitations, and terms
20 considered necessary and proper to protect the interest of the state. Violations of any
21 provision of this chapter or the terms of the contract of sale subject the purchaser to
22 appropriate administrative and legal action, including but not limited to specific
23 performance, foreclosure, ejectment, or other legal remedies in accordance with
24 applicable state law.

25 * **Sec. 10.** AS 38.05.065(h) is amended to read:

26 (h) The commissioner, after consulting with the Board of Agriculture and
27 Conservation (AS 03.09.010),

28 (1) shall provide that, notwithstanding (a) [AND (b)] of this section, in
29 a contract for the sale of land classified under AS 38.05.020(b)(6) for agricultural
30 uses, the interest rate to be charged on installment payments may not exceed 9.5
31 percent; and

1 (2) may declare a moratorium of up to five years on payments on land
2 sold under this section for land classified under AS 38.05.020(b)(6) for agricultural
3 uses if

4 (A) the commissioner determines that the moratorium is in the
5 best interest of the state;

6 (B) the commissioner certifies and the contract purchaser
7 agrees to perform farm development, crop production, and harvesting, not
8 including land clearing or related activity, requiring the expenditure of
9 amounts equivalent to the payments that would otherwise be made during the
10 moratorium;

11 (C) the sale of the agricultural land takes place after July 1,
12 1979; and

13 (D) the contract purchaser is in compliance with the
14 development plan specified in the purchase contract at the time the purchaser
15 applies for a moratorium under this paragraph and remains in compliance with
16 the development plan during the moratorium; for the payments subject to the
17 moratorium declared under this paragraph, interest payments are subject to the
18 moratorium but interest continues to accrue during the moratorium.

19 * **Sec. 11.** AS 38.05.070 is amended by adding new subsections to read:

20 (f) A lease may be extended once for a period up to two years, if the director
21 determines it to be in the best interests of the state and the extension is necessary to
22 prolong the lease while the department considers

23 (1) a lessee preference application under AS 38.05.102;

24 (2) an application to renew the lease under (e) of this section; or

25 (3) an application to issue a new lease on the same site that, because it
26 substantially changes the purpose or operation of an existing lease, requires a new
27 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease
28 is changed.

29 (g) An extension issued under (f) of this section is not subject to
30 AS 38.05.035(e). The director shall provide public notice of the decision to extend the
31 lease.

1 * **Sec. 12.** AS 38.05.075(a) is amended to read:

2 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.082,
3 38.05.083, 38.05.087, 38.05.102, 38.05.565, 38.05.600, 38.05.810, and this section,
4 when competitive interest has been demonstrated or the commissioner determines that
5 it is in the state's best interests, leasing shall be made at public auction or by sealed
6 bid, at the discretion of the director, to the highest qualified bidder as determined by
7 the commissioner. A bidder may be represented by an attorney or agent at a public
8 auction. In the public notice of a lease to be offered at public auction or by sealed bid,
9 the commissioner shall specify a minimum acceptable bid and the lease compensation
10 method. The lease compensation method shall be designed to maximize the return on
11 the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).
12 **A substantially and adversely affected** [AN AGGRIEVED] bidder may appeal **or**
13 **request reconsideration under AS 44.37.011; however, the appeal or request must**
14 **be made** [TO THE COMMISSIONER] within five days **after issuance of the**
15 **determination of the highest qualified bidder** for a review of the determination. The
16 leasing shall be conducted by the commissioner, and the successful bidder shall
17 deposit at the public auction or with the sealed bid the first year's rental or other lease
18 compensation as specified by the commissioner, or that portion of it that the
19 commissioner requires in accordance with the bid. The commissioner shall require,
20 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or
21 appraisal costs reasonably incurred by another qualified bidder acting in accordance
22 with the regulations of the commissioner or incurred by the department under
23 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal
24 costs is determined by the commissioner to be the highest qualified bidder under this
25 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those
26 costs or to the department if the department incurred the costs. All costs for survey and
27 appraisal shall be approved in advance in writing by the commissioner. The
28 commissioner shall immediately issue a receipt containing a description of the land or
29 interest leased, the price bid, and the terms of the lease to the successful qualified
30 bidder. If the receipt is not accepted in writing by the bidder under this subsection, the
31 commissioner may offer the land for lease again under this subsection. A lease, on a

1 form approved by the attorney general, shall be signed by the successful bidder and by
2 the commissioner.

3 * **Sec. 13.** AS 38.05.075(h) is amended to read:

4 (h) A person **substantially and adversely affected** [AGGRIEVED] by a
5 decision of the commissioner under this section may appeal **or request**
6 **reconsideration under AS 44.37.011; however, the appeal or request for**
7 **reconsideration must be made** [TO THE COMMISSIONER] within five days **after**
8 [OF] the prequalification decision. [THE DECISION OF THE COMMISSIONER
9 UNDER THIS SUBSECTION MAY BE APPEALED TO THE SUPERIOR
10 COURT.]

11 * **Sec. 14.** AS 38.05.082(b) is amended to read:

12 (b) The director may classify land as subject to leases for fisheries
13 development and publicly invite applications for lease of the selected areas. Each
14 application shall be accompanied by an affidavit to the effect that the applicant
15 presently intends to personally utilize the leased area for fishing purposes the
16 following season. If two or more applications are received for the same shore area, the
17 director shall award the lease to the most qualified applicant. In determining the
18 qualifications of applicants, the director shall consider the length of time during which
19 the applicant has been engaged in set netting, the proximity of the past fishing sites of
20 the applicant to the land to be leased, the present ability of the applicant to utilize the
21 location to its maximum potential, and other factors relevant to the equitable
22 assignment of the disputed area. If the director cannot determine a preference between
23 conflicting applicants for the same lease site on the basis of qualifications, the director
24 shall select between the applicants by lot. **A substantially and adversely affected**
25 [AN AGGRIEVED] applicant may appeal to the commissioner **under AS 44.37.011**
26 within **20** [30] days **after issuance of the determination** for a review of the director's
27 determination.

28 * **Sec. 15.** AS 38.05.083(a) is amended to read:

29 (a) The commissioner may offer to the public for lease at public auction or by
30 sealed bid under AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic
31 farming or related hatchery operations. Before a final decision to issue [OR RENEW]

1 a lease under this section, the commissioner shall give notice and allow opportunity
2 for comment in accordance with AS 38.05.945 and may hold a hearing to take
3 testimony. Before a final decision to issue [OR RENEW] a lease under this section,
4 the commissioner shall consider all relevant comment or testimony submitted under
5 this section, AS 38.05.945, or 38.05.946.

6 * **Sec. 16.** AS 38.05.083 is amended by adding new subsections to read:

7 (g) The director may renew a lease issued under this section before its
8 expiration if the lease is in good standing and the director determines the lease renewal
9 to be in the best interests of the state. A renewal issued under this subsection is not
10 subject to AS 38.05.035(e). A lease may be renewed only once for a term not longer
11 than 10 years. The director shall provide notice of the decision to renew the lease.

12 (h) The director may extend the term of a lease issued under this section if the
13 lease is in good standing and the lease extension is determined to be in the best
14 interests of the state. A lease may be only extended once before its expiration for an
15 additional period of not more than two years. A lease extension may only be issued if
16 the director determines the extension is necessary while the department considers

17 (1) an application to renew the lease under (g) of this section; or

18 (2) an application to issue a new lease on the same site that, because it
19 substantially changes the purpose or operation of an existing lease, requires a new
20 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease
21 is changed.

22 (i) An extension issued under (h) of this section is not subject to
23 AS 38.05.035(e). The director shall provide public notice of the decision to extend the
24 lease.

25 * **Sec. 17.** AS 38.05.185(a) is amended to read:

26 (a) The acquisition and continuance of rights in and to deposits on state land
27 of minerals, which on January 3, 1959, were subject to location under the mining laws
28 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in
29 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to
30 mineral deposits owned by any other person or government. The director, with the
31 approval of the commissioner, shall determine that land from which mineral deposits

1 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that
2 land that shall be closed to location under AS 38.05.185 - 38.05.275. State land may
3 not be closed to location under AS 38.05.185 - 38.05.275 except as provided in
4 AS 38.05.300 and unless the commissioner makes a finding that mining would be
5 incompatible with significant surface uses on the state land. State land may not be
6 restricted to mining under lease unless the commissioner determines that potential use
7 conflicts on the state land require that mining be allowed only under written leases
8 issued under AS 38.05.205 or the commissioner has determined that the land was
9 mineral in character at the time of state selection. The determinations required under
10 this subsection shall be made in compliance with land classification orders and land
11 use plans developed under AS 38.05.300. **A preliminary written decision under this**
12 **subsection may be made available to the public and provide opportunity for**
13 **public comment on the preliminary written decision for a period of at least 30**
14 **days.**

15 * **Sec. 18.** AS 38.05.300(a) is amended to read:

16 (a) The commissioner shall classify for surface use land in areas considered
17 necessary and proper. This section does not prevent reclassification of land where the
18 public interest warrants reclassification, nor does it preclude multiple purpose use of
19 land whenever different uses are compatible. **The commissioner may make available**
20 **to the public a preliminary written classification decision and provide**
21 **opportunity for public comment on the preliminary written decision for a period**
22 **of at least 30 days.** If the area involved contains more than 640 contiguous acres, state
23 land, water, or land and water area may not, except by act of the state legislature, (1)
24 be closed to multiple purpose use, or (2) be otherwise classified by the commissioner
25 so that mining, mineral entry or location, mineral prospecting, or mineral leasing is
26 precluded or is designated an incompatible use, except when the classification is
27 necessary for a land disposal or exchange or is for the development of utility or
28 transportation corridors or projects or similar projects or infrastructure, or except as
29 allowed under (c) of this section.

30 * **Sec. 19.** AS 38.05.945(a) is amended to read:

31 (a) This section establishes the requirements for notice given by the

1 department for the following actions:

2 (1) a preliminary decision, or final decision if a preliminary
3 decision is not issued, regarding the classification or reclassification of state land
4 under AS 38.05.300 or a mineral order or leasehold location order regarding
5 [AND] the availability [CLOSING] of land to mineral leasing or entry under
6 AS 38.05.185;

7 (2) a preliminary decision, or final decision if a preliminary
8 decision is not issued, regarding the zoning of land under applicable law;

9 (3) issuance of a

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

13 (B) written finding for the sale, lease, or disposal of an interest
14 in state land or resources under AS 38.05.035(e)(6), except

15 (i) if a preliminary written finding is issued under
16 AS 38.05.035(e)(6); or

17 (ii) a lease sale described in AS 38.05.035(e)(6)(F) for
18 which the director must provide opportunity for public comment under
19 the provisions of that subparagraph;

20 (C) preliminary written finding that the director issued
21 under AS 38.05.035(e)(6);

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

24 (5) a preliminary finding under AS 38.05.035(e) concerning sites for
25 aquatic farms and related hatcheries;

26 (6) a decision under AS 38.05.132 - 38.05.134 regarding the sale,
27 lease, or disposal of an interest in state land or resources.

28 * **Sec. 20.** AS 38.05.965(21) is amended to read:

29 (21) "state land" or "land" means all land, including shoreland
30 [SHORE], tideland [TIDE], and submerged land, or resources belonging to or
31 acquired by the state;

1 * **Sec. 21.** AS 38.05.965 is amended by adding a new paragraph to read:

2 (26) "public auction" includes a public oral outcry auction and a public
3 online auction.

4 * **Sec. 22.** AS 38.50.010 is amended to read:

5 **Sec. 38.50.010. Authorization for exchange of state land.** Subject to the
6 requirements of this chapter, the director [, WITH THE CONCURRENCE OF THE
7 COMMISSIONER,] is authorized to exchange [DISPOSE OF] state land or interest in
8 land [BY EXCHANGING IT] for land, interest in land, or other consideration when it
9 is in the best interests of the state, including either or both the land estate or
10 mineral estate. Land or an interest in land must be of approximately equal value;
11 however, the director may accept cash from, or pay cash to, any other party to an
12 exchange in order to equalize the value of the property or other consideration
13 conveyed and received by the state. If the director determines that the property
14 that would be exchanged is not of approximately equal value or if the value
15 cannot be ascertained with reasonable certainty, the director may enter into an
16 exchange with a finding that the value of the property that would be received,
17 together with the value of other public benefits, equals or exceeds the value of the
18 property that the state would relinquish. Exchange procedures must comply with
19 applicable statutes and regulations and follow the decision and review procedures
20 under AS 38.05.035(e). The director may include in any patent or the written
21 decision stipulations necessary to promote or protect the public interest. If a land
22 exchange exceeds \$5,000,000 in the value of state land, or if the exchange is other
23 than of an approximately equal value, the director shall forward the proposed
24 exchange to the legislature for review under AS 38.50.140 within 10 days after
25 the convening of the next legislative session. The notice provisions of
26 AS 38.05.945 must be followed [. EXCHANGES SHALL BE FOR THE PURPOSE
27 OF CONSOLIDATING STATE LAND HOLDINGS, CREATING LAND
28 OWNERSHIP AND USE PATTERNS WHICH WILL PERMIT MORE EFFECTIVE
29 ADMINISTRATION OF THE STATE PUBLIC DOMAIN, FACILITATING THE
30 OBJECTIVES OF STATE PROGRAMS, OR OTHER PUBLIC PURPOSES].

31 * **Sec. 23.** AS 38.50.030(b) is amended to read:

1 (b) The director may negotiate an exchange involving more than one party [;
2 HOWEVER, IN ORDER TO ASCERTAIN WHETHER THE EQUAL VALUE
3 REQUIREMENTS OF THIS CHAPTER HAVE BEEN MET, THE DIRECTOR
4 SHALL CONSIDER ONLY THE LAND AND OTHER CONSIDERATION WHICH
5 THE STATE WOULD CONVEY AND RECEIVE IF THE EXCHANGE WERE
6 EXECUTED].

7 * **Sec. 24.** AS 38.50.050 is amended to read:

8 **Sec. 38.50.050. Conveyance of mineral rights.** Subject to the requirements of
9 this chapter, the director is authorized to exchange mineral rights in state land to the
10 extent that the conveyance is authorized by the state constitution and applicable
11 federal law. [THE DIRECTOR MAY NOT EXCHANGE OR RECEIVE THE
12 SURFACE ESTATE OF LAND OR THE MINERAL RIGHTS IN IT, ONE
13 WITHOUT THE OTHER, UNLESS THE SEPARATION OF ESTATE IS
14 NECESSITATED BY A PRIOR SEPARATION OF OWNERSHIP OR BY
15 RESTRICTIONS IN APPLICABLE LAW, OR THE DIRECTOR OTHERWISE
16 FINDS THAT THE CONVEYANCE OR RECEIPT OF THE SURFACE OR
17 MINERAL ESTATES, ONE WITHOUT THE OTHER, IS NECESSARY TO
18 ACHIEVE A SIGNIFICANT PUBLIC PURPOSE.]

19 * **Sec. 25.** AS 38.50.070 is amended to read:

20 **Sec. 38.50.070. Valid existing rights.** Conveyances made by the state under
21 this chapter are subject to valid existing rights, including [, BUT NOT LIMITED TO,]
22 contracts, permits, leases, rights-of-way, and easements. Unless jurisdiction is waived,
23 the appropriate state agency shall continue to administer valid existing rights, **and** [AS
24 LONG AS] any revenues derived from the existing rights continue to accrue to the
25 state until state land has been conveyed under AS 38.50.150 [ARE DISTRIBUTED
26 AS PROVIDED IN THE EXCHANGE AGREEMENT].

27 * **Sec. 26.** AS 38.50.140 is amended to read:

28 **Sec. 38.50.140. Legislative review.** Within 10 days **after** [OF] the convening
29 of a regular legislative session, the governor shall transmit to the president of the
30 senate and the speaker of the house of representatives any proposal for a land
31 exchange required to be submitted to the legislature for approval under AS 38.50.010

1 [AS 38.50.020(a)] that is scheduled to occur before the next legislative session. If
2 exigent circumstances seriously affecting state interests so require, the governor may
3 submit the proposed exchange to the legislature at some other time. A finding of
4 exigent circumstances shall be carefully documented in the letter of transmittal. The
5 director is authorized to conclude a proposed exchange agreement upon approval by
6 the legislature of the proposed exchange agreement. A decision by the legislature to
7 disapprove a proposed exchange shall be accompanied by a recommendation to the
8 governor with respect to future actions which the director should take concerning the
9 exchange.

10 * **Sec. 27.** AS 38.50.170(3) is amended to read:

11 (3) "state land" means all land including shoreland [SHORE],
12 tideland [TIDE], and submerged land or unsevered resources belonging to or acquired
13 by the state excluding interests in land severed or constructively severed from the
14 land.

15 * **Sec. 28.** AS 40.15.305(e) is amended to read:

16 (e) A recorded plat may not be altered or replatted except on petition of the
17 state, a municipality, a public utility, or the owner of a majority of the land affected by
18 the proposed alteration or replat. The petition shall be filed with the commissioner and
19 shall be accompanied by a copy of the existing plat showing the proposed alteration or
20 replat. The provisions of AS 29.40.130 and 29.40.140(a) apply to an alteration or
21 replat submitted under this subsection. The provisions of (d) of this section do not
22 apply to an alteration or replat petition, but the commissioner shall state in writing
23 reasons for disapproval of the petition. **Alteration of a platted boundary is exempt**
24 **from this subsection if all owners approve and no public easement or right-of-**
25 **way is affected. A plat of the alteration remains subject to all other provisions of**
26 **this section.**

27 * **Sec. 29.** AS 44.37.011(a) is amended to read:

28 (a) This section applies to administrative appeals or requests [PETITIONS]
29 for reconsideration of a decision in an administrative appeal to the commissioner of
30 natural resources, except for those administrative appeals or requests for
31 reconsideration [PETITIONS] done under AS 38.35, [OR] AS 43.82, or a different

1 procedure set out in AS 27.21 or its applicable regulations. If a conflict occurs
2 between this section and other state law existing at the time of original enactment of
3 this section, the provisions of this section control.

4 * **Sec. 30.** AS 44.37.011(b) is amended to read:

5 (b) If a person is an applicant, or substantially and adversely affected
6 [AGGRIEVED] by a decision of the Department of Natural Resources not made by
7 the commissioner and is otherwise eligible to seek the commissioner's review of the
8 decision, the person may appeal to the commissioner. The person may not file a
9 request [PETITION] for reconsideration of the commissioner's decision on the
10 appeal. The commissioner's decision on the administrative appeal is a final
11 administrative order for purposes of filing an appeal of the administrative decision to
12 the court.

13 * **Sec. 31.** AS 44.37.011(c) is amended to read:

14 (c) If a person is substantially and adversely affected [AGGRIEVED] by a
15 decision of the department made by the commissioner and is otherwise eligible to seek
16 the commissioner's review of the decision, the person may not appeal that decision to
17 the commissioner; however, the person may request [PETITION THE
18 COMMISSIONER FOR] reconsideration of the commissioner's decision. The
19 commissioner's decision made upon reconsideration or the commissioner's failure to
20 act on the request [PETITION] for reconsideration is a final administrative order for
21 purposes of filing an appeal of the administrative decision to the court.

22 * **Sec. 32.** AS 44.37.011(d) is amended to read:

23 (d) If a person has a right to appeal or request [PETITION FOR]
24 reconsideration under [AS 44.62.540 OR] this section, the person has [A TOTAL OF]
25 20 calendar days after the date of issuance of a final department decision [,
26 INCLUDING THE TIME AVAILABLE UNDER AS 44.62.540,] in which to file an
27 appeal or a request [PETITION] for reconsideration with the commissioner.

28 * **Sec. 33.** AS 44.37.011 is amended by adding new subsections to read:

29 (f) In this section, in order for a person to be adversely affected, a final
30 decision made by the department must create or impose an adverse and direct effect or
31 detriment on the person or the interests of that person.

1 (g) An appeal or request for reconsideration must include a statement that
2 explains how the person is substantially and adversely affected by the department
3 decision. The statement must

4 (1) specifically describe the substantial and adverse effect on the
5 person that is a direct result of the decision; and

6 (2) explain how the decision caused the substantial and adverse effect
7 on the person.

8 (h) If the department gives public notice and allows a public comment period
9 of at least 30 days on a proposed action, the department may restrict eligibility to
10 appeal or request reconsideration to a person who has provided timely comment on the
11 proposed action by including notice of the restriction as part of the public notice
12 announcing the opportunity to comment.

13 (i) The commissioner may reject an appeal or request for reconsideration for
14 failure to meet the requirements of (f) - (h) of this section.

15 * **Sec. 34.** AS 46.15.035(a) is amended to read:

16 (a) **A significant amount of water, as determined by the department by**
17 **regulation,** [WATER] may not be removed from the hydrologic unit from which it
18 was appropriated to another hydrologic unit, inside or outside the state, without being
19 returned to the hydrologic unit from which it was appropriated nor may **a significant**
20 **amount of** water be appropriated for removal from the hydrologic unit from which the
21 appropriation is sought to another hydrologic unit, inside or outside the state, without
22 the water being returned to the hydrologic unit from which it is to be appropriated,
23 unless the commissioner

24 (1) finds that the water to be removed or appropriated for removal is
25 surplus to needs within the hydrologic unit from which the water is to be removed or
26 appropriated for removal, including fishing, mining, timber, oil and gas, agriculture,
27 domestic water supply, and other needs as determined by the commissioner;

28 (2) finds that the application for removal or appropriation for removal
29 meets the requirements of AS 46.15.080; and

30 (3) assesses a water conservation fee under (b) of this section.

31 * **Sec. 35.** AS 46.15.133(a) is amended to read:

1 (a) If the commissioner proposes a sale of water or receives an application for
2 appropriation or removal, when the commissioner determines that the proposal or
3 application is ready for a decision, the commissioner shall prepare a notice
4 containing the location and extent of the proposed sale, appropriation, or removal, the
5 name and address of the applicant, if applicable, and other information the
6 commissioner considers pertinent. The notice shall state that, within 15 days after
7 [OF] publication or service of notice, persons may file with the director written
8 objections [,] stating the name and address of the objector [,] and any facts tending to
9 show that rights of the objector or the public interest as described in AS 46.15.080(b)
10 would be adversely affected by the proposed sale, appropriation, or removal.

11 * **Sec. 36.** AS 46.15.133(b) is amended to read:

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

25 * **Sec. 37.** AS 46.15.133(d) is amended to read:

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

29 * **Sec. 38.** AS 46.15.133(e) is amended to read:

30 (e) A person adversely affected [AGGRIEVED] by the action of the
31 commissioner or by the failure of the commissioner to grant, deny, or condition a

1 proposed sale or an application for appropriation or removal in accordance with (c) of
2 this section may appeal to the superior court. **In this subsection, to be adversely**
3 **affected, a person must be directly affected by a decision made by the department**
4 **either by a physical or financial detriment to the person's interests resulting from**
5 **the decision.**

6 * Sec. 39. AS 46.15.145(c) is amended to read:

7 (c) The commissioner shall issue a certificate reserving the water applied for
8 under this section if the commissioner finds that

9 (1) the rights of prior appropriators will not be affected by the
10 reservation;

11 (2) the applicant has demonstrated that a need exists for the
12 reservation;

13 (3) there is unappropriated water in the stream or body of water
14 sufficient for the reservation; and

15 (4) the proposed reservation is in the public interest: **in determining**
16 **the public interest, the commissioner shall consider**

17 **(A) the benefit to the applicant resulting from the proposed**
18 **reservation;**

19 **(B) the effect of the economic activity resulting from the**
20 **proposed reservation;**

21 **(C) the effect on fish and game resources and on public**
22 **recreational opportunities;**

23 **(D) the effect on public health;**

24 **(E) the effect of loss of alternate uses of water that might be**
25 **made within a reasonable time if not precluded or hindered by the**
26 **proposed reservation;**

27 **(F) harm to other persons resulting from the proposed**
28 **reservation; and**

29 **(G) the effect upon access to navigable or public water.**

30 * Sec. 40. AS 46.15.145(f) is amended to read:

31 (f) **The** [AT LEAST ONCE EACH 10 YEARS THE] commissioner **may**

1 [SHALL] review a [EACH] reservation under this section to determine whether the
2 purpose described in (a) of this section for which the certificate reserving water was
3 issued and the findings described in (c) of this section still apply to the reservation. If
4 the commissioner determines that the purpose, or part or all of the findings, no longer
5 apply to the reservation, the commissioner may revoke or modify the certificate
6 reserving the water after notice, hearing when appropriate, and a written determination
7 that the revocation or modification is in the best interests of the state.

8 * **Sec. 41.** AS 46.15.145 is amended by adding new subsections to read:

9 (g) For any water reservation applied for by a person, the commissioner will
10 issue an approved certificate of reservation to the appropriate state agency, and the
11 applicant receives no property right in the resulting approved certificate of reservation.

12 (h) The commissioner has the discretion to determine when and in what order
13 any application for a reservation of water is processed, but the order in which an
14 application is processed does not affect priority of appropriation.

15 (i) The applicant for a reservation of water shall be considered adversely
16 affected by a decision of the commissioner on the application for purposes of appeal
17 under AS 46.15.133(e). Only the applicant for a reservation of water or an agency that
18 holds a reservation under (g) of this section may appeal the commissioner's subsequent
19 administration under (f) of this section of any certificate of reservation issued as a
20 result of the application, which right to appeal may not be transferred or assigned.

21 (j) Notwithstanding (c) of this section, before the commissioner may issue a
22 certificate of reservation, the applicant must have submitted not less than five years of
23 nonproprietary public domain hydrologic data or hydrologic data collected by or for
24 the applicant to support the application.

25 * **Sec. 42.** AS 46.15.155(a) is amended to read:

26 (a) Notwithstanding any contrary provision of this chapter, the commissioner
27 may authorize the temporary use of a significant amount of water, as determined by
28 the department by regulation, for a period of time not to exceed five consecutive years
29 in each authorization, if the water applied for has not been appropriated in
30 accordance with this chapter. The commissioner may issue one or more new
31 temporary water use authorizations for the same project.

1 * **Sec. 43.** AS 46.15 is amended by adding a new section to read:

2 **Sec. 46.15.257. Interest of applicant.** An applicant under this chapter does not
3 have a property right in the application.

4 * **Sec. 44.** AS 46.15.260(7) is amended to read:

5 (7) "person" includes an individual, partnership, association, **federally**
6 **recognized tribe**, public or private corporation, state agency, political subdivision of
7 the state, and the United States;

8 * **Sec. 45.** AS 38.05.065(b); AS 38.50.020, 38.50.040, 38.50.080, 38.50.090, 38.50.100,
9 38.50.110, 38.50.120, 38.50.130; and AS 46.15.145(e) are repealed.

10 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 WORK PLAN FOR THE RESERVATION OF WATER IN 12 IMPORTANT
13 RIVERS AND OTHER WATERS TO SUSTAIN THE ABUNDANCE AND
14 PRODUCTIVITY OF CHINOOK SALMON. (a) The legislature finds that the Unuk, Stikine,
15 Taku, Chilkat, Copper, Susitna, Kenai, Karluk, Chignik, Nushagak, Kuskokwim, and Yukon
16 Rivers are important to the state as significant waters used by Chinook salmon. The
17 legislature finds that maintaining sufficient water in these rivers is necessary to sustain the
18 abundance and productivity of the Chinook salmon.

19 (b) On or before January 20, 2015, the Department of Natural Resources shall submit
20 a work plan to the legislature for evaluating the status and quality of existing data and
21 resource studies in the 12 rivers identified in (a) of this section. The Department of Natural
22 Resources shall identify additional data gathering and resource studies that are necessary to
23 identify the amount of water necessary to conserve Chinook salmon in each river identified in
24 (a) of this section and in other waters determined by the Department of Natural Resources and
25 the Department of Fish and Game to be significant and of high priority for the conservation of
26 Chinook salmon.

27 (c) The work plan presented to the legislature under (b) of this section shall recognize
28 and prioritize the proper protection of habitat that supports the Chinook salmon life cycle. The
29 Department of Natural Resources shall consult with the Department of Fish and Game and
30 may work with and consult with, as necessary, other appropriate resource agencies, interested
31 organizations, and persons with an interest in protecting Chinook salmon for the purpose of

1 properly protecting Chinook salmon habitat.

2 (d) Nothing in this section prevents or may be construed to prevent the Department of
3 Natural Resources from authorizing other uses of the water in rivers identified in (a) and (b)
4 of this section before the issuance of water reservations in those rivers.

5 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 TRANSITION: PENDING APPLICATIONS UNDER AS 46.15.145 FOR
8 RESERVED WATER. The Department of Natural Resources shall process applications filed
9 before the effective date of secs. 34 - 44 of this Act using the provisions of this Act.

10 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 TRANSITION: REGULATIONS. The Department of Natural Resources may
13 immediately adopt regulations necessary to implement the changes made by this Act. The
14 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1,
15 2014.

16 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
19 heading of AS 44.37.011 from "Additional procedures for administrative appeals and
20 petitions for reconsideration to the commissioner of natural resources" to "Procedures for
21 administrative appeals and requests for reconsideration to the commissioner of natural
22 resources."

23 * **Sec. 50.** Sections 34 - 44, and 46 - 48 of this Act take effect immediately under
24 AS 01.10.070(c).

25 * **Sec. 51.** Except as provided in sec. 50 of this Act, this Act takes effect July 1, 2014.

28-GH1524VT

Bullock

3/12/14

2d SENATE CS FOR CS FOR HOUSE BILL NO. 77(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:

Referred:

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

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to the Alaska Land Act, including certain authorizations, contracts,
2 leases, permits, or other disposals of state land, resources, property, or interests; relating
3 to authorization for the use of state land by general permit; relating to exchange of state
4 land; relating to procedures for certain administrative appeals and requests for
5 reconsideration to the commissioner of natural resources; relating to the Alaska Water
6 Use Act; and providing for an effective date."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * **Section 1.** AS 38.05.020 is amended by adding a new subsection to read:

9 (c) The department may authorize an activity on state land that the department
10 may authorize already through permit under AS 38.05 or AS 38.95 or a regulation
11 adopted under AS 38.05 or AS 38.95 by the issuance of a general permit if the
12 department finds that the activity is unlikely to result in significant or irreparable harm
13 to state land or resources. The department shall provide public notice and opportunity

1 for public comment on a proposed general permit for a period of not less than 30 days.
2 After the public comment period for a proposed general permit, if the department
3 decides to issue the general permit, the department shall make available to the public a
4 written decision issuing the general permit. The decision shall describe the scope of
5 activity authorized by the general permit and contain a finding that the activity is
6 unlikely to result in significant or irreparable harm to state land or resources. The
7 decision to issue a general permit is appealable under AS 44.37.011. A decision not to
8 issue a general permit may not be appealed. After a general permit is issued and the
9 appeal period has ended, the general permit may not be appealed on the basis of
10 subsequent activities that adhere to the terms of the general permit. An activity that
11 adheres to the terms of an issued general permit does not require separate public
12 notice. This subsection does not apply to land designated or authorizations issued
13 under AS 16.20, AS 27.21, AS 41.17, or AS 41.21. If there is a conflict between this
14 subsection and AS 38.04, AS 38.05, or AS 38.95, then the provisions of this
15 subsection apply.

16 * **Sec. 2.** AS 38.05.030(c) is amended to read:

17 (c) The [IN ADDITION TO THE REQUIREMENTS SPECIFIED IN
18 AS 38.50.090, THE] agencies referred to in (b) of this section and other state agencies
19 with authority to acquire or dispose of land shall give written notification of the fact of
20 acquisition, lease, disposal, or exchange to the commissioner within three months after
21 the date that they make the acquisition, lease, disposal, or exchange.

22 * **Sec. 3.** AS 38.05.035(e) is amended to read:

23 (e) Upon a written finding that the interests of the state will be best served, the
24 director may, with the consent of the commissioner, approve contracts for the sale,
25 lease, or other disposal of available land, resources, property, or interests in them. In
26 approving a contract under this subsection, the director need only prepare a single
27 written finding. In addition to the conditions and limitations imposed by law, the
28 director may impose additional conditions or limitations in the contracts as the director
29 determines, with the consent of the commissioner, will best serve the interests of the
30 state. The preparation and issuance of the written finding by the director are subject to
31 the following:

1 (1) with the consent of the commissioner and subject to the director's
2 discretion, for a specific proposed disposal of available land, resources, or property, or
3 of an interest in them, the director, in the written finding,

4 (A) shall establish the scope of the administrative review on
5 which the director's determination is based, and the scope of the written
6 finding supporting that determination; the scope of the administrative review
7 and finding may address only reasonably foreseeable, significant effects of the
8 uses proposed to be authorized by the disposal;

9 (B) may limit the scope of an administrative review and finding
10 for a proposed disposal to

11 (i) applicable statutes and regulations;

12 (ii) the facts pertaining to the land, resources, or
13 property, or interest in them, that the director finds are material to the
14 determination and that are known to the director or knowledge of which
15 is made available to the director during the administrative review; and

16 (iii) issues that, based on the statutes and regulations
17 referred to in (i) of this subparagraph, on the facts as described in (ii) of
18 this subparagraph, and on the nature of the uses sought to be authorized
19 by the disposal, the director finds are material to the determination of
20 whether the proposed disposal will best serve the interests of the state;
21 and

22 (C) may, if the project for which the proposed disposal is
23 sought is a multiphased development, limit the scope of an administrative
24 review and finding for the proposed disposal to the applicable statutes and
25 regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that
26 pertain solely to the disposal phase of the project when

27 (i) the only uses to be authorized by the proposed
28 disposal are part of that phase;

29 (ii) the disposal is a disposal of oil and gas, or of gas
30 only, and, before the next phase of the project may proceed, public
31 notice and the opportunity to comment are provided under regulations

1 adopted by the department;

2 (iii) the department's approval is required before the
3 next phase of the project may proceed; and

4 (iv) the department describes its reasons for a decision
5 to phase;

6 (2) the director shall discuss in the written finding prepared and issued
7 under this subsection the reasons that each of the following was not material to the
8 director's determination that the interests of the state will be best served:

9 (A) facts pertaining to the land, resources, or property, or an
10 interest in them other than those that the director finds material under (1)(B)(ii)
11 of this subsection; and

12 (B) issues based on the statutes and regulations referred to in
13 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
14 subsection;

15 (3) a written finding for an oil and gas lease sale or gas only lease sale
16 under AS 38.05.180 is subject to (g) of this section;

17 (4) a contract for the sale, lease, or other disposal of available land or
18 an interest in land is not legally binding on the state until the commissioner approves
19 the contract, but if the appraised value is not greater than \$50,000 in the case of the
20 sale of land or an interest in land, or \$10,000 [\$5,000] in the case of the annual rental
21 of land or interest in land, the director may execute the contract without the approval
22 of the commissioner;

23 (5) public notice requirements relating to the sale, lease, or other
24 disposal of available land or an interest in land for oil and gas, or for gas only,
25 proposed to be scheduled in the five-year oil and gas leasing program under
26 AS 38.05.180(b), except for a sale under (6)(F) of this subsection, are as follows:

27 (A) before a public hearing, if held, or in any case not less than
28 180 days before the sale, lease, or other disposal of available land or an interest
29 in land, the director shall make available to the public a preliminary written
30 finding that states the scope of the review established under (1)(A) of this
31 subsection and includes the applicable statutes and regulations, the material

1 facts and issues in accordance with (1)(B) of this subsection, and information
2 required by (g) of this section, upon which the determination that the sale,
3 lease, or other disposal will serve the best interests of the state will be based;
4 the director shall provide opportunity for public comment on the preliminary
5 written finding for a period of not less than 60 days;

6 (B) after the public comment period for the preliminary written
7 finding and not less than 90 days before the sale, lease, or other disposal of
8 available land or an interest in land for oil and gas or for gas only, the director
9 shall make available to the public a final written finding that states the scope of
10 the review established under (1)(A) of this subsection and includes the
11 applicable statutes and regulations, the material facts and issues in accordance
12 with (1) of this subsection, and information required by (g) of this section,
13 upon which the determination that the sale, lease, or other disposal will serve
14 the best interests of the state is based;

15 (6) before a public hearing, if held, or in any case not less than 21 days
16 before the sale, lease, or other disposal of available land, property, resources, or
17 interests in them other than a sale, lease, or other disposal of available land or an
18 interest in land for oil and gas or for gas only under (5) of this subsection, the director
19 shall make available to the public a written finding that, in accordance with (1) of this
20 subsection, sets out the material facts and applicable statutes and regulations and any
21 other information required by statute or regulation to be considered upon which the
22 determination that the sale, lease, or other disposal will best serve the interests of the
23 state was based; the director may make available to the public a preliminary
24 written finding and provide opportunity for public comment on the preliminary
25 written finding for a period of at least 30 days; [HOWEVER,] a written finding is
26 not required before the approval of

27 (A) a contract for a negotiated sale authorized under
28 AS 38.05.115;

29 (B) a lease of land for a shore fishery site under AS 38.05.082;

30 (C) a permit or other authorization revocable by the
31 commissioner;

1 (D) a mineral claim located under AS 38.05.195;
2 (E) a mineral lease issued under AS 38.05.205;
3 (F) an exempt oil and gas lease sale or gas only lease sale under
4 AS 38.05.180(d) of acreage subject to a best interest finding issued within the
5 previous 10 years or a reoffer oil and gas lease sale or gas only lease sale under
6 AS 38.05.180(w) of acreage subject to a best interest finding issued within the
7 previous 10 years, unless the commissioner determines that substantial new
8 information has become available that justifies a supplement to the most recent
9 best interest finding for the exempt oil and gas lease sale or gas only lease sale
10 acreage and for the reoffer oil and gas lease sale or gas only lease sale acreage;
11 however, for each oil and gas lease sale or gas only lease sale described in this
12 subparagraph, the director shall call for comments from the public; the
13 director's call for public comments must provide opportunity for public
14 comment for a period of not less than 30 days; if the director determines that a
15 supplement to the most recent best interest finding for the acreage is required
16 under this subparagraph,
17 (i) the director shall issue the supplement to the best
18 interest finding not later than 90 days before the sale;
19 (ii) not later than 45 days before the sale, the director
20 shall issue a notice describing the interests to be offered, the location
21 and time of the sale, and the terms and conditions of the sale; and
22 (iii) the supplement has the status of a final written best
23 interest finding for purposes of (i) and (l) of this section;
24 (G) a surface use lease under AS 38.05.255;
25 (H) a permit, right-of-way, or easement under AS 38.05.850;
26 (7) the director shall include in
27 (A) a preliminary written finding, if issued [REQUIRED], a
28 summary of agency and public comments, if any, obtained as a result of
29 contacts with other agencies concerning a proposed disposal or as a result of
30 informal efforts undertaken by the department to solicit public response to a
31 proposed disposal, and the department's preliminary responses to those

1 comments; and

2 (B) the final written finding a summary of agency and public
3 comments received and the department's responses to those comments.

4 * **Sec. 4.** AS 38.05.035(i) is amended to read:

5 (i) A person who is eligible to file an administrative appeal or a request for
6 reconsideration, as appropriate, under this subsection and who is **substantially and**
7 **adversely affected** [AGGRIEVED] by the final written finding of the director entered
8 under (e)(5) or (6) of this section may, within 20 days after the issuance of the final
9 written finding, file an administrative appeal or request reconsideration of the decision
10 by the commissioner. A person is eligible to file an administrative appeal or a request
11 for reconsideration if the person

12 (1) meaningfully participated in the process set out in this chapter for
13 receipt of public comment by

14 (A) submitting written comment during the period for receipt
15 of public comment; or

16 (B) presenting oral testimony at a public hearing, if a public
17 hearing was held; **or** [AND]

18 (2) is **the applicant** [AFFECTED BY THE FINAL WRITTEN
19 FINDING].

20 * **Sec. 5.** AS 38.05.035(j) is amended to read:

21 (j) An administrative appeal or a request for reconsideration submitted under
22 (i) of this section must specify the written finding complained of and the specific basis
23 upon which it is challenged. [THE COMMISSIONER SHALL GRANT OR DENY
24 THE ADMINISTRATIVE APPEAL OR RECONSIDERATION REQUEST WITHIN
25 30 DAYS AFTER ISSUANCE OF THE FINAL WRITTEN FINDING.] Failure of the
26 commissioner to act on **a** [THE] request for reconsideration within **30 days after**
27 **issuance of the final written finding** [THIS PERIOD] is a denial of the request for
28 reconsideration and a final administrative decision for purposes of appeal to the
29 superior court.

30 * **Sec. 6.** AS 38.05.035(l) is amended to read:

31 (l) A person may appeal a final written finding issued under (e)(5) or (6) of

1 this section to the superior court, but only if the person was eligible to request, and did
2 request, an administrative appeal or reconsideration of that finding under (i) of this
3 section. The person shall initiate the appeal to the court within 30 days from the date
4 that the decision on administrative appeal or reconsideration is mailed or otherwise
5 distributed, or the date the request for reconsideration is considered denied by the
6 commissioner's failure to act on the request, whichever is earlier. The points on appeal
7 to the court are limited to those presented to the commissioner in the person's
8 administrative appeal or request for reconsideration.

9 * **Sec. 7.** AS 38.05.035 is amended by adding a new subsection to read:

10 (p) Where there is a valid municipal entitlement selection on state land under
11 AS 29.65.010 - 29.65.030 that has a state-issued land lease that has been issued
12 competitively under AS 38.05.070 and before the decision to approve the municipal
13 entitlement land selection, the director shall grant a preference right to purchase
14 without further competitive bid of up to five acres of the state land to an individual
15 who has erected a building approved by a lease on the state land and used the land for
16 bona fide business purposes for 10 or more years under a state lease, if the business
17 produced not less than 25 percent of the total income of the applicant for the 10 years
18 preceding the application to purchase the land. An application for a preference right
19 under this section must be filed with the director within 120 days after notice to the
20 lessee of the municipal entitlement land selection. If the director grants the preference
21 right, the director shall sell the land at a price determined by the director to represent
22 the current fair market value of the unimproved land determined by an appraisal under
23 AS 38.05.840 and a survey, both at the cost of the applicant. If the director determines
24 that the purchase of the land would interfere with public use by residents of the area,
25 the director may condition the purchase to mitigate the adverse effects on the public in
26 the written finding under AS 38.05.035(e) or may reject the application if those effects
27 cannot be avoided or mitigated. If the preference right application is approved, the
28 amount of land within the overall municipal entitlement under AS 29.65.010 -
29 29.65.030 shall be reduced by the amount of land covered under this section; however,
30 subject to appropriation, the revenue from the purchase of the parcel will be given to
31 the municipality if the municipal entitlement land selection is approved. In this

1 subsection,

2 (1) "building" means a permanent type of structure not less than 500
3 square feet in size with solid walls, foundation, and roof;

4 (2) "business purposes" means a purpose consistent with the
5 classification of the land at the time the land was entered.

6 * **Sec. 8.** AS 38.05.065(a) is amended to read:

7 (a) **Unless the remainder of the purchase price is paid in full at the time of**
8 **the sale, a** [THE] contract of sale for land **or property** sold [AT PUBLIC AUCTION
9 OR BY SEALED BID] under **this chapter or former AS 38.05.078** [AS 38.05.055]
10 shall require the remainder of the purchase price to be paid in monthly, quarterly, or
11 annual installments over a period of not more than 20 years, with interest at the rate
12 provided in (i) of this section. Installment payments plus interest shall be set on the
13 level-payment basis.

14 * **Sec. 9.** AS 38.05.065(c) is amended to read:

15 (c) The director shall, for **a contract that provides for installment payments**
16 [CONTRACTS] under (a) [, (b),] or (h) of this section, set out in the contract [FOR
17 EACH SALE] the period for the payment of installments and the total purchase price
18 plus interest. The director, with the consent of the commissioner, may also include in **a**
19 **contract** [CONTRACTS] under this section conditions, limitations, and terms
20 considered necessary and proper to protect the interest of the state. Violations of any
21 provision of this chapter or the terms of the contract of sale subject the purchaser to
22 appropriate administrative and legal action, including but not limited to specific
23 performance, foreclosure, ejectment, or other legal remedies in accordance with
24 applicable state law.

25 * **Sec. 10.** AS 38.05.065(h) is amended to read:

26 (h) The commissioner, after consulting with the Board of Agriculture and
27 Conservation (AS 03.09.010),

28 (1) shall provide that, notwithstanding (a) [AND (b)] of this section, in
29 a contract for the sale of land classified under AS 38.05.020(b)(6) for agricultural
30 uses, the interest rate to be charged on installment payments may not exceed 9.5
31 percent; and

1 (2) may declare a moratorium of up to five years on payments on land
2 sold under this section for land classified under AS 38.05.020(b)(6) for agricultural
3 uses if

4 (A) the commissioner determines that the moratorium is in the
5 best interest of the state;

6 (B) the commissioner certifies and the contract purchaser
7 agrees to perform farm development, crop production, and harvesting, not
8 including land clearing or related activity, requiring the expenditure of
9 amounts equivalent to the payments that would otherwise be made during the
10 moratorium;

11 (C) the sale of the agricultural land takes place after July 1,
12 1979; and

13 (D) the contract purchaser is in compliance with the
14 development plan specified in the purchase contract at the time the purchaser
15 applies for a moratorium under this paragraph and remains in compliance with
16 the development plan during the moratorium; for the payments subject to the
17 moratorium declared under this paragraph, interest payments are subject to the
18 moratorium but interest continues to accrue during the moratorium.

19 * **Sec. 11.** AS 38.05.070 is amended by adding new subsections to read:

20 (f) A lease may be extended once for a period up to two years, if the director
21 determines it to be in the best interests of the state and the extension is necessary to
22 prolong the lease while the department considers

23 (1) a lessee preference application under AS 38.05.102;

24 (2) an application to renew the lease under (e) of this section; or

25 (3) an application to issue a new lease on the same site that, because it
26 substantially changes the purpose or operation of an existing lease, requires a new
27 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease
28 is changed.

29 (g) An extension issued under (f) of this section is not subject to
30 AS 38.05.035(e). The director shall provide public notice of the decision to extend the
31 lease.

1 * **Sec. 12.** AS 38.05.075(a) is amended to read:

2 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.082,
3 38.05.083, 38.05.087, 38.05.102, 38.05.565, 38.05.600, 38.05.810, and this section,
4 when competitive interest has been demonstrated or the commissioner determines that
5 it is in the state's best interests, leasing shall be made at public auction or by sealed
6 bid, at the discretion of the director, to the highest qualified bidder as determined by
7 the commissioner. A bidder may be represented by an attorney or agent at a public
8 auction. In the public notice of a lease to be offered at public auction or by sealed bid,
9 the commissioner shall specify a minimum acceptable bid and the lease compensation
10 method. The lease compensation method shall be designed to maximize the return on
11 the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).
12 A substantially and adversely affected [AN AGGRIEVED] bidder may appeal or
13 request reconsideration under AS 44.37.011; however, the appeal or request must
14 be made [TO THE COMMISSIONER] within five days after issuance of the
15 determination of the highest qualified bidder for a review of the determination. The
16 leasing shall be conducted by the commissioner, and the successful bidder shall
17 deposit at the public auction or with the sealed bid the first year's rental or other lease
18 compensation as specified by the commissioner, or that portion of it that the
19 commissioner requires in accordance with the bid. The commissioner shall require,
20 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or
21 appraisal costs reasonably incurred by another qualified bidder acting in accordance
22 with the regulations of the commissioner or incurred by the department under
23 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal
24 costs is determined by the commissioner to be the highest qualified bidder under this
25 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those
26 costs or to the department if the department incurred the costs. All costs for survey and
27 appraisal shall be approved in advance in writing by the commissioner. The
28 commissioner shall immediately issue a receipt containing a description of the land or
29 interest leased, the price bid, and the terms of the lease to the successful qualified
30 bidder. If the receipt is not accepted in writing by the bidder under this subsection, the
31 commissioner may offer the land for lease again under this subsection. A lease, on a

1 form approved by the attorney general, shall be signed by the successful bidder and by
2 the commissioner.

3 * **Sec. 13.** AS 38.05.075(h) is amended to read:

4 (h) A person substantially and adversely affected [AGGRIEVED] by a
5 decision of the commissioner under this section may appeal or request
6 reconsideration under AS 44.37.011; however, the appeal or request for
7 reconsideration must be made [TO THE COMMISSIONER] within five days after
8 [OF] the prequalification decision. [THE DECISION OF THE COMMISSIONER
9 UNDER THIS SUBSECTION MAY BE APPEALED TO THE SUPERIOR
10 COURT.]

11 * **Sec. 14.** AS 38.05.082(b) is amended to read:

12 (b) The director may classify land as subject to leases for fisheries
13 development and publicly invite applications for lease of the selected areas. Each
14 application shall be accompanied by an affidavit to the effect that the applicant
15 presently intends to personally utilize the leased area for fishing purposes the
16 following season. If two or more applications are received for the same shore area, the
17 director shall award the lease to the most qualified applicant. In determining the
18 qualifications of applicants, the director shall consider the length of time during which
19 the applicant has been engaged in set netting, the proximity of the past fishing sites of
20 the applicant to the land to be leased, the present ability of the applicant to utilize the
21 location to its maximum potential, and other factors relevant to the equitable
22 assignment of the disputed area. If the director cannot determine a preference between
23 conflicting applicants for the same lease site on the basis of qualifications, the director
24 shall select between the applicants by lot. A substantially and adversely affected
25 [AN AGGRIEVED] applicant may appeal to the commissioner under AS 44.37.011
26 within 20 [30] days after issuance of the determination for a review of the director's
27 determination.

28 * **Sec. 15.** AS 38.05.083(a) is amended to read:

29 (a) The commissioner may offer to the public for lease at public auction or by
30 sealed bid under AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic
31 farming or related hatchery operations. Before a final decision to issue [OR RENEW]

1 a lease under this section, the commissioner shall give notice and allow opportunity
2 for comment in accordance with AS 38.05.945 and may hold a hearing to take
3 testimony. Before a final decision to issue [OR RENEW] a lease under this section,
4 the commissioner shall consider all relevant comment or testimony submitted under
5 this section, AS 38.05.945, or 38.05.946.

6 * **Sec. 16.** AS 38.05.083 is amended by adding new subsections to read:

7 (g) The director may renew a lease issued under this section before its
8 expiration if the lease is in good standing and the director determines the lease renewal
9 to be in the best interests of the state. A renewal issued under this subsection is not
10 subject to AS 38.05.035(e). A lease may be renewed only once for a term not longer
11 than 10 years. The director shall provide notice of the decision to renew the lease.

12 (h) The director may extend the term of a lease issued under this section if the
13 lease is in good standing and the lease extension is determined to be in the best
14 interests of the state. A lease may be only extended once before its expiration for an
15 additional period of not more than two years. A lease extension may only be issued if
16 the director determines the extension is necessary while the department considers

17 (1) an application to renew the lease under (g) of this section; or

18 (2) an application to issue a new lease on the same site that, because it
19 substantially changes the purpose or operation of an existing lease, requires a new
20 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease
21 is changed.

22 (i) An extension issued under (h) of this section is not subject to
23 AS 38.05.035(e). The director shall provide public notice of the decision to extend the
24 lease.

25 * **Sec. 17.** AS 38.05.185(a) is amended to read:

26 (a) The acquisition and continuance of rights in and to deposits on state land
27 of minerals, which on January 3, 1959, were subject to location under the mining laws
28 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in
29 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to
30 mineral deposits owned by any other person or government. The director, with the
31 approval of the commissioner, shall determine that land from which mineral deposits

1 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that
2 land that shall be closed to location under AS 38.05.185 - 38.05.275. State land may
3 not be closed to location under AS 38.05.185 - 38.05.275 except as provided in
4 AS 38.05.300 and unless the commissioner makes a finding that mining would be
5 incompatible with significant surface uses on the state land. State land may not be
6 restricted to mining under lease unless the commissioner determines that potential use
7 conflicts on the state land require that mining be allowed only under written leases
8 issued under AS 38.05.205 or the commissioner has determined that the land was
9 mineral in character at the time of state selection. The determinations required under
10 this subsection shall be made in compliance with land classification orders and land
11 use plans developed under AS 38.05.300. **A preliminary written decision under this**
12 **subsection may be made available to the public and provide opportunity for**
13 **public comment on the preliminary written decision for a period of at least 30**
14 **days.**

15 * **Sec. 18.** AS 38.05.300(a) is amended to read:

16 (a) The commissioner shall classify for surface use land in areas considered
17 necessary and proper. This section does not prevent reclassification of land where the
18 public interest warrants reclassification, nor does it preclude multiple purpose use of
19 land whenever different uses are compatible. **The commissioner may make available**
20 **to the public a preliminary written classification decision and provide**
21 **opportunity for public comment on the preliminary written decision for a period**
22 **of at least 30 days.** If the area involved contains more than 640 contiguous acres, state
23 land, water, or land and water area may not, except by act of the state legislature, (1)
24 be closed to multiple purpose use, or (2) be otherwise classified by the commissioner
25 so that mining, mineral entry or location, mineral prospecting, or mineral leasing is
26 precluded or is designated an incompatible use, except when the classification is
27 necessary for a land disposal or exchange or is for the development of utility or
28 transportation corridors or projects or similar projects or infrastructure, or except as
29 allowed under (c) of this section.

30 * **Sec. 19.** AS 38.05.945(a) is amended to read:

31 (a) This section establishes the requirements for notice given by the

1 department for the following actions:

2 (1) a preliminary decision, or final decision if a preliminary
3 decision is not issued, regarding the classification or reclassification of state land
4 under AS 38.05.300 or a mineral order or leasehold location order regarding
5 [AND] the availability [CLOSING] of land to mineral leasing or entry under
6 AS 38.05.185;

7 (2) a preliminary decision, or final decision if a preliminary
8 decision is not issued, regarding the zoning of land under applicable law;

9 (3) issuance of a

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

13 (B) written finding for the sale, lease, or disposal of an interest
14 in state land or resources under AS 38.05.035(e)(6), except

15 (i) if a preliminary written finding is issued under
16 AS 38.05.035(e)(6); or

17 (ii) a lease sale described in AS 38.05.035(e)(6)(F) for
18 which the director must provide opportunity for public comment under
19 the provisions of that subparagraph;

20 (C) preliminary written finding that the director issued
21 under AS 38.05.035(e)(6);

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

24 (5) a preliminary finding under AS 38.05.035(e) concerning sites for
25 aquatic farms and related hatcheries;

26 (6) a decision under AS 38.05.132 - 38.05.134 regarding the sale,
27 lease, or disposal of an interest in state land or resources.

28 * **Sec. 20.** AS 38.05.965(21) is amended to read:

29 (21) "state land" or "land" means all land, including shoreland
30 [SHORE], tideland [TIDE], and submerged land, or resources belonging to or
31 acquired by the state;

1 * **Sec. 21.** AS 38.05.965 is amended by adding a new paragraph to read:

2 (26) "public auction" includes a public oral outcry auction and a public
3 online auction.

4 * **Sec. 22.** AS 38.50.010 is amended to read:

5 **Sec. 38.50.010. Authorization for exchange of state land.** Subject to the
6 requirements of this chapter, the director [, WITH THE CONCURRENCE OF THE
7 COMMISSIONER,] is authorized to exchange [DISPOSE OF] state land or interest in
8 land [BY EXCHANGING IT] for land, interest in land, or other consideration when it
9 is in the best interests of the state, including either or both the land estate or
10 mineral estate. Land or an interest in land must be of approximately equal value;
11 however, the director may accept cash from, or pay cash to, any other party to an
12 exchange in order to equalize the value of the property or other consideration
13 conveyed and received by the state. If the director determines that the property
14 that would be exchanged is not of approximately equal value or if the value
15 cannot be ascertained with reasonable certainty, the director may enter into an
16 exchange with a finding that the value of the property that would be received,
17 together with the value of other public benefits, equals or exceeds the value of the
18 property that the state would relinquish. Exchange procedures must comply with
19 applicable statutes and regulations and follow the decision and review procedures
20 under AS 38.05.035(e). The director may include in any patent or the written
21 decision stipulations necessary to promote or protect the public interest. If a land
22 exchange exceeds \$5,000,000 in the value of state land, or if the exchange is other
23 than of an approximately equal value, the director shall forward the proposed
24 exchange to the legislature for review under AS 38.50.140 within 10 days after
25 the convening of the next legislative session. The notice provisions of
26 AS 38.05.945 must be followed [. EXCHANGES SHALL BE FOR THE PURPOSE
27 OF CONSOLIDATING STATE LAND HOLDINGS, CREATING LAND
28 OWNERSHIP AND USE PATTERNS WHICH WILL PERMIT MORE EFFECTIVE
29 ADMINISTRATION OF THE STATE PUBLIC DOMAIN, FACILITATING THE
30 OBJECTIVES OF STATE PROGRAMS, OR OTHER PUBLIC PURPOSES].

31 * **Sec. 23.** AS 38.50.030(b) is amended to read:

1 (b) The director may negotiate an exchange involving more than one party [;
2 HOWEVER, IN ORDER TO ASCERTAIN WHETHER THE EQUAL VALUE
3 REQUIREMENTS OF THIS CHAPTER HAVE BEEN MET, THE DIRECTOR
4 SHALL CONSIDER ONLY THE LAND AND OTHER CONSIDERATION WHICH
5 THE STATE WOULD CONVEY AND RECEIVE IF THE EXCHANGE WERE
6 EXECUTED].

7 * **Sec. 24.** AS 38.50.050 is amended to read:

8 **Sec. 38.50.050. Conveyance of mineral rights.** Subject to the requirements of
9 this chapter, the director is authorized to exchange mineral rights in state land to the
10 extent that the conveyance is authorized by the state constitution and applicable
11 federal law. [THE DIRECTOR MAY NOT EXCHANGE OR RECEIVE THE
12 SURFACE ESTATE OF LAND OR THE MINERAL RIGHTS IN IT, ONE
13 WITHOUT THE OTHER, UNLESS THE SEPARATION OF ESTATE IS
14 NECESSITATED BY A PRIOR SEPARATION OF OWNERSHIP OR BY
15 RESTRICTIONS IN APPLICABLE LAW, OR THE DIRECTOR OTHERWISE
16 FINDS THAT THE CONVEYANCE OR RECEIPT OF THE SURFACE OR
17 MINERAL ESTATES, ONE WITHOUT THE OTHER, IS NECESSARY TO
18 ACHIEVE A SIGNIFICANT PUBLIC PURPOSE.]

19 * **Sec. 25.** AS 38.50.070 is amended to read:

20 **Sec. 38.50.070. Valid existing rights.** Conveyances made by the state under
21 this chapter are subject to valid existing rights, including [, BUT NOT LIMITED TO,]
22 contracts, permits, leases, rights-of-way, and easements. Unless jurisdiction is waived,
23 the appropriate state agency shall continue to administer valid existing rights, **and** [AS
24 LONG AS] any revenues derived from the existing rights continue to accrue to the
25 state until state land has been conveyed under AS 38.50.150 [ARE DISTRIBUTED
26 AS PROVIDED IN THE EXCHANGE AGREEMENT].

27 * **Sec. 26.** AS 38.50.140 is amended to read:

28 **Sec. 38.50.140. Legislative review.** Within 10 days **after** [OF] the convening
29 of a regular legislative session, the governor shall transmit to the president of the
30 senate and the speaker of the house of representatives any proposal for a land
31 exchange required to be submitted to the legislature for approval under AS 38.50.010

1 [AS 38.50.020(a)] that is scheduled to occur before the next legislative session. If
2 exigent circumstances seriously affecting state interests so require, the governor may
3 submit the proposed exchange to the legislature at some other time. A finding of
4 exigent circumstances shall be carefully documented in the letter of transmittal. The
5 director is authorized to conclude a proposed exchange agreement upon approval by
6 the legislature of the proposed exchange agreement. A decision by the legislature to
7 disapprove a proposed exchange shall be accompanied by a recommendation to the
8 governor with respect to future actions which the director should take concerning the
9 exchange.

10 * **Sec. 27.** AS 38.50.170(3) is amended to read:

11 (3) "state land" means all land including shoreland [SHORE],
12 tideland [TIDE], and submerged land or unsevered resources belonging to or acquired
13 by the state excluding interests in land severed or constructively severed from the
14 land.

15 * **Sec. 28.** AS 40.15.305(e) is amended to read:

16 (e) A recorded plat may not be altered or replatted except on petition of the
17 state, a municipality, a public utility, or the owner of a majority of the land affected by
18 the proposed alteration or replat. The petition shall be filed with the commissioner and
19 shall be accompanied by a copy of the existing plat showing the proposed alteration or
20 replat. The provisions of AS 29.40.130 and 29.40.140(a) apply to an alteration or
21 replat submitted under this subsection. The provisions of (d) of this section do not
22 apply to an alteration or replat petition, but the commissioner shall state in writing
23 reasons for disapproval of the petition. Alteration of a platted boundary is exempt
24 from this subsection if all owners approve and no public easement or right-of-
25 way is affected. A plat of the alteration remains subject to all other provisions of
26 this section.

27 * **Sec. 29.** AS 44.37.011(a) is amended to read:

28 (a) This section applies to administrative appeals or requests [PETITIONS]
29 for reconsideration of a decision in an administrative appeal to the commissioner of
30 natural resources, except for those administrative appeals or requests for
31 reconsideration [PETITIONS] done under AS 38.35, [OR] AS 43.82, or a different

1 procedure set out in AS 27.21 or its applicable regulations. If a conflict occurs
2 between this section and other state law existing at the time of original enactment of
3 this section, the provisions of this section control.

4 * **Sec. 30.** AS 44.37.011(b) is amended to read:

5 (b) If a person is an applicant, or substantially and adversely affected
6 [AGGRIEVED] by a decision of the Department of Natural Resources not made by
7 the commissioner and is otherwise eligible to seek the commissioner's review of the
8 decision, the person may appeal to the commissioner. The person may not file a
9 request [PETITION] for reconsideration of the commissioner's decision on the
10 appeal. The commissioner's decision on the administrative appeal is a final
11 administrative order for purposes of filing an appeal of the administrative decision to
12 the court.

13 * **Sec. 31.** AS 44.37.011(c) is amended to read:

14 (c) If a person is substantially and adversely affected [AGGRIEVED] by a
15 decision of the department made by the commissioner and is otherwise eligible to seek
16 the commissioner's review of the decision, the person may not appeal that decision to
17 the commissioner; however, the person may request [PETITION THE
18 COMMISSIONER FOR] reconsideration of the commissioner's decision. The
19 commissioner's decision made upon reconsideration or the commissioner's failure to
20 act on the request [PETITION] for reconsideration is a final administrative order for
21 purposes of filing an appeal of the administrative decision to the court.

22 * **Sec. 32.** AS 44.37.011(d) is amended to read:

23 (d) If a person has a right to appeal or request [PETITION FOR]
24 reconsideration under [AS 44.62.540 OR] this section, the person has [A TOTAL OF]
25 20 calendar days after the date of issuance of a final department decision [,
26 INCLUDING THE TIME AVAILABLE UNDER AS 44.62.540,] in which to file an
27 appeal or a request [PETITION] for reconsideration with the commissioner.

28 * **Sec. 33.** AS 44.37.011 is amended by adding new subsections to read:

29 (f) In this section, in order for a person to be adversely affected, a final
30 decision made by the department must create or impose an adverse and direct effect or
31 detriment on the person or the interests of that person.

1 (g) An appeal or request for reconsideration must include a statement that
2 explains how the person is substantially and adversely affected by the department
3 decision. The statement must

4 (1) specifically describe the substantial and adverse effect on the
5 person that is a direct result of the decision; and

6 (2) explain how the decision caused the substantial and adverse effect
7 on the person.

8 (h) If the department gives public notice and allows a public comment period
9 of at least 30 days on a proposed action, the department may restrict eligibility to
10 appeal or request reconsideration to a person who has provided timely comment on the
11 proposed action by including notice of the restriction as part of the public notice
12 announcing the opportunity to comment.

13 (i) The commissioner may reject an appeal or request for reconsideration for
14 failure to meet the requirements of (f) - (h) of this section.

15 * **Sec. 34.** AS 46.15.035(a) is amended to read:

16 (a) **A significant amount of water, as determined by the department by**
17 **regulation,** [WATER] may not be removed from the hydrologic unit from which it
18 was appropriated to another hydrologic unit, inside or outside the state, without being
19 returned to the hydrologic unit from which it was appropriated nor may **a significant**
20 **amount of** water be appropriated for removal from the hydrologic unit from which the
21 appropriation is sought to another hydrologic unit, inside or outside the state, without
22 the water being returned to the hydrologic unit from which it is to be appropriated,
23 unless the commissioner

24 (1) finds that the water to be removed or appropriated for removal is
25 surplus to needs within the hydrologic unit from which the water is to be removed or
26 appropriated for removal, including fishing, mining, timber, oil and gas, agriculture,
27 domestic water supply, and other needs as determined by the commissioner;

28 (2) finds that the application for removal or appropriation for removal
29 meets the requirements of AS 46.15.080; and

30 (3) assesses a water conservation fee under (b) of this section.

31 * **Sec. 35.** AS 46.15.133(a) is amended to read:

1 (a) If the commissioner proposes a sale of water or receives an application for
2 appropriation or removal, when the commissioner determines that the proposal or
3 application is ready for a decision, the commissioner shall prepare a notice
4 containing the location and extent of the proposed sale, appropriation, or removal, the
5 name and address of the applicant, if applicable, and other information the
6 commissioner considers pertinent. The notice shall state that, within 15 days after
7 [OF] publication or service of notice, persons may file with the director written
8 objections [,] stating the name and address of the objector [,] and any facts tending to
9 show that rights of the objector or the public interest as described in AS 46.15.080(b)
10 would be adversely affected by the proposed sale, appropriation, or removal.

11 * **Sec. 36.** AS 46.15.133(b) is amended to read:

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

25 * **Sec. 37.** AS 46.15.133(d) is amended to read:

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

29 * **Sec. 38.** AS 46.15.133(e) is amended to read:

30 (e) A person adversely affected [AGGRIEVED] by the action of the
31 commissioner or by the failure of the commissioner to grant, deny, or condition a

1 proposed sale or an application for appropriation or removal in accordance with (c) of
2 this section may appeal to the superior court. In this subsection, to be adversely
3 affected, a person must be directly affected by a decision made by the department
4 either by a physical or financial detriment to the person's interests resulting from
5 the decision.

6 * Sec. 39. AS 46.15.145(c) is amended to read:

7 (c) The commissioner shall issue a certificate reserving the water applied for
8 under this section if the commissioner finds that

9 (1) the rights of prior appropriators will not be affected by the
10 reservation;

11 (2) the applicant has demonstrated that a need exists for the
12 reservation;

13 (3) there is unappropriated water in the stream or body of water
14 sufficient for the reservation; and

15 (4) the proposed reservation is in the public interest; in determining
16 the public interest, the commissioner shall consider

17 (A) the benefit to the applicant resulting from the proposed
18 reservation;

19 (B) the effect of the economic activity resulting from the
20 proposed reservation;

21 (C) the effect on fish and game resources and on public
22 recreational opportunities;

23 (D) the effect on public health;

24 (E) the effect of loss of alternate uses of water that might be
25 made within a reasonable time if not precluded or hindered by the
26 proposed reservation;

27 (F) harm to other persons resulting from the proposed
28 reservation; and

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

30 * Sec. 40. AS 46.15.145(f) is amended to read:

31 (f) The [AT LEAST ONCE EACH 10 YEARS THE] commissioner may

1 [SHALL] review a [EACH] reservation under this section to determine whether the
2 purpose described in (a) of this section for which the certificate reserving water was
3 issued and the findings described in (c) of this section still apply to the reservation. If
4 the commissioner determines that the purpose, or part or all of the findings, no longer
5 apply to the reservation, the commissioner may revoke or modify the certificate
6 reserving the water after notice, hearing when appropriate, and a written determination
7 that the revocation or modification is in the best interests of the state.

8 * **Sec. 41.** AS 46.15.145 is amended by adding new subsections to read:

9 (g) For any water reservation applied for by a person, the commissioner will
10 issue an approved certificate of reservation to the appropriate state agency, and the
11 applicant receives no property right in the resulting approved certificate of reservation.

12 (h) The commissioner has the discretion to determine when and in what order
13 any application for a reservation of water is processed, but the order in which an
14 application is processed does not affect priority of appropriation.

15 (i) The applicant for a reservation of water shall be considered adversely
16 affected by a decision of the commissioner on the application for purposes of appeal
17 under AS 46.15.133(e). Only the applicant for a reservation of water or an agency that
18 holds a reservation under (g) of this section may appeal the commissioner's subsequent
19 administration under (f) of this section of any certificate of reservation issued as a
20 result of the application, which right to appeal may not be transferred or assigned.

21 (j) Notwithstanding (c) of this section, before the commissioner may issue a
22 certificate of reservation, the applicant must have submitted not less than five years of
23 nonproprietary public domain hydrologic data or hydrologic data collected by or for
24 the applicant to support the application.

25 * **Sec. 42.** AS 46.15.155(a) is amended to read:

26 (a) Notwithstanding any contrary provision of this chapter, the commissioner
27 may authorize the temporary use of a significant amount of water, as determined by
28 the department by regulation, for a period of time not to exceed five consecutive years
29 in each authorization, if the water applied for has not been appropriated in
30 accordance with this chapter. The commissioner may issue one or more new
31 temporary water use authorizations for the same project.

1 * **Sec. 43.** AS 46.15 is amended by adding a new section to read:

2 **Sec. 46.15.257. Interest of applicant.** An applicant under this chapter does not
3 have a property right in the application.

4 * **Sec. 44.** AS 46.15.260(7) is amended to read:

5 (7) "person" includes an individual, partnership, association, **federally**
6 **recognized tribe**, public or private corporation, state agency, political subdivision of
7 the state, and the United States;

8 * **Sec. 45.** AS 38.05.065(b); AS 38.50.020, 38.50.040, 38.50.080, 38.50.090, 38.50.100,
9 38.50.110, 38.50.120, 38.50.130; and AS 46.15.145(e) are repealed.

10 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 WORK PLAN FOR THE RESERVATION OF WATER IN 12 IMPORTANT
13 RIVERS AND OTHER WATERS TO SUSTAIN THE ABUNDANCE AND
14 PRODUCTIVITY OF CHINOOK SALMON. (a) The legislature finds that the Unuk, Stikine,
15 Taku, Chilkat, Copper, Susitna, Kenai, Karluk, Chignik, Nushagak, Kuskokwim, and Yukon
16 Rivers are important to the state as significant waters used by Chinook salmon. The
17 legislature finds that maintaining sufficient water in these rivers is necessary to sustain the
18 abundance and productivity of the Chinook salmon.

19 (b) On or before January 20, 2015, the Department of Natural Resources shall submit
20 a work plan to the legislature for evaluating the status and quality of existing data and
21 resource studies in the 12 rivers identified in (a) of this section. The Department of Natural
22 Resources shall identify additional data gathering and resource studies that are necessary to
23 identify the amount of water necessary to conserve Chinook salmon in each river identified in
24 (a) of this section and in other waters determined by the Department of Natural Resources and
25 the Department of Fish and Game to be significant and of high priority for the conservation of
26 Chinook salmon. The Department of Natural Resources shall identify the amount of water to
27 be reserved in an automatic reservation of water in each of the 12 rivers identified in (a) of
28 this section and additional rivers identified under this subsection that do not have a
29 reservation of water in place.

30 (c) The work plan presented to the legislature under (b) of this section shall recognize
31 and prioritize the proper protection of habitat that supports the Chinook salmon life cycle. The

1 Department of Natural Resources shall consult with the Department of Fish and Game and
2 may work with and consult with, as necessary, other appropriate resource agencies, interested
3 organizations, and persons with an interest in protecting Chinook salmon for the purpose of
4 properly protecting Chinook salmon habitat.

5 (d) Nothing in this section prevents or may be construed to prevent the Department of
6 Natural Resources from authorizing other uses of the water in rivers identified in (a) and (b)
7 of this section before the issuance of automatic water reservations in those rivers.

8 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TRANSITION: PENDING APPLICATIONS UNDER AS 46.15.145 FOR
11 RESERVED WATER. The Department of Natural Resources shall process applications filed
12 before the effective date of secs. 34 - 44 of this Act using the provisions of this Act.

13 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 TRANSITION: REGULATIONS. The Department of Natural Resources may
16 immediately adopt regulations necessary to implement the changes made by this Act. The
17 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1,
18 2014.

19 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
22 heading of AS 44.37.011 from "Additional procedures for administrative appeals and
23 petitions for reconsideration to the commissioner of natural resources" to "Procedures for
24 administrative appeals and requests for reconsideration to the commissioner of natural
25 resources."

26 * **Sec. 50.** Sections 29, 34 - 44, and 46 - 48 of this Act take effect immediately under
27 AS 01.10.070(c).

28 * **Sec. 51.** Except as provided in sec. 50 of this Act, this Act takes effect July 1, 2014.

28-GH1524E
Bullock
3/12/14

2d SENATE CS FOR CS FOR HOUSE BILL NO. 77(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska Land Act, including certain authorizations, contracts,**
2 **leases, permits, or other disposals of state land, resources, property, or interests; relating**
3 **to authorization for the use of state land by general permit; relating to exchange of state**
4 **land; relating to procedures for certain administrative appeals and requests for**
5 **reconsideration to the commissioner of natural resources; relating to the Alaska Water**
6 **Use Act; and providing for an effective date."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 *** Section 1.** AS 38.05.020 is amended by adding a new subsection to read:

9 (c) The department may authorize an activity on state land that the department
10 may authorize already through permit under AS 38.05 or AS 38.95 or a regulation
11 adopted under AS 38.05 or AS 38.95 by the issuance of a general permit if the
12 department finds that the activity is unlikely to result in significant or irreparable harm
13 to state land or resources. The department shall provide public notice and opportunity

1 for public comment on a proposed general permit for a period of not less than 30 days.
2 After the public comment period for a proposed general permit, if the department
3 decides to issue the general permit, the department shall make available to the public a
4 written decision issuing the general permit. The decision shall describe the scope of
5 activity authorized by the general permit and contain a finding that the activity is
6 unlikely to result in significant or irreparable harm to state land or resources. The
7 decision to issue a general permit is appealable under AS 44.37.011. A decision not to
8 issue a general permit may not be appealed. After a general permit is issued and the
9 appeal period has ended, the general permit may not be appealed on the basis of
10 subsequent activities that adhere to the terms of the general permit. An activity that
11 adheres to the terms of an issued general permit does not require separate public
12 notice. This subsection does not apply to land designated or authorizations issued
13 under AS 16.20, AS 27.21, AS 41.17, or AS 41.21. If there is a conflict between this
14 subsection and AS 38.04, AS 38.05, or AS 38.95, then the provisions of this
15 subsection apply.

16 * **Sec. 2.** AS 38.05.030(c) is amended to read:

17 (c) The [IN ADDITION TO THE REQUIREMENTS SPECIFIED IN
18 AS 38.50.090, THE] agencies referred to in (b) of this section and other state agencies
19 with authority to acquire or dispose of land shall give written notification of the fact of
20 acquisition, lease, disposal, or exchange to the commissioner within three months after
21 the date that they make the acquisition, lease, disposal, or exchange.

22 * **Sec. 3.** AS 38.05.035(e) is amended to read:

23 (e) Upon a written finding that the interests of the state will be best served, the
24 director may, with the consent of the commissioner, approve contracts for the sale,
25 lease, or other disposal of available land, resources, property, or interests in them. In
26 approving a contract under this subsection, the director need only prepare a single
27 written finding. In addition to the conditions and limitations imposed by law, the
28 director may impose additional conditions or limitations in the contracts as the director
29 determines, with the consent of the commissioner, will best serve the interests of the
30 state. The preparation and issuance of the written finding by the director are subject to
31 the following:

1 (1) with the consent of the commissioner and subject to the director's
2 discretion, for a specific proposed disposal of available land, resources, or property, or
3 of an interest in them, the director, in the written finding,

4 (A) shall establish the scope of the administrative review on
5 which the director's determination is based, and the scope of the written
6 finding supporting that determination; the scope of the administrative review
7 and finding may address only reasonably foreseeable, significant effects of the
8 uses proposed to be authorized by the disposal;

9 (B) may limit the scope of an administrative review and finding
10 for a proposed disposal to

11 (i) applicable statutes and regulations;

12 (ii) the facts pertaining to the land, resources, or
13 property, or interest in them, that the director finds are material to the
14 determination and that are known to the director or knowledge of which
15 is made available to the director during the administrative review; and

16 (iii) issues that, based on the statutes and regulations
17 referred to in (i) of this subparagraph, on the facts as described in (ii) of
18 this subparagraph, and on the nature of the uses sought to be authorized
19 by the disposal, the director finds are material to the determination of
20 whether the proposed disposal will best serve the interests of the state;
21 and

22 (C) may, if the project for which the proposed disposal is
23 sought is a multiphased development, limit the scope of an administrative
24 review and finding for the proposed disposal to the applicable statutes and
25 regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that
26 pertain solely to the disposal phase of the project when

27 (i) the only uses to be authorized by the proposed
28 disposal are part of that phase;

29 (ii) the disposal is a disposal of oil and gas, or of gas
30 only, and, before the next phase of the project may proceed, public
31 notice and the opportunity to comment are provided under regulations

1 adopted by the department;

2 (iii) the department's approval is required before the
3 next phase of the project may proceed; and

4 (iv) the department describes its reasons for a decision
5 to phase;

6 (2) the director shall discuss in the written finding prepared and issued
7 under this subsection the reasons that each of the following was not material to the
8 director's determination that the interests of the state will be best served:

9 (A) facts pertaining to the land, resources, or property, or an
10 interest in them other than those that the director finds material under (1)(B)(ii)
11 of this subsection; and

12 (B) issues based on the statutes and regulations referred to in
13 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
14 subsection;

15 (3) a written finding for an oil and gas lease sale or gas only lease sale
16 under AS 38.05.180 is subject to (g) of this section;

17 (4) a contract for the sale, lease, or other disposal of available land or
18 an interest in land is not legally binding on the state until the commissioner approves
19 the contract, but if the appraised value is not greater than \$50,000 in the case of the
20 sale of land or an interest in land, or \$10,000 [\$5,000] in the case of the annual rental
21 of land or interest in land, the director may execute the contract without the approval
22 of the commissioner;

23 (5) public notice requirements relating to the sale, lease, or other
24 disposal of available land or an interest in land for oil and gas, or for gas only,
25 proposed to be scheduled in the five-year oil and gas leasing program under
26 AS 38.05.180(b), except for a sale under (6)(F) of this subsection, are as follows:

27 (A) before a public hearing, if held, or in any case not less than
28 180 days before the sale, lease, or other disposal of available land or an interest
29 in land, the director shall make available to the public a preliminary written
30 finding that states the scope of the review established under (1)(A) of this
31 subsection and includes the applicable statutes and regulations, the material

1 facts and issues in accordance with (1)(B) of this subsection, and information
2 required by (g) of this section, upon which the determination that the sale,
3 lease, or other disposal will serve the best interests of the state will be based;
4 the director shall provide opportunity for public comment on the preliminary
5 written finding for a period of not less than 60 days;

6 (B) after the public comment period for the preliminary written
7 finding and not less than 90 days before the sale, lease, or other disposal of
8 available land or an interest in land for oil and gas or for gas only, the director
9 shall make available to the public a final written finding that states the scope of
10 the review established under (1)(A) of this subsection and includes the
11 applicable statutes and regulations, the material facts and issues in accordance
12 with (1) of this subsection, and information required by (g) of this section,
13 upon which the determination that the sale, lease, or other disposal will serve
14 the best interests of the state is based;

15 (6) before a public hearing, if held, or in any case not less than 21 days
16 before the sale, lease, or other disposal of available land, property, resources, or
17 interests in them other than a sale, lease, or other disposal of available land or an
18 interest in land for oil and gas or for gas only under (5) of this subsection, the director
19 shall make available to the public a written finding that, in accordance with (1) of this
20 subsection, sets out the material facts and applicable statutes and regulations and any
21 other information required by statute or regulation to be considered upon which the
22 determination that the sale, lease, or other disposal will best serve the interests of the
23 state was based; **the director may make available to the public a preliminary**
24 **written finding and provide opportunity for public comment on the preliminary**
25 **written finding for a period of at least 30 days;** [HOWEVER,] a written finding is
26 not required before the approval of

27 (A) a contract for a negotiated sale authorized under
28 AS 38.05.115;

29 (B) a lease of land for a shore fishery site under AS 38.05.082;

30 (C) a permit or other authorization revocable by the
31 commissioner;

1 (D) a mineral claim located under AS 38.05.195;

2 (E) a mineral lease issued under AS 38.05.205;

3 (F) an exempt oil and gas lease sale or gas only lease sale under
4 AS 38.05.180(d) of acreage subject to a best interest finding issued within the
5 previous 10 years or a reoffer oil and gas lease sale or gas only lease sale under
6 AS 38.05.180(w) of acreage subject to a best interest finding issued within the
7 previous 10 years, unless the commissioner determines that substantial new
8 information has become available that justifies a supplement to the most recent
9 best interest finding for the exempt oil and gas lease sale or gas only lease sale
10 acreage and for the reoffer oil and gas lease sale or gas only lease sale acreage;
11 however, for each oil and gas lease sale or gas only lease sale described in this
12 subparagraph, the director shall call for comments from the public; the
13 director's call for public comments must provide opportunity for public
14 comment for a period of not less than 30 days; if the director determines that a
15 supplement to the most recent best interest finding for the acreage is required
16 under this subparagraph,

17 (i) the director shall issue the supplement to the best
18 interest finding not later than 90 days before the sale;

19 (ii) not later than 45 days before the sale, the director
20 shall issue a notice describing the interests to be offered, the location
21 and time of the sale, and the terms and conditions of the sale; and

22 (iii) the supplement has the status of a final written best
23 interest finding for purposes of (i) and (l) of this section;

24 (G) a surface use lease under AS 38.05.255;

25 (H) a permit, right-of-way, or easement under AS 38.05.850;

26 (7) the director shall include in

27 (A) a preliminary written finding, if **issued** [REQUIRED], a
28 summary of agency and public comments, if any, obtained as a result of
29 contacts with other agencies concerning a proposed disposal or as a result of
30 informal efforts undertaken by the department to solicit public response to a
31 proposed disposal, and the department's preliminary responses to those

1 comments; and

2 (B) the final written finding a summary of agency and public
3 comments received and the department's responses to those comments.

4 * **Sec. 4.** AS 38.05.035(i) is amended to read:

5 (i) A person who is eligible to file an administrative appeal or a request for
6 reconsideration, as appropriate, under this subsection and who is **substantially and**
7 **adversely affected** [AGGRIEVED] by the final written finding of the director entered
8 under (e)(5) or (6) of this section may, within 20 days after the issuance of the final
9 written finding, file an administrative appeal or request reconsideration of the decision
10 by the commissioner. A person is eligible to file an administrative appeal or a request
11 for reconsideration if the person

12 (1) meaningfully participated in the process set out in this chapter for
13 receipt of public comment by

14 (A) submitting written comment during the period for receipt
15 of public comment; or

16 (B) presenting oral testimony at a public hearing, if a public
17 hearing was held; **or** [AND]

18 (2) is **the applicant** [AFFECTED BY THE FINAL WRITTEN
19 FINDING].

20 * **Sec. 5.** AS 38.05.035(j) is amended to read:

21 (j) An administrative appeal or a request for reconsideration submitted under
22 (i) of this section must specify the written finding complained of and the specific basis
23 upon which it is challenged. [THE COMMISSIONER SHALL GRANT OR DENY
24 THE ADMINISTRATIVE APPEAL OR RECONSIDERATION REQUEST WITHIN
25 30 DAYS AFTER ISSUANCE OF THE FINAL WRITTEN FINDING.] Failure of the
26 commissioner to act on **a** [THE] request for reconsideration within **30 days after**
27 **issuance of the final written finding** [THIS PERIOD] is a denial of the request for
28 reconsideration and a final administrative decision for purposes of appeal to the
29 superior court.

30 * **Sec. 6.** AS 38.05.035(l) is amended to read:

31 (l) A person may appeal a final written finding issued under (e)(5) or (6) of

1 this section to the superior court, but only if the person was eligible to request, and did
2 request, an administrative appeal or reconsideration of that finding under (i) of this
3 section. The person shall initiate the appeal to the court within 30 days from the date
4 that the decision on administrative appeal or reconsideration is mailed or otherwise
5 distributed, or the date the request for reconsideration is considered denied by the
6 commissioner's failure to act on the request, whichever is earlier. The points on appeal
7 to the court are limited to those presented to the commissioner in the person's
8 administrative appeal or request for reconsideration.

9 * **Sec. 7.** AS 38.05.035 is amended by adding a new subsection to read:

10 (p) Where there is a valid municipal entitlement selection on state land under
11 AS 29.65.010 - 29.65.030 that has a state-issued land lease that has been issued
12 competitively under AS 38.05.070 and before the decision to approve the municipal
13 entitlement land selection, the director shall grant a preference right to purchase
14 without further competitive bid of up to five acres of the state land to an individual
15 who has erected a building approved by a lease on the state land and used the land for
16 bona fide business purposes for 10 or more years under a state lease, if the business
17 produced not less than 25 percent of the total income of the applicant for the 10 years
18 preceding the application to purchase the land. An application for a preference right
19 under this section must be filed with the director within 120 days after notice to the
20 lessee of the municipal entitlement land selection. If the director grants the preference
21 right, the director shall sell the land at a price determined by the director to represent
22 the current fair market value of the unimproved land determined by an appraisal under
23 AS 38.05.840 and a survey, both at the cost of the applicant. If the director determines
24 that the purchase of the land would interfere with public use by residents of the area,
25 the director may condition the purchase to mitigate the adverse effects on the public in
26 the written finding under AS 38.05.035(e) or may reject the application if those effects
27 cannot be avoided or mitigated. If the preference right application is approved, the
28 amount of land within the overall municipal entitlement under AS 29.65.010 -
29 29.65.030 shall be reduced by the amount of land covered under this section; however,
30 subject to appropriation, the revenue from the purchase of the parcel will be given to
31 the municipality if the municipal entitlement land selection is approved. In this

1 subsection,

2 (1) "building" means a permanent type of structure not less than 500
3 square feet in size with solid walls, foundation, and roof;

4 (2) "business purposes" means a purpose consistent with the
5 classification of the land at the time the land was entered.

6 * **Sec. 8.** AS 38.05.065(a) is amended to read:

7 (a) **Unless the remainder of the purchase price is paid in full at the time of**
8 **the sale, a** [THE] contract of sale for land **or property** sold [AT PUBLIC AUCTION
9 OR BY SEALED BID] under **this chapter or former AS 38.05.078** [AS 38.05.055]
10 shall require the remainder of the purchase price to be paid in monthly, quarterly, or
11 annual installments over a period of not more than 20 years, with interest at the rate
12 provided in (i) of this section. Installment payments plus interest shall be set on the
13 level-payment basis.

14 * **Sec. 9.** AS 38.05.065(c) is amended to read:

15 (c) The director shall, for **a contract that provides for installment payments**
16 [CONTRACTS] under (a) [, (b),] or (h) of this section, set out in the contract [FOR
17 EACH SALE] the period for the payment of installments and the total purchase price
18 plus interest. The director, with the consent of the commissioner, may also include in **a**
19 **contract** [CONTRACTS] under this section conditions, limitations, and terms
20 considered necessary and proper to protect the interest of the state. Violations of any
21 provision of this chapter or the terms of the contract of sale subject the purchaser to
22 appropriate administrative and legal action, including but not limited to specific
23 performance, foreclosure, ejectment, or other legal remedies in accordance with
24 applicable state law.

25 * **Sec. 10.** AS 38.05.065(h) is amended to read:

26 (h) The commissioner, after consulting with the Board of Agriculture and
27 Conservation (AS 03.09.010),

28 (1) shall provide that, notwithstanding (a) [AND (b)] of this section, in
29 a contract for the sale of land classified under AS 38.05.020(b)(6) for agricultural
30 uses, the interest rate to be charged on installment payments may not exceed 9.5
31 percent; and

1 (2) may declare a moratorium of up to five years on payments on land
2 sold under this section for land classified under AS 38.05.020(b)(6) for agricultural
3 uses if

4 (A) the commissioner determines that the moratorium is in the
5 best interest of the state;

6 (B) the commissioner certifies and the contract purchaser
7 agrees to perform farm development, crop production, and harvesting, not
8 including land clearing or related activity, requiring the expenditure of
9 amounts equivalent to the payments that would otherwise be made during the
10 moratorium;

11 (C) the sale of the agricultural land takes place after July 1,
12 1979; and

13 (D) the contract purchaser is in compliance with the
14 development plan specified in the purchase contract at the time the purchaser
15 applies for a moratorium under this paragraph and remains in compliance with
16 the development plan during the moratorium; for the payments subject to the
17 moratorium declared under this paragraph, interest payments are subject to the
18 moratorium but interest continues to accrue during the moratorium.

19 * **Sec. 11.** AS 38.05.070 is amended by adding new subsections to read:

20 (f) A lease may be extended once for a period up to two years, if the director
21 determines it to be in the best interests of the state and the extension is necessary to
22 prolong the lease while the department considers

23 (1) a lessee preference application under AS 38.05.102;

24 (2) an application to renew the lease under (e) of this section; or

25 (3) an application to issue a new lease on the same site that, because it
26 substantially changes the purpose or operation of an existing lease, requires a new
27 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease
28 is changed.

29 (g) An extension issued under (f) of this section is not subject to
30 AS 38.05.035(e). The director shall provide public notice of the decision to extend the
31 lease.

1 * **Sec. 12.** AS 38.05.075(a) is amended to read:

2 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.082,
3 38.05.083, 38.05.087, 38.05.102, 38.05.565, 38.05.600, 38.05.810, and this section,
4 when competitive interest has been demonstrated or the commissioner determines that
5 it is in the state's best interests, leasing shall be made at public auction or by sealed
6 bid, at the discretion of the director, to the highest qualified bidder as determined by
7 the commissioner. A bidder may be represented by an attorney or agent at a public
8 auction. In the public notice of a lease to be offered at public auction or by sealed bid,
9 the commissioner shall specify a minimum acceptable bid and the lease compensation
10 method. The lease compensation method shall be designed to maximize the return on
11 the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).
12 **A substantially and adversely affected** [AN AGGRIEVED] bidder may appeal **or**
13 **request reconsideration under AS 44.37.011; however, the appeal or request must**
14 **be made** [TO THE COMMISSIONER] within five days **after issuance of the**
15 **determination of the highest qualified bidder** for a review of the determination. The
16 leasing shall be conducted by the commissioner, and the successful bidder shall
17 deposit at the public auction or with the sealed bid the first year's rental or other lease
18 compensation as specified by the commissioner, or that portion of it that the
19 commissioner requires in accordance with the bid. The commissioner shall require,
20 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or
21 appraisal costs reasonably incurred by another qualified bidder acting in accordance
22 with the regulations of the commissioner or incurred by the department under
23 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal
24 costs is determined by the commissioner to be the highest qualified bidder under this
25 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those
26 costs or to the department if the department incurred the costs. All costs for survey and
27 appraisal shall be approved in advance in writing by the commissioner. The
28 commissioner shall immediately issue a receipt containing a description of the land or
29 interest leased, the price bid, and the terms of the lease to the successful qualified
30 bidder. If the receipt is not accepted in writing by the bidder under this subsection, the
31 commissioner may offer the land for lease again under this subsection. A lease, on a

1 form approved by the attorney general, shall be signed by the successful bidder and by
2 the commissioner.

3 * **Sec. 13.** AS 38.05.075(h) is amended to read:

4 (h) A person substantially and adversely affected [AGGRIEVED] by a
5 decision of the commissioner under this section may appeal or request
6 reconsideration under AS 44.37.011; however, the appeal or request for
7 reconsideration must be made [TO THE COMMISSIONER] within five days after
8 [OF] the prequalification decision. [THE DECISION OF THE COMMISSIONER
9 UNDER THIS SUBSECTION MAY BE APPEALED TO THE SUPERIOR
10 COURT.]

11 * **Sec. 14.** AS 38.05.082(b) is amended to read:

12 (b) The director may classify land as subject to leases for fisheries
13 development and publicly invite applications for lease of the selected areas. Each
14 application shall be accompanied by an affidavit to the effect that the applicant
15 presently intends to personally utilize the leased area for fishing purposes the
16 following season. If two or more applications are received for the same shore area, the
17 director shall award the lease to the most qualified applicant. In determining the
18 qualifications of applicants, the director shall consider the length of time during which
19 the applicant has been engaged in set netting, the proximity of the past fishing sites of
20 the applicant to the land to be leased, the present ability of the applicant to utilize the
21 location to its maximum potential, and other factors relevant to the equitable
22 assignment of the disputed area. If the director cannot determine a preference between
23 conflicting applicants for the same lease site on the basis of qualifications, the director
24 shall select between the applicants by lot. A substantially and adversely affected
25 [AN AGGRIEVED] applicant may appeal to the commissioner under AS 44.37.011
26 within 20 [30] days after issuance of the determination for a review of the director's
27 determination.

28 * **Sec. 15.** AS 38.05.083(a) is amended to read:

29 (a) The commissioner may offer to the public for lease at public auction or by
30 sealed bid under AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic
31 farming or related hatchery operations. Before a final decision to issue [OR RENEW]

1 a lease under this section, the commissioner shall give notice and allow opportunity
2 for comment in accordance with AS 38.05.945 and may hold a hearing to take
3 testimony. Before a final decision to issue [OR RENEW] a lease under this section,
4 the commissioner shall consider all relevant comment or testimony submitted under
5 this section, AS 38.05.945, or 38.05.946.

6 * **Sec. 16.** AS 38.05.083 is amended by adding new subsections to read:

7 (g) The director may renew a lease issued under this section before its
8 expiration if the lease is in good standing and the director determines the lease renewal
9 to be in the best interests of the state. A renewal issued under this subsection is not
10 subject to AS 38.05.035(e). A lease may be renewed only once for a term not longer
11 than 10 years. The director shall provide notice of the decision to renew the lease.

12 (h) The director may extend the term of a lease issued under this section if the
13 lease is in good standing and the lease extension is determined to be in the best
14 interests of the state. A lease may be only extended once before its expiration for an
15 additional period of not more than two years. A lease extension may only be issued if
16 the director determines the extension is necessary while the department considers

17 (1) an application to renew the lease under (g) of this section; or

18 (2) an application to issue a new lease on the same site that, because it
19 substantially changes the purpose or operation of an existing lease, requires a new
20 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease
21 is changed.

22 (i) An extension issued under (h) of this section is not subject to
23 AS 38.05.035(e). The director shall provide public notice of the decision to extend the
24 lease.

25 * **Sec. 17.** AS 38.05.185(a) is amended to read:

26 (a) The acquisition and continuance of rights in and to deposits on state land
27 of minerals, which on January 3, 1959, were subject to location under the mining laws
28 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in
29 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to
30 mineral deposits owned by any other person or government. The director, with the
31 approval of the commissioner, shall determine that land from which mineral deposits

1 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that
2 land that shall be closed to location under AS 38.05.185 - 38.05.275. State land may
3 not be closed to location under AS 38.05.185 - 38.05.275 except as provided in
4 AS 38.05.300 and unless the commissioner makes a finding that mining would be
5 incompatible with significant surface uses on the state land. State land may not be
6 restricted to mining under lease unless the commissioner determines that potential use
7 conflicts on the state land require that mining be allowed only under written leases
8 issued under AS 38.05.205 or the commissioner has determined that the land was
9 mineral in character at the time of state selection. The determinations required under
10 this subsection shall be made in compliance with land classification orders and land
11 use plans developed under AS 38.05.300. **A preliminary written decision under this**
12 **subsection may be made available to the public and provide opportunity for**
13 **public comment on the preliminary written decision for a period of at least 30**
14 **days.**

15 * **Sec. 18.** AS 38.05.300(a) is amended to read:

16 (a) The commissioner shall classify for surface use land in areas considered
17 necessary and proper. This section does not prevent reclassification of land where the
18 public interest warrants reclassification, nor does it preclude multiple purpose use of
19 land whenever different uses are compatible. **The commissioner may make available**
20 **to the public a preliminary written classification decision and provide**
21 **opportunity for public comment on the preliminary written decision for a period**
22 **of at least 30 days.** If the area involved contains more than 640 contiguous acres, state
23 land, water, or land and water area may not, except by act of the state legislature, (1)
24 be closed to multiple purpose use, or (2) be otherwise classified by the commissioner
25 so that mining, mineral entry or location, mineral prospecting, or mineral leasing is
26 precluded or is designated an incompatible use, except when the classification is
27 necessary for a land disposal or exchange or is for the development of utility or
28 transportation corridors or projects or similar projects or infrastructure, or except as
29 allowed under (c) of this section.

30 * **Sec. 19.** AS 38.05.945(a) is amended to read:

31 (a) This section establishes the requirements for notice given by the

1 department for the following actions:

2 (1) a preliminary decision, or final decision if a preliminary
3 decision is not issued, regarding the classification or reclassification of state land
4 under AS 38.05.300 or a mineral order or leasehold location order regarding
5 [AND] the availability [CLOSING] of land to mineral leasing or entry under
6 AS 38.05.185;

7 (2) a preliminary decision, or final decision if a preliminary
8 decision is not issued, regarding the zoning of land under applicable law;

9 (3) issuance of a

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

13 (B) written finding for the sale, lease, or disposal of an interest
14 in state land or resources under AS 38.05.035(e)(6), except

15 (i) if a preliminary written finding is issued under
16 AS 38.05.035(e)(6); or

17 (ii) a lease sale described in AS 38.05.035(e)(6)(F) for
18 which the director must provide opportunity for public comment under
19 the provisions of that subparagraph;

20 (C) preliminary written finding that the director issued
21 under AS 38.05.035(e)(6);

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

24 (5) a preliminary finding under AS 38.05.035(e) concerning sites for
25 aquatic farms and related hatcheries;

26 (6) a decision under AS 38.05.132 - 38.05.134 regarding the sale,
27 lease, or disposal of an interest in state land or resources.

28 * **Sec. 20.** AS 38.05.965(21) is amended to read:

29 (21) "state land" or "land" means all land, including shoreland
30 [SHORE], tideland [TIDE], and submerged land, or resources belonging to or
31 acquired by the state;

1 * **Sec. 21.** AS 38.05.965 is amended by adding a new paragraph to read:

2 (26) "public auction" includes a public oral outcry auction and a public
3 online auction.

4 * **Sec. 22.** AS 38.50.010 is amended to read:

5 **Sec. 38.50.010. Authorization for exchange of state land.** Subject to the
6 requirements of this chapter, the director [, WITH THE CONCURRENCE OF THE
7 COMMISSIONER,] is authorized to exchange [DISPOSE OF] state land or interest in
8 land [BY EXCHANGING IT] for land, interest in land, or other consideration when it
9 is in the best interests of the state, including either or both the land estate or
10 mineral estate. Land or an interest in land must be of approximately equal value;
11 however, the director may accept cash from, or pay cash to, any other party to an
12 exchange in order to equalize the value of the property or other consideration
13 conveyed and received by the state. If the director determines that the property
14 that would be exchanged is not of approximately equal value or if the value
15 cannot be ascertained with reasonable certainty, the director may enter into an
16 exchange with a finding that the value of the property that would be received,
17 together with the value of other public benefits, equals or exceeds the value of the
18 property that the state would relinquish. Exchange procedures must comply with
19 applicable statutes and regulations and follow the decision and review procedures
20 under AS 38.05.035(e). The director may include in any patent or the written
21 decision stipulations necessary to promote or protect the public interest. If a land
22 exchange exceeds \$5,000,000 in the value of state land, or if the exchange is other
23 than of an approximately equal value, the director shall forward the proposed
24 exchange to the legislature for review under AS 38.50.140 within 10 days after
25 the convening of the next legislative session. The notice provisions of
26 AS 38.05.945 must be followed [. EXCHANGES SHALL BE FOR THE PURPOSE
27 OF CONSOLIDATING STATE LAND HOLDINGS, CREATING LAND
28 OWNERSHIP AND USE PATTERNS WHICH WILL PERMIT MORE EFFECTIVE
29 ADMINISTRATION OF THE STATE PUBLIC DOMAIN, FACILITATING THE
30 OBJECTIVES OF STATE PROGRAMS, OR OTHER PUBLIC PURPOSES].

31 * **Sec. 23.** AS 38.50.030(b) is amended to read:

1 (b) The director may negotiate an exchange involving more than one party [;
2 HOWEVER, IN ORDER TO ASCERTAIN WHETHER THE EQUAL VALUE
3 REQUIREMENTS OF THIS CHAPTER HAVE BEEN MET, THE DIRECTOR
4 SHALL CONSIDER ONLY THE LAND AND OTHER CONSIDERATION WHICH
5 THE STATE WOULD CONVEY AND RECEIVE IF THE EXCHANGE WERE
6 EXECUTED].

7 * **Sec. 24.** AS 38.50.050 is amended to read:

8 **Sec. 38.50.050. Conveyance of mineral rights.** Subject to the requirements of
9 this chapter, the director is authorized to exchange mineral rights in state land to the
10 extent that the conveyance is authorized by the state constitution and applicable
11 federal law. [THE DIRECTOR MAY NOT EXCHANGE OR RECEIVE THE
12 SURFACE ESTATE OF LAND OR THE MINERAL RIGHTS IN IT, ONE
13 WITHOUT THE OTHER, UNLESS THE SEPARATION OF ESTATE IS
14 NECESSITATED BY A PRIOR SEPARATION OF OWNERSHIP OR BY
15 RESTRICTIONS IN APPLICABLE LAW, OR THE DIRECTOR OTHERWISE
16 FINDS THAT THE CONVEYANCE OR RECEIPT OF THE SURFACE OR
17 MINERAL ESTATES, ONE WITHOUT THE OTHER, IS NECESSARY TO
18 ACHIEVE A SIGNIFICANT PUBLIC PURPOSE.]

19 * **Sec. 25.** AS 38.50.070 is amended to read:

20 **Sec. 38.50.070. Valid existing rights.** Conveyances made by the state under
21 this chapter are subject to valid existing rights, including [, BUT NOT LIMITED TO,]
22 contracts, permits, leases, rights-of-way, and easements. Unless jurisdiction is waived,
23 the appropriate state agency shall continue to administer valid existing rights, **and** [AS
24 LONG AS] any revenues derived from the **existing** rights **continue to accrue to the**
25 **state until state land has been conveyed under AS 38.50.150** [ARE DISTRIBUTED
26 AS PROVIDED IN THE EXCHANGE AGREEMENT].

27 * **Sec. 26.** AS 38.50.140 is amended to read:

28 **Sec. 38.50.140. Legislative review.** Within 10 days **after** [OF] the convening
29 of a regular legislative session, the governor shall transmit to the president of the
30 senate and the speaker of the house of representatives any proposal for a land
31 exchange required to be submitted to the legislature for approval under **AS 38.50.010**

1 [AS 38.50.020(a)] that is scheduled to occur before the next legislative session. If
2 exigent circumstances seriously affecting state interests so require, the governor may
3 submit the proposed exchange to the legislature at some other time. A finding of
4 exigent circumstances shall be carefully documented in the letter of transmittal. The
5 director is authorized to conclude a proposed exchange agreement upon approval by
6 the legislature of the proposed exchange agreement. A decision by the legislature to
7 disapprove a proposed exchange shall be accompanied by a recommendation to the
8 governor with respect to future actions which the director should take concerning the
9 exchange.

10 * **Sec. 27.** AS 38.50.170(3) is amended to read:

11 (3) "state land" means all land including shoreland [SHORE],
12 tideland [TIDE], and submerged land or unsevered resources belonging to or acquired
13 by the state excluding interests in land severed or constructively severed from the
14 land.

15 * **Sec. 28.** AS 40.15.305(e) is amended to read:

16 (e) A recorded plat may not be altered or replatted except on petition of the
17 state, a municipality, a public utility, or the owner of a majority of the land affected by
18 the proposed alteration or replat. The petition shall be filed with the commissioner and
19 shall be accompanied by a copy of the existing plat showing the proposed alteration or
20 replat. The provisions of AS 29.40.130 and 29.40.140(a) apply to an alteration or
21 replat submitted under this subsection. The provisions of (d) of this section do not
22 apply to an alteration or replat petition, but the commissioner shall state in writing
23 reasons for disapproval of the petition. Alteration of a platted boundary is exempt
24 from this subsection if all owners approve and no public easement or right-of-
25 way is affected. A plat of the alteration remains subject to all other provisions of
26 this section.

27 * **Sec. 29.** AS 44.37.011(a) is amended to read:

28 (a) This section applies to administrative appeals or requests [PETITIONS]
29 for reconsideration of a decision in an administrative appeal to the commissioner of
30 natural resources, except for those administrative appeals or requests for
31 reconsideration [PETITIONS] done under AS 38.35, [OR] AS 43.82, or a different

1 procedure set out in AS 27.21 or its applicable regulations. If a conflict occurs
2 between this section and other state law existing at the time of original enactment of
3 this section, the provisions of this section control.

4 * **Sec. 30.** AS 44.37.011(b) is amended to read:

5 (b) If a person is an applicant, or substantially and adversely affected
6 [AGGRIEVED] by a decision of the Department of Natural Resources not made by
7 the commissioner and is otherwise eligible to seek the commissioner's review of the
8 decision, the person may appeal to the commissioner. The person may not file a
9 request [PETITION] for reconsideration of the commissioner's decision on the
10 appeal. The commissioner's decision on the administrative appeal is a final
11 administrative order for purposes of filing an appeal of the administrative decision to
12 the court.

13 * **Sec. 31.** AS 44.37.011(c) is amended to read:

14 (c) If a person is substantially and adversely affected [AGGRIEVED] by a
15 decision of the department made by the commissioner and is otherwise eligible to seek
16 the commissioner's review of the decision, the person may not appeal that decision to
17 the commissioner; however, the person may request [PETITION THE
18 COMMISSIONER FOR] reconsideration of the commissioner's decision. The
19 commissioner's decision made upon reconsideration or the commissioner's failure to
20 act on the request [PETITION] for reconsideration is a final administrative order for
21 purposes of filing an appeal of the administrative decision to the court.

22 * **Sec. 32.** AS 44.37.011(d) is amended to read:

23 (d) If a person has a right to appeal or request [PETITION FOR]
24 reconsideration under [AS 44.62.540 OR] this section, the person has [A TOTAL OF]
25 20 calendar days after the date of issuance of a final department decision [,
26 INCLUDING THE TIME AVAILABLE UNDER AS 44.62.540,] in which to file an
27 appeal or a request [PETITION] for reconsideration with the commissioner.

28 * **Sec. 33.** AS 44.37.011 is amended by adding new subsections to read:

29 (f) In this section, in order for a person to be adversely affected, a final
30 decision made by the department must create or impose an adverse and direct effect or
31 detriment on the person or the interests of that person.

1 (g) An appeal or request for reconsideration must include a statement that
2 explains how the person is substantially and adversely affected by the department
3 decision. The statement must

4 (1) specifically describe the substantial and adverse effect on the
5 person that is a direct result of the decision; and

6 (2) explain how the decision caused the substantial and adverse effect
7 on the person.

8 (h) If the department gives public notice and allows a public comment period
9 of at least 30 days on a proposed action, the department may restrict eligibility to
10 appeal or request reconsideration to a person who has provided timely comment on the
11 proposed action by including notice of the restriction as part of the public notice
12 announcing the opportunity to comment.

13 (i) The commissioner may reject an appeal or request for reconsideration for
14 failure to meet the requirements of (f) - (h) of this section.

15 * **Sec. 34.** AS 46.15.035(a) is amended to read:

16 (a) **A significant amount of water, as determined by the department by**
17 **regulation,** [WATER] may not be removed from the hydrologic unit from which it
18 was appropriated to another hydrologic unit, inside or outside the state, without being
19 returned to the hydrologic unit from which it was appropriated nor may **a significant**
20 **amount of** water be appropriated for removal from the hydrologic unit from which the
21 appropriation is sought to another hydrologic unit, inside or outside the state, without
22 the water being returned to the hydrologic unit from which it is to be appropriated,
23 unless the commissioner

24 (1) finds that the water to be removed or appropriated for removal is
25 surplus to needs within the hydrologic unit from which the water is to be removed or
26 appropriated for removal, including fishing, mining, timber, oil and gas, agriculture,
27 domestic water supply, and other needs as determined by the commissioner;

28 (2) finds that the application for removal or appropriation for removal
29 meets the requirements of AS 46.15.080; and

30 (3) assesses a water conservation fee under (b) of this section.

31 * **Sec. 35.** AS 46.15.133(a) is amended to read:

1 (a) If the commissioner proposes a sale of water or receives an application for
2 appropriation or removal, **when the commissioner determines that the proposal or**
3 **application is ready for a decision,** the commissioner shall prepare a notice
4 containing the location and extent of the proposed sale, appropriation, or removal, the
5 name and address of the applicant, if applicable, and other information the
6 commissioner considers pertinent. The notice shall state that, within 15 days **after**
7 [OF] publication or service of notice, persons may file with the director written
8 objections [,] stating the name and address of the objector [,] and any facts tending to
9 show that rights of the objector or the public interest **as described in AS 46.15.080(b)**
10 would be adversely affected by the proposed sale, appropriation, or removal.

11 * **Sec. 36.** AS 46.15.133(b) is amended to read:

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

25 * **Sec. 37.** AS 46.15.133(d) is amended to read:

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

29 * **Sec. 38.** AS 46.15.133(e) is amended to read:

30 (e) A person **adversely affected** [AGGRIEVED] by the action of the
31 commissioner or by the failure of the commissioner to grant, deny, or condition a

1 proposed sale or an application for appropriation or removal in accordance with (c) of
2 this section may appeal to the superior court. **In this subsection, to be adversely**
3 **affected, a person must be directly affected by a decision made by the department**
4 **either by a physical or financial detriment to the person's interests resulting from**
5 **the decision.**

6 * **Sec. 39.** AS 46.15.145(c) is amended to read:

7 (c) The commissioner shall issue a certificate reserving the water applied for
8 under this section if the commissioner finds that

9 (1) the rights of prior appropriators will not be affected by the
10 reservation;

11 (2) the applicant has demonstrated that a need exists for the
12 reservation;

13 (3) there is unappropriated water in the stream or body of water
14 sufficient for the reservation; and

15 (4) the proposed reservation is in the public interest; **in determining**
16 **the public interest, the commissioner shall consider**

17 **(A) the benefit to the applicant resulting from the proposed**
18 **reservation;**

19 **(B) the effect of the economic activity resulting from the**
20 **proposed reservation;**

21 **(C) the effect on fish and game resources and on public**
22 **recreational opportunities;**

23 **(D) the effect on public health;**

24 **(E) the effect of loss of alternate uses of water that might be**
25 **made within a reasonable time if not precluded or hindered by the**
26 **proposed reservation;**

27 **(F) harm to other persons resulting from the proposed**
28 **reservation; and**

29 **(G) the effect upon access to navigable or public water.**

30 * **Sec. 40.** AS 46.15.145(f) is amended to read:

31 (f) **The** [AT LEAST ONCE EACH 10 YEARS THE] commissioner **may**

1 [SHALL] review a [EACH] reservation under this section to determine whether the
2 purpose described in (a) of this section for which the certificate reserving water was
3 issued and the findings described in (c) of this section still apply to the reservation. If
4 the commissioner determines that the purpose, or part or all of the findings, no longer
5 apply to the reservation, the commissioner may revoke or modify the certificate
6 reserving the water after notice, hearing when appropriate, and a written determination
7 that the revocation or modification is in the best interests of the state.

8 * **Sec. 41.** AS 46.15.145 is amended by adding new subsections to read:

9 (g) For any water reservation applied for by a person, the commissioner will
10 issue an approved certificate of reservation to the appropriate state agency, and the
11 applicant receives no property right in the resulting approved certificate of reservation.

12 (h) The commissioner has the discretion to determine when and in what order
13 any application for a reservation of water is processed, but the order in which an
14 application is processed does not affect priority of appropriation.

15 (i) The applicant for a reservation of water shall be considered adversely
16 affected by a decision of the commissioner on the application for purposes of appeal
17 under AS 46.15.133(e). Only the applicant for a reservation of water or an agency that
18 holds a reservation under (g) of this section may appeal the commissioner's subsequent
19 administration under (f) of this section of any certificate of reservation issued as a
20 result of the application, which right to appeal may not be transferred or assigned.

21 (j) Notwithstanding (c) of this section, before the commissioner may issue a
22 certificate of reservation, the applicant must have submitted not less than five years of
23 nonproprietary public domain hydrologic data or hydrologic data collected by or for
24 the applicant to support the application.

25 * **Sec. 42.** AS 46.15.155(a) is amended to read:

26 (a) Notwithstanding any contrary provision of this chapter, the commissioner
27 may authorize the temporary use of a significant amount of water, as determined by
28 the department by regulation, for a period of time not to exceed five consecutive years
29 in each authorization, if the water applied for has not been appropriated in
30 accordance with this chapter. The commissioner may issue one or more new
31 temporary water use authorizations for the same project.

1 * **Sec. 43.** AS 46.15 is amended by adding a new section to read:

2 **Sec. 46.15.257. Interest of applicant.** An applicant under this chapter does not
3 have a property right in the application.

4 * **Sec. 44.** AS 46.15.260(7) is amended to read:

5 (7) "person" includes an individual, partnership, association, **federally**
6 **recognized tribe**, public or private corporation, state agency, political subdivision of
7 the state, and the United States;

8 * **Sec. 45.** AS 38.05.065(b); AS 38.50.020, 38.50.040, 38.50.080, 38.50.090, 38.50.100,
9 38.50.110, 38.50.120, 38.50.130; and AS 46.15.145(e) are repealed.

10 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 WORK PLAN FOR THE RESERVATION OF WATER IN 12 IMPORTANT
13 RIVERS AND OTHER WATERS TO SUSTAIN THE ABUNDANCE AND
14 PRODUCTIVITY OF CHINOOK SALMON. (a) The legislature finds that the Unuk, Stikine,
15 Taku, Chilkat, Copper, Susitna, Kenai, Karluk, Chignik, Nushagak, Kuskokwim, and Yukon
16 Rivers are important to the state as significant waters used by Chinook salmon. The
17 legislature finds that maintaining sufficient water in these rivers is necessary to sustain the
18 abundance and productivity of the Chinook salmon.

19 (b) On or before January 20, 2015, the Department of Natural Resources shall submit
20 a work plan to the legislature for evaluating the status and quality of existing data and
21 resource studies in the 12 rivers identified in (a) of this section. The Department of Natural
22 Resources shall identify additional data gathering and resource studies that are necessary to
23 identify the amount of water necessary to conserve Chinook salmon in each river identified in
24 (a) of this section and in other waters determined by the Department of Natural Resources and
25 the Department of Fish and Game to be significant and of high priority for the conservation of
26 Chinook salmon. The Department of Natural Resources shall identify the amount of water to
27 be reserved in an automatic reservation of water in each of the 12 rivers identified in (a) of
28 this section and additional rivers identified under this subsection that do not have a
29 reservation of water in place.

30 (c) The work plan presented to the legislature under (b) of this section shall recognize
31 and prioritize the proper protection of habitat that supports the Chinook salmon life cycle. The

1 Department of Natural Resources shall consult with the Department of Fish and Game and
2 may work with and consult with, as necessary, other appropriate resource agencies, interested
3 organizations, and persons with an interest in protecting Chinook salmon for the purpose of
4 properly protecting Chinook salmon habitat.

5 (d) Nothing in this section prevents or may be construed to prevent the Department of
6 Natural Resources from authorizing other uses of the water in rivers identified in (a) and (b)
7 of this section before the issuance of automatic water reservations in those rivers.

8 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TRANSITION: PENDING APPLICATIONS UNDER AS 46.15.145 FOR
11 RESERVED WATER. The Department of Natural Resources shall process applications filed
12 before the effective date of secs. 34 - 44 of this Act using the provisions of this Act.

13 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 TRANSITION: REGULATIONS. The Department of Natural Resources may
16 immediately adopt regulations necessary to implement the changes made by this Act. The
17 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1,
18 2014.

19 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
22 heading of AS 44.37.011 from "Additional procedures for administrative appeals and
23 petitions for reconsideration to the commissioner of natural resources" to "Procedures for
24 administrative appeals and requests for reconsideration to the commissioner of natural
25 resources."

26 * **Sec. 50.** Sections 34 - 44, and 46 - 48 of this Act take effect immediately under
27 AS 01.10.070(c).

28 * **Sec. 51.** Except as provided in sec. 50 of this Act, this Act takes effect July 1, 2014.

28-GH1524\H
Bullock
3/7/14

2d SENATE CS FOR CS FOR HOUSE BILL NO. 77(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Land Act, including certain authorizations, contracts,
2 leases, permits, or other disposals of state land, resources, property, or interests; relating
3 to authorization for the use of state land by general permit; relating to exchange of state
4 land; establishing that performance of a feasibility study for the development and
5 operation of a hydroelectric site at Chikuminuk Lake is not considered an incompatible
6 use of the Wood-Tikchik State Park; relating to procedures for certain administrative
7 appeals and requests for reconsideration to the commissioner of natural resources;
8 relating to the Alaska Water Use Act; and providing for an effective date."

9 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

10 * Section 1. AS 38.05.020 is amended by adding a new subsection to read:

11 (c) The department may authorize an activity on state land that the department
12 may authorize already through permit under AS 38.05 or AS 38.95 or a regulation

1 adopted under AS 38.05 or AS 38.95 by the issuance of a general permit if the
2 department finds that the activity is unlikely to result in significant or irreparable harm
3 to state land or resources. The department shall provide public notice and opportunity
4 for public comment on a proposed general permit for a period of not less than 30 days.
5 After the public comment period for a proposed general permit, if the department
6 decides to issue the general permit, the department shall make available to the public a
7 written decision issuing the general permit. The decision shall describe the scope of
8 activity authorized by the general permit and contain a finding that the activity is
9 unlikely to result in significant or irreparable harm to state land or resources. The
10 decision to issue a general permit is appealable under AS 44.37.011. A decision not to
11 issue a general permit may not be appealed. After a general permit is issued and the
12 appeal period has ended, the general permit may not be appealed on the basis of
13 subsequent activities that adhere to the terms of the general permit. An activity that
14 adheres to the terms of an issued general permit does not require separate public
15 notice. This subsection does not apply to land designated or authorizations issued
16 under AS 16.20, AS 27.21, AS 41.17, or AS 41.21. If there is a conflict between this
17 subsection and AS 38.04, AS 38.05, or AS 38.95, then the provisions of this
18 subsection apply.

19 * **Sec. 2.** AS 38.05.030(c) is amended to read:

20 (c) **The** [IN ADDITION TO THE REQUIREMENTS SPECIFIED IN
21 AS 38.50.090, THE] agencies referred to in (b) of this section and other state agencies
22 with authority to acquire or dispose of land shall give written notification of the fact of
23 acquisition, lease, disposal, or exchange to the commissioner within three months after
24 the date that they make the acquisition, lease, disposal, or exchange.

25 * **Sec. 3.** AS 38.05.035(e) is amended to read:

26 (e) Upon a written finding that the interests of the state will be best served, the
27 director may, with the consent of the commissioner, approve contracts for the sale,
28 lease, or other disposal of available land, resources, property, or interests in them. In
29 approving a contract under this subsection, the director need only prepare a single
30 written finding. In addition to the conditions and limitations imposed by law, the
31 director may impose additional conditions or limitations in the contracts as the director

1 determines, with the consent of the commissioner, will best serve the interests of the
2 state. The preparation and issuance of the written finding by the director are subject to
3 the following:

4 (1) with the consent of the commissioner and subject to the director's
5 discretion, for a specific proposed disposal of available land, resources, or property, or
6 of an interest in them, the director, in the written finding,

7 (A) shall establish the scope of the administrative review on
8 which the director's determination is based, and the scope of the written
9 finding supporting that determination; the scope of the administrative review
10 and finding may address only reasonably foreseeable, significant effects of the
11 uses proposed to be authorized by the disposal;

12 (B) may limit the scope of an administrative review and finding
13 for a proposed disposal to

14 (i) applicable statutes and regulations;

15 (ii) the facts pertaining to the land, resources, or
16 property, or interest in them, that the director finds are material to the
17 determination and that are known to the director or knowledge of which
18 is made available to the director during the administrative review; and

19 (iii) issues that, based on the statutes and regulations
20 referred to in (i) of this subparagraph, on the facts as described in (ii) of
21 this subparagraph, and on the nature of the uses sought to be authorized
22 by the disposal, the director finds are material to the determination of
23 whether the proposed disposal will best serve the interests of the state;
24 and

25 (C) may, if the project for which the proposed disposal is
26 sought is a multiphased development, limit the scope of an administrative
27 review and finding for the proposed disposal to the applicable statutes and
28 regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that
29 pertain solely to the disposal phase of the project when

30 (i) the only uses to be authorized by the proposed
31 disposal are part of that phase;

1 (ii) the disposal is a disposal of oil and gas, or of gas
2 only, and, before the next phase of the project may proceed, public
3 notice and the opportunity to comment are provided under regulations
4 adopted by the department;

5 (iii) the department's approval is required before the
6 next phase of the project may proceed; and

7 (iv) the department describes its reasons for a decision
8 to phase;

9 (2) the director shall discuss in the written finding prepared and issued
10 under this subsection the reasons that each of the following was not material to the
11 director's determination that the interests of the state will be best served:

12 (A) facts pertaining to the land, resources, or property, or an
13 interest in them other than those that the director finds material under (1)(B)(ii)
14 of this subsection; and

15 (B) issues based on the statutes and regulations referred to in
16 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
17 subsection;

18 (3) a written finding for an oil and gas lease sale or gas only lease sale
19 under AS 38.05.180 is subject to (g) of this section;

20 (4) a contract for the sale, lease, or other disposal of available land or
21 an interest in land is not legally binding on the state until the commissioner approves
22 the contract, but if the appraised value is not greater than \$50,000 in the case of the
23 sale of land or an interest in land, or \$10,000 [\$5,000] in the case of the annual rental
24 of land or interest in land, the director may execute the contract without the approval
25 of the commissioner;

26 (5) public notice requirements relating to the sale, lease, or other
27 disposal of available land or an interest in land for oil and gas, or for gas only,
28 proposed to be scheduled in the five-year oil and gas leasing program under
29 AS 38.05.180(b), except for a sale under (6)(F) of this subsection, are as follows:

30 (A) before a public hearing, if held, or in any case not less than
31 180 days before the sale, lease, or other disposal of available land or an interest

1 in land, the director shall make available to the public a preliminary written
2 finding that states the scope of the review established under (1)(A) of this
3 subsection and includes the applicable statutes and regulations, the material
4 facts and issues in accordance with (1)(B) of this subsection, and information
5 required by (g) of this section, upon which the determination that the sale,
6 lease, or other disposal will serve the best interests of the state will be based;
7 the director shall provide opportunity for public comment on the preliminary
8 written finding for a period of not less than 60 days;

9 (B) after the public comment period for the preliminary written
10 finding and not less than 90 days before the sale, lease, or other disposal of
11 available land or an interest in land for oil and gas or for gas only, the director
12 shall make available to the public a final written finding that states the scope of
13 the review established under (1)(A) of this subsection and includes the
14 applicable statutes and regulations, the material facts and issues in accordance
15 with (1) of this subsection, and information required by (g) of this section,
16 upon which the determination that the sale, lease, or other disposal will serve
17 the best interests of the state is based;

18 (6) before a public hearing, if held, or in any case not less than 21 days
19 before the sale, lease, or other disposal of available land, property, resources, or
20 interests in them other than a sale, lease, or other disposal of available land or an
21 interest in land for oil and gas or for gas only under (5) of this subsection, the director
22 shall make available to the public a written finding that, in accordance with (1) of this
23 subsection, sets out the material facts and applicable statutes and regulations and any
24 other information required by statute or regulation to be considered upon which the
25 determination that the sale, lease, or other disposal will best serve the interests of the
26 state was based; the director may make available to the public a preliminary
27 written finding and provide opportunity for public comment on the preliminary
28 written finding for a period of at least 30 days; [HOWEVER,] a written finding is
29 not required before the approval of

30 (A) a contract for a negotiated sale authorized under
31 AS 38.05.115;

- 1 (B) a lease of land for a shore fishery site under AS 38.05.082;
- 2 (C) a permit or other authorization revocable by the
- 3 commissioner;
- 4 (D) a mineral claim located under AS 38.05.195;
- 5 (E) a mineral lease issued under AS 38.05.205;
- 6 (F) an exempt oil and gas lease sale or gas only lease sale under
- 7 AS 38.05.180(d) of acreage subject to a best interest finding issued within the
- 8 previous 10 years or a reoffer oil and gas lease sale or gas only lease sale under
- 9 AS 38.05.180(w) of acreage subject to a best interest finding issued within the
- 10 previous 10 years, unless the commissioner determines that substantial new
- 11 information has become available that justifies a supplement to the most recent
- 12 best interest finding for the exempt oil and gas lease sale or gas only lease sale
- 13 acreage and for the reoffer oil and gas lease sale or gas only lease sale acreage;
- 14 however, for each oil and gas lease sale or gas only lease sale described in this
- 15 subparagraph, the director shall call for comments from the public; the
- 16 director's call for public comments must provide opportunity for public
- 17 comment for a period of not less than 30 days; if the director determines that a
- 18 supplement to the most recent best interest finding for the acreage is required
- 19 under this subparagraph,
- 20 (i) the director shall issue the supplement to the best
- 21 interest finding not later than 90 days before the sale;
- 22 (ii) not later than 45 days before the sale, the director
- 23 shall issue a notice describing the interests to be offered, the location
- 24 and time of the sale, and the terms and conditions of the sale; and
- 25 (iii) the supplement has the status of a final written best
- 26 interest finding for purposes of (i) and (l) of this section;
- 27 (G) a surface use lease under AS 38.05.255;
- 28 (H) a permit, right-of-way, or easement under AS 38.05.850;
- 29 (7) the director shall include in
- 30 (A) a preliminary written finding, if issued [REQUIRED], a
- 31 summary of agency and public comments, if any, obtained as a result of

1 contacts with other agencies concerning a proposed disposal or as a result of
2 informal efforts undertaken by the department to solicit public response to a
3 proposed disposal, and the department's preliminary responses to those
4 comments; and

5 (B) the final written finding a summary of agency and public
6 comments received and the department's responses to those comments.

7 * **Sec. 4.** AS 38.05.035(i) is amended to read:

8 (i) A person who is eligible to file an administrative appeal or a request for
9 reconsideration, as appropriate, under this subsection and who is **substantially and**
10 **adversely affected** [AGGRIEVED] by the final written finding of the director entered
11 under (e)(5) or (6) of this section may, within 20 days after the issuance of the final
12 written finding, file an administrative appeal or request reconsideration of the decision
13 by the commissioner. A person is eligible to file an administrative appeal or a request
14 for reconsideration if the person

15 (1) meaningfully participated in the process set out in this chapter for
16 receipt of public comment by

17 (A) submitting written comment during the period for receipt
18 of public comment; or

19 (B) presenting oral testimony at a public hearing, if a public
20 hearing was held; **or** [AND]

21 (2) is **the applicant** [AFFECTED BY THE FINAL WRITTEN
22 FINDING].

23 * **Sec. 5.** AS 38.05.035(j) is amended to read:

24 (j) An administrative appeal or a request for reconsideration submitted under
25 (i) of this section must specify the written finding complained of and the specific basis
26 upon which it is challenged. [THE COMMISSIONER SHALL GRANT OR DENY
27 THE ADMINISTRATIVE APPEAL OR RECONSIDERATION REQUEST WITHIN
28 30 DAYS AFTER ISSUANCE OF THE FINAL WRITTEN FINDING.] Failure of the
29 commissioner to act on **a** [THE] request for reconsideration within **30 days after**
30 **issuance of the final written finding** [THIS PERIOD] is a denial of the request for
31 reconsideration and a final administrative decision for purposes of appeal to the

1 superior court.

2 * **Sec. 6.** AS 38.05.035(*I*) is amended to read:

3 (I) A person may appeal a final written finding issued under (e)(5) or (6) of
4 this section to the superior court, but only if the person was eligible to request, and did
5 request, an administrative appeal or reconsideration of that finding under (i) of this
6 section. The person shall initiate the appeal to the court within 30 days from the date
7 that the decision on administrative appeal or reconsideration is mailed or otherwise
8 distributed, or the date the request for reconsideration is considered denied by the
9 commissioner's failure to act on the request, whichever is earlier. The points on appeal
10 to the court are limited to those presented to the commissioner in the person's
11 administrative appeal or request for reconsideration.

12 * **Sec. 7.** AS 38.05.035 is amended by adding a new subsection to read:

13 (p) Where there is a valid municipal entitlement selection on state land under
14 AS 29.65.010 - 29.65.030 that has a state-issued land lease that has been issued
15 competitively under AS 38.05.070 and before the decision to approve the municipal
16 entitlement land selection, the director shall grant a preference right to purchase
17 without further competitive bid of up to five acres of the state land to an individual
18 who has erected a building approved by a lease on the state land and used the land for
19 bona fide business purposes for 10 or more years under a state lease, if the business
20 produced not less than 25 percent of the total income of the applicant for the 10 years
21 preceding the application to purchase the land. An application for a preference right
22 under this section must be filed with the director within 120 days after notice to the
23 lessee of the municipal entitlement land selection. If the director grants the preference
24 right, the director shall sell the land at a price determined by the director to represent
25 the current fair market value of the unimproved land determined by an appraisal under
26 AS 38.05.840 and a survey, both at the cost of the applicant. If the director determines
27 that the purchase of the land would interfere with public use by residents of the area,
28 the director may condition the purchase to mitigate the adverse effects on the public in
29 the written finding under AS 38.05.035(e) or may reject the application if those effects
30 cannot be avoided or mitigated. If the preference right application is approved, the
31 amount of land within the overall municipal entitlement under AS 29.65.010 -

1 29.65.030 shall be reduced by the amount of land covered under this section; however,
2 subject to appropriation, the revenue from the purchase of the parcel will be given to
3 the municipality if the municipal entitlement land selection is approved. In this
4 subsection,

5 (1) "building" means a permanent type of structure not less than 500
6 square feet in size with solid walls, foundation, and roof;

7 (2) "business purposes" means a purpose consistent with the
8 classification of the land at the time the land was entered.

9 * **Sec. 8.** AS 38.05.065(a) is amended to read:

10 (a) **Unless the remainder of the purchase price is paid in full at the time of**
11 **the sale, a** [THE] contract of sale for land **or property** sold [AT PUBLIC AUCTION
12 OR BY SEALED BID] under **this chapter or former AS 38.05.078** [AS 38.05.055]
13 shall require the remainder of the purchase price to be paid in monthly, quarterly, or
14 annual installments over a period of not more than 20 years, with interest at the rate
15 provided in (i) of this section. Installment payments plus interest shall be set on the
16 level-payment basis.

17 * **Sec. 9.** AS 38.05.065(c) is amended to read:

18 (c) The director shall, for **a contract that provides for installment payments**
19 [CONTRACTS] under (a) [, (b),] or (h) of this section, set out in the contract [FOR
20 EACH SALE] the period for the payment of installments and the total purchase price
21 plus interest. The director, with the consent of the commissioner, may also include in **a**
22 **contract** [CONTRACTS] under this section conditions, limitations, and terms
23 considered necessary and proper to protect the interest of the state. Violations of any
24 provision of this chapter or the terms of the contract of sale subject the purchaser to
25 appropriate administrative and legal action, including but not limited to specific
26 performance, foreclosure, ejectment, or other legal remedies in accordance with
27 applicable state law.

28 * **Sec. 10.** AS 38.05.065(h) is amended to read:

29 (h) The commissioner, after consulting with the Board of Agriculture and
30 Conservation (AS 03.09.010),

31 (1) shall provide that, notwithstanding (a) [AND (b)] of this section, in

1 a contract for the sale of land classified under AS 38.05.020(b)(6) for agricultural
2 uses, the interest rate to be charged on installment payments may not exceed 9.5
3 percent; and

4 (2) may declare a moratorium of up to five years on payments on land
5 sold under this section for land classified under AS 38.05.020(b)(6) for agricultural
6 uses if

7 (A) the commissioner determines that the moratorium is in the
8 best interest of the state;

9 (B) the commissioner certifies and the contract purchaser
10 agrees to perform farm development, crop production, and harvesting, not
11 including land clearing or related activity, requiring the expenditure of
12 amounts equivalent to the payments that would otherwise be made during the
13 moratorium;

14 (C) the sale of the agricultural land takes place after July 1,
15 1979; and

16 (D) the contract purchaser is in compliance with the
17 development plan specified in the purchase contract at the time the purchaser
18 applies for a moratorium under this paragraph and remains in compliance with
19 the development plan during the moratorium; for the payments subject to the
20 moratorium declared under this paragraph, interest payments are subject to the
21 moratorium but interest continues to accrue during the moratorium.

22 * **Sec. 11.** AS 38.05.070 is amended by adding new subsections to read:

23 (f) A lease may be extended once for a period up to two years, if the director
24 determines it to be in the best interests of the state and the extension is necessary to
25 prolong the lease while the department considers

26 (1) a lessee preference application under AS 38.05.102;

27 (2) an application to renew the lease under (e) of this section; or

28 (3) an application to issue a new lease on the same site that, because it
29 substantially changes the purpose or operation of an existing lease, requires a new
30 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease
31 is changed.

1 (g) An extension issued under (f) of this section is not subject to
2 AS 38.05.035(e). The director shall provide public notice of the decision to extend the
3 lease.

4 * **Sec. 12.** AS 38.05.075(a) is amended to read:

5 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.082,
6 38.05.083, 38.05.087, 38.05.102, 38.05.565, 38.05.600, 38.05.810, and this section,
7 when competitive interest has been demonstrated or the commissioner determines that
8 it is in the state's best interests, leasing shall be made at public auction or by sealed
9 bid, at the discretion of the director, to the highest qualified bidder as determined by
10 the commissioner. A bidder may be represented by an attorney or agent at a public
11 auction. In the public notice of a lease to be offered at public auction or by sealed bid,
12 the commissioner shall specify a minimum acceptable bid and the lease compensation
13 method. The lease compensation method shall be designed to maximize the return on
14 the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).
15 A substantially and adversely affected [AN AGGRIEVED] bidder may appeal or
16 request reconsideration under AS 44.37.011; however, the appeal or request must
17 be made [TO THE COMMISSIONER] within five days after issuance of the
18 determination of the highest qualified bidder for a review of the determination. The
19 leasing shall be conducted by the commissioner, and the successful bidder shall
20 deposit at the public auction or with the sealed bid the first year's rental or other lease
21 compensation as specified by the commissioner, or that portion of it that the
22 commissioner requires in accordance with the bid. The commissioner shall require,
23 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or
24 appraisal costs reasonably incurred by another qualified bidder acting in accordance
25 with the regulations of the commissioner or incurred by the department under
26 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal
27 costs is determined by the commissioner to be the highest qualified bidder under this
28 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those
29 costs or to the department if the department incurred the costs. All costs for survey and
30 appraisal shall be approved in advance in writing by the commissioner. The
31 commissioner shall immediately issue a receipt containing a description of the land or

1 interest leased, the price bid, and the terms of the lease to the successful qualified
2 bidder. If the receipt is not accepted in writing by the bidder under this subsection, the
3 commissioner may offer the land for lease again under this subsection. A lease, on a
4 form approved by the attorney general, shall be signed by the successful bidder and by
5 the commissioner.

6 * **Sec. 13.** AS 38.05.075(h) is amended to read:

7 (h) A person substantially and adversely affected [AGGRIEVED] by a
8 decision of the commissioner under this section may appeal or request
9 reconsideration under AS 44.37.011; however, the appeal or request for
10 reconsideration must be made [TO THE COMMISSIONER] within five days after
11 [OF] the prequalification decision. [THE DECISION OF THE COMMISSIONER
12 UNDER THIS SUBSECTION MAY BE APPEALED TO THE SUPERIOR
13 COURT.]

14 * **Sec. 14.** AS 38.05.082(b) is amended to read:

15 (b) The director may classify land as subject to leases for fisheries
16 development and publicly invite applications for lease of the selected areas. Each
17 application shall be accompanied by an affidavit to the effect that the applicant
18 presently intends to personally utilize the leased area for fishing purposes the
19 following season. If two or more applications are received for the same shore area, the
20 director shall award the lease to the most qualified applicant. In determining the
21 qualifications of applicants, the director shall consider the length of time during which
22 the applicant has been engaged in set netting, the proximity of the past fishing sites of
23 the applicant to the land to be leased, the present ability of the applicant to utilize the
24 location to its maximum potential, and other factors relevant to the equitable
25 assignment of the disputed area. If the director cannot determine a preference between
26 conflicting applicants for the same lease site on the basis of qualifications, the director
27 shall select between the applicants by lot. A substantially and adversely affected
28 [AN AGGRIEVED] applicant may appeal to the commissioner under AS 44.37.011
29 within 20 [30] days after issuance of the determination for a review of the director's
30 determination.

31 * **Sec. 15.** AS 38.05.083(a) is amended to read:

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

9 * **Sec. 16.** AS 38.05.083 is amended by adding new subsections to read:

10 (g) The director may renew a lease issued under this section before its
11 expiration if the lease is in good standing and the director determines the lease renewal
12 to be in the best interests of the state. A renewal issued under this subsection is not
13 subject to AS 38.05.035(e). A lease may be renewed only once for a term not longer
14 than 10 years. The director shall provide notice of the decision to renew the lease.

15 (h) The director may extend the term of a lease issued under this section if the
16 lease is in good standing and the lease extension is determined to be in the best
17 interests of the state. A lease may be only extended once before its expiration for an
18 additional period of not more than two years. A lease extension may only be issued if
19 the director determines the extension is necessary while the department considers

20 (1) an application to renew the lease under (g) of this section; or

21 (2) an application to issue a new lease on the same site that, because it
22 substantially changes the purpose or operation of an existing lease, requires a new
23 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease
24 is changed.

25 (i) An extension issued under (h) of this section is not subject to
26 AS 38.05.035(e). The director shall provide public notice of the decision to extend the
27 lease.

28 * **Sec. 17.** AS 38.05.185(a) is amended to read:

29 (a) The acquisition and continuance of rights in and to deposits on state land
30 of minerals, which on January 3, 1959, were subject to location under the mining laws
31 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in

1 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to
2 mineral deposits owned by any other person or government. The director, with the
3 approval of the commissioner, shall determine that land from which mineral deposits
4 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that
5 land that shall be closed to location under AS 38.05.185 - 38.05.275. State land may
6 not be closed to location under AS 38.05.185 - 38.05.275 except as provided in
7 AS 38.05.300 and unless the commissioner makes a finding that mining would be
8 incompatible with significant surface uses on the state land. State land may not be
9 restricted to mining under lease unless the commissioner determines that potential use
10 conflicts on the state land require that mining be allowed only under written leases
11 issued under AS 38.05.205 or the commissioner has determined that the land was
12 mineral in character at the time of state selection. The determinations required under
13 this subsection shall be made in compliance with land classification orders and land
14 use plans developed under AS 38.05.300. **A preliminary written decision under this**
15 **subsection may be made available to the public and provide opportunity for**
16 **public comment on the preliminary written decision for a period of at least 30**
17 **days.**

18 * **Sec. 18.** AS 38.05.300(a) is amended to read:

19 (a) The commissioner shall classify for surface use land in areas considered
20 necessary and proper. This section does not prevent reclassification of land where the
21 public interest warrants reclassification, nor does it preclude multiple purpose use of
22 land whenever different uses are compatible. **The commissioner may make available**
23 **to the public a preliminary written classification decision and provide**
24 **opportunity for public comment on the preliminary written decision for a period**
25 **of at least 30 days.** If the area involved contains more than 640 contiguous acres, state
26 land, water, or land and water area may not, except by act of the state legislature, (1)
27 be closed to multiple purpose use, or (2) be otherwise classified by the commissioner
28 so that mining, mineral entry or location, mineral prospecting, or mineral leasing is
29 precluded or is designated an incompatible use, except when the classification is
30 necessary for a land disposal or exchange or is for the development of utility or
31 transportation corridors or projects or similar projects or infrastructure, or except as

1 allowed under (c) of this section.

2 * **Sec. 19.** AS 38.05.945(a) is amended to read:

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

5 (1) **a preliminary decision, or final decision if a preliminary**
6 **decision is not issued, regarding the** classification or reclassification of state land
7 under AS 38.05.300 **or a mineral order or leasehold location order regarding**
8 **[AND] the availability [CLOSING] of land to mineral leasing or entry under**
9 AS 38.05.185;

10 (2) **a preliminary decision, or final decision if a preliminary**
11 **decision is not issued, regarding the** zoning of land under applicable law;

12 (3) issuance of a

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

16 (B) written finding for the sale, lease, or disposal of an interest
17 in state land or resources under AS 38.05.035(e)(6), except

18 **(i) if a preliminary written finding is issued under**
19 **AS 38.05.035(e)(6); or**

20 **(ii)** a lease sale described in AS 38.05.035(e)(6)(F) for
21 which the director must provide opportunity for public comment under
22 the provisions of that subparagraph;

23 **(C) preliminary written finding that the director issued**
24 **under AS 38.05.035(e)(6);**

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

27 (5) a preliminary finding under AS 38.05.035(e) concerning sites for
28 aquatic farms and related hatcheries;

29 (6) a decision under AS 38.05.132 - 38.05.134 regarding the sale,
30 lease, or disposal of an interest in state land or resources.

31 * **Sec. 20.** AS 38.05.965(21) is amended to read:

1 (21) "state land" or "land" means all land, including shoreland
2 [SHORE], tideland [TIDE], and submerged land, or resources belonging to or
3 acquired by the state;

4 * **Sec. 21.** AS 38.05.965 is amended by adding a new paragraph to read:

5 (26) "public auction" includes a public oral outcry auction and a public
6 online auction.

7 * **Sec. 22.** AS 38.50.010 is amended to read:

8 **Sec. 38.50.010. Authorization for exchange of state land.** Subject to the
9 requirements of this chapter, the director [, WITH THE CONCURRENCE OF THE
10 COMMISSIONER,] is authorized to exchange [DISPOSE OF] state land or interest in
11 land [BY EXCHANGING IT] for land, interest in land, or other consideration when it
12 is in the best interests of the state, including either or both the land estate or
13 mineral estate. Land or an interest in land must be of approximately equal value;
14 however, the director may accept cash from, or pay cash to, any other party to an
15 exchange in order to equalize the value of the property or other consideration
16 conveyed and received by the state. If the director determines that the property
17 that would be exchanged is not of approximately equal value or if the value
18 cannot be ascertained with reasonable certainty, the director may enter into an
19 exchange with a finding that the value of the property that would be received,
20 together with the value of other public benefits, equals or exceeds the value of the
21 property that the state would relinquish. Exchange procedures must comply with
22 applicable statutes and regulations and follow the decision and review procedures
23 under AS 38.05.035(e). The director may include in any patent or the written
24 decision stipulations necessary to promote or protect the public interest. If a land
25 exchange exceeds \$5,000,000 in the value of state land, or if the exchange is other
26 than of an approximately equal value, the director shall forward the proposed
27 exchange to the legislature for review under AS 38.50.140 within 10 days after
28 the convening of the next legislative session. The notice provisions of
29 AS 38.05.945 must be followed [. EXCHANGES SHALL BE FOR THE PURPOSE
30 OF CONSOLIDATING STATE LAND HOLDINGS, CREATING LAND
31 OWNERSHIP AND USE PATTERNS WHICH WILL PERMIT MORE EFFECTIVE

1 ADMINISTRATION OF THE STATE PUBLIC DOMAIN, FACILITATING THE
2 OBJECTIVES OF STATE PROGRAMS, OR OTHER PUBLIC PURPOSES].

3 * **Sec. 23.** AS 38.50.030(b) is amended to read:

4 (b) The director may negotiate an exchange involving more than one party [;
5 HOWEVER, IN ORDER TO ASCERTAIN WHETHER THE EQUAL VALUE
6 REQUIREMENTS OF THIS CHAPTER HAVE BEEN MET, THE DIRECTOR
7 SHALL CONSIDER ONLY THE LAND AND OTHER CONSIDERATION WHICH
8 THE STATE WOULD CONVEY AND RECEIVE IF THE EXCHANGE WERE
9 EXECUTED].

10 * **Sec. 24.** AS 38.50.050 is amended to read:

11 **Sec. 38.50.050. Conveyance of mineral rights.** Subject to the requirements of
12 this chapter, the director is authorized to exchange mineral rights in state land to the
13 extent that the conveyance is authorized by the state constitution and applicable
14 federal law. [THE DIRECTOR MAY NOT EXCHANGE OR RECEIVE THE
15 SURFACE ESTATE OF LAND OR THE MINERAL RIGHTS IN IT, ONE
16 WITHOUT THE OTHER, UNLESS THE SEPARATION OF ESTATE IS
17 NECESSITATED BY A PRIOR SEPARATION OF OWNERSHIP OR BY
18 RESTRICTIONS IN APPLICABLE LAW, OR THE DIRECTOR OTHERWISE
19 FINDS THAT THE CONVEYANCE OR RECEIPT OF THE SURFACE OR
20 MINERAL ESTATES, ONE WITHOUT THE OTHER, IS NECESSARY TO
21 ACHIEVE A SIGNIFICANT PUBLIC PURPOSE.]

22 * **Sec. 25.** AS 38.50.070 is amended to read:

23 **Sec. 38.50.070. Valid existing rights.** Conveyances made by the state under
24 this chapter are subject to valid existing rights, including [, BUT NOT LIMITED TO,]
25 contracts, permits, leases, rights-of-way, and easements. Unless jurisdiction is waived,
26 the appropriate state agency shall continue to administer valid existing rights, **and** [AS
27 LONG AS] any revenues derived from the existing rights continue to accrue to the
28 state until state land has been conveyed under AS 38.50.150 [ARE DISTRIBUTED
29 AS PROVIDED IN THE EXCHANGE AGREEMENT].

30 * **Sec. 26.** AS 38.50.140 is amended to read:

31 **Sec. 38.50.140. Legislative review.** Within 10 days **after** [OF] the convening

1 of a regular legislative session, the governor shall transmit to the president of the
2 senate and the speaker of the house of representatives any proposal for a land
3 exchange required to be submitted to the legislature for approval under AS 38.50.010
4 [AS 38.50.020(a)] that is scheduled to occur before the next legislative session. If
5 exigent circumstances seriously affecting state interests so require, the governor may
6 submit the proposed exchange to the legislature at some other time. A finding of
7 exigent circumstances shall be carefully documented in the letter of transmittal. The
8 director is authorized to conclude a proposed exchange agreement upon approval by
9 the legislature of the proposed exchange agreement. A decision by the legislature to
10 disapprove a proposed exchange shall be accompanied by a recommendation to the
11 governor with respect to future actions which the director should take concerning the
12 exchange.

13 * **Sec. 27.** AS 38.50.170(3) is amended to read:

14 (3) "state land" means all land including shoreland [SHORE],
15 tideland [TIDE], and submerged land or unsevered resources belonging to or acquired
16 by the state excluding interests in land severed or constructively severed from the
17 land.

18 * **Sec. 28.** AS 40.15.305(e) is amended to read:

19 (e) A recorded plat may not be altered or replatted except on petition of the
20 state, a municipality, a public utility, or the owner of a majority of the land affected by
21 the proposed alteration or replat. The petition shall be filed with the commissioner and
22 shall be accompanied by a copy of the existing plat showing the proposed alteration or
23 replat. The provisions of AS 29.40.130 and 29.40.140(a) apply to an alteration or
24 replat submitted under this subsection. The provisions of (d) of this section do not
25 apply to an alteration or replat petition, but the commissioner shall state in writing
26 reasons for disapproval of the petition. Alteration of a platted boundary is exempt
27 from this subsection if all owners approve and no public easement or right-of-
28 way is affected. A plat of the alteration remains subject to all other provisions of
29 this section.

30 * **Sec. 29.** AS 41.21.167 is amended by adding a new subsection to read:

31 (e) Performance of a feasibility study for the development and operation of a

1 hydroelectric site at Chikuminuk Lake is not considered an incompatible use.

2 * **Sec. 30.** AS 44.37.011(a) is amended to read:

3 (a) This section applies to administrative appeals or requests [PETITIONS]
4 for reconsideration of a decision in an administrative appeal to the commissioner of
5 natural resources, except for those administrative appeals or requests for
6 reconsideration [PETITIONS] done under AS 38.35, [OR] AS 43.82, or a different
7 procedure set out in AS 27.21 or its applicable regulations. If a conflict occurs
8 between this section and other state law existing at the time of original enactment of
9 this section, the provisions of this section control.

10 * **Sec. 31.** AS 44.37.011(b) is amended to read:

11 (b) If a person is an applicant, or substantially and adversely affected
12 [AGGRIEVED] by a decision of the Department of Natural Resources not made by
13 the commissioner and is otherwise eligible to seek the commissioner's review of the
14 decision, the person may appeal to the commissioner. The person may not file a
15 request [PETITION] for reconsideration of the commissioner's decision on the
16 appeal. The commissioner's decision on the administrative appeal is a final
17 administrative order for purposes of filing an appeal of the administrative decision to
18 the court.

19 * **Sec. 32.** AS 44.37.011(c) is amended to read:

20 (c) If a person is substantially and adversely affected [AGGRIEVED] by a
21 decision of the department made by the commissioner and is otherwise eligible to seek
22 the commissioner's review of the decision, the person may not appeal that decision to
23 the commissioner; however, the person may request [PETITION THE
24 COMMISSIONER FOR] reconsideration of the commissioner's decision. The
25 commissioner's decision made upon reconsideration or the commissioner's failure to
26 act on the request [PETITION] for reconsideration is a final administrative order for
27 purposes of filing an appeal of the administrative decision to the court.

28 * **Sec. 33.** AS 44.37.011(d) is amended to read:

29 (d) If a person has a right to appeal or request [PETITION FOR]
30 reconsideration under [AS 44.62.540 OR] this section, the person has [A TOTAL OF]
31 20 calendar days after the date of issuance of a final department decision [,

1 INCLUDING THE TIME AVAILABLE UNDER AS 44.62.540,] in which to file **an**
2 **appeal or a request** [PETITION] for reconsideration with the commissioner.

3 * **Sec. 34.** AS 44.37.011 is amended by adding new subsections to read:

4 (f) In this section, in order for a person to be adversely affected, a final
5 decision made by the department must create or impose an adverse and direct effect or
6 detriment on the person or the interests of that person.

7 (g) An appeal or request for reconsideration must include a statement that
8 explains how the person is substantially and adversely affected by the department
9 decision. The statement must

10 (1) specifically describe the substantial and adverse effect on the
11 person that is a direct result of the decision; and

12 (2) explain how the decision caused the substantial and adverse effect
13 on the person.

14 (h) If the department gives public notice and allows a public comment period
15 of at least 30 days on a proposed action, the department may restrict eligibility to
16 appeal or request reconsideration to a person who has provided timely comment on the
17 proposed action by including notice of the restriction as part of the public notice
18 announcing the opportunity to comment.

19 (i) The commissioner may reject an appeal or request for reconsideration for
20 failure to meet the requirements of (f) - (h) of this section.

21 * **Sec. 35.** AS 46.15.035(a) is amended to read:

22 (a) **A significant amount of water, as determined by the department by**
23 **regulation.** [WATER] may not be removed from the hydrologic unit from which it
24 was appropriated to another hydrologic unit, inside or outside the state, without being
25 returned to the hydrologic unit from which it was appropriated nor may **a significant**
26 **amount of** water be appropriated for removal from the hydrologic unit from which the
27 appropriation is sought to another hydrologic unit, inside or outside the state, without
28 the water being returned to the hydrologic unit from which it is to be appropriated,
29 unless the commissioner

30 (1) finds that the water to be removed or appropriated for removal is
31 surplus to needs within the hydrologic unit from which the water is to be removed or

1 appropriated for removal, including fishing, mining, timber, oil and gas, agriculture,
2 domestic water supply, and other needs as determined by the commissioner;

3 (2) finds that the application for removal or appropriation for removal
4 meets the requirements of AS 46.15.080; and

5 (3) assesses a water conservation fee under (b) of this section.

6 * **Sec. 36.** AS 46.15.133(a) is amended to read:

7 (a) If the commissioner proposes a sale of water or receives an application for
8 appropriation or removal, **when the commissioner determines that the proposal or**
9 **application is ready for a decision,** the commissioner shall prepare a notice
10 containing the location and extent of the proposed sale, appropriation, or removal, the
11 name and address of the applicant, if applicable, and other information the
12 commissioner considers pertinent. The notice shall state that, within 15 days **after**
13 [OF] publication or service of notice, persons may file with the director written
14 objections [,] stating the name and address of the objector [,] and any facts tending to
15 show that rights of the objector or the public interest **as described in AS 46.15.080(b)**
16 would be adversely affected by the proposed sale, appropriation, or removal.

17 * **Sec. 37.** AS 46.15.133(b) is amended to read:

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

31 * **Sec. 38.** AS 46.15.133(d) is amended to read:

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

4 * **Sec. 39.** AS 46.15.133(e) is amended to read:

5 (e) A person **adversely affected** [AGGRIEVED] by the action of the
 6 commissioner or by the failure of the commissioner to grant, deny, or condition a
 7 proposed sale or an application for appropriation or removal in accordance with (c) of
 8 this section may appeal to the superior court. **In this subsection, to be adversely**
 9 **affected, a person must be directly affected by a decision made by the department**
 10 **either by a physical or financial detriment to the person's interests resulting from**
 11 **the decision.**

12 * **Sec. 40.** AS 46.15.145(c) is amended to read:

13 (c) The commissioner shall issue a certificate reserving the water applied for
 14 under this section if the commissioner finds that

15 (1) the rights of prior appropriators will not be affected by the
 16 reservation;

17 (2) the applicant has demonstrated that a need exists for the
 18 reservation;

19 (3) there is unappropriated water in the stream or body of water
 20 sufficient for the reservation; and

21 (4) the proposed reservation is in the public interest; **in determining**
 22 **the public interest, the commissioner shall consider**

23 **(A) the benefit to the applicant resulting from the proposed**
 24 **reservation;**

25 **(B) the effect of the economic activity resulting from the**
 26 **proposed reservation;**

27 **(C) the effect on fish and game resources and on public**
 28 **recreational opportunities;**

29 **(D) the effect on public health;**

30 **(E) the effect of loss of alternate uses of water that might be**
 31 **made within a reasonable time if not precluded or hindered by the**

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proposed reservation;

(F) harm to other persons resulting from the proposed reservation; and

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

* **Sec. 41.** AS 46.15.145(f) is amended to read:

(f) **The** [AT LEAST ONCE EACH 10 YEARS THE] commissioner **may** [SHALL] review **a** [EACH] reservation under this section to determine whether the purpose described in (a) of this section for which the certificate reserving water was issued and the findings described in (c) of this section still apply to the reservation. If the commissioner determines that the purpose, or part or all of the findings, no longer apply to the reservation, the commissioner may revoke or modify the certificate reserving the water after notice, hearing when appropriate, and a written determination that the revocation or modification is in the best interests of the state.

* **Sec. 42.** AS 46.15.145 is amended by adding new subsections to read:

(g) For any water reservation applied for by a person, the commissioner will issue an approved certificate of reservation to the appropriate state agency, and the applicant receives no property right in the resulting approved certificate of reservation.

(h) The commissioner has the discretion to determine when and in what order any application for a reservation of water is processed, but the order in which an application is processed does not affect priority of appropriation.

(i) The applicant for a reservation of water shall be considered adversely affected by a decision of the commissioner on the application for purposes of appeal under AS 46.15.133(e). Only the applicant for a reservation of water or an agency that holds a reservation under (g) of this section may appeal the commissioner's subsequent administration under (f) of this section of any certificate of reservation issued as a result of the application, which right to appeal may not be transferred or assigned.

(j) Notwithstanding (c) of this section, before the commissioner may issue a certificate of reservation, the applicant must have submitted not less than five years of nonproprietary public domain hydrologic data or hydrologic data collected by or for the applicant to support the application.

* **Sec. 43.** AS 46.15.155(a) is amended to read:

1 (a) Notwithstanding any contrary provision of this chapter, the commissioner
 2 may authorize the temporary use of a significant amount of water, as determined by
 3 the department by regulation, for a period of time not to exceed five consecutive years
 4 in each authorization, if the water applied for has not been appropriated in
 5 accordance with this chapter. The commissioner may issue one or more new
 6 temporary water use authorizations for the same project.

7 * **Sec. 44.** AS 46.15 is amended by adding a new section to read:

8 **Sec. 46.15.257. Interest of applicant.** An applicant under this chapter does not
 9 have a property right in the application.

10 * **Sec. 45.** AS 46.15.260(7) is amended to read:

11 (7) "person" includes an individual, partnership, association, federally
 12 recognized tribe, public or private corporation, state agency, political subdivision of
 13 the state, and the United States;

14 * **Sec. 46.** AS 38.05.065(b); AS 38.50.020, 38.50.040, 38.50.080, 38.50.090, 38.50.100,
 15 38.50.110, 38.50.120, 38.50.130; and AS 46.15.145(e) are repealed.

16 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
 17 read:

18 TRANSITION: WOOD-TIKCHIK STATE PARK MANAGEMENT PLAN AND
 19 REGULATIONS; ENFORCEMENT. To allow for a feasibility study for the development and
 20 operation of a hydroelectric site at Chikuminuk Lake, the Department of Natural Resources
 21 may not enforce or implement provisions in the Wood-Tikchik State Park Management Plan,
 22 dated October 2002, and regulations applicable to the Wood-Tikchik State Park that are
 23 inconsistent with AS 41.21.167(e), enacted by sec. 29 of this Act.

24 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
 25 read:

26 TRANSITION: PENDING APPLICATIONS UNDER AS 46.15.145 FOR
 27 RESERVED WATER. The Department of Natural Resources shall process applications filed
 28 before the effective date of secs. 35 - 45 of this Act using the provisions of this Act.

29 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
 30 read:

31 TRANSITION: REGULATIONS. The Department of Natural Resources may

1 immediately adopt regulations necessary to implement the changes made by this Act. The
2 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1,
3 2014.

4 * **Sec. 50.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
7 heading of AS 44.37.011 from "Additional procedures for administrative appeals and
8 petitions for reconsideration to the commissioner of natural resources" to "Procedures for
9 administrative appeals and requests for reconsideration to the commissioner of natural
10 resources."

11 * **Sec. 51.** Sections 29, 35 - 45, and 47 - 49 of this Act take effect immediately under
12 AS 01.10.070(c).

13 * **Sec. 52.** Except as provided in sec. 51 of this Act, this Act takes effect July 1, 2014.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR MICCICHE

TO: 2d SCS CSHB 77(RES), Draft Version "H"

1 Page 24, following line 15:

2 Insert a new bill section to read:

3 **"* Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 WORK PLAN FOR THE RESERVATION OF WATER IN 12 IMPORTANT
6 RIVERS AND OTHER WATERS TO SUSTAIN THE ABUNDANCE AND
7 PRODUCTIVITY OF CHINOOK SALMON. (a) The legislature finds that the Unuk, Stikine,
8 Taku, Chilkat, Copper, Susitna, Kenai, Karluk, Chignik, Nushagak, Kuskokwim, and Yukon
9 Rivers are important to the state as significant waters used by Chinook salmon. The
10 legislature finds that maintaining sufficient water in these rivers is necessary to sustain the
11 abundance and productivity of the Chinook salmon.

12 (b) On or before January 20, 2015, the Department of Natural Resources shall submit
13 a work plan to the legislature for evaluating the status and quality of existing data and
14 resource studies in the 12 rivers identified in (a) of this section. The Department of Natural
15 Resources shall identify additional data gathering and resource studies that are necessary to
16 identify the amount of water necessary to conserve Chinook salmon in each river identified in
17 (a) of this section and in other waters determined by the Department of Natural Resources and
18 the Department of Fish and Game to be significant and of high priority for the conservation of
19 Chinook salmon. ~~The Department of Natural Resources shall identify the amount of water to~~
20 ~~be reserved in an automatic reservation of water in each of the 12 rivers identified in (a) of~~
21 ~~this section and additional rivers identified under this subsection that do not have a~~
22 ~~reservation of water in place.~~

23 (c) The work plan presented to the legislature under (b) of this section shall recognize

1 and prioritize the proper protection of habitat that supports the Chinook salmon life cycle. The
2 Department of Natural Resources shall consult with the Department of Fish and Game and
3 may work with and consult with, as necessary, other appropriate resource agencies, interested
4 organizations, and persons with an interest in protecting Chinook salmon for the purpose of
5 properly protecting Chinook salmon habitat.

6 (d) Nothing in this section prevents or may be construed to prevent the Department of
7 Natural Resources from authorizing other uses of the water in rivers identified in (a) and (b)
8 of this section before the issuance of ~~automatic~~ water reservations in those rivers."
9

10 Renumber the following bill sections accordingly.

11

12 Page 25, line 11:

13 Delete "47 - 49"

14 Insert "47 - 50"

15

16 Page 25, line 13:

17 Delete "sec. 51"

18 Insert "sec. 52"

A M E N D M E N T

OFFERED IN THE SENATE

TO: 2d SCS CSHB 77(RES), Draft Version "H"

1 Page 1, lines 4 - 6:

2 Delete "**establishing that performance of a feasibility study for the development**
3 **and operation of a hydroelectric site at Chikuminuk Lake is not considered an**
4 **incompatible use of the Wood-Tikchik State Park;**"

5

6 Page 18, line 30, through page 19, line 1:

7 Delete all material.

8

9 Renumber the following bill sections accordingly.

10

11 Page 24, lines 16 - 23:

12 Delete all material.

13

14 Renumber the following bill sections accordingly.

15

16 Page 24, line 28:

17 Delete "secs. 35 - 45"

18 Insert "secs. 34 - 44"

19

20 Page 25, line 11:

21 Delete "Sections 29, 35 - 45, and 47 - 49"

22 Insert "Sections 34 - 44, 46, and 47"

23

- 1 Page 25, line 13:
- 2 Delete "sec. 51"
- 3 Insert "sec. 49"

28-LS1595\A
Bullock
3/12/14

SENATE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

Introduced:
Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning House Bill No. 77, relating to the Alaska Land Act, including**
3 **certain authorizations, contracts, leases, permits, or other disposals of state land,**
4 **resources, property, or interests; relating to authorization for the use of state land by**
5 **general permit; relating to exchange of state land; relating to procedures for certain**
6 **administrative appeals and requests for reconsideration to the commissioner of natural**
7 **resources; and relating to the Alaska Water Use Act.**

8 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
10 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
11 changes to the title of a bill, are suspended in consideration of House Bill No. 77, relating to
12 the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other
13 disposals of state land, resources, property, or interests; relating to authorization for the use of
14 state land by general permit; relating to exchange of state land; relating to procedures for

- 1 certain administrative appeals and requests for reconsideration to the commissioner of natural
- 2 resources; and relating to the Alaska Water Use Act.

Section X. The uncodified law of the State of Alaska is amended by adding a new section to read:

WORKPLAN FOR RESERVATION OF WATER APPLICATIONS FOR TWELVE SIGNIFICANT WATERWAYS UTILIZED BY CHINOOK SALMON IN ALASKA

- (1) The state recognizes the importance of the Unuk, Stikine, Taku, Chilkat, Copper, Susitna, Kenai, Karluk, Chignik, Nushagak, Kuskokwim, and Yukon Rivers as being significant waterways utilized by Chinook Salmon in Alaska. Maintaining sufficient water in these twelve rivers is necessary to sustain the abundance and productivity of the Chinook Salmon.
- (2) No later than January 21, 2014, the Department of Natural Resources shall submit a work plan to the Legislature to evaluate the status and quality of existing data and resource studies as well as evaluate what additional data gathering and resource studies are necessary to create an automatic reservation of water for these twelve rivers for the conservation of Chinook Salmon if a reservation is not already in place. The evaluation will extend to any other rivers determined to be a priority by the departments of Natural Resources and Fish and Game.
- (3) The workplan shall recognize and prioritize the proper protection of habitat that supports Chinook Salmon life cycles. The department shall consult with the Alaska Department of Fish and Game and may work with other appropriate resource agencies, interested organizations and individuals with an interest in protecting Chinook Salmon as necessary to accomplish this goal.
- (4) Nothing in this section prevents the department from authorizing other uses of these water bodies prior to the issuance of the reservations.

*Sec. 50. Sections 30, 46, X and 48 of this Act take effect immediately under AS 01.10.070(c).



Background:

In late 2010, the Department of Natural Resources (DNR) identified a backlog of more than 2,600 pending applications for DNR permits and authorizations. Recognizing that inefficiencies in the permitting system were harming businesses and individual Alaskans seeking to access state land and resources, DNR committed to drive down the backlog. In return, Governor Parnell and the Legislature supplied additional personnel and resources to DNR. All parties understood funding alone would not eliminate the backlog and DNR committed to an in-depth review of its permitting system.

Working with other state resource agencies, DNR in 2011 launched a permitting initiative to ensure its decisions are issued in a timely, predictable and efficient manner – without compromising environmental standards. DNR hosted eight forums around the state in 2011 to gather public input on the permitting initiative, and in 2012, through HB 361, secured a first set of statutory reforms improving DNR's process for land leasing and material sales. In 2013, DNR and legislators secured additional statutory reforms to support timelier decisions for oil and gas projects. Also during the 2013 legislative session, Governor Parnell introduced HB 77, which sought to increase the efficiency of DNR's land and water-use authorization processes.

Since 2011, DNR has cut its backlog of permits and authorizations by more than 50 percent. This has been accomplished through a variety of actions, including investing in our staff, new business process management tools and permit reform legislation.

Summary of HB 77:

HB 77 is an omnibus bill that seeks to improve DNR's timeliness and efficiency in issuing land and water use authorizations. The bill focuses on agency process and does not seek changes in environmental standards or laws protecting Alaska's fish and wildlife habitat. In 2013, some provisions of HB 77 drew opposition, and as a result, HB 77 remained in the Senate Rules Committee without proceeding to the Senate floor.

Following the 2013 legislative session, DNR staff and legislators met with the public to look for ways to alleviate their concerns about HB 77. As a result of this outreach, proposed amendments have been developed and introduced in the Senate Resources Committee. These include changes that: limit DNR's authority to issue a general permit; define the process for issuing a general permit to include public comment; allow individuals, tribes and others to be able to apply for water reservations but clarifies that the certificate will be issued to an appropriate state agency rather than a "person." DNR is pleased to support these amendments, *which are shown in italics* in the bill overview provided in the Appendix to this briefing paper.

Appendix – Provisions of HB 77

General permits

DNR may establish general permits for activities on state land unlikely to result in significant *or* irreparable harm to state land or resources *and that already can be authorized by a permit under AS 38.05 or AS 38.95.*

- General permits cannot be used for decisions on easements, oil and gas or mineral leasing, coal leases, material sales, or other disposals of state land, nor can a general permit be issued in State Forests, Game Refuges or State Parks, or for coal mining.
- DNR’s creation of a general permit will require public notice and comment.

Land exchanges

DNR will generally adopt the process for municipal land exchanges (AS 29.65.090) for the purposes of land exchanges with private entities and the federal government.

- The process for land exchanges between DNR and private parties or federal agencies is so cumbersome that it effectively blocks transactions that are beneficial to the state.

Lease extensions and renewals

DNR may extend a land or tidelands lease on a one-time basis for a period of up to two years. DNR also may renew an aquatic farm lease on a one-time basis for a period of up to ten years. Best interest findings will be required to support these extensions and renewals.

- These provisions provide relief to businesses that have difficulty securing financing under DNR’s existing lease terms.

Water use

A person is allowed to use small amounts of state water and not return it to the same hydrologic unit.

- A person who wants to use a “significant amount of water” – defined by regulation as more than 5,000 gallons of water in a single day – must secure a permit or water right (11 AAC 93.035)
- Without this amendment, a person who uses less than 5,000 gallons of water in a single day without returning it to the same hydrologic unit is technically in violation of AS 46.15.035.

A separate provision clarifies that DNR may issue one or more new temporary water use authorizations therefore allowing successive authorizations for the same project.

Water reservations

A person may apply for a reservation of water but the reservation must be issued to an appropriate state agency, not a person. All applications, including pending applications filed before the immediate effective date of Sections 35-45 of this Act, will be processed using the provisions of this Act.

- This amendment does not apply to applicants for traditional water rights, temporary water use authorizations or water removals.

An applicant under the Water Use Act (including applications for reservations, other water rights, and temporary water use authorizations) does not have a property right in the application. For proposed sales or

applications for appropriation or reservation of water, DNR will issue public notice regarding the proposal or application when sufficient information is available to adjudicate the decision. A minimum of five years of hydrologic data collection is required for a certificate of reservation of water to be issued. DNR will determine the order in which applications for reservation of water will be processed.

DNR may review a water reservation to determine if the statutory purpose of, and findings that support, the reservation still apply. It will no longer be required to do so every 10 years.

Appeals and public notices

Only a person who is substantially and adversely affected may appeal or request reconsideration of a decision. Furthermore, DNR may require a person to participate in the public comment process to be eligible to appeal or request reconsideration.

- The intent of these changes is to limit use of the appeals process to people who can demonstrate how a DNR decision poses some substantial and adverse effect on their interests.

DNR's creation of a general permit can be appealed but a general permit cannot be appealed based on subsequent activities conducted in compliance with the permit after the initial appeal period has run.

An applicant for a reservation of water may appeal DNR's decision on the application. DNR's subsequent decisions involving the certificate for reservation of water may only be appealed by the certificate holder or the original applicant.

All mineral orders and leasehold location orders are subject to public notice requirements of AS 38.05.945.

- This ensures that the public is aware of DNR decisions involving the mineral estate on state lands. Currently, only mineral closing orders require public notice.

Alterations of platted boundaries do not require public notice if no public easements or rights-of-way are affected.

- Existing law requires public notice if a person who owns two lots wishes to remove the boundary line or change the configuration of the two lots. This adds months to the subdivision process without impacting anyone other than the applicant.

“Public auction” is redefined to include public oral outcry auction and public on-line auctions.

- By using online auctions for state land sales, DNR is seeking to accelerate and simplify the process for bidding on state land sales, and to increase income to the Land Disposal Income Fund.

DNR has the authority and discretion to issue preliminary best interest findings for non-oil and gas-related decisions.

- Existing law does not explicitly provide for preliminary best interest findings for non-oil and gas-related decisions. This change supports and defends DNR's current practice of seeking public input on such decisions.

Miscellaneous

The performance of a feasibility study for the development and operation of a hydroelectric site at Chikuminuk Lake is not an incompatible use of Wood-Tikchik State Park.



Section 1 adds a new subsection (c) to AS 38.05.020 to allow the Department of Natural Resources (DNR) the ability to issue a general permit for an activity on state land that the department may already authorize through permit under AS 38.05 and AS 38.95 in the Alaska Land Act. A general permit may be issued if the activity is unlikely to result in significant or irreparable harm to state land or resources. The section outlines the decision process for a general permit, which includes a public comment period provided for a proposed general permit. A decision to issue a general permit will be appealable at the time of issuance through the general DNR appeal provision (AS 44.37.011). After the initial appeal period has ended for the decision to establish a general permit, it cannot be later appealed based on subsequent activity that adheres to the general permit. Activities conducted under the general permit will not require further public notice. This section does not apply to state game refuges (AS 16.20), the Alaska Surface Coal Mining Control and Reclamation Act (AS 27.21), state forests (AS 41.17) and state parks (AS 41.21). If there is a conflict between this provision and a provision in AS 38.04, AS 38.05, or AS 38.95, the provisions of this section control.

Section 2 removes the reference to the additional requirement that the director of the division of Mining, Land and Water (DMLW) shall consult with other departments during the negotiation of a land exchange (AS 38.50.090), as this provision is repealed in Section 46 of the bill. This provision is replaced in Section 22 with the addition of language referring to decision and review procedures established in AS 38.05.035(e).

Section 3 allows the director to execute a contract for the sale, lease, or other disposal of land or an interest in land without commissioner approval if the annual rental is not greater than \$10,000 (rather than \$5,000). This section also clarifies that the director of DMLW may provide a preliminary written best interest finding and public notice for that preliminary finding for non-oil and gas related land disposals.

Section 4 clarifies that only a person who is substantially and adversely affected by a final written best interest finding related to the sale, lease, or disposal of land or an interest in land may appeal a director's decision. It also adds that the applicant may also appeal the decision.

Section 5 clarifies that for appeals of written best interest findings related to the sale, lease, or disposal of land or an interest in land, it is considered a denial if the Commissioner does not act on a request for reconsideration within 30 days after the issuance of the final written finding.

Section 6 states in an administrative appeal to court of a written best interest finding related to the sale, lease, or disposal of land or an interest in land, a court can only deal with points presented to the commissioner in the appeal or request for reconsideration.

Section 7 creates a new preference right that allows an individual that holds a state land lease for 10 years that was issued competitively, with a constructed building, where 25% of their income for 10 years came from that land, to purchase the land before the state conveys the land to a municipality through a municipal

entitlement. The director may either condition the purchase or reject the application for preference right if he determines that the purchase of the land would interfere with public use by residents of the area. If the preference right is approved, subject to appropriation, the revenue from the purchase of the parcel will be given to the municipality and the municipal entitlement shall be reduced by the amount of land covered under this section.

Sections 8 through 10 amend statutes to allow land and property sales to be purchased by contract or by payment in full up-front. Sections 9 and 10 remove references to AS 38.05.065(b) related to sale of land by lottery, which is repealed in Section 46 as the newly created Section 8 now includes all land sales.

Section 11 adds a new subsection (f) to AS 38.05.070 that allows a one-time extension by the director of DMLW for a period of up to two years for an existing land lease if in the best interest of the state. This section allows leases to remain active while DMLW adjudicates a request to renew the lease, a request to purchase the leased land under a preference right under AS 38.05.102 or where the lessee plans to substantially change the operation to the point where a new best interest finding and decision must be issued under AS 38.05.035(e).

Section 12 amends AS 38.05.075(a) so that only a bidder who is substantially and adversely affected by the issuance of a determination of highest bidder in a lease sale may appeal for a review of the determination under AS 44.37.011.

Section 13 amends AS 38.05.075(h) so that only a person substantially and adversely affected by the department's prequalification decision may appeal or request reconsideration within 5 days of the decision. This section also clarifies that appeals to DNR and superior court would now be addressed under AS 44.37.011 and therefore the sentence providing appeal to superior court is deleted.

Section 14 clarifies that only an applicant substantially and adversely affected by the department's decision related to leases for fisheries development may appeal or request reconsideration under AS 44.37.011 within 20 days after the decision is issued.

Section 15 and 16 relate to aquatic farming leases. Section 15 removes the reference to lease renewals as Section 16 adds a new subsection related specifically to renewal of aquatic farm leases. Section 16 allows the director of DMLW to issue a one-time renewal, for a period of up to ten years in duration, of an existing aquatic farm lease if it is determined to be in the best interest of the state. Section 16 also provides that the director may extend aquatic farm leases for up to two years while a renewal application is pending or where the lessee plans to substantially change the purpose or operation of an existing lease such that a new best interest finding and decision must be issued under AS 38.05.035(e).

Section 17 amends AS 38.05.185(a) to allow the director of DMLW to make a preliminary written decision for a mineral order or leasehold location order regarding availability of land to mineral leasing or entry. This conforms to amendments made in Section 19.

Section 18 amends AS 38.05.300(a) to allow the director of DMLW to make a preliminary written decision regarding the classification or reclassification of state land. This conforms to amendments made in Section 19.

Section 19 amends the public notice statute AS 38.05.945(a) to include public notice for various preliminary decisions or final decisions if a preliminary decision is not issued. This section also clarifies

that all mineral orders and leasehold location orders are subject to public notice requirements of AS 38.05.945, not just mineral closing orders.

Section 20 clarifies the definition of “state land” includes shoreland and tideland in AS 38.05.965(21). Previous definition included “shore” and “tide.”

Section 21 adds a definition to include that “public auction” includes a public oral outcry auction and a public online auction.

Sections 22 through 27 give DMLW more flexibility in its authority to exchange land or interest in land when it is in the best interest of the State. Section 22 is modeled after AS 29.65.090 which provides for exchanges between DNR and boroughs and municipalities. Subsequent sections make conforming amendments.

Section 28 revises the statute to exclude the requirements of AS 38.05.305(e) for alterations of platted boundaries if all owners approve and no public easements or rights-of-way are affected.

Section 29 adds a new section that allows performance of a feasibility study for the development and operation of a hydroelectric site at Chikuminuk Lake.

Sections 30 through 34 amend statutes to allow only either an applicant or a person who is substantially and adversely affected, rather than aggrieved, to appeal or request reconsideration of DNR decisions. Section 30 clarifies when the requirements of AS 44.37.011 are applicable. Section 33 clarifies that a person has 20 calendar days after the issuance date of a final department decision in which to file an appeal or request for reconsideration. Section 34 adds new subsections to define what it means to be adversely affected and outlines additional requirements in the DNR administrative appeal process.

Section 35 would allow people to carry small quantities of water from one hydrologic unit to another without violating the law.

Section 36 makes minor wording revisions and also provides that the commissioner shall prepare public notice on a proposed sale of water or an application for appropriation or removal of water once the commissioner determines that the proposal or application is ready for a decision.

Section 37 removes a requirement that mail notice of proposed sales of water or applications for appropriation or removal of water be certified mail.

Sections 38 and 39 continue the changes made to statutes related to appeals including a requirement that a person be “adversely affected” as defined in Section 39 in order to appeal a decision regarding a proposed sale or application for appropriation or removal of water. It further defines adversely affected in this subsection to require that the decision has a physical or financial detriment to a person’s interests.

Section 40 adds factors for the commissioner to consider in determining whether a proposed reservation of water is in the public interest.

Section 41 removes the requirement that the commissioner review all reservations of water at least once every ten years and provides that the commissioner may review reservations of water at any time.

Section 42 adds new subsections to the water reservation statute AS 36.15.145. These subsections provide that for any water reservation applied for by a person, the certificate of reservation, if approved,

will be issued to an appropriate state agency, and that there is no property right for the applicant in the resulting certificate of reservation. It also provides that the commissioner has the discretion to determine the order in which he processes applications for water reservation, although the order of processing does not affect priority of appropriation. An applicant has the right to appeal a decision on a reservation application, and only the applicant or the agency that holds a reservation may appeal subsequent administration of the reservation. The section states that an applicant must submit at least five years of hydrologic data and specifies what type of data must be submitted.

Section 43 amends AS 46.15.155(a) to clarify that the commissioner may issue one or more new temporary water use permits for the same project.

Section 44 adds a general provision to the Water Use Act that states that an applicant under that chapter does not have a property right in the application.

Section 45 adds to the definition of "person" for the Water Use Act to clarify that federally recognized tribes are considered "persons."

Section 46 repeals certain statutes that have been modified in other sections of this bill related to land sale contracts, land exchanges, and water reservations.

Section 47 allows a feasibility study for a hydroelectric project at Chikuminuk Lake to proceed by making inapplicable any inconsistent provisions of the Wood-Tikchik State Park Management Plan and regulations.

Section 48 states that any pending applications for water reservations that are filed before the immediate effective date of the water reservation statutes will be processed using the provisions of the Act.

Section 49 allows the Department to adopt regulations necessary to implement changes to take effect on or after July 1, 2014.

Section 50 instructs the Revisor to change the heading of AS 44.37.011.

Section 51 establishes an immediate effective date for Sections 29, 35-45, and 47-49.

Section 52 establishes an effective date of July 1, 2014 for the remainder of the act.



Alaska Department of
**NATURAL
RESOURCES**

Summary of Changes
HB 77: Land Disposals/Exchanges; Water Rights
Division of Mining, Land and Water
March 10, 2014

This is a summary of changes between SCS CSHB 77 (FIN)\Version Y and 2d Senate CS for House Bill No. 77(RES)\Version H. All page numbers reference Version 28-GH1524\H.

In Section 1 beginning on page 1, line 10, language was added to limit the applicability of the Department of Natural Resources' (DNR) authority to issue general permits, specify a process for creating them, and address how they may be appealed. The "notwithstanding" clause has been replaced with a provision that removes potential conflicts with three applicable Title 38 provisions. The changes further restrict general permits to be used only for activities that the department can already authorize through a permit under AS 38.05 and AS 38.95, or regulations adopted under those statutes. This eliminates leasing, easements, material sales, other land sales, and other provisions of Title 38. The process to create a general permit is now defined as requiring public notice and opportunity to comment for 30 days on a proposed general permit. The permits may only be issued if unlikely to result in "significant or irreparable" harm to state land or resources rather than "significant and irreparable harm." Additionally, if the commissioner decides to issue a general permit after the public comment period, there must be a written decision. However, a decision to not issue a general permit does not require a written decision, and is not appealable. Lastly, Section 1 now clarifies that the original decision is appealable, but not the subsequent lawful use of the general permit once established and that public notice is not required for subsequent activity occurring under the general permit.

Stylistic edits were suggested by Legislative Legal on page 2, line 23. Drafting standards utilize the word "within," in the context of that provision which is how the statutes currently read, rather than "not later than" as proposed in Version Y. These same stylistic edits were also made in other sections of the bill (pg. 7, lines 11 and 29; pg. 11, line 17; pg. 16, line 27; pg. 17, line 31) and resulted in the removal of Sections 13 and 39 of Version Y, which made similar stylistic drafting edits. Subsequent sections were renumbered accordingly.

In Section 7, the preference right provision applicability was narrowed to state land leases issued competitively under AS 38.05.070 (page 8, lines 14-15). It is also clarified that this provision applies to valid municipal entitlements on page 8, line 13. A provision is added on page 8, line 21 to address when the preference right application must be filed (within 120 days of notice to lessee of the municipal land selection). Some words were changed to better clarify or make the provision consistent with other statutes. Page 8, line 30 clarifies how the municipal entitlement would be affected by a granted preference right. The funds to be transferred to the municipality are "subject to appropriation" to avoid creating a dedicated fund. Lastly, the definition of building was further clarified to be no less than 500 square feet in size (page 9, lines 5-6). Due to changes made last year to AS 38.05.035, this new subsection was also re-lettered.

Stylistic edits were also made in Section 22 changing the words "to be" to "that would be" (pg. 16, lines 17, 19 and 21).

Section 34 (page 20, line 16) was amended to make “persons” singular. This is for uniformity with statutory drafting standards and not a substantive change. Under rules of statutory interpretation, singular means plural, plural means singular.

In Section 36 (former Section 37), beginning on page 21, line 6, a clause was added that the commissioner does not have to prepare a notice of application for sale, appropriation, or removal of water until the application is ready for decision. It would be inappropriate to move forward with the notice until appropriate application and necessary data is available to begin the adjudication process.

Former section 42, which contained changes to AS 46.15.145(a) that removed “person” from eligible applicants to file for a water reservation, was removed and the statute is left as it reads today. Subsequent sections were renumbered accordingly.

A new Section 40 beginning on page 22, line 12, was inserted and lists out criteria used in the commissioner’s public interest determination for water reservations. Although the criteria were required to be used previously through regulation, the criteria are now directly incorporated into this statute. Subsequent sections were renumbered accordingly.

A new Section 42 beginning on page 23, line 14, adds new subsections to the water reservation statutes that explains the treatment of the applications. New subsection (g) was added that directs the commissioner to issue any approved certification for a water reservation applied for by a person to an appropriate state agency to ensure that a public entity holds the reservation for a public resource. Subsection (h) grants discretion to the commissioner to determine when and in what order to process water reservation applications, however clarifies that the order an application is processed does not affect priority of appropriation. Subsection (i) clarifies that an applicant will have the right to appeal a decision on the application. It further clarifies that only the applicant or agency holder of a reservation may appeal subsequent administration of the reservation under AS 46.15.145(f), and that the right to appeal may not be transferred or assigned. Subsection (j) clarifies how much and what type of hydrologic data must be submitted before the commissioner can issue a certificate of reservation. Subsequent sections were renumbered accordingly.

A new section 44 (page 24, line 7) adds a new provision that states that an applicant in the water chapter does not have any property right in the application. This does not contradict with the property right granted through a traditional water right for beneficial use upon certification. Subsequent sections in the bill are renumbered accordingly.

A new section 45 (page 24, line 10) adds “federally recognized tribe” into the Water Use Act definition of “person.” While the current definition is already interpreted by DNR as allowing tribes to apply as a “person,” this language clarifies that understanding. Subsequent sections were renumbered accordingly.

Section 48 (former Section 47) beginning on page 24, line 24, contains the transition language for pending applications for reservations of water. It is changed to require that all applications, including pending applications filed before the immediate effective date of Sections 35-45 of this Act, will be processed using the provisions of this Act.

Sections 49 and 52 (beginning on page 24, line 29 and page 25, line 13) amend the effective date to July 1, 2014. Section 51 (page 25, line 11) adds additional provisions of this Act that take effect immediately (including the changes to AS 46.15).

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HB 77
Fiscal Note Number 1
(H) Publish Date 1/18/13

Identifier (file name) LL0524-DNR-MLW-1-14-13 Dept. Affected Natural Resources
Title Relating to MLW Permitting and Lease Reform, and Appropriation Land & Water Resources
General Permitting Allocation Mining, Land and Water
Sponsor Rules by Request of the Governor
Requester Governor OMB Component Number 3002

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES	FY14	FY14	FY15	FY16	FY17	FY18	FY19
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							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY13) operating costs 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY14) costs 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended, or repealed? 6/30/2015 Discuss details 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 Division of Mining, Land and Water
Approved by Daniel S. Sullivan, Commissioner
Department of Natural Resources

Phone 269-8400
Date/Time 1/14/13 5:00 PM
Date 1/14/2013

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 77

Analysis

This bill proposes to make changes to statutes that are intended to continue progress made to the State of Alaska's permitting processes to ensure projects are permitted in a more timely, predictable and efficient manner while safeguarding the environment.

These proposed changes are not anticipated to have a fiscal impact on the department or the State. The bill will either create efficiencies or prevent inefficiencies, which will allow the Division of Mining, Land, and Water to re-allocate staff time to other permits and authorizations thus helping to reduce the backlog.

Regulations will be amended to help implement certain new or substantially modified sections of the bill. The Department of Natural Resources will also amend regulations in order to conform to language changes. The Department would first focus on the regulations needed to implement the new or substantially modified sections. The department anticipates that it would take two years until all regulatory changes that might result from passage of this bill are adopted.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HB 77
 Fiscal Note Number 2
 (H) Publish Date 1/18/13

Identifier (file name) LL0524-DFG-CO-01-14-13 Dept. Affected ADFG
 Title Relating to MLW permitting and lease reform, and Appropriation Administration and Support
general permitting Allocation Commissioner's Office
 Sponsor Governor
 Requester Rules by Request of the Governor OMB Component Number 2175

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates					
			FY14	FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES								
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	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 (FY13) operating costs** 0.0 (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY14) costs** 0.0 (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

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

Initial version.

Prepared by Ben Mulligan, Legislative Liaison
 Division Commissioner's Office
 Approved by Cora Campbell, Commissioner
Department of Fish & Game

Phone 907-267-2311
 Date/Time 01/07/13 10:30AM
 Date 1/7/2013

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 77

Analysis

After consulting with the Sport Fish Division and Habitat Division the proposed legislation will have no fiscal impact upon ADF&G.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: SCS CSHB 77(FIN)
Fiscal Note Number: 3
(S) Publish Date: 4/8/13

Identifier: HB77SCSCS(FIN)-DNR-MLW-4-8-13
Title: LAND USE/DISP/EXCHANGES; WATER RIGHTS
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: Senate Finance Committee

Department: Department of Natural Resources
Appropriation: Land & Water Resources
Allocation: Mining, Land & Water
OMB Component Number: 3002

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
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 (Operating Only)

None							
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 (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 06/30/15

Why this fiscal note differs from previous version:

The Senate Finance Committee adopted changes that would allow for a feasibility study for the development and operation of a hydroelectric site at Chikuminuk Lake. The Senate Finance committee also added a section that creates a new preference right to allow state lessees the option to purchase the land before it is conveyed to a municipality. Neither of these changes impact the fiscal note.

Prepared By:	Esther Tempel, Legislative Liaison	Phone:	(907)269-8400
Division	Department of Natural Resources	Date:	04/08/2013 09:00 AM
Approved By:	Daniel S. Sullivan, Commissioner	Date:	04/08/13
	Department of Natural Resources		

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SCS CSHB 77(FIN)

Analysis

This bill proposes to make changes to statutes that are intended to continue progress made to the State of Alaska's permitting processes to ensure projects are permitted in a more timely, predictable and efficient manner while safeguarding the environment.

These proposed changes are not anticipated to have a fiscal impact on the department or the State. The bill will either create efficiencies or prevent inefficiencies, which will allow the Division of Mining, Land, and Water to re-allocate staff time to other permits and authorizations thus helping to reduce the backlog.

Regulations will be amended to help implement certain new or substantially modified sections of the bill. The Department of Natural Resources will also amend regulations in order to conform to language changes. The Department would first focus on the regulations needed to implement the new or substantially modified sections. The department anticipates that it would take two years until all regulatory changes that might result from passage of this bill are adopted.

The Senate Finance Committee added two new provisions. The bill adds AS 41.21.167(e) stating that performance of a feasibility study for the development and operation of a hydroelectric site at Chikuminuk Lake is not considered an incompatible use in Wood-Tikchik State Park. The transition language states that DNR may not enforce or implement those provisions in the Wood-Tikchik State Park Management Plan, dated October 2002, and regulations applicable that are inconsistent with AS 41.21.167(e) as enacted by this bill. This bill does not require any change to the management plan or the regulations.

The committee substitute also creates a new preference right in AS 38.05.035 to allow state lessees the option to purchase the land before it is conveyed to a municipality. This provision will have no additional fiscal impact on the department as there are existing staff who can adjudicate applications to purchase.

2nd SCS CSHB77\VERSION H: *SECTIONAL ANALYSIS*

Senate Resources Committee

March 10, 2014

Juneau, AK

**Division of Mining, Land
and Water**

*Alaska Department of
Natural Resources*



SECOND SCS CS HB77(RES)\H

- MAIN PROVISIONS -

- **General Permits**
- **Land Lease and Sale Provisions**
- **Extensions and Renewals on Land and Aquatic Leases**
- **Preference Right for Certain Land Leases**
- **Preliminary Written Findings**
- **Land Exchanges**
- **Chikuminuk Lake Feasibility Study**
- **Appeals**
 - Best Interest Findings and Decisions
 - Land and Fisheries Development Leases
 - Water Use Act
 - General Appeals Statute
- **Water Use Act**
 - General
 - Water Reservations
 - Temporary Water Use Authorizations

SECOND SCS CS HB77(RES) \H

- GENERAL PERMITS -

Section 1 adds a new subsection (c) to AS 38.05.020 to allow the Department of Natural Resources (DNR) the ability to issue a general permit

- General permits can only be issued for an activity on state land that the department may already authorize through permit under AS 38.05 and AS 38.95
- DNR's creation of a general permit will require public notice and comment
- A decision to issue a general permit will be appealable at the time of issuance but a general permit cannot be appealed based on subsequent activities conducted in compliance with the permit
- *Cannot* be issued for:
 - Decisions on easements, oil and gas or mineral leasing, coal leases, material sales, or other disposals of state land
 - Activities where “significant or irreparable” harm to state land or resources would be caused
 - Activities occurring inside state forests, parks, and game refuges, or for coal mining (federally delegated program)

SECOND SCS CS HB77(RES) \H

- LAND LEASE AND SALE PROVISIONS -

- **Section 3** allows the director to execute a contract for the sale, lease, or other disposal of land or an interest in land without commissioner approval if the annual rental is not greater than \$10,000 (rather than \$5,000).
- **Section 8** amends AS 38.05.065(a) to allow land and property sales to be purchased by contract or by payment in full up-front.
- **Sections 9 and 10** remove references to AS 38.05.065(b) related to sale of land by lottery, which is repealed in Section 46 as the newly created Section 8 now includes all land sales.
- **Section 21** adds a definition to include that “public auction” includes a public oral outcry auction and a public online auction.



SECOND SCS CS HB77(RES) \ H

- EXTENSIONS AND RENEWALS ON LAND AND AQUATIC LEASES -

- **Section 11** adds a new subsection (f) to AS 38.05.070 that allows a one-time extension by the director of DMLW for a period of up to two years for an existing land lease if in the best interest of the state.
- **Section 11** also allows leases to remain active while DMLW adjudicates a request to renew the lease, a request to purchase the leased land under a preference right under AS 38.05.102 or where the lessee plans to substantially change the operation to the point where a new best interest finding and decision must be issued under AS 38.05.035(e).
- **Section 15** removes the reference to lease renewals as **Section 16** provides that the director may extend aquatic farm leases for up to two years while a renewal application is pending or where the lessee plans to substantially change the purpose or operation of an existing lease such that a new best interest finding and decision must be issued under AS 38.05.035(e).
- **Section 16** also allows the director of DMLW to issue a one-time renewal, for a period of up to ten years in duration, of an existing aquatic farm lease if it is determined to be in the best interest of the state.

SECOND SCS CS HB77(RES) \H

- PREFERENCE RIGHT ON CERTAIN LAND LEASES -

- **Section 7** creates a new preference right that allows an individual that holds a state land lease for 10 years that was issued competitively, with a constructed building, where 25% of their income for 10 years came from that land, to purchase the land before the state conveys the land to a municipality through a municipal entitlement.
- An application must be filed with the director of DMLW within 120 days after notice to the lessee of the municipal entitlement land selection.
- If the preference right is approved, the land shall be sold at fair market value as determined by an appraisal under AS 38.05.840 and a survey, both at the cost of the applicant.
- If the preference right is approved, subject to legislative appropriation, the revenue from the purchase of the parcel will be given to the municipality and the municipal entitlement shall be reduced accordingly.



SECOND SCS CS HB77(RES) \H

- PRELIMINARY WRITTEN FINDINGS -

- **Section 3** clarifies that preliminary decisions can be used for non-oil and gas disposal of interest decisions:
 - The law today does not provide the Director of DMLW with the explicit authority to issue preliminary decisions and public notice.
- **Section 17** amends AS 38.05.185(a) to allow the director of DMLW to make a preliminary written decision for a mineral order or leasehold location order regarding availability of land to mineral leasing or entry. This conforms to amendments made in Section 19.
- **Section 18** amends AS 38.05.300(a) to allow the director of DMLW to make a preliminary written decision regarding the classification or reclassification of state land. This conforms to amendments made in Section 19.
- **Section 19** amends the public notice statute AS 38.05.945(a) to include public notice for various preliminary decisions or final decisions if a preliminary decision is not issued. This section clarifies that all mineral orders and leasehold location orders are subject to public notice requirements of AS 38.05.945, not just mineral closing orders.

SECOND SCS CS HB77(RES) \H

- LAND EXCHANGES -

- **Sections 22 through 27** give DMLW more flexibility in its authority to exchange land or interest in land when it is in the best interest of the State.
- **Section 22** is modeled after AS 29.65.090, which provides for exchanges between DNR and boroughs and municipalities. Subsequent sections make conforming amendments.
- **Section 2** removes the reference to the additional requirement that the director of the division of Mining, Land and Water shall consult with other departments during the negotiation of a land exchange (AS 38.50.090), as this provision is deleted in Section 46 of the bill. This provision is replaced in Section 22 with the addition of language referring to decision and review procedures established in AS 38.05.035(e).

SECOND SCS CS HB77(RES) \H

- APPEALS -

- **HB 77 seeks to change the standard from “aggrieved” to “substantially and adversely affected” so that appellants are required to provide some amount of information that clearly explains how they or their interests are directly, negatively affected by the decision**
- **Best Interest Findings on Disposals**
 - **Section 4** clarifies that only a person who is substantially and adversely affected by a final written best interest finding related to the sale, lease, or disposal of land or an interest in land may appeal a director’s decision. It also adds that the applicant may also appeal the decision.
 - **Sections 5 and 6** clarify but do not change the intent of existing statutes.
 - **Section 5** clarifies that for appeals of written best interest findings related to the sale, lease, or disposal of land or an interest in land, it is considered a denial if the Commissioner does not act on a request for reconsideration within 30 days after the issuance of the final written finding.
 - **Section 6** states that a court can only deal with points presented to the commissioner in the appeal or request for reconsideration of a written best interest finding related to the sale, lease, or disposal of land or an interest in land.

SECOND SCS CS HB77(RES) \ H

- APPEALS -

- **Land and Fisheries Development Leases**

- **Section 12** amends AS 38.05.075(a) so that only a bidder who is substantially and adversely affected by the issuance of a determination of highest bidder in a lease sale may appeal for a review of the determination under AS 44.37.011.
- **Section 13** amends AS 38.05.075(h) so that only a person substantially and adversely affected by the department's prequalification decision may appeal or request reconsideration within 5 days of the decision.

- **Section 13** also clarifies that appeals to DNR and superior court would now be addressed under AS 44.37.011 and therefore the sentence providing appeal to superior court is deleted.
- **Section 14** clarifies that only an applicant substantially and adversely affected by the department's decision related to leases for fisheries development may appeal or request reconsideration under AS 44.37.011 within 20 days after the decision is issued.

SECOND SCS CS HB77(RES) \H

- APPEALS -

- **Water Use Act**

- **Sections 38 and 39** continue the changes made to statutes related to appeals including a requirement that a person be “adversely affected” as defined in Section 39 in order to appeal a decision regarding a proposed sale or application for appropriation or removal of water.

- **General Appeals Statutes**

- **Sections 30 through 34** amend AS 44.37.011 to allow only either an applicant or a person who is substantially and adversely affected, rather than aggrieved, to appeal or request reconsideration of DNR decisions.
- **Section 34** adds new subsections to define what it means to be adversely affected and outlines additional requirements in the DNR administrative appeal process.



SECOND SCS CS HB77(RES) \H

- WATER USE ACT -

DNR has three principal tools to manage the State's water resources:

- Water Rights
- Temporary Water Use Authorizations (TWUAs, a.k.a. TWUPs)
- Water Reservations – preserve a specific quantity of water to remain in a water body, for public purposes

Allow the public to remove water from water bodies

Water rights and TWUAs are the primary way Alaskans are authorized to use water. Both are used for all manner of water uses, such as:

- Ice-bridge crossings
- Ice roads
- Ski resort snowmaking
- Village landfills, sewer and water projects
- Hydroelectric projects



SECOND SCS CS HB77(RES) \ H

- WATER RESERVATIONS -

2nd SCS CSHB 77(RES) retains a person's ability to file for a water reservation.

Section 42 adds new subsections to the water reservation statute AS 46.15.145.

- Clarifies that the certificate of reservation, if approved, will be **issued to an appropriate state agency**.
- Provides that the commissioner has the discretion to determine the order in which he processes applications for water reservation, although the order of processing does not affect priority of appropriation.
- An applicant has the right to appeal a decision on a reservation application, and only the applicant or the agency that holds a reservation may appeal subsequent administration of the reservation.
- An applicant must submit at least five years of nonproprietary public domain hydrologic data or hydrologic data collected by or for the applicant.



SECOND SCS CS HB77(RES) \ H

- WATER RESERVATIONS -

2nd SCS CSHB 77 (RES) retains a “person’s” ability to file for a water reservation.

- **Section 40** adds factors for the commissioner to consider in determining whether a proposed reservation of water is in the public interest.
- **Section 41** removes the requirement that the commissioner review all reservations of water at least once every ten years and provides that the commissioner may review reservations of water at any time.
- **Section 48** states that any pending applications for water reservations that are filed before the immediate effective date of the water reservation statutes will be processed using the provisions of the Act.



SECOND SCS CS HB77(RES) \H

- WATER USE ACT -

- **Other Changes to the Water Use Act**

- **Section 35** would allow people to carry small quantities of water from one hydrologic unit to another without violating the law.
- **Section 36** provides that the commissioner shall prepare public notice on a proposed sale of water or an application for appropriation or removal of water once the commissioner determines that the proposal or application is ready for a decision.
- **Section 37** removes a requirement that mail notice of proposed sales of water or applications for appropriation or removal of water be certified mail.
- **Section 43** amends AS 46.15.155(a) to clarify that the commissioner may issue one or more new temporary water use permits for the same project.
- **Section 44** adds a general provision to the Water Use Act that states that an applicant under that chapter does not have a property right in the application.
- **Section 45** adds to the definition of “person” for the Water Use Act to clarify that federally recognized tribes are considered “persons.”

SECOND SCS CS HB77(RES) \H

- OTHER PROVISIONS -

- **Chikuminuk Lake**
 - **Section 29** adds a new section that allows performance of a feasibility study for the development and operation of a hydroelectric site at Chikuminuk Lake.
 - **Section 47** allows a feasibility study for a hydroelectric project at Chikuminuk Lake to proceed by making inapplicable any inconsistent provisions of the Wood-Tikchik State Park Management Plan and regulations.
- **Section 20** clarifies the definition of “state land” includes shoreland and tideland in AS 38.05.965(21). Previous definition included “shore” and “tide.”
- **Section 28** revises the statute to exclude the requirements of AS 38.05.305(e) for alterations of platted boundaries if all owners approve and no public easements or rights-of-way are affected.
- **Section 46** repeals certain statutes that have been modified in other sections of this bill related to land sale contracts, land exchanges, and water reservations.

2009



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Alaska State Legislature

Official Business

State Capitol
Juneau, AK 99801-1182

March 12, 2014

To: Senator Cathy Giessel, Chairman
Senate Resources Committee

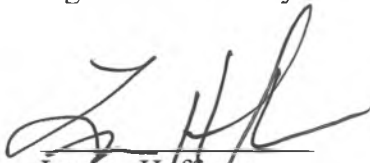
From: Senator Lyman Hoffman
Senate District S

Senator Gary Stevens
Senate District R

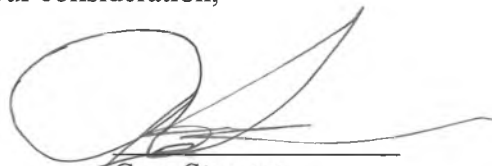
Representative Bryce Edgmon
House District 36

We are requesting consideration of an amendment to HB 77:Land Use/Disp/Exchange/Water Rights, *to remove all language that relates to the feasibility study at Chikuminuk Lake*. The reason for the request is that the region, consisting of 56 villages, has decided to go in a new direction with the aim at a more regional energy impact. It has been decided to re-appropriate the funds allocated to Chikuminuk Lake feasibility study to their new project.

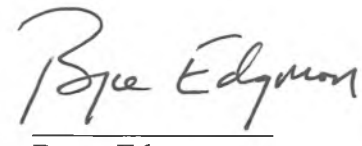
As representatives of the region in question, we are asking that this be removed from the legislation. Thank you for your consideration,



Lyman Hoffman
Senate District S



Gary Stevens
Senate District R



Bryce Edgmon
District 36

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[Wolverine Basketball LIVE on KDLG](#)[Volunteer Opportunities](#)

Environment

4:50 PM TUE MARCH 11, 2014

Nuvista Board Shelves Chikuminuk Dam Project

By [DAVE BENDINGER](#) (/PEOPLE/DAVE-BENDINGER)

Nuvista says it recognizes the political and economic hurdles in front of the project, and would rather shift focus towards more near-term solutions.

DILLINGHAM: On Wednesday, controversial house bill 77 will be back before the Senate Resources Committee.

It has undergone some revisions, but one thing that has not changed, at least yet, is language authorizing a feasibility study for a dam at Chikuminuk Lake in the Wood Tikchik State Park.

The Chikuminuk Dam project has itself been controversial since it was introduced to the public in the spring of 2012.

Many residents in the communities downstream of Chikuminuk have opposed it, citing its expected enormous costs and disruption to the park's ecosystem. But others, mainly upstream in the Yukon-Kuskokwim region, have said the dam could provide the cheap, renewable energy the region desperately needs.

But even though the Chikuminuk provision still remains in HB 77, Nuvista tells KDLG News that its board recently voted to shelve the project and turn the cooperative's focus towards more practical energy solutions.

"Nuvista's leadership still finds merit in the potential for hydroelectric generation at Chikuminuk Lake," said Executive Director Tiffany Zulkoskey Tuesday. "But we also understand the challenges in front of the state legislature with regards to capital funding for any project, small or large-scale."

Constructing the Chikuminuk Dam was estimated to cost half a billion dollars.

According to Zulkoskey, she drafted a proposal that Nuvista drop the project for now, and the board members voted unanimously to adopt it. A letter was sent to inform Sen. Lyman Hoffman from Bethel at the end of February.

Senator Hoffman said Tuesday that he would now support pulling the Chikuminuk language from the version of HB 77 in the Senate.

"Yes I would," said Hoffman, who is not on the Senate Resources Committee. "It's not coming to one of the committees I'm on, but I plan on working with members of the Senate to see what can be done there."

[http://www.kdlg.org/post/201403/chikuminuk.011.jpg](#)

The Allen River drains Chikuminuk Lake in the Wood Tikchik State Park. Developers eye that river as a source of hydroelectric energy, but political and economic hurdles have caused Nuvista to shelve the project for now.

Credit DNR

As written, the language in the bill would amend the Wood Tikchik State Park management plan only to allow for the feasibility study to occur. Building an actual dam would require further legislative approval. Still, opening the door to the nation's largest state park for even the study has not sat well with many area residents.

Zulkoskey said she and the board are now looking for the best way to now wind down the Chikuminuk Lake hydroelectric project. The legislature originally allocated ten million dollars for the study. Nuvista says about four million has been spent so far. The cooperative would like to redirect the remaining funds towards developing a comprehensive area energy plan, or investing in renewable energy projects with better near-term potential.

The legislature will have to agree to redirect the money. So far, Nuvista has reached out for support to Sen. Hoffman and Rep. Bryce Edgmon from Dillingham.

email the author at dave@kdla.org (<mailto:dave@kdla.org>)



The Honorable Lyman Hoffman
Alaska State Capitol
Room 11
Juneau, AK 99801

February 28, 2014

Dear Senator Hoffman,

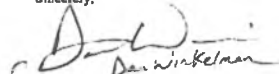
Thank you for your leadership in funding alternative energy projects in our home region of western Alaska. As you are well aware, due to the expense of diesel-generated electricity, proposed alternative energy projects are imperative opportunities to pursue as we evaluate realistic energy solutions for the communities we serve.

Although Nuvista leadership continues to find merit in the potential of hydroelectric generation at Chikuminuk Lake, we understand the challenges before our Legislature with regards to the decline in State revenues and funding available for capital projects. We also recognize that in recent years, market conditions have resulted in affordable energy options changing significantly. We believe, through Nuvista, the YK region is well-positioned to move forward with the State.

Therefore, the Nuvista Membership and its Board of Directors proposes to re-appropriate the remainder of our FY11 appropriation to fund nearer term, less expensive, in-region energy projects. Enclosed you will find our proposed project alternatives. We believe under the leadership of our new Executive Director, our region's first non-profit energy consortium will find great success and implore that you keep the entirety of the re-appropriation within Nuvista.

Do not hesitate to contact us for clarification of our proposal or if you would like further information.

Sincerely,


George Guy
Chairman, Nuvista Board of Directors

219 E. International Road, Ste. 100, Anchorage, AK 99518
(907) 565-4200 - (907) 565-4217 fax - NuvistaCoop.org

http://mediad.publicbroadcasting.net/p/kdlg/files/201403/Nuvista_Ltr_2014-page-001.jpg



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Natural Resources

Division of Mining, Land & Water
Director's Office

550 West 7th Avenue, Suite 1070
Anchorage, Alaska 99501-3579
Main: 907.269.8600
TDD: 907.269.8411
Fax: 907.269.8904

March 12, 2014

Senator Cathy Giessel
State Capital, Room 427
Juneau, AK 99801

Honorable Senator Giessel,

You received two questions from Senator Olson for which you requested a written response. The following is that response. Please let me know if there are any further questions.

- 1. In Sec 7 (page 8, line 17), what is the definition of "individual"? For example, could an "individual" mean an oil and gas company? What are the circumstances or conditions surrounding granting a preference right in this section?*

Response: There is no formal definition of "individual" in this statute, but an individual typically means a natural person in the Alaska statutes. DNR would interpret that this provision would mean the individual that obtained the lease from the state which was issued competitively under AS 38.05.070.

The preference right under Section 7 only applies to leases issued competitively under AS 38.05.070. AS 38.05.070 is a statute governing land leases. It does not cover oil and gas leasing or mining leasing, or coal leasing.

Furthermore, as the bill states, the additional circumstances are that you must have to have this preference right option are the following:

- The lease must have been in existence for at least 10 years before the municipal entitlement selection.
- A municipality must select the land on which the lease is situated for the purposes of fulfilling their municipal entitlement under AS 29.65.
- The lessee has 120 days from notification of the municipal entitlement land selection to decide whether they want to use the preference right to purchase.
- The lessee must prove that they have used the land for bona fide business purpose for at least 10 years, that the business produced not less than 25 percent of their total income for the 10 preceding years, and they have constructed a building allowed by the lease terms of not less than 500 square feet in size.
- The director would determine if the purchase of the land would interfere with public use by residents of the area and determine if conditions can be created to mitigate those adverse effects.

- f. A written finding is created to approve the preference right unless there some interference of public use that cannot be mitigated or avoided.
- g. And the conveyance is limited to only 5 acres at appraised fair market value of the unimproved land.

2. In Sec 42 (page 23, line 18), why is it necessary to allow the commissioner to determine when and in what order to process water reservation applications?

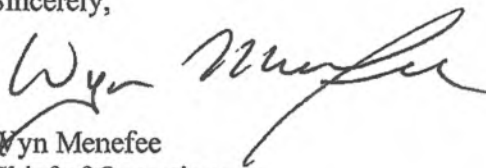
Response: Section 42 clarifies existing practice and understanding of the Water Use Act, AS 46.15. There are more reservation applications than can be processed in any given year, and the number of applications are expected to increase. Many of the applications for water reservations are in areas where there is little risk that the stated purpose for the reservation will be harmed in any foreseeable future.

As an example, the USFWS has 200 applications for water reservations that cross or are wholly in a national wildlife refuge, primarily to protect fish habitat. In those that are wholly in a national wildlife refuge, there is a relatively small potential for harm to the fish habitat from others using the water since the USFWS does not generally allow any other uses of the water. If we had to process reservations strictly by the order received, we would have to process those applications before addressing any other applications that have a higher risk of competing uses or need.

If there is a competing use for a water supply that is insufficient to supply all applicants, we are required under AS 46.15.090 to adjudicate the competing and foreseeable uses to determine what will constitute the most beneficial use before granting any water rights. If the commissioner did not have the flexibility to determine what order to process an application, we would not be able to fulfill AS 46.15.090. The order in which an application is processed does not affect priority of appropriation once granted.

Each year DNR actively works with ADFG to prioritize the water reservation applications to address the highest priority applications. DNR considers the order in which applications were filed, existing or potential water use conflicts, importance of the resource at risk, the availability and adequacy of the existing hydrologic data, and ADFG recommendations when setting these priorities. ADFG recommendations are considered because the vast majority of the reservations are applied for the purpose of protecting fish and wildlife habitat.

Sincerely,



Wyn Menefee
Chief of Operations
Division of Mining, Land and Water
Department of Natural Resources



March 12, 2014

Senator Cathy Giessel
Chair Senate Resources Committee
State Capitol Room 427
Juneau AK, 99801

Senator Fred Dyson
Vice-Chair Senate Resources Committee
State Capitol Room 121
Juneau AK, 99801

Re: Version H of HB 77

Dear Senate Resources Committee:

Bristol Bay Native Corporation (BBNC) appreciates the Alaska Legislature's willingness to gather public input on this far-reaching legislation and appreciates the long hours that many members have devoted to these important issues. Improvements in the latest draft of the bill (Version H) respond to some of BBNC's concerns. However, many of the most fundamental problems with the bill remain. Until these are adequately addressed, BBNC believes the legislation does not yet adequately balance permitting efficiency with public access to and participation in the decision-making process.

As the major private landowner in the Bristol Bay region BBNC is committed to responsibly developing and managing its lands and resources for the benefit of current shareholders and their descendants. Nevertheless, BBNC also believes it is important that our local communities are fully involved in all decision-making processes that may affect their well-being and supports the right of Bristol Bay residents to fully participate and be consulted in agency permitting, land use, and water resource decisions affecting the region.

This past fall and winter, hundreds of Alaskans, including many BBNC shareholders, attended public meetings regarding HB 77 and expressed concerns that the bill would: (1) create a Department of Natural Resources (DNR) general permit that appears to trump all other laws, (2) raise the bar for public citizens to establish the standing necessary to challenge many DNR decisions, (3) significantly restrict who can apply for instream flow reservations, (4) eliminate "best interest" findings for many types of land disposals, (5) more broadly authorize DNR to sanction water transfers across hydrologic boundaries, (6) authorize DNR to issue successive temporary water use permits for development projects, and (7) authorize a feasibility study for a hydroelectric site at Chikuminuk Lake in Wood-Tikchik State Park. The public's objections

caused many legislators to withhold their support and to call for further changes to the legislation, resulting in the current Version H.

While Version H makes progress, further changes are necessary to achieve governmental efficiency and sound decision-making while, at the same time, encouraging and facilitating meaningful citizen participation. Citizen participation is always an important value under Alaska's constitution and laws, but it is especially important for decisions affecting land, water, and other resources in a region whose way of life is deeply intertwined with the natural environment. Alaska government agencies also have a special responsibility to work with Alaska Native tribes on a government-to-government basis, and BBNC encourages legislators to keep this in mind when considering the proposed legislation.

BBNC offers the following specific observations and recommendations regarding Version H of HB 77. As discussed below, while BBNC is encouraged by the fact that this new combined substitute is an improvement over prior versions of the bill, it nevertheless perpetuates several deficiencies from the earlier versions.

1. General Permits

Version H removes the "[n]otwithstanding any other provision of law" language that could be interpreted to mean activities approved by a general permit would not need to satisfy other provisions of law, and limits general permits to those activities already subject to permitting under AS 38.05 and AS 38.95 and that are not likely to cause "significant" or "irreparable" harm. This narrowing of the scope of the general permit authority is a welcome change. However, at the Senate Resources Committee hearing on Monday, March 10, 2014, DNR Deputy Director Wynn Menefee was unable to provide Senator Giessel an example of the types of activities that would cause "irreparable" harm (and thus not be subject to general permitting), and he acknowledged that certain activities that are a part of large development projects could be authorized by general permits under HB77. These admissions suggest that the contours of the general permit authority are not defined well enough in the bill. This raises the concern that piecemeal permitting strategies could be used to shield a broad range of activities on State lands from standard public notice and comment requirements. The bill should place more clear limits on the general permit authority sought by DNR.

2. Standing

At the earlier public forums, numerous people criticized HB77 for raising the threshold burden of standing required for persons to challenge DNR decisions. These provisions are unchanged in Version H and will limit who can challenge DNR decisions to those who can show a direct physical or financial detriment. Indeed, DNR Deputy Director Menefee openly acknowledged on Monday that the goal of these provisions is to limit citizens' ability to appeal or seek reconsideration of agency decisions. These changes will inappropriately insulate important DNR decisions from public oversight. The proposed standing provisions also run counter to prevailing Alaska Supreme Court principles of standing, which allow a

wider range of persons access to administrative and judicial review. Such review is a core provision of our system of checks and balances and is a highly valued public right. BBNC and its shareholders are wary of measures that would allegedly make government more efficient by restricting or limiting citizens' right to challenge government decisions and action. This is not good government, as it would allow flawed and unlawful decisions to evade appropriate review. Accordingly, these proposed changes should be revisited and either modified or struck.

3. Instream Flow Reservations under AS 46.15.145

Version H eliminates one of the biggest concerns in the prior versions of the legislation and maintains the current statutory language that allows a "person" to apply for instream flow reservations. The language further specifically defines "person" to include a "federally recognized tribe." These are all positive changes.

However, additional changes to the State's instream flow reservation program introduced by Version H are troubling. New language in section 42 mandates that all reservations granted be held by the State (as opposed to the applicants) and would not bestow a property right to the applicant. These changes are unfair in that they treat applicants for instream flow reservations differently than applicants for beneficial uses of water who are conferred a property right (section 42). These changes are also unnecessary because only a small percentage of instream flow reservations are filed by "persons," and so far DNR has never issued a reservation to a private applicant.

New language in section 42 of Version H would require anyone applying for an instream flow reservation to submit 5 years of hydrologic data in support of their application. This is a huge hurdle. This also suggests an additional unfairness in the bill. Anyone who is able to meet the new hydrologic data requirement and prove the need for the reservation deserves to receive a property interest that they can then individually protect.

The changes in Version H appear to be an effort to strongly discourage private applicants—a prohibition DNR tried, but failed, to specifically incorporate in the earlier version of HB 77. The Legislature should not do implicitly in this bill what it has already declined to do explicitly—make it impossible for private persons and entities to apply for instream flow reservations.

4. Criteria for Best Interest Findings for Water Reservations under AS 46.15.145

Version H provides criteria to guide DNR's public interest determinations for water reservations, and these criteria include economic, fish and game habitat, public health and access considerations. These criteria are helpful, and it is good that they will now be defined in statute. Noticeably missing, however, is a criterion for subsistence. It is not sufficient that there is a fish and game habitat criterion; the two are not the same. Subsistence encompasses social and cultural as well as habitat concerns. For this reason, subsistence has

unique seasonal, geographic, and generational dimensions that deserve independent consideration. One of BBNC's strategic priorities is to advocate for fish and subsistence protections. In accordance with this strategic priority, we strongly believe these statutorily enumerated criteria should include subsistence as a stand-alone consideration.

5. Best Interest Findings for Land Disposals

Multiple sections of Version H explicitly give DNR discretion as to whether it will make a preliminary best interest finding for any type of land disposal other than for oil and gas development. Preliminary best interest findings are helpful to the public's understanding as to why DNR is making the subject land disposals, and the agency often provides them for land disposals of all kinds. They are also helpful in that they provide the public an opportunity to provide public comment on the disposal decision. These changes suggest DNR intends to issue preliminary best findings less frequently. That is not a beneficial change as it will make it harder for the public to understand DNR's rationale for land disposals or otherwise participate in the decision-making process.

6. Temporary Water Use Authorizations under AS 46.15.155

Despite significant public disapproval voiced at the public forums about changes to the temporary water use authorization program, section 43 of Version H remains unchanged and allows DNR to issue an unlimited series of successive 5-year temporary water use permits for projects of all sizes and scopes. Senator McGuire voiced concern about the broad power this confers on DNR to allow projects to indefinitely use unlimited quantities of State water resources over long periods of time on a purportedly "temporary" basis without going through the water rights process. BBNC shares these concerns. The existing temporary water use program is extremely lax on users and includes no meaningful public participation. The changes in section 43 will solidify rather than address the problems with the program and insulate it from public participation even further. That is a mistake.

7. Chikuminuk Hydroelectric Feasibility Study Compatibility Determination

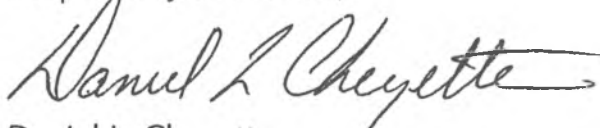
Sections 29 and 47 of Version H continue to include a finding that a feasibility study for a hydroelectric project in Wood-Tikchik State Park in the Bristol Bay region is not an incompatible use and continue to limit implementation of the Wood-Tikchik State Park management plan. While BBNC does not yet have a position on the project itself, we do feel strongly that a specific issue like this feasibility study should not be buried in legislation focusing primarily on other important topics. Including the compatibility determination in this bill means the topic will receive little, if any, independent debate or consideration. The issues surrounding the Chikuminuk provisions should be removed from this bill and considered separately.

Conclusion

BBNC appreciates the Legislature's changes and improvements in Version H as compared to earlier versions of HB77. Nevertheless, it is a work in progress, and BBNC would like to see further revisions consonant with the recommendations described above.

We appreciate the opportunity to comment on this legislation.

Respectfully submitted,



Daniel L. Cheyette
Associate General Counsel
Bristol Bay Native Corporation

cc: Senator Peter Micciche
Senator Click Bishop
Senator Lesil McGuire
Senator Anna Fairclough
Senator Hollis French
Senator Lyman Hoffman
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March 11, 2014

Senate Resources Committee

Senator Giessel, Chair

Alaska State Legislature

State Capitol,

Juneau, AK 99811

Dear Senator Giessel and Committee Members,

Southeast Alaska Fishermen's Alliance (SEafa) listened to the senate resource committee hearing on Monday March 10th when the changes to SCS CSHB 77 (FIN) were introduced. SEafa still is not comfortable with SCS CSHB 77 (FIN) as written. We sincerely appreciate the work and hearings that Senator Micciche and others did on this legislation. We also share the concerns that Senator McGuire mentioned during the hearing.

Southeast Alaska Fishermen's Alliance fully supports the revision where section one with the "Notwithstanding" language was removed. This retains ADF&G's statutory authority intact.

We believe support allowing a person or tribe to apply for water reservation rights but having the public agency hold them is a good compromise but we are concerned about how the backlog of applications are handled in the bill. While we understand that a particular system may have more of an immediate need/priority to be addressed but when a system or stream is being evaluated all permits applying for those water rights should be looked at concurrently with the date the applications were submitted taken into consideration.

Another concern SEafa has with the latest version is without providing definitions of some terms used in the bill, you are handling an incredible amount of power and judgment within a single individual, the commissioner of Department of Natural Resources. Particularly the definitions "unlikely", "significant" or "irreparable" should be defined or provide further clarification with intent language for what these terms should mean.

Thank you for considering our comments on this very complex legislation.

Sincerely,

A handwritten signature in black ink that reads "Kathy Hansen" followed by a long horizontal line.

Kathy Hansen
Executive Director