

**HB**

**274**

<TARGET><BILL>HB 274</BILL><SUBJECT>HB  
274</SUBJECT><COMM>HRES29</COMM></TARGET>



REPRESENTATIVE CATHY MUÑOZ

## SPONSOR STATEMENT HOUSE BILL 274

Since 2010, I have worked with a local non-profit and the State of Alaska to resolve a long-standing land exchange issue. Despite considerable effort to work within the Title 38 statutory framework, I have found that private land exchanges identified to be in the state's best interest are challenging to execute.

The most recent completed exchange involved state land in Skagway and federal land in Gustavus for the Falls Creek hydro project in 2006. Initial discussions between the National Parks Service and the Department of Natural Resources (DNR) began in 1980. The intent of House Bill 274 is to address the inherent inefficiencies under Title 38 private land exchanges and to help DNR in their ability to effectively manage state land resources.

The main changes made by House Bill 274 include:

- Exchange procedures will follow AS 38.05.035(e) decisions and AS 38.05.945 notice provisions and will follow state best interest findings.
- The decision can include the exchange of either the land estate or mineral estate without the existing restriction related to separate estates.
- When determining whether the exchange is of equal value, the restriction of only considering the land is removed.
- Removes the one year limitation on the validity of an appraisal.

House Bill 274 maintains the legislative review and approval for exchanges that exceed \$5 million in state land value or for exchanges other than of "approximate equal value."

Thank you for the opportunity to present this legislation and I appreciate your support.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 22, 2016

**SUBJECT:** Sectional Summary HB 274 (Work Order No. 29-LS0234E)

**TO:** Representative Cathy Muñoz  
Attn: Crystal Koeneman

**FROM:** Alpheus Bullard *LAB*  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that this sectional summary should not be considered an authoritative interpretation of the bill -- the bill itself is the best statement of its contents.

Section 1. Removes a reference in AS 38.05.030(c) to AS 38.05.090 which is repealed in sec. 13 of the bill.

Section 2. Adds two new subsections to AS 38.05.070. The first subsection permits the Department of Natural Resources (department) to extend certain existing land leases if it is in the best interest of the state and necessary while the department considers applications. The second subsection provides that the extensions are not subject to AS 38.05.035(e) and it requires public notice of a lease extension under the section.

Section 3. Applies existing notice standards to state land exchanges.

Section 4. Clarifies that in AS 38.05 the terms "state land" and "land" include shoreland and tideland.

Section 5. Amends AS 38.50.010 to add two new requirements: when the director disposes of state land or an interest in state land the disposal must be in the best interest of the state and the director must provide notice under AS 38.05.945.

Section 6. Adds three new subsections to AS 38.50.010 that establish procedures for the exchange of state land or an interest in state land and requires legislative review of exchanges valued at \$5,000,000 or more.

Section 7. Removes a requirement that the director, when negotiating a land exchange involving more than one party, "consider only the land and other consideration which the state would convey and receive if the exchange were executed."

Section 8. Removes an existing limitation, permitting the director to exchange or receive land or the mineral rights in the land separately, if the conveyance is authorized by the Constitution of the State of Alaska and applicable federal law.

Section 9. Amends AS 38.50.070 to provide that, unless waived, the appropriate state agency will continue to administer valid existing rights in land, or interests in land, conveyed under AS 38.50 and that revenue derived from existing rights in the land, or an interest in land, will continue to accrue to the state until the land is conveyed under AS 38.50.150.

Section 10. Changes the requirement that the director hold three public hearings concerning the exchange of land valued at more than \$5,000,000 to a requirement that the director hold at least one public meeting.

Section 11. Conforms AS 38.50.140 to changes made in secs. 6 and 13 (repeal of AS 38.50.020). Makes de minimus editorial changes.

Section 12. Clarifies that in AS 38.50, the terms "state land" and "land" include shoreland and tideland.

Section 13. Repeals AS 38.50.020, 38.50.040, 38.50.080(b), 38.50.090, 38.50.100, 38.50.110, 38.50.120(b), and 38.50.130.

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version: HB 274  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB 274-DNR-MLW-2-5-16  
Title: STATE LAND; EXCHANGES; LEASE  
EXTENSIONS  
Sponsor: MUNOZ  
Requester: House Resources Committee

Department: Department of Natural Resources  
Appropriation: Fire Suppression, 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)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates					
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
---------------------------	--	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2017) cost:** 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? 12/31/17

**Why this fiscal note differs from previous version:**

Initial version.
------------------

Prepared By: <u>Brent Goodrum, Director</u>	Phone: <u>(907)269-8625</u>
Division: <u>Mining, Land and Water</u>	Date: <u>02/05/2016 12:00 AM</u>
Approved By: <u>Mark Myers, Commissioner</u>	Date: <u>02/05/16</u>
Agency: <u>Department of Natural Resources</u>	

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

BILL NO. HB 274/A

### Analysis

DNR does not anticipate any fiscal impact from this legislation.

Section 1: Conforming language due to changes in AS 38.50.

Section 2: Adds two new subsections to AS 38.05.070. The first subsection permits DNR to extend certain existing land leases if the lessee is in good standing, and only once for a period of two years, while DNR considers applications for three specific purposes. The second subsection provides that the extensions are not subject to AS 38.05.035(e) but requires public notice of the lease extension.

Section 3: Applies existing AS 38.05.945 public notice standards to state land exchanges.

Section 4: Modifies the terms shorelands and tidelands to those currently used.

Section 5: Amends AS 38.50.010 to add two new requirements for determining best interest and noticing in AS 38.05.945 as well as modifying language about which estates can be exchanged.

Section 6: Adds three new sections to AS 38.50.010 that establish procedures for the exchange of state land or an interest in state land, including following the AS 38.05.035(e) process, and keeps the requirement for legislative review of exchanges valued at \$5M or more.

Section 7: Removes a requirement that the director, when negotiating a land exchange involving more than one party, "consider only the land and other consideration which the state would convey and receive if the exchange were executed."

Section 8: Removes an existing limitation, revising the statute in a way that permits the director to exchange or receive land or the mineral rights in the land separately, if the conveyance is authorized by the State Constitution and applicable federal law.

Section 9: Amends AS 38.50.070 to provide that, unless waived, the appropriate state agency will continue to administer valid existing rights in land, or interests in land, conveyed under AS 38.50 and that revenue derived from existing rights in the land, or an interest in land, will continue to accrue to the state until the land is conveyed under AS 38.50.150.

Section 10: Changes the requirement that the director hold three public hearings concerning the exchange of land valued at more than \$5M to a requirement that the director hold at least one public meeting.

Section 11: Conforming language in AS 38.50.140 to changes made in sections 6 and 13.

Section 12: Conforms the terms of shoreland and tideland to AS 38.05.965.

Section 13: Repeals AS 38.50.020, AS 38.040, AS 38.080(b), AS 38.090, AS 38.100, AS 38.110, AS 38.120(b), and AS 38.130

Regulations: DNR anticipates that passage of this legislation will require revisions to existing regulations at 11 AAC 67.200 - 67.280, to implement the Exchange of State Land provisions of Sections 2- 13, and repeal portions of those regulations made inconsistent with the revised statute. DNR will also be required to adopt new regulations in 11 AAC 58 to implement the lease extension provisions of Section 1. Costs of these efforts will be more than offset by savings in personal services cost resulting from the revisions made in this bill.

## Reasons for the Repeal Sections from AS 38.50

The general purpose of repealing language within these sections is to replace procedures for land exchanges with federal agencies, Native corporations, and private entities with ones that allow for exchanges to be conducted efficiently, similar to other disposals of interest decisions conducted by DNR. These land exchanges will now fall under the standard public notice and decision process requirements of the Alaska Lands Act (AS 38.05.945 and AS 38.05.035(e)) that are currently used for most state land disposals, including oil and gas leasing and land sales. Therefore, some sections regarding public notice and decision process that deviate from AS 38.05.945 and AS 38.05.035(e) are repealed.

**38.50.020 Value of properties exchanged.** The majority of this section was retained under AS 38.50.010, except the requirement that the state must receive land that is equal to or exceeds the appraised fair market value of the land exchanged by the state. The unintended consequence of this requirement, along with some other provisions of AS 38.50, has created challenges to complete exchanges when considering other values of public benefit that will not be able to be appraised. This problem is fixed by using the procedures similar to those used for municipal land exchanges, which require the state to receive land with approximate equal value of the land it is exchanging. Repealing the old requirement will allow the state to evaluate the value of the property together with other public benefits to ensure that the land and value received by the state equals or exceeds the value of the property relinquished.

**38.50.040 Land subject to exchange.** This section does not appear to have any functional use. Regardless of this statutory provision, the state does not have the legal authority to violate a covenant or restriction on title that prevents a disposal or land exchange.

**38.50.080(b) Prohibition against alienation of selection rights.** The state has already selected land under the Alaska Statehood Act and has no further ability to select lands, therefore this subsection is no longer applicable.

**38.50.090 Coordination with other state agencies.** For consistency, this is replaced with the requirements under AS 38.05.035(e) which includes a requirement to provide a summary of agency and public comment obtained as a result of contacts with other agencies and efforts taken by the department to solicit public response.

**38.50.100 Finding requirement as to alternatives.** This is replaced with the process described under AS 38.05.035(e) which requires a written determination that the exchange will best serve the interests of the state.

**38.50.110 Notice of proposed exchange.** This notice section is replaced with the requirements of AS 38.05.945, which is the standard for most other disposals, including oil and gas leases, land sales, material sales, and other leases. AS 38.50.110 contains different language from AS 38.05.945, in that it requires that the notice to contain all of the pertinent information regarding the land exchange, which has the effect of requiring publication of a very lengthy public notice. AS 38.05.945 allows supporting materials to be provided along with the notice that accomplish this same purpose.

**38.50.120(b) Public hearings.** Modifications to AS 38.50.120(a) changed public hearings to public meetings. Typically DNR holds public meetings instead of formal hearings. Therefore subsection (b) is no longer necessary to clarify hearing procedures.

**38.50.130 Report on proposed exchange.** This reporting requirement is duplicative of existing requirements for publication of a best interest finding, and it adds cost and complexity to the exchange process. The best interest decision will lay out the considerations used in determining the value of the properties, the value of the exchange and what the benefits are of the exchange.

ADOPTED

29-LS0234\E.1  
Bullard  
3/24/16

**AMENDMENT**

OFFERED IN THE HOUSE

TO: HB 274

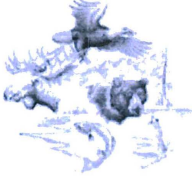
1 Page 4, line 28, through page 5, line 3:

2 Delete all material and insert:

3 **"\* Sec. 10.** AS 38.50.120(a) is amended to read:

4 (a) [THE COMMISSIONER MAY HOLD AS MANY PUBLIC HEARINGS  
5 AS IS CONSIDERED APPROPRIATE.] For an exchange of state land having an  
6 appraised or estimated fair market value of more than \$5,000,000, **the director**  
7 **[THERE] shall hold [BE] at least two public meetings before the exchange is**  
8 **submitted to the legislature for approval. Meetings under this subsection may be**  
9 **held telephonically, except at least [THREE PUBLIC HEARINGS IN] one meeting**  
10 **shall be held in person in a municipality [OR MORE MUNICIPALITIES] close to**  
11 **the state land proposed for exchange [BEFORE IT IS SUBMITTED TO THE**  
12 **LEGISLATURE FOR APPROVAL]."**

# Seth-De-Ya-Ah Corporation



Box 58056

Minto, AK 99758

(907) 798-7181 | Fax: (907) 798-7556

Toll Free: 1-866-798-7181

sethdeyaahcorp@gci.net



---

February 3, 2016

Representative Cathy Munoz  
Alaska State Capitol, Room 501  
Juneau, AK 99801

RE: Support for the Passage of HB 274

Dear Representative Munoz,

In a special meeting held on January 30, 2016, the Seth-De-Ya-Ah Corporation Board voted to support the passage of House Bill 274, relating to land exchanges.

Seth-De-Ya-Ah Corporation is the ANCSA village corporation for the federally recognized Native Village of Minto. The mission of Seth-De-Ya-Ah Corporation is two-fold: 1) to manage our land and affairs in a fiscally responsible manner to ensure a healthy and viable corporation and a reasonable and consistent return for our shareholders; and 2) to provide employment opportunities and training for, and to promote and retain the tradition, cultural values and customs of our shareholders and their descendants.

We consider the current law to be disadvantageous to the applicant which discourages private property owners, such as Seth-De-Ya-Ah Corporation, from making application. HB 274 would encourage private investment and economic development by making the application process much less onerous and the opportunity for exchange values much more equitable.

We urge the Legislature to pass HB 274 this legislative session and will make representatives from our Corporation available to assist you in this endeavor.

Sincerely,

Edna Riley

President of the Board of Directors

Cc: Representative David Talerico, House Resources Committee Co-Chair  
Representative Benjamin Nageak, House Resources Committee Co-Chair

---

# Minto Development Corporation

---

615 Bidwell Ave, Suite 405, Fairbanks AK 99701 • Phone: (907) 374-0968

February 3, 2016

Representative Cathy Munoz  
Alaska State Capitol, Room 501  
Juneau, AK 99801

RE: Support for the Passage of HB 274

Dear Representative Munoz,

In a special meeting held on January 30, 2016, the Minto Development Corporation Board voted to support the passage of House Bill 274, relating to land exchanges.

We consider the current law to be disadvantageous to the applicant which discourages private property owners, such as our parent corporation Seth-De-Ya-Ah Corporation, from making application. HB 274 would encourage private investment and economic development by making the application process much less onerous and the opportunity for exchange values much more equitable.

We urge the Legislature to pass HB 274 this legislative session and will make representatives from our Corporation available to assist you in this endeavor.

Sincerely,



Roxanne Frank  
President of the Board of Directors

Cc: Representative David Talerico, House Resources Committee Co-Chair  
Representative Benjamin Nageak, House Resources Committee Co-Chair

## Background on proposed land trade to provide land access to Point Bridget State Park

- Point Bridget State Park was established by statute in 1988. The statute recognized there were land access issues and authorized a purchase or exchange with the following:

***AS 41.21.182 Purchase or exchange authorized***

***If requested by an owner of land, the department may purchase or enter into an exchange under AS 38.50 if the purchase or exchange will improve access to the park, consolidate the ownership of land, or otherwise enhance the purposes of the park as expressed in AS 41.21.180. Land acquired by the department under this subsection becomes a part of the Point Bridget State Park.***

- There is currently no state land access to the main portion of Point Bridget State Park from the nearest road, the Glacier Highway.
- The public has accessed the main portion of the park from the Glacier Highway via a social trail that was in use before the park's creation. This trail (see dashed black line on attached map) traverses an open meadow system, part of which is located on private land owned by the Echo Ranch Bible Camp (ERBC).
- Developing a different trail that would avoid traversing private land is not practicable because of the topography and vegetation in the area.
- ERBC has on numerous occasions requested DNR to pursue a remedy to this situation through a land trade. The most recent request was received by the commissioner's office in July of this year. ERBC is not willing to sell either the land or a public easement to the state, leaving a land trade as the only realistic solution to this access issue.
- Previous attempts to accomplish a land trade have failed due to lack of funds as well as a lack of expertise and knowledge within the Division of Parks & Outdoor Recreation on how to accomplish a land trade according to AS 38.50.
- Land trades are very difficult to accomplish and require expertise from Division of Mining, Land & Water employees working in the title, survey, appraisal and RAD sections.
- Funds needed to accomplish trade:
  - 7100 --- 48K DNR personnel costs (survey, appraisal, reality services, negotiation, etc)
  - 7400 - 1.5K printing and production costs for maps, advertising and public notices, etc
  - 7300 - 10K appraisal and survey work

*Resource Assessment & Development*



# Fact Sheet



Division of Mining, Land & Water  
December 2008

## Title: State Land Exchanges

The state authority for land exchanges was created by the legislature in 1976, when it passed Alaska Statute 38.50. Soon after, regulation (11 AAC 67) further explained state land exchange procedures. The state has completed land exchanges that range in size from a small private inholding in a state park to a complex exchange involving hundreds of acres of land.

### ***Why does the state exchange land?***

Exchanges allow the state to consolidate its land holdings and create ownership and land use patterns that allow more effective management of the state's public land and programs.

### ***Who can be a party to an exchange?***

The state can exchange land with anyone. The most frequent participants in exchanges are federal agencies and native corporations. Usually, these exchanges are done to create more manageable land ownership patterns.

### ***How are the values of the exchanged properties established?***

The value of land exchanged is established by appraisers using standard and professional rules. The appraisers establish a fair market value for all land or interests to be included in the exchange. The appraisals may be used for up to one year after they have been approved by the Department of Natural Resources.

The value the state receives in exchange must be equal to or more than the fair market value of the state land exchanged. An exchange for less than the value of the state land can be made only if the Division of Mining, Land, & Water director determines that the total value of public benefits received in land or interest, plus the appraised fair market value is higher than the value of property in state exchanges.

The legislature reviews exchanges when the state receives less than appraised fair market value or where the fair market value of state land exceeds \$5,000,000.

### ***How can I apply for land exchange with the state?***

Submit an application to the regional office nearest the land being offered for exchange (offices are listed on the reverse side). The application must include proof of ownership of the land offered, and a description of the public benefit from the exchange. A \$100 filing fee must accompany the application.

### ***What happens next?***

If the exchange is between the state and one other party, and all of the land is within one region of the Department of Natural Resources (Northern, Southcentral, and Southeastern), and is an equal value land exchange, the appropriate regional office adjudicates the application. All other exchanges are adjudicated by the director's office of the Division of Mining, Land & Water in Anchorage.

### ***The basic procedure is as follows:***

1. The department reviews the exchange proposal and decides whether it is in the state's interest. A written response is sent within 60 days of receipt of the application.
2. If the department decides to go ahead with the exchange, a "preliminary land exchange agreement" is negotiated with the applicant. An agreement includes:
  - a) description of land owned by each party that is include in the proposal and any improvements on the land;
  - b) a description of the public benefit to be gained from the exchange;
  - c) a summary of appraisal, survey and cost responsibility;
  - d) a time table for exchange actions;

- e) a commitment by each party to examine its land and identify unauthorized entries;
  - f) a ban against new third party interests on the land to be exchanged.
3. Next, other state agencies review the proposal. After that, it is made available for public review, which may include public meetings.
  4. Because the state keeps the minerals for all land it sells or exchanges, it usually places a mineral closing order on the state land that is offered in exchange. That way, the party receiving the state land has full use of the land's surface.
  5. After public and agency review, if the proposal is still found to be in the state's best interest, a final exchange agreement is negotiated and executed. This agreement contains the final details of the exchange, including such things as the identification of any taxes and assessments owed on the property; easements, reservations, or other title encumbrances to be reserved in the final conveyance documents; and if applicable, a determination of the consistency of the proposal with the Alaska Coastal Management Program.

Department of Natural Resources  
Division of Mining, Land & Water  
Director's Office  
550 West 7<sup>th</sup> Ave., Suite 1070  
Anchorage, AK 99501-3579  
Phone: 907-269-8503  
Fax: 907-269-8403

Southcentral Regional Office  
550 West 7<sup>th</sup> Ave., 900-C  
Anchorage, AK 99501-3577  
Phone: 907-269-8552  
Fax: 907-269-8913

Southeast Regional Office  
400 Willoughby Avenue, 4<sup>th</sup> Floor  
Juneau, AK 99801  
Phone: 907-465-3400  
Fax: 907-586-2954

Northern Regional Office  
3700 Airport Way  
Fairbanks, AK 99709-4699  
Phone: 907-451-2705  
Fax: 907-451-2706

***For additional information contact:***



## The Trust Land Exchange

The Alaska Mental Health Trust / US Forest Service Land Exchange has been pursued since 2005. An Agreement to Initiate (ATI), for the exchange, was signed in June of 2015. Maps of the proposal are available by clicking on the link below. The September 4, 2012, land exchange package, including land selections, is the result of a collaborative effort facilitated by the Tongass Futures Roundtable. The exchange will be a value for value land exchange based on appraised values



(not based on acreage). The signing of the ATI was the beginning of a Federal process which will take several years to accomplish. This process includes review by the National Environmental Policy Act (NEPA), title and survey work, public notice, and the appraisal process. All these steps are outlined in Federal Statute.

The proposed exchange involves 18,000 acres of Trust land surrounding seven Southeast Alaska communities and offers a solution regarding use of these lands that is favorable to the communities, the State of Alaska, the federal government and The Trust.

### Benefits

- Preserve old growth timber along the Inside Passage
- Protect recreational and tourism opportunities near local communities
- Preserve watersheds adjacent to communities
- Create opportunity for The Trust to generate revenue to support its mission and serve its beneficiaries

For more information contact Paul Slenkamp, Senior Resource Manager, at 907.225.6618 or [paul.slenkamp@alaska.gov](mailto:paul.slenkamp@alaska.gov), or click [USFS-AMHT Proposed Land Exchange](#).