

ALASKA LEGISLATURE

1224

HOUSE and SENATE FINANCE COMMITTEE FILES,

1993-1994

298

SB

338

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/2/94

FURTHER:

DATE TURNED INTO OFFICE: 4-19-94

The Finance Committee considered **SENATE BILL NO. 338**

Issuance of revenue bonds for acquisition and construction of the Alaska Discovery Center for the Ship Creek Project in Anchorage; relating to a study of the feasibility and financial viability of the Alaska Discovery Center; relating to construction of the Alaska Discovery Center; efd.

and recommends:

replace with CS 5B 338 (FINANCE)
 or adopt previous CS ()
 attaches amendment(s)

same title
 new title
 technical title change (HB only)

adopts Letter of Intent

further referral to the

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
<u>DOR</u>	<u>2/22/94</u>	<u>0</u>	

Appropriation No Fiscal Note

DO PASS.

Tim Kelly

Steve Kim

OTHER RECOMMENDATIONS:

Best Sharp No-Rec

1. Irue Pearce - No Rec
 Co-Chair: Signature/Recommendation

2. Don No Rec
 Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 1

Bill Version: SB 338

(S) Publish Date: 3-2-94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL 1

Revision Date:	Dept. Affected: <u>Revenue</u>
Title: <u>An Act Relating to the Issuance of Revenue Bonds for the Alaska Discovery Center</u>	BRU: <u>Revenue Operations</u>
Sponsor: <u>Senate Labor and Commerce Committee</u>	Component: <u>Treasury Management</u>
Requestor: <u>Senate Labor and Commerce Committee</u>	COMPONENT SERIAL NO. <u>121</u>

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0	0				
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Changes in CSB 338 (etc) have no fiscal impact. This fiscal note is appropriate.

Estimate of current year (FY94) impact: \$ 0

3/1/94 date [Signature] Compt Aide (initial)

ANALYSIS: (Attach a separate page if necessary.)

The Department of Revenue believes it to be in the best interest of the State to have a thorough analysis of the project feasibility as required by this legislation. A qualified financial advisor should also review all bond and legal documents for proper disclosure of revenue sources and other credit issues. The analysis will be funded from bond proceeds.

Prepared by: <u>Laraine L. Derr, Deputy Commissioner</u>	Phone: <u>465-4880</u>
Division: <u>Treasury</u>	Date: <u>2/28/94</u>
Approved by Commissioner: <u>Darrel J. Rexwinkel</u>	Date: <u>2/28/94</u>
Agency: <u>Department of Revenue</u>	

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

4-19-94
SF 3/6
~~FR~~ 81

8-LS1761NO.4
Utermohle
4/19/94

Adopted

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 338(L&C)

BY SENATOR FRANK

Page 2, line 13:

Delete "of"

Insert "received by the corporation from"

Page 2, line 14, after "Center.":

Insert "Notwithstanding AS 42.40.630 and 42.40.640, the Alaska Railroad Corporation may not pledge, mortgage, or assign money, leases, revenue, agreements, assets, or property of the corporation to the payment of the bonds, except as expressly provided in this subsection."

Page 2, line 31, after "assets":

Insert "received by the corporation from the public or private entity that owns and operates the Northern Crossroads Discovery Center that are"

SENATE FINANCE
COMMITTEE #1
Amendment Number: #1
Bill Number: SB 338
Sponsor: FRANK Date: 19 APR 94
Logged In By: [Signature]

Kathy
2418

4-20-94

1) Leave as is

Sec. 1(a)

Approved

by

Sen

Kelly

per

Linda

2) on charge to

Sec 1(a)(1)(B)

AN ACT

Establishing the Alaska Railroad Corporation to manage and operate the Alaska Railroad; and providing for an effective date.

* Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature

finds that

(1) it is the policy of the state to

(A) provide safe, economical, and efficient transportation to residents, businesses, visitors, and military installations in the state;

(B) foster and promote the long-term economic growth and development of the state;

(C) develop and implement plans for a transportation network;

(D) foster and promote the development of the state's land and natural resources;

(E) ensure that the Alaska Railroad does not use direct appropriations to fund a particular freight operation if it can be demonstrated that the appropriation has placed privately owned and operated carriers in an unfair competitive position. Nothing herein shall affect the provisions of AS 42.40.220(b);

(2) the Alaska Railroad is an essential part of the state transportation network that may, unless preserved by state action, cease to be a transportation option in Alaska;

3-16-94
Technical Amendment
p. 1, line 7
Adopted. 8-LS1761\O

* Revision of technical
amend. to Sec. 1(a)(1)(B)
approved by Sen. Kelly
4/20/94
FJR

CS FOR SENATE BILL NO. 338(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 3/2/94
Referred: Finance

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the issuance of revenue bonds for acquisition and
2 construction of the Northern Crossroads Discovery Center for the Ship Creek
3 Landings Project; relating to a study of the feasibility and financial viability of
4 the Northern Crossroads Discovery Center; relating to construction of the
5 Northern Crossroads Discovery Center; and providing for an effective date."

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

7 * Section 1. (a) In furtherance of the state policy under sec. 1(a), ch. 153, SLA 1984 to
8 foster the long-term economic growth and development of the state, the Alaska Railroad
9 Corporation is authorized to issue revenue bonds in the principal amount of not more than
10 \$55,000,000 for the construction and acquisition of the Northern Crossroads Discovery Center
11 for the Ship Creek Landings Project, if the board of directors of the Alaska Railroad
12 Corporation determines after completion of the study conducted under sec. 2 of this Act that
13 the Northern Crossroads Discovery Center is feasible and financially viable. This section

(b)* (see above revision) 4/20/94 TK
Adopted

1 constitutes legislative approval of the issuance of bonds by the Alaska Railroad Corporation,
2 as required by AS 42.40.285.

3 (b) The Alaska Railroad Corporation may loan the proceeds from the sale of revenue
4 bonds authorized by this section to a public or private entity that the Alaska Railroad
5 Corporation considers appropriate to acquire, construct, and operate the Northern Crossroads
6 Discovery Center. The Alaska Railroad Corporation may enter into agreements, including
7 leases, with a public or private entity that the Alaska Railroad Corporation considers
8 appropriate to provide for and secure payment of a loan made from the proceeds from the sale
9 of the revenue bonds.

10 (c) The issuance of revenue bonds authorized by this section is subject to
11 AS 42.40.600 - 42.40.700, except that, notwithstanding AS 42.40.630, the bonds are special
12 nonrecourse obligations of the Alaska Railroad Corporation payable only from the revenues
13 and assets ^{received by the corporation from} of the public or private entity that owns and operates the Northern Crossroads
14 Discovery Center. *-notwithstanding etc. Amend #1*

15 * Sec. 2. The Alaska Railroad Corporation shall conduct a study of the feasibility and
16 financial viability of the proposed Northern Crossroads Discovery Center for the Ship Creek
17 Landings Project, if a private party, including a potential developer or lessee of the Northern
18 Crossroads Discovery Center, enters into an agreement with the Alaska Railroad Corporation
19 to pay the cost of the study. The Alaska Railroad Corporation shall select the person or firm
20 to conduct the study. Upon receipt of the completed study, the board of directors of the
21 Alaska Railroad Corporation shall determine whether the Northern Crossroads Discovery
22 Center is feasible and financially viable.

23 * Sec. 3. Before construction of the Northern Crossroads Discovery Center begins, the
24 Alaska Railroad Corporation shall require that the public or private entity authorized to design
25 and construct the Northern Crossroads Discovery Center post a payment and performance
26 bond in favor of the Alaska Railroad Corporation to assure completion of the Northern
27 Crossroads Discovery Center.

28 * Sec. 4. Each bond issued under sec. 1 of this Act shall contain on its face a statement
29 that

30 (1) the Alaska Railroad Corporation is not obligated to pay the bond or the
31 interest on the bond except from the revenue or assets ^{pledged} for the bond;

received by corporation etc.

1 (2) neither the faith and credit nor the taxing power of the State of Alaska or
2 of a political subdivision of the state is pledged to the payment of the bond; and

3 (3) the issuance of the bonds does not create a legal or moral debt of the State
4 of Alaska and payment of the bond is not directly or indirectly dependent upon an
5 appropriation by the Alaska State Legislature.

6 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

WOHLFORTH, ARGETSINGER, JOHNSON & BRECHT

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

900 WEST 5TH AVENUE, SUITE 600

ANCHORAGE, ALASKA 99501-2046

PETER ARGETSINGER
JULIUS J. BRECHT
SYNTHIA L. CARTLEDGE
CAROL L. GILEB
ROBERT M. JOHNSON
THOMAS P. KLUNNER
BRADLEY S. MEYER
JAMES A. SARAFIN
KENNETH E. VASSAR
ERIC E. WOHLFORTH

TELEPHONE
(907) 276-6601

TELECOPY
(907) 276-5093

March 16, 1994

BY FAX

Senate Finance Committee
State Capitol
Juneau, Alaska 99801

Re: Potential State liability for bonds issued pursuant to the terms of CS
for Senate Bill No. 338 (L&C) (Alaska Railroad Ship Creek Project)
Our File No. 5323/0601

Honorable Members of the Committee:

During this morning's meeting of the committee, Eric Wohlforth was asked whether the State of Alaska might be liable for the repayment of bonds authorized to be issued if the above-referenced bill were enacted. A similar question was asked of me when the bill was before the Labor and Commerce Committee. Following this morning's meeting of the Finance Committee, Mark LoPatin asked me whether the requirement in the bill for a feasibility study might lead to some liability of the State for the bonds. I am preparing this letter at Mr. LoPatin's request for the purpose of setting forth our views relating to potential State liability for bonds issued under the authorization of this bill. In brief, we do not believe the State would have any liability for the repayment of bonds issued under the terms of the bill in its present form.

Section 1 of the bill authorizes the issuance of bonds and describes the bonds that are authorized to be issued as "special nonrecourse obligations of the Alaska Railroad Corporation payable only from the revenues and assets of the public or private entity that owns and operates the Northern Crossroads Discovery Center." This language is clear. It authorizes the issuance of bonds that are only payable from the revenues and assets of the entity that owns and operates the Northern Crossroads Discovery Center. Any effort to issue bonds that are payable from any other assets (including assets of the State of Alaska) would be beyond the authority granted by this language, and any such bonds would be invalid. Without more, I believe this language would prevent any attempt to issue bonds

WOHLFORTH, ARGETSINGER,
JOHNSON & BRECHT

for which the State of Alaska could be held liable. However, there is more to the bill.

Section 4 of the bill requires that each bond issued under Section 1 contain on its face several statements, each of which strongly and plainly indicates that the bonds may not in any way pledge the assets of the State. Those statements are:

(1) the Alaska Railroad Corporation is not obligated to pay the bond or the interest on the bond except from the revenue or assets pledged for the bonds;

(2) neither the faith and credit nor the taxing power of the State of Alaska or of a political subdivision of the state is pledged to the payment of the bond; and

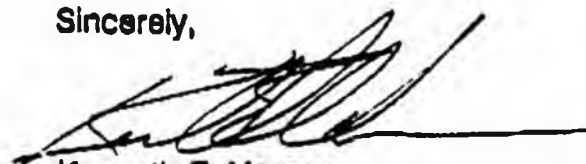
(3) the issuance of the bonds does not create a legal or moral debt of the State of Alaska and payment of the bond is not directly or indirectly dependent upon an appropriation by the Alaska State Legislature.

To my knowledge, these disclaimers are uniquely strong. It is difficult to imagine how they could be made stronger or clearer. A person who buys a bond with this language printed on the bond would be clearly informed that the State is neither legally nor morally obligated to use its assets to repay the bond.

The language of the bill describes, and only authorizes the issuance of, revenue bonds -- that is, bonds that are secured solely by the revenues of the project that it is issued to finance. It is possible to issue revenue bonds that do not obligate the State of Alaska, and the bonds authorized by this bill would be in that category. The requirement in the bill for a feasibility study, if it has any impact on their status, probably strengthens the argument that the bonds are revenue bonds. By requiring a feasibility study, the bill further emphasizes that the bonds are payable solely from revenues by requiring that there be a reasonable demonstration of the existence of such revenues before the bonds may be issued.

I hope this letter is helpful to the committee in its consideration of the bill. We are, of course, happy to assist further at your request.

Sincerely,



Kenneth E. Vassar

Lo Patin Lease
1st Nine Page

GROUND LEASE

THIS GROUND LEASE (herein called "this Lease") is made on the day executed by the last signatory hereto, by and between the ALASKA RAILROAD CORPORATION (herein called "Lessor"), a public corporation created pursuant to AS 42.40, whose mailing address is P.O. Box 107500, Anchorage, Alaska 99510-7500, and SHIP CREEK CROSSINGS DEVELOPERS, INC., an Alaska corporation (herein called "Lessee"), whose mailing address is 3000 Town Center, Suite 1000, Southfield, Michigan 48075.

Recitals

A. The Lessor has agreed to lease to Lessee approximately 37 acres of land located in the Alaska Railroad Anchorage Terminal Reserve on the south side of Ship Creek. The parcel is within the 120-acre area generally known as the Ship Creek Redevelopment which was the subject of a Request for Proposal issued by the Anchorage Economic Development Corporation in January, 1990. Up to 25 additional acres that are currently leased to the Municipality of Anchorage at Ship Creek Point may subsequently be added to the leased premises.

B. Lessee will act as a master developer for the property consistent with the terms of this Lease and a development agreement to be negotiated between Lessor and Lessee. Lessee's master development plan must consider the entire 120 acres which constitute the Ship Creek Redevelopment area, and Lessee will coordinate development within the leased premises with activities on the adjacent acreage.

C. Lessee is required under this Lease to bring substantial development projects to the property, which may include a hotel/conference center, tourist oriented specialty shops, commercial offices, a residential component, and public amenities such as a world class aquarium or planetarium.

D. The intent of Lessor in issuing this Lease is to develop new markets for both tourists and residents of Alaska, rather than relocating existing tenants and commercial enterprises already established in the Anchorage area.

ARTICLE 1

LEASED PREMISES AND TERM

1.01 Leased Premises. Lessor, for and in consideration of the rents, covenants and conditions hereinafter specified to be paid, performed and observed by Lessee, hereby leases to Lessee, and Lessee hereby leases from Lessor, the land situated in the Anchorage Recording District, Third Judicial District, State of Alaska, more particularly described on Schedule 1 attached to and for all purposes made a part of this Lease, together with all rights, easements, privileges, both subterranean and vertical, and appurtenances attaching or belonging to the described land, but subject to the reservation contained in paragraph 1.02 hereof (herein called the "Leased Premises").

This Lease is subject to certain existing leases and permits respecting the Leased Premises, as specified in Exhibit A. Two of such leases, Contract No. 4270 with Dresser Industries as lessee, and Contract No. 1664 with Consolidated Freightways as lessee, are being assigned by Lessor to Lessee concurrently with execution of this Lease. The land area within such two leases is included within the 37 acres described in Schedule 1. Upon expiration or earlier termination of each of such leases, the real property affected thereby will become a part of the Leased Premises and governed thereafter by the terms of this Lease. To the extent noted on Exhibit A, the other existing leases and permits may be terminated by Lessor, at Lessee's request, before June 1, 1992 and the affected property made available to Lessee.

The Leased Premises may be expanded after execution of this Lease, in the event Lessor and the Municipality of Anchorage complete certain on-going negotiations in a manner that makes a portion of the Municipality's Ship Creek Landing lease, Contract No. 5920 available to add to the Leased Premises. Lessor will exert good faith efforts to successfully conclude such negotiations. Lessor and Lessee agree that in such event, Schedule 1 shall be amended to include such additional acreage (currently estimated to be approximately 25 acres) and such property shall be governed by the terms of this Lease.

1.02 Reservation of Minerals. All oil, gas, coal, geothermal resources and minerals of whatever nature in or under the above-described land are excluded from the Leased Premises and reserved to Lessor. Notwithstanding the foregoing, Lessee shall have the right, subject to the terms of this Lease, to use earth materials on or in the above-described land to a depth not to exceed twenty (20) feet below the surface, and to move and recontour such materials on the Leased Premises. During the term of this Lease, Lessor shall not have the right to enter on the surface of the Leased Premises, without Lessee's prior consent, for the purpose of mining and/or extracting such oil, gas, coal, geothermal resources, or other minerals and shall not mine and/or extract the same by any means at a depth less than twenty-five (25) feet below the surface of the Leased Premises. If Lessor mines and/or extracts such oil, gas, coal, geothermal resources, or other minerals, the mining and/or extraction shall not interfere with Lessee's business and activities on the Leased Premises, parking or access to the Leased Premises.

1.03 Improvements Owned by Lessor. The following described improvements ("Lessor's improvements") are situated on and are a part of the Leased Premises and are and shall remain throughout the term of this Lease the property of the Lessor:

All fill, retaining walls, berms, earth contours, and all other below-surface improvements situated on the Leased Premises on the date of this Lease; excepting however, any utility service connections and any underground storage tank(s) on the Leased Premises or appurtenances to such tank(s).

Any subsurface improvements to the Leased Premises during the Lease Term shall become the property of Lessor (and included within the term "Lessor's Improvements") immediately upon installation, except underground storage

tank(s) (and their appurtenances) and utility service connections, which shall be and remain the sole property of Lessee. Any such subsurface improvements shall be eligible for rent credits pursuant to the criteria set forth in paragraph 2.04, regardless of their ownership under this paragraph 1.03.

Lessor is also the owner of certain trackage located on the Leased Premises, and shall remain the owner thereof regardless of any subsequent relocation, except as otherwise agreed.

1.04 Improvements Owned by Lessee. There are no above surface improvements on the Leased Premises which belong to Lessee at the commencement of this Lease. Lessee's improvements shall include any above surface improvement constructed or placed on the Leased Premises by Lessee (or Lessee's assigns and/or sublessees) during the term of this Lease ("Lessee's Improvements").

1.05 Lease Term. This Lease shall be and continue in full force and effect for a term of five (5) years (the "Lease Term") commencing as of March 1, 1992, and terminating on February 28, 1997, unless earlier terminated as provided in this Lease.

1.06 Option to Extend.

A. Lessee may, at Lessee's option, extend the term of this Lease for up to two additional lease terms not to exceed five (5) years each, subject to all the provisions of this Lease, including but not limited to provisions for adjustments to and variations in rent and the provisions of subparagraph B below.

Lessee may, at Lessee's election, assign this option in whole or in part at any time and from time to time to any one or more Qualified Subtenants, Assignees, or Mortgagees as those terms are hereinafter defined, and may give any such Subtenant, Assignee or Mortgagee, with or without such assignment, power of attorney to exercise such option.

B. Lessee's right to extend the Lease Term is subject to the following conditions precedent:

1. In order to exercise its option for the second 5-year term (the first extension period), Lessee must have accomplished development projects (evidenced by the issuance of certificates of occupancy during the original 5-year term to either Lessee, its sublessees and/or assigns) whose cumulative value is \$2 million, in addition to the development requirements contained in paragraph 4.01.C. In order to exercise its option for the third 5-year term (the second extension period), Lessee must have accomplished development projects (evidenced by the issuance of certificates of occupancy during the second 5-year term to either Lessee, its sublessees and/or assigns) whose cumulative value is \$5 million.

2. The Lease shall be in effect at the time notice of exercise is given and on the last day of the original Lease Term; and

3. Lessee shall not be in material default under any provision of this Lease at the time notice of exercise is given or on the last day of the term; and

4. Lessee shall have given Lessor written notice of its exercise of the option, which shall be irrevocable, not more than 365 days nor less than 90 days before the last day of the original Lease Term.

C. The phrase "Lease Term" as used in this Lease shall mean and refer to the original 5-year term hereof and any extended term (in the event Lessee exercises one or both of its option to extend). The phrase "extended term" is used from time to time herein to refer solely to either or both of the 5-year additional terms created if Lessee exercises the option provided under subparagraphs 1.06.A and B.

D. If during the course of this Lease Term or either of the extended terms, Lessee is prepared to commence construction on any of the development projects contemplated by this Lease, Lessor and Lessee agree to enter into good faith negotiations towards the execution of a new ground lease with either Lessee or its proposed assignee for that portion of the Leased Premises to be developed. It is anticipated that said ground leases shall not extend beyond two (2) successive thirty-five (35) years terms, it being understood that the extended term(s) in each instance shall be tailored to the specific projects and need not be the same term for each specific project.

1.07 Termination for Railroad Use. In accordance with Alaska Statute 42.40.285(4) (the Alaska Railroad Corporation Act), Lessor reserves the right to terminate this Lease or any successor lease as contemplated by paragraph 1.06.D at any time after thirty-five (35) years if the Premises are needed for railroad purposes, which are defined solely for purposes of this paragraph 1.07 as being for track right-of-way of customary width. This entire Lease (or entire successor lease) may not be terminated unless Lessor determines in good faith that so much of the Leased Premises are needed for railroad purposes that the purpose of this Lease (or specific successor lease) cannot reasonably be satisfied. In the event of such termination, Lessor shall compensate Lessee only for the fair market value of Lessee's Improvements as of the date Lessor gives Lessee notice of such termination. Fair market value of Lessee's Improvements shall be agreed to by the parties or determined as set forth in Article 2 of this Lease.

ARTICLE 2

RENTS

2.01 Rents. Lessee shall pay the following rents to Lessor in legal tender of the United States of America, without deduction and without notice or demand, net of all real property taxes, assessments, and other charges required to be paid by Lessee under this Lease with respect to the Leased Premises, and in equal monthly installments in advance on or before the first day of each calendar month during the Lease Term, with partial periods prorated on a daily basis. Both Initial Rent and Project Rent, as hereafter defined, are referred to elsewhere in this Lease as "Basic Rents."

Post-It™ brand fax transmittal memo 7671 # of pages ▶ 6

To	M.H.	From	PJ
Co.		Co.	
Dept.		Phone #	
Fax #		Fax #	

A. Initial Rent. Rent payable at the outset of this Lease and without any adjustment as hereinafter provided is known as "Initial Rent." For Lease years 1-5 inclusive, Initial Rent will be Thirty-Seven Thousand Dollars (\$37,000), subject to the provisions of paragraph 2.01.B below. The parties agree that this figure represents rent of \$1,000 per acre for the 37 net usable acres within the Leased Premises.

Initial Rent will be payable for the net usable land released from the Municipality of Anchorage's current Ship Creek Point lease and made available to Lessee for development as described in paragraph 1.01, commencing June 1, 1993 or at such later date as such land is so released from the municipal lease. The parties presently contemplate that less than twenty-five (25) acres will become so available. Initial Rent shall be payable at the rate of \$1,000 per acre until such time, if ever, any portion of this former municipal lease acreage becomes the site of a development project. Then and in such event, Project Rent will be payable in accordance with subparagraph 2.01.B.

B. Project Rent. Initial Rent as provided in subparagraph 2.01.A will be adjusted from time to time in the following manner with respect to any specific portion of the Leased Premises upon which a component of Lessee's development project becomes situated. After such adjustment, such rental will be known as "Project Rent."

1. Initial Rent will be paid at the rate set in subparagraph 2.01.A until the date a certificate of occupancy (or equivalent) is issued.

2. As of the date such certificate is issued, rent for that parcel will be adjusted to its fair market value as determined in accordance with paragraph 2.02 unless Lessor elects to apply one of the methods of rental computation set forth in subparagraph 2.01.B.3 below.

In the event Lessor and Lessee are unable to reach agreement regarding specific terms under subsection 3 immediately below, then fair market value rent under this subparagraph 2.01.B.2 shall become due and payable with respect to the specific project, effective as of the date the certificate of occupancy was issued.

3. Lessor's alternatives to fair market value are as follows:

a. Lessor may elect to receive a percentage of the project's gross revenues in addition to a base rent of seventy-five percent (75%) of fair market value rent as determined in accordance with paragraph 2.02. The percentage of gross revenues so received shall be negotiated on a project-specific basis.

b. In the alternative, Lessor may elect to participate as an investor/owner of a specific project and receive a negotiated percentage of net profits.

4. Once a specific project obtains a certificate of occupancy and begins accruing Project Rent, the area which is platted for (or otherwise agreed by Lessor and Lessee to be allocated to) such project shall be withdrawn from computation of Initial Rent regardless of whether Lessee

subleases the parcel or partially assigns its rights under this Lease to the project occupant. For purposes of this calculation, parcel sizes shall be rounded to the nearest half acre and Initial Rent shall accordingly be reduced pro rata.

2.02 Determination of Fair Market Value Rent: Periodic Readjustment. Whenever fair market value is used as an agreed measure of Project Rent (under paragraphs 2.01.B.2 or 3 above), it shall be determined as set forth below. In addition to the initial valuation, the fair market value rent shall be readjusted to current fair market value as of the beginning of each seven (7)-year period of the lease term pursuant to the same procedures. Notwithstanding anything to the contrary, Project Rent shall not be increased for any portion of the Leased Premises for which a certificate of occupancy has not been issued.

A. Appraisal of Fair Market Value of Fee Simple Interest. Lessor shall select an appraiser from a list of qualified appraisers compiled by Lessor and kept available for public inspection at Lessor's office. The appraiser shall determine, within sixty (60) days of Lessee's request and Lessor's selection of an appraiser pursuant to this subparagraph for an initial fair market valuation, or as of a date within one hundred eighty (180) days before or after the beginning of the applicable rent period for subsequent rental adjustments, the fair market value of the fee simple interest in the Leased Premises, based upon the use to which the land is or shall be put so long as the same is consistent with the master plan developed for the Leased Premises, unencumbered by this Lease, and including improvements owned by Lessor (identified in paragraph 1.03 of this Lease), and excluding improvements owned by Lessee (identified in paragraph 1.04 of this Lease). A copy of the appraisal report shall be provided by Lessor to Lessee at Lessee's request.

B. Fair Market Value Rent. The fair market value rent shall be the product derived from multiplying the fair market value of the Leased Premises (established in accordance with subparagraph 2.02.A) by TEN PERCENT (10 %).

C. Appeal and Arbitration of Rent Increases. In the event Lessee disagrees with an appraisal of fee simple value made by Lessor pursuant to subparagraph 2.02.A of this Lease, Lessee may appeal the value determined in such appraisal by notifying Lessor in writing of its demand for appeal within thirty (30) days of receiving Lessor's notice of change in rent. Lessee's failure to give said notice will constitute a waiver of Lessee's right to appeal a change in rent based on such appraisal, and Lessee shall be bound by Lessor's determination of the fair market value rent.

In the event Lessee so appeals a change in rent, Lessee shall, at its own expense, obtain an appraisal of the fair market value of the fee simple interest in the Leased Premises, based upon the use to which the land is or shall be put so long as the same is consistent with the master plan developed for the Leased Premises, unencumbered by this Lease, and including Lessor's Improvements and excluding Lessee's Improvements, and provide the same to Lessor no later than sixty (60) days after Lessee's notice of appeal is delivered to Lessor. Said appraisal shall be performed in accordance with Lessor's Standard Appraisal Instructions in effect at the time of appraisal.

If within fifteen (15) days after Lessor receives Lessee's appraisal, the parties are unable to agree as to the fair market value of the fee simple interest, Lessee may, at its option, refer the matter to arbitration in accordance with the procedures contained in Article 8 of this Lease by notifying Lessor in writing of its demand for arbitration within ten (10) days after expiration of the 15-day period provided above. Otherwise, Lessee shall have no right to refer a rent dispute to arbitration and shall be bound by Lessor's determination of rent under this Lease.

Notwithstanding the foregoing, Lessee shall pay all rent at the new rate provided in Lessor's notice of change in rent until the issue of fair market value of the Leased Premises is resolved.

D. Retroactive Rent. Until a change in Basic Rent is determined, Lessee shall pay the same Basic Rent as in the previous year. When the adjusted Basic Rent has been determined, and Lessee notified, such Basic Rent as so determined shall be due and payable to Lessor retroactive to the commencement of the lease year for which such rent adjustment is made, and any deficiency resulting from such rent adjustment shall be payable within thirty (30) days after the giving of such notice to Lessee. However, at no time will the Lessee be responsible for more than ninety (90) days of unbilled retroactive rent at the increased level.

2.03 Absolutely Net Rent. It is the purpose and intent of Lessor and Lessee that the Basic Rents established under this Lease shall be absolutely net to Lessor so that this Lease shall yield, net to Lessor, the rent specified herein during the term of this Lease, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Leased Premises, which may arise or become due during the Lease Term, except as otherwise expressly provided in this Lease, and except costs, expenses, and obligations (other than those to be borne by Lessee as herein provided) incurred by Lessor in connection with the sale or mortgaging of the Leased Premises, shall be paid by Lessee, and that Lessor shall be indemnified and held harmless by Lessee from and against the same.

2.04 Rent Credits.

A. Lessee's Rent Credits. Lessee shall be eligible for credit against its annual rent (whether Initial Rent or Project Rent) for certain expenditures that qualify for capitalization under Internal Revenue Code section 195. Such expenditures are subject to an annual maximum of \$150,000. Lessee may submit an itemization of such expenditures on a monthly basis (or less frequently, if Lessee so desires) together with such supporting documentation as Lessor may require, and receive payment of any amount by which the month's eligible expenditures exceed the rental due, subject however to the \$150,000 annual maximum credit.

B. Specific Project Rent Credit. Lessee's subleases (or partial assignments) to specific project owners or operators may grant such parties the right to seek rent credit for site-specific development costs that qualify as capital improvements under Internal Revenue Code section 195, amortized over the life of the individual sublease or assignment. Lessor shall require supporting documentation for any such credits requested. In no event shall

such credit exceed, on an annual basis, the annual Project Rent payable with respect to that project. Any excess qualifying costs (those not fully applied as credits in any one calendar year) may be carried over into subsequent rental periods until fully utilized by the sublessee/assignee.

C. Credit for Improvements of Common Benefit. Lessor and Lessee acknowledge that certain capital improvements may benefit all component development projects generally rather than any specific project. Such improvements include but are not limited to main streets/thoroughfares and pedestrian trails. The cost of such improvements may be eligible for rent credit to Lessee consistent with paragraph 2.04.A or, at Lessee's election, such costs may be charged to sublessees and allocated among all development projects on the basis of their respective pro rata shares of land area within the Leased Premises. In such event, the cost shall be amortized over the remaining term of each respective sublease. In no event shall any sublessee's credit under this subparagraph, taken together with any credit under paragraph 2.04.B, exceed that sublessee's annual Project Rent, but any unused qualifying costs may be carried over until fully utilized. Lessor shall require supporting documentation for any such credits requested.

D. Improvements Funded by Public Monies. Notwithstanding the foregoing, in no event will rent credit be allowed for any improvements to the extent the same are funded by grants or other public monies unless such funds are in the form of loans at market equivalent interest rates.

2.05 Public Amenity Development. The parties contemplate the inclusion of one or more "public amenity" projects within the Leased Premises, such as a planetarium or aquarium. Such projects cannot reasonably be expected to be produce net revenue, yet they enhance the overall development and the business opportunities of individual projects. Ownership and management of such amenity projects shall be decided by Lessor and Lessee on a case-by-case basis and may be vested in separately established non-profit corporations. Any parcel devoted to such amenity projects shall continue to accrue Initial Rent at the rate set in paragraph 2.01 unless a higher rate is charged as rent by Lessee to the sublessee. In the latter event, Lessor shall receive fair market value rent for such parcel under paragraph 2.02. As to such projects for which Lessee does not receive rent greater than the Initial Rent, Lessee shall be paid a development fee by Lessor equivalent to five percent (5%) of Lessee's development costs. Lessor shall require supporting documentation for such costs prior to paying any such development fee.

ARTICLE 3

QUIET ENJOYMENT

Subject to the other leases and permits described in paragraph 1.01, upon timely payment by Lessee of all of such rents and other payments required to be paid by Lessee under this Lease, and upon full and faithful observance and performance by Lessee of all of its covenants contained in this Lease, and so long as such observance and performance continues, Lessee shall peaceably hold and enjoy the Leased Premises during the Lease Term and any extended term(s) without hindrance or interruption by Lessor or anyone lawfully claiming by, through, or under Lessor.

ARTICLE 4

LESSEE'S COVENANTS

4.01 Special Covenants of Lessee.

A. Lessee shall act as master developer of the Leased Premises and accomplish an integrated mixed-use commercial development pursuant to the terms of this Lease and a development agreement as described in subparagraph 4.01.B. Such development shall occupy various portions of the Leased Premises on a sublease or partial assignment basis, subject to the other terms of this Lease.

B. In order to obtain \$5.5 million previously appropriated by the Alaska State Legislature for the redevelopment of the Leased Premises, Lessor and Lessee must execute a development agreement (the "Development Agreement") which is approved by the Anchorage Economic Development Corporation and the Municipality of Anchorage not later than April 30, 1992. Lessee shall diligently and in good faith negotiate the terms of the Development Agreement with Lessor and failure to enter into the Development Agreement may, at Lessor's discretion, be cause for termination of this Lease.

C. The previously mentioned legislative appropriation requires private investment commitments of not less than \$5.5 million and the Development Agreement shall so provide. In addition, Lessee is required by this Lease to diligently pursue such commitments (and any others it may obtain) to a final result of the issuance of certificate(s) of occupancy for development projects on the Leased Premises totalling not less than \$7.0 million within three (3) years of the effective date of this Lease.

D. It is Lessor's desire to encourage public participation in the development process to the extent that no party's competitive position is compromised and no privileged or proprietary information is released. Lessee shall actively solicit public comment regarding each proposed component part of its development on the Leased Premises to the extent reasonably possible, consistent with this philosophy. Lessee is not, however, required to conduct public hearings or follow any other specific procedures, and failure to obtain a public consensus as to any individual project shall not be cause for abandonment of that project, nor shall it constitute default under this Lease.

4.02 Taxes, Assessments and Charges.

A. Lessee shall pay, not less than ten (10) days before they become delinquent, all real property taxes, assessments, special assessments or other charges of every description for which the Leased Premises, or any improvement thereon or any use thereof, are now or during the Lease Term may be assessed or become liable, whether made by governmental authority or by any public utility or community service company, and whether assessed to or payable by Lessor or Lessee, subject to Lessee's option to pay in installments hereinafter provided. Such taxes and assessments include, but are not limited to, any increased real property tax resulting from any classification of the Leased Premises during the Lease Term to a higher use. Payments of real property taxes and assessments due during the first and last years of the

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

True

DATE: 2/22/94

FURTHER: Finance

Date of 5-Day Notice: 2/24/94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/2/94

L&C Committee considered SB 338

Issuance of revenue bonds for acquisition and construction of the Alaska Discovery Center for the Ship Creek Project in Anchorage relating to a study of the feasibility and financial viability of the Alaska Discovery Center; relating to construction of the Alaska Discovery Center; efd.

and recommends: **and recommends it be replaced with**

replace with CS SB 338 (L&C)

- same title
- new title
- technical title change (HB only)

attaches amendment(s) **and report it back as follows**

adopts _____ Letter of Intent

further referral to the _____

- do pass
- do not pass
- no recommendation
- individual recommendations

Φ EN

FISCAL NOTE INFORMATION

SB&CS

Department	Date	Zero	Fiscal
DEPT. OF REVENUE	2/24/94		✓

Department	Date	Zero	Fiscal

- Appropriation No Fiscal Note
- Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

- ② *Rep. A. M. Sharp NR*
- ② *Rep. ... NR*
- ② *Rep. ... NR*
- ② *Rep. ... NR*

① Tom Kelly - Do Pass
Chair: Signature and Recommendation

S B

3 3 9

HFIN

FILE

(11)

Date Referred: May 3, 1994

HOUSE COMMITTEE REPORT FURTHER REFERRALS:

Date of Committee Action: 5/7/94

The FINANCE Committee considered:

CSSB 339(RES)(efd fld)

CS FOR SENATE BILL NO. 339(RES)(efd fld) MANAGEMENT OF STATE LAND AND RESOURCES

"An Act relating to the management and disposal of state land and resources; relating to certain remote parcel and homestead entry land purchase contracts and patents."

RECOMMENDATIONS: be replaced with HCS CSSB 339 (Fin) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) DOR, 2/28/94

zero fiscal note _____

zero fiscal note(s) _____

SIGNING-DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Richard Larson</i>	X				
<i>Richard Foster</i>	X	<i>Mark Hankey</i>		X	
		<i>Larry Martin</i>		X	
		<i>John Hoffman</i>		X	
		<i>Paul Gussendorf</i>		X	
		<i>Tom Threlkitt</i>		X	
		<i>Jan Brown</i>			X

Richard Larson

CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: SB 339
(S) Publish Date: 2-28-94

Revision Date: Original Dept Affected: Natural Resources
Title: "Title 38 Revision" BRU: ALL
Component: ALL
Sponsor: Governor
Requestor: _____ Component Serial No. ALL

Expenditures/Revenues		(Thousands of Dollars)					
	FY95	FY96	FY97	FY98	FY99	FY00	
OPERATING EXPENDITURES							
PERSONAL SERVICES							
TRAVEL							
CONTRACTUAL							
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
GRANTS, CLAIMS							
MISCELLANEOUS							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	
CHANGE IN REVENUES (1004)*	100.0	100.0	100.0	100.0	100.0	100.0	

FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1006 GF/MHTIA							
Other							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	

Changes in CS SB 339 (RES) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.
4/2/94 date [Signature] Comte Aide (initial)

Estimate of any current year (FY94) cost: \$ None

POSITIONS							
FULL-TIME	0	0	0	0	0	0	
PART-TIME	0	0	0	0	0	0	
TEMPORARY	0	0	0	0	0	0	

ANALYSIS: (Attach a separate page if necessary)
Bill would lower administrative costs for Division of Land (deletes duplicative land bank, travel to hold lotteries at remote sites, special procedures for set net sites/aquatic farmsites, loopholes that let ex-lessees transfer site cleanup costs to state, enforcement of reconveyance restrictions on remote parcels/homesteads). It would increase revenue by ensuring fair market value for most state land sales and leases under AS 38.05.070-.105, and at least some rental payment to hold homesites/homestead entry permits.
*Revenue of \$100.0 depends on maintaining current level of staffing in FY95.

Prepared by: Jerry Gallagher, Legislative Liaison Phone: 465-2400
Division: Commissioner's Office Date: 1-Feb-94
Approved by Commissioner: [Signature] Date: 1-Feb-94
Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

WALTER J. HICKEL
GOVERNOR



P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 25, 1994

339

*The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making amendments to the Alaska Land Act, also referred to as Title 38.05. The bill also makes other amendments to the same title.

The Alaska Land Act dictates how the Department of Natural Resources manages state land. Since 1959, this set of statutes has been added to and amended so that it now exceeds 180 pages in length. This past summer, I asked Commissioner Noah to review the Alaska Land Act to recommend changes that would bring greater efficiency to the management of state lands without sacrificing public involvement in land use decisions. This legislation is the result of that effort.

This legislation will result in increased delivery of state government services to the citizens of Alaska at no additional costs. It will streamline procedures for mining and land actions, clarify definitions for agriculture, allow greater flexibility for managing our forests, provide for exchange of native allotments located within state park units, and make other changes necessary for cost effective and sound land management.

This legislation is not intended to be a comprehensive overhaul of the Alaska Land Act, but rather the first step in a process that will continue to review the requirements of law, the needs of Alaskans, and the cost effective operation of government. I look forward to working with you to assure your prompt consideration and passage of this bill.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel".

Walter J. Hickel
Governor

Date: March 1, 1994

Prepared By: Department of Natural Resources

Contact: Jerry Gallagher 465-2400

Neil Johannsen 762-2600

Senate Bill 339 and House Bill 515 relate to the management of state land and resources and to certain remote parcel and homestead entry land purchase contracts and patents. The bill amends or repeals provisions in AS 38 to simplify and clarify them, and to provide greater efficiency in the management of state land and resources.

Sections 1 through 7 of the bill would amend AS 38.04.020 to delete the land disposal bank for potential state land sales, recast the land bank as a land disposal program, revise planning and classification requirements, and make appropriation requests for land disposals discretionary by the commissioner of the Department of Natural Resources (DNR). Currently, existing AS 38.04.020 requires the land bank to have at least 500,000 acres classified and available for disposal into private ownership. That statute also requires an annual report on the status of the land bank and mandates that the commissioner annually submit an appropriation request to the legislature to administer surveys and disposals of land. The land bank system is outdated because regional land use plans have now classified over 2,000,000 acres of state land for disposal. Section 35 of the bill repeals existing AS 38.04.020(c),

(f), (j), and (k), the requirements of which have become unnecessary due to the amount of land now classified for disposal. Section 8 of the bill makes a conforming amendment to AS 38.04.021(b)(1).

Sections 9 and 10 of the bill amend existing AS 38.04.030 and AS 38.04.035 to simplify the methods that DNR can use to design state land disposals. Section 9 amends existing AS 38.04.030 by authorizing DNR to develop additional disposal programs by regulation. A program established by regulation would have to provide for competitive disposal at no less than fair market value, but would not necessarily have to conform to existing programs in AS 38.

Section 10 amends AS 38.04.035 by making a fair market value return to the state mandatory, rather than discretionary, when state land is conveyed to private parties, unless a conveyance for less than fair market value is specifically authorized by statute or regulation.

Section 11 of the bill amends existing AS 38.05.035(b)(9) to allow DNR to reconvey substitute land for state land that is subject to a pending Native allotment application. This amendment is designed to give DNR the ability to relocate Native allotment claims from state parks and recreation areas to less sensitive areas. Existing AS 38.05.035(b)(9) only allows the reconveyance of land wrongfully

conveyed by the federal government to the state, such as land subject to Native use and occupancy predating state selection. The amendment is intended to allow DNR to take advantage of a 1992 amendment to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1617(c), which authorizes the relocation of pending Native allotment claims to substitute state land with the commissioner of DNR's concurrence.

Sections 13 and 14 of the bill delete from existing AS 38.05.055 and AS 38.05.057(a) the requirement that a purchaser appear in person at a lottery or auction for state land. In Chambers v. State, No. 3AN-88-4634 CI (1989), that requirement was held to violate the equal protection clause of the Constitution of Alaska because it discriminates between local and non-local residents. Section 12 of the bill amends existing AS 38.05.050 to remove the requirement that the lottery or auction be held in a community near the land to be disposed. Such a decision would, instead, be discretionary. Section 35 of the bill repeals existing AS 38.05.057(g) and AS 38.05.057(j), which are premised on the existing requirements in AS 38.05.050, AS 38.05.055, and AS 38.05.057(a) that are being deleted. Section 32 of the bill amends AS 38.09.010(g) to remove language related to personal appearance at a lottery and local site for a lottery.

In addition, sec. 14 of the bill deletes a provision of AS 38.05.057(a) that requires the commissioner of DNR to consult

with the municipal assessor before determining the purchase price for state land located in that municipality. Because the appraisal required by existing AS 38.05.840 gives the commissioner an accurate valuation, the consultation requirement is unnecessary.

Section 15 of the bill repeals and reenacts AS 38.05.069(e) (2). Existing AS 38.04.069(e) (2) defines "approximate vicinity," a term that is not used elsewhere in existing AS 38.05.069, the agricultural preference right statute. The bill would replace "approximate vicinity" with a definition of "adjacent," a term that is used elsewhere in that statute.

Changes made by secs. 16 through 18 and sec. 35 of the bill eliminate special procedures for leasing setnet and aquatic farming sites contained in existing AS 38.05.082, 38.05.083, and 38.05.856. Sections 29 and 35 revise the public notice requirements of existing AS 38.05.945 accordingly, by repealing AS 38.05.945(a) (5) and (6) and amending AS 38.05.945(d). Section 16 amends existing AS 38.05.082(b), which requires DNR to award set net leases between two or more competing applicants on the basis of a complex analysis of the "most qualified applicant." This procedure is highly dependent on DNR's ability to make factual determinations as to each applicant's tenure in the fishery, present ability to utilize the location to its maximum potential, and "other factors relevant to the equitable assignment of the disputed area." The amendment would replace this procedure with the options of either a public

auction under AS 38.05.075(a) or, if only one application is received and the value of the lease is \$5,000 a year or less, a negotiated lease under AS 38.05.070(b). In secs. 3 and 5, ch. 27, SLA 1991, the legislature amended AS 38.05.082(b), effective January 1, 1997, regarding language that refers to DNR land use plans. Section 34 of the attached bill clarifies that the changes in the bill regarding new procedures for determining the qualifications of setnet lease applicants, contained in sec. 16 of the bill, do not affect the changes made to AS 38.05.082(b) by secs. 3 and 5, ch. 27, SLA 1991.

In sec. 18 of the bill, AS 38.05.083 is repealed and reenacted to set out aquatic farm and hatchery site leasing procedures. In the repeal and reenactment, many of the existing permit provisions in AS 38.05.856 are moved to AS 38.05.083 as leasing provisions. AS 38.05.856 is repealed by sec. 35 of the bill. Section 35 of the bill also repeals existing AS 38.05.855, which requires DNR to identify and propose sites for aquatic farms and hatcheries, and AS 38.05.946(b), which requires DNR to hold public hearings on those proposed sites. The purpose of these changes is to bring the leasing of setnet and aquatic farming sites into conformity with the procedures governing other state land uses. Section 36 of the bill makes clear that the changes made to existing AS 38.05.083 and 38.05.856 by secs. 18 and 34 of the bill do not impair the legal rights of a person who holds a permit under those statutes.

Section 19 of the bill repeals and reenacts AS 38.05.090 to make a lessee of state land responsible for returning a former leasehold to a marketable condition. The amendment would also provide for the automatic vesting of title in the state of any personal property, buildings, or fixtures that are not removed by the lessee within a specified time. Under the existing statute, a lessee who leaves buildings or personal property on state land when a lease expires is not subject to any penalty and is not responsible for the costs of restoring the property to a condition suitable for subsequent leasing. The changes made by sec. 19 would address this statutory deficiency.

Sections 20 and 21 of the bill give the commissioner of DNR new authority regarding the sale of state timber. A new statute, AS 38.05.117, would permit the commissioner of DNR, after making a best interests determination, to sell timber that will quickly lose substantial economic value or perpetuate insect or disease epidemics unless salvaged. Cases of damage due to insects, disease, or fire, or when the land is to be cleared of timber and converted to some nonforest use, often fall outside of the normal five-year sale schedule mandated by AS 38.05.113 and the limitations on sales set out in AS 38.05.115. This new section providing for salvage sales would exempt those sales from the limitations of AS 38.05.113 and, in certain circumstances, from the limitations of AS 38.05.115. The amendment made by sec. 21 of the bill would permit the commissioner of DNR to negotiate timber sales

in certain areas if the commissioner finds that the specified circumstances "will exist" within two years, and adds, as a circumstance: "that timber will lose substantial economic value due to insects, disease, fire, or land use conversion."

Section 22 of the bill amends existing AS 38.05.180(c) to remove restrictions on DNR's ability to delay an oil and gas lease sale for more than 90 days after the sale's scheduled date in the five-year oil and gas leasing schedule submitted annually to the legislature. Under the existing statute, an oil and gas lease sale may be delayed only for a maximum of 90 days after the last day of the calendar quarter for which the sale was scheduled. After that time, the sale must be delayed until the sale has again appeared in the annual five-year leasing schedules submitted to the legislature for two calendar years. Although the purpose of the 90-day restriction was to prevent arbitrary delays in lease sales, that has not been shown to be a problem. The Department of Natural Resources has concerns that administrative appeals and court challenges to lease sales might cause the 90-day limit to be exceeded. Also, DNR might wish to extend the comment period for a lease sale beyond 90 days to facilitate unique needs of residents in the area. For instance, the comment period might otherwise occur during peak subsistence hunting or fishing seasons. The amendment would delete the 90-day restriction to accommodate unavoidable delays, while still allowing for timely scheduling of lease sales. Timely scheduling of future sales is important in

encouraging development.

Section 23 of the bill amends existing AS 38.05.185(a) to eliminate overly broad provisions allowing land to be closed to mining. The existing statute allows DNR to determine which state land should be closed to mining or mineral entry. The commissioner of DNR must first find that mining would be incompatible with significant surface uses of the land. Although not defined in AS 38.05, the term "mining" generally refers to the activities and operations involved in extracting, processing, and marketing minerals. "Mining" presupposes the existence of valid mining rights under mining claims or leases. Existing AS 38.05.185(a) is overly broad because it allows land to be closed to mining without provision for valid existing mining rights. The existing statute could be viewed as effecting a "taking" of valid mining rights, since it authorizes a mineral closure without requiring an eminent domain action or providing for compensation; it may therefore run afoul of AS 37.05.170 and art. IX, sec. 13, of the Alaska Constitution. The amendment would provide that land may be closed to location under AS 38.05.185 - 38.05.275, which would prevent the acquisition of new mining rights, thus avoiding these potential pitfalls.

Section 24 amends existing AS 38.05.190(a) to clarify the qualifications for mining claim ownership by aliens and foreign corporations. Under the existing statute, an alien at least 18 years old from a country that grants "like privileges" to United

States citizens may acquire or hold exploration and mining rights. A corporation in which more than 50 percent of the stock is owned or controlled by aliens whose country does not grant reciprocal rights to United States citizens may not acquire or hold exploration and mining rights. However, determinations of which countries grant "like privileges" to United States citizens have never been made or enforced in any consistent manner due to the number and complexity of mining laws worldwide. The federal mining laws, upon which Alaska laws were initially based, allow an alien to form a domestic corporation that would be qualified to obtain mining rights, without inquiry into "like privileges." The Alaska laws governing the acquisition and holding of oil and gas rights also do not inquire into "like privileges." Amending AS 38.05.190(a) to delete these requirements would be consistent with modern business practices, similar federal laws, and state laws affecting other types of mineral rights.

The bill makes several changes regarding mining operations. Section 35 of the bill repeals AS 38.05.207 in its entirety. That statute requires a production license for every mining operation. This provision was added in 1982 in an effort to resolve issues arising under sec. 6(i) of the Alaska Statehood Act. In Trustees for Alaska v. State, 736 P.2d 324 (Alaska 1987), AS 38.05.207 was held not to satisfy the Statehood Act provision and the existing rent and royalty measures in AS 38.05.211 and AS 38.05.212 subsequently were enacted. The production license requirement in

AS 38.05.207 is thus outmoded and serves no public purpose at this time.

Section 25 of the bill would repeal and reenact AS 38.05.211(d) to simplify the adjustments to be made in the annual rental amounts due on mining claims and leases. The existing statute requires the rental amounts to be adjusted every 10 years based on changes in the consumer price index for Anchorage. This statutory adjustment would most likely result in odd rental amounts that would make calculating, accounting, and collection more difficult. Additionally, adjusting rental amounts only at 10-year intervals could result in large changes at one time. The repeal and reenactment would allow rent adjustments to be made whenever the change in the consumer price index for all urban consumers in the Anchorage area equals or exceeds \$5, and would restrict the change to multiples of \$5. Both DNR and the mining claim or lease owners would appear to be better served if changes can be made more often, and in smaller increments than at cumulative 10-year intervals. The amendment also more clearly identifies the consumer price index on which changes are to be based.

Section 26 of the bill amends AS 38.05.255 to provide a more workable surface use authorization for mine millsites. The existing statute requires a millsite permit for millsites and tailings disposal. Millsites and tailings disposal sites involve large, long-term structures such as mills, dams, and tailing

impoundments, often constructed or installed at considerable expense. However, the term "permit" traditionally refers to an authorization to use land for a limited purpose, with the authorization revocable at the will of the grantor of the permit. A permit does not accommodate the realistic needs of a mining project, which requires long-term surface occupancy and some certainty of continuance if the authorization is maintained in good standing. A prudent operator would obviously be reluctant to invest the large amounts of capital and time necessary for a major mining project if the millsite authorization could be revoked without cause at any time. The amendment substitutes "lease" for "permit" in AS 38.05.255 and provides other conforming changes relating to that change of term. A lease provides for use of the land for a definite period of time if the leasehold is maintained in good standing. A lease generally requires good cause and notice for cancellation. The amendment also exempts millsite leases from the requirements of AS 38.05.070 - 38.05.105, which govern leases not for the extraction of natural resources. Those statutes require competitive bidding as the disposal method. A millsite lease, however, should not be competitively bid since there will almost always be only one party, the mine operator, applying for a particular tract for a millsite lease, and the characteristics of each mine probably will not generate more than one or two acceptable millsite tracts for disposal. Instead, the bill requires the commissioner of DNR to adopt regulations establishing appropriate procedures and annual rent amounts for millsite leases.

Section 27 of the bill amends existing AS 38.05.265 to eliminate the failure to file a lease application within a prescribed period of time as grounds for abandonment of a mining claim. In areas open to mining only under lease, a person who locates a mining claim first must record the certificate of location with DNR under AS 38.05.205(a). DNR then issues a public notice of the proposed mining lease and mails a lease application to the locator. The locator of the mining claim is required to return the lease application within 90 days after receipt of it. Under existing AS 38.05.265, if a lease applicant fails to file the application within 90 days after receipt, the mining claims included within the proposed lease area are abandoned. The 90-day deadline for return of the lease application appears to be for the purpose of issuing a lease timely after the required public notice, so that the notice is not "stale" when the lease is finally issued. However, if the application is not timely filed, the notice period could be repeated without the severe penalty of loss of the mining applicant's leasehold property rights. Under this bill, an applicant would still be prohibited from mining the claims, except for testing or sampling purposes, until a lease is issued and other filing requirements are met.

Section 28 of the bill amends AS 38.05.850(a) to clarify that the use of revokable permits is allowable to authorize certain uses of limited value.

Sections 30, 31, and 33 of the bill amend existing AS 38.08.030, 38.08.040, and AS 38.09.030, respectively, to increase fees for the use of homesites and homesteads before patent, to defray DNR's administrative costs. Existing AS 38.08.030(b) sets a maximum \$10 application fee for the use of a homesite. Existing AS 38.09.030(a) limits the application fee for homesteads to \$5 per acre. These minimal fees presently paid by permittees for the use of state land do not even cover DNR's administrative costs. This proposal would amend AS 38.08.030(b) by increasing the fee for new homesite applications to the maximum of \$25 set out in AS 38.05.057(d), and would amend AS 38.08.040(a) to establish a \$100 annual fee to receive and hold a homesite permit before patent. AS 38.09.030(a) would be amended to increase the application fee for homesteads to \$20 per acre if the land is not classified as agricultural. The fee increases would apply only to new applications filed after the effective date of this bill. Section 36 of the bill makes clear that the new requirement in AS 38.08.040 for payment of an annual rental fee for a homesite entry permit does not apply to a person who was issued a permit under that statute's existing guarantee that the \$10 "application fee is the sole rent chargeable on the permit for its duration."

In addition, secs. 30 and 31 make amendments to clarify that homesite entry permits are issued under lottery procedures in AS 38.05.057(e), (f), and (h). Under DNR regulations, lottery procedures apply to issuance of the permits, but AS 38.05.057 and

AS 38.08 are not clear regarding the applicable procedures.

Section 35 of the bill would repeal existing AS 38.09.050(d) and (e), which prohibit the sale of homesteads for five years after the issuance of patent and the subdivision of homesteads for either five or 10 years after patent, depending on whether the land was purchased under AS 38.09.090. Section 38 of the bill would prohibit DNR from including the conditions of former AS 38.05.078(d) (prohibiting sale or subdivision of the parcel for 10 years after purchase) in a remote parcel purchase contract issued after the effective date of this bill. This section also would require DNR to amend a remote parcel or homestead purchase contract or patent issued before the effective date of the bill if the holder of the contract or patent pays (1) the administrative costs of the amendment, and (2) the difference between the land's fair market value before and after the conditions on the land are removed. The latter requirement is proposed because the fair market value of remote parcel land and homestead entry land sold by the state under existing law has been reduced by 50 percent to account for the conditions in AS 38.05.078 and AS 38.09.050. Removal of the conditions under secs. 34 and 37 of the bill is designed to increase revenue from state land sales and to allow private landowners greater use of the land.

Section 37 of the bill, and its immediate effective date (sec. 39 of the bill), allow for timely adoption of regulations needed to

implement the changes made by the bill. Section 40 of the bill provides for an effective date of July 1, 1994 for the remainder of the bill.

In addition to the changes described above, numerous "housekeeping" amendments are contained in many sections of the bill.

Brief Description of CSSB 339

CSSB 399 amends the Alaska Land Act, Title 38, to increase the delivery of services through a less cumbersome set of procedures. It speeds and improves various sections for land actions, mining, forestry and state parks.

Since 1959, Title 38 has grown long and complicated, and is now nearly 200 pages in length. This bill is not a total overhaul of Title 38, but offers greater efficiency while not sacrificing public involvement. Further work to improve Title 38 is now underway.

A brief sectional analysis of Senate Bill 339 follows:

Sections 1-8 creates a streamlined land disposal program.

Section 9-10 designs new land disposal programs more efficient for DNR to manage and for the public to understand.

Section 11 authorizes the commissioner of DNR to do certain reconveyences to trade Native allotments out of state conservation units such as state parks.

Sections 12-14 allows for persons to purchase state lands without being present at a lottery or auction, which was found to violate the equal protection clause of our constitution.

Section 15 deals with a technical problem, offering a definition of "adjacent" for purposes of disposals and appraisals.

Section 16 requires state land leaseholders to return a property to a marketable condition, by removing personal property - often buildings and "junk."

Section 17-18 allows the commissioner of DNR to reach a finding that certain timber stands can lose substantial value because of insects, fire and disease and to then quickly sell that timber, by passing long, cumbersome bureaucratic processes.

Section 19 amends 38.05.180(c) to remove restrictions on DNR's ability to delay an oil and gas sale for more than 90 days after the sale date. Appeals and court action can cause the 90 day limit to be exceeded.

Section 20 amends 38.05 to eliminate overly broad provisions allowing land to be closed to mining, even closing land with existing valid mining claim rights.

Section 21 clarifies mining claim ownership by aliens or foreign corporations. Now, only foreign corporations or foreign citizens from countries offering "like privileges" can own claims in Alaska, yet determinations on which countries offer this has never been done by the U.S. Government or the State of Alaska.

Section 22 simplifies adjustments to be made in the annual rental amounts due on mining claims and leases. This amendment to 38.05.211 more clearly identifies the consumer price index on which changes are to be based.

Sections 23-24 simplifies mining leasing procedures and creates more modern terms for annual rents, leases and restrictions.

Section 25 creates more reasonable terms for miners to file lease paperwork without sudden termination of their claim rights.

7
Sections 26-34 increases fees for homesites and homesteads before patent, to defray DNR's administrative costs, clarifies homesite entry and lottery procedures. These sections are basicly "housekeeping" amendments on "homesite" laws.

A M E N D M E N T

Adopted

OFFERED IN THE HOUSE

TO: CSSB 339(RES)(efd fld)

517194

Page 1, line 3, after "patents":

Insert "; and providing for an effective date"

Page 16, after line 1:

Insert a new bill section to read:

"* Sec. 34. Notwithstanding AS 41.21.120 - 41.21.125, within Township 10 North, Range 1 East, Seward Meridian, the commissioner of natural resources may

(1) convey a property interest in land to the Alaska Railroad Corporation for the purpose of realigning the railroad in conjunction with the relocation of the Seward Highway, provided that the property interest conveyed must be equivalent to that conveyed to the state-owned railroad under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982) and shall be held and managed by the Alaska Railroad Corporation under AS 42.40;

(2) grant a 300 foot wide highway easement to the Department of Transportation and Public Facilities for the relocated Seward Highway;

(3) grant a 100 foot wide utility easement to Chugach Electric Association, Inc., for the relocation of the 115 kilovolt electric transmission line (Federal Power Commission project no. 2170, AA-39417, and ADL 32417) and the electric distribution line (A-029885) located within the Chugach State Park."

Re-number the following bill section accordingly.

Page 16, after line 9:

Insert new bill sections to read:

"* Sec. 36. Except for sec. 35 of this Act, this Act takes effect July 1, 1994.

* Sec. 37. Section 35 of this Act takes effect immediately under AS 01.10.070(c)."

AMENDMENT

2

failed

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSSB 339(RES)(efd fld)

Page 9, line 15 through line 23:

Delete all material.

Page 9, line 27 - 28:

Delete ", or will exist within two years."

AMENDMENT 3

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSSB 339(RES)(efd fld)

Page 9, line 17, after "making a":

Delete "determination"

Insert "written finding"

3A

Adopt

Page 9, line 18, after "state":

Insert " and that the loss of substantial economic value cannot be
practicably mitigated by other means"

3B1

failed

Page 9, line 22 through line 23:

Delete all material.

3B2

failed

SB

339

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/21/94

FURTHER:

DATE TURNED INTO OFFICE: 4-25-94

The Finance Committee considered **SENATE BILL NO. 339**

"An Act relating to the management of state land and resources; relating to certain remote parcel and homestead entry land purchase contracts and patents; and providing for an effective date."

and recommends:

- replace with _____ CS _____ (FINANCE)
- or adopt previous _____ CS SB 339 (RES)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DNR	2/1/94	<input checked="" type="checkbox"/>	

Rev. 100-07

Appropriation No Fiscal Note

DO PASS.

George Arko

OTHER RECOMMENDATIONS:

Steve Kim No Recommendation
Bob Meyer NR

1. _____
 Co-Chair: Signature/Recommendation

2. _____
True Lance - 10/2/94
 Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 1

STATE OF ALASKA
1994 LEGISLATIVE SESSION

I Bill Version: SB 339
(S) Publish Date: 2-28-94

Revision Date: Original Dept Affected: Natural Resources
Title: "Title 38 Revision" BRU: ALL
Component: ALL
Sponsor: Governor
Requestor: _____ Component Serial No. ALL

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1004)*	100.0	100.0	100.0	100.0	100.0	100.0

FUND SOURCE	(Thousands of Dollars)						
1002 Federal Receipts							Changes in <u>CS SB 339 (RES)</u> reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate. <u>4/2/94</u> _____ date Comte Aide (initial)
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1006 GF/MHTIA							
Other							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	

Estimate of any current year (FY94) cost: \$ None

POSITIONS	FY95	FY96	FY97	FY98	FY99	FY00
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
 Bill would lower administrative costs for Division of Land (deletes duplicative land bank, travel to hold lotteries at remote sites, special procedures for set net sites/aquatic farmsites, loopholes that let ex-lessees transfer site cleanup costs to state, enforcement of reconveyance restrictions on remote parcels/homesteads). It would increase revenue by ensuring fair market value for most state land sales and leases under AS 38.05.070-.105, and at least some rental payment to hold homesites/homestead entry permits.
 *Revenue of \$100.0 depends on maintaining current level of staffing in FY95.

Prepared by: Jerry Gallagher, Legislative Liaison Phone: 465-2400
 Division: Commissioner's Office Date: 1-Feb-94
 Approved by Commissioner: _____ Date: 1-Feb-94
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

SB 339

Date: March 1, 1994

Prepared By: Department of Natural Resources

Contact: Jerry Gallagher 465-2400

Neil Johannsen 762-2600

Senate Bill 339 and House Bill 515 relate to the management of state land and resources and to certain remote parcel and homestead entry land purchase contracts and patents. The bill amends or repeals provisions in AS 38 to simplify and clarify them, and to provide greater efficiency in the management of state land and resources.

Sections 1 through 7 of the bill would amend AS 38.04.020 to delete the land disposal bank for potential state land sales, recast the land bank as a land disposal program, revise planning and classification requirements, and make appropriation requests for land disposals discretionary by the commissioner of the Department of Natural Resources (DNR). Currently, existing AS 38.04.020 requires the land bank to have at least 500,000 acres classified and available for disposal into private ownership. That statute also requires an annual report on the status of the land bank and mandates that the commissioner annually submit an appropriation request to the legislature to administer surveys and disposals of land. The land bank system is outdated because regional land use plans have now classified over 2,000,000 acres of state land for disposal. Section 35 of the bill repeals existing AS 38.04.020(c),

(f), (j), and (k), the requirements of which have become unnecessary due to the amount of land now classified for disposal. Section 8 of the bill makes a conforming amendment to AS 38.04.021(b)(1).

Sections 9 and 10 of the bill amend existing AS 38.04.030 and AS 38.04.035 to simplify the methods that DNR can use to design state land disposals. Section 9 amends existing AS 38.04.030 by authorizing DNR to develop additional disposal programs by regulation. A program established by regulation would have to provide for competitive disposal at no less than fair market value, but would not necessarily have to conform to existing programs in AS 38.

Section 10 amends AS 38.04.035 by making a fair market value return to the state mandatory, rather than discretionary, when state land is conveyed to private parties, unless a conveyance for less than fair market value is specifically authorized by statute or regulation.

Section 11 of the bill amends existing AS 38.05.035(b)(9) to allow DNR to reconvey substitute land for state land that is subject to a pending Native allotment application. This amendment is designed to give DNR the ability to relocate Native allotment claims from state parks and recreation areas to less sensitive areas. Existing AS 38.05.035(b)(9) only allows the reconveyance of land wrongfully

conveyed by the federal government to the state, such as land subject to Native use and occupancy predating state selection. The amendment is intended to allow DNR to take advantage of a 1992 amendment to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1617(c), which authorizes the relocation of pending Native allotment claims to substitute state land with the commissioner of DNR's concurrence.

Sections 13 and 14 of the bill delete from existing AS 38.05.055 and AS 38.05.057(a) the requirement that a purchaser appear in person at a lottery or auction for state land. In Chambers v. State, No. 3AN-88-4634 CI (1989), that requirement was held to violate the equal protection clause of the Constitution of Alaska because it discriminates between local and non-local residents. Section 12 of the bill amends existing AS 38.05.050 to remove the requirement that the lottery or auction be held in a community near the land to be disposed. Such a decision would, instead, be discretionary. Section 35 of the bill repeals existing AS 38.05.057(g) and AS 38.05.057(j), which are premised on the existing requirements in AS 38.05.050, AS 38.05.055, and AS 38.05.057(a) that are being deleted. Section 32 of the bill amends AS 38.09.010(g) to remove language related to personal appearance at a lottery and local site for a lottery.

In addition, sec. 14 of the bill deletes a provision of AS 38.05.057(a) that requires the commissioner of DNR to consult

with the municipal assessor before determining the purchase price for state land located in that municipality. Because the appraisal required by existing AS 38.05.840 gives the commissioner an accurate valuation, the consultation requirement is unnecessary.

Section 15 of the bill repeals and reenacts AS 38.05.069(e) (2). Existing AS 38.04.069(e) (2) defines "approximate vicinity," a term that is not used elsewhere in existing AS 38.05.069, the agricultural preference right statute. The bill would replace "approximate vicinity" with a definition of "adjacent," a term that is used elsewhere in that statute.

Changes made by secs. 16 through 18 and sec. 35 of the bill eliminate special procedures for leasing setnet and aquatic farming sites contained in existing AS 38.05.082, 38.05.083, and 38.05.856. Sections 29 and 35 revise the public notice requirements of existing AS 38.05.945 accordingly, by repealing AS 38.05.945(a) (5) and (6) and amending AS 38.05.945(d). Section 16 amends existing AS 38.05.082(b), which requires DNR to award set net leases between two or more competing applicants on the basis of a complex analysis of the "most qualified applicant." This procedure is highly dependent on DNR's ability to make factual determinations as to each applicant's tenure in the fishery, present ability to utilize the location to its maximum potential, and "other factors relevant to the equitable assignment of the disputed area." The amendment would replace this procedure with the options of either a public

auction under AS 38.05.075(a) or, if only one application is received and the value of the lease is \$5,000 a year or less, a negotiated lease under AS 38.05.070(b). In secs. 3 and 5, ch. 27, SLA 1991, the legislature amended AS 38.05.082(b), effective January 1, 1997, regarding language that refers to DNR land use plans. Section 34 of the attached bill clarifies that the changes in the bill regarding new procedures for determining the qualifications of setnet lease applicants, contained in sec. 16 of the bill, do not affect the changes made to AS 38.05.082(b) by secs. 3 and 5, ch. 27, SLA 1991.

In sec. 18 of the bill, AS 38.05.083 is repealed and reenacted to set out aquatic farm and hatchery site leasing procedures. In the repeal and reenactment, many of the existing permit provisions in AS 38.05.856 are moved to AS 38.05.083 as leasing provisions. AS 38.05.856 is repealed by sec. 35 of the bill. Section 35 of the bill also repeals existing AS 38.05.855, which requires DNR to identify and propose sites for aquatic farms and hatcheries, and AS 38.05.946(b), which requires DNR to hold public hearings on those proposed sites. The purpose of these changes is to bring the leasing of setnet and aquatic farming sites into conformity with the procedures governing other state land uses. Section 36 of the bill makes clear that the changes made to existing AS 38.05.083 and 38.05.856 by secs. 18 and 34 of the bill do not impair the legal rights of a person who holds a permit under those statutes.

Section 19 of the bill repeals and reenacts AS 38.05.090 to make a lessee of state land responsible for returning a former leasehold to a marketable condition. The amendment would also provide for the automatic vesting of title in the state of any personal property, buildings, or fixtures that are not removed by the lessee within a specified time. Under the existing statute, a lessee who leaves buildings or personal property on state land when a lease expires is not subject to any penalty and is not responsible for the costs of restoring the property to a condition suitable for subsequent leasing. The changes made by sec. 19 would address this statutory deficiency.

Sections 20 and 21 of the bill give the commissioner of DNR new authority regarding the sale of state timber. A new statute, AS 38.05.117, would permit the commissioner of DNR, after making a best interests determination, to sell timber that will quickly lose substantial economic value or perpetuate insect or disease epidemics unless salvaged. Cases of damage due to insects, disease, or fire, or when the land is to be cleared of timber and converted to some nonforest use, often fall outside of the normal five-year sale schedule mandated by AS 38.05.113 and the limitations on sales set out in AS 38.05.115. This new section providing for salvage sales would exempt those sales from the limitations of AS 38.05.113 and, in certain circumstances, from the limitations of AS 38.05.115. The amendment made by sec. 21 of the bill would permit the commissioner of DNR to negotiate timber sales

in certain areas if the commissioner finds that the specified circumstances "will exist" within two years, and adds, as a circumstance: "that timber will lose substantial economic value due to insects, disease, fire, or land use conversion."

Section 22 of the bill amends existing AS 38.05.180(c) to remove restrictions on DNR's ability to delay an oil and gas lease sale for more than 90 days after the sale's scheduled date in the five-year oil and gas leasing schedule submitted annually to the legislature. Under the existing statute, an oil and gas lease sale may be delayed only for a maximum of 90 days after the last day of the calendar quarter for which the sale was scheduled. After that time, the sale must be delayed until the sale has again appeared in the annual five-year leasing schedules submitted to the legislature for two calendar years. Although the purpose of the 90-day restriction was to prevent arbitrary delays in lease sales, that has not been shown to be a problem. The Department of Natural Resources has concerns that administrative appeals and court challenges to lease sales might cause the 90-day limit to be exceeded. Also, DNR might wish to extend the comment period for a lease sale beyond 90 days to facilitate unique needs of residents in the area. For instance, the comment period might otherwise occur during peak subsistence hunting or fishing seasons. The amendment would delete the 90-day restriction to accommodate unavoidable delays, while still allowing for timely scheduling of lease sales. Timely scheduling of future sales is important in

encouraging development.

Section 23 of the bill amends existing AS 38.05.185(a) to eliminate overly broad provisions allowing land to be closed to mining. The existing statute allows DNR to determine which state land should be closed to mining or mineral entry. The commissioner of DNR must first find that mining would be incompatible with significant surface uses of the land. Although not defined in AS 38.05, the term "mining" generally refers to the activities and operations involved in extracting, processing, and marketing minerals. "Mining" presupposes the existence of valid mining rights under mining claims or leases. Existing AS 38.05.185(a) is overly broad because it allows land to be closed to mining without provision for valid existing mining rights. The existing statute could be viewed as effecting a "taking" of valid mining rights, since it authorizes a mineral closure without requiring an eminent domain action or providing for compensation; it may therefore run afoul of AS 37.05.170 and art. IX, sec. 13, of the Alaska Constitution. The amendment would provide that land may be closed to location under AS 38.05.185 - 38.05.275, which would prevent the acquisition of new mining rights, thus avoiding these potential pitfalls.

Section 24 amends existing AS 38.05.190(a) to clarify the qualifications for mining claim ownership by aliens and foreign corporations. Under the existing statute, an alien at least 18 years old from a country that grants "like privileges" to United

States citizens may acquire or hold exploration and mining rights. A corporation in which more than 50 percent of the stock is owned or controlled by aliens whose country does not grant reciprocal rights to United States citizens may not acquire or hold exploration and mining rights. However, determinations of which countries grant "like privileges" to United States citizens have never been made or enforced in any consistent manner due to the number and complexity of mining laws worldwide. The federal mining laws, upon which Alaska laws were initially based, allow an alien to form a domestic corporation that would be qualified to obtain mining rights, without inquiry into "like privileges." The Alaska laws governing the acquisition and holding of oil and gas rights also do not inquire into "like privileges." Amending AS 38.05.190(a) to delete these requirements would be consistent with modern business practices, similar federal laws, and state laws affecting other types of mineral rights.

The bill makes several changes regarding mining operations. Section 35 of the bill repeals AS 38.05.207 in its entirety. That statute requires a production license for every mining operation. This provision was added in 1982 in an effort to resolve issues arising under sec. 6(i) of the Alaska Statehood Act. In Trustees for Alaska v. State, 736 P.2d 324 (Alaska 1987), AS 38.05.207 was held not to satisfy the Statehood Act provision and the existing rent and royalty measures in AS 38.05.211 and AS 38.05.212 subsequently were enacted. The production license requirement in

AS 38.05.207 is thus outmoded and serves no public purpose at this time.

Section 25 of the bill would repeal and reenact AS 38.05.211(d) to simplify the adjustments to be made in the annual rental amounts due on mining claims and leases. The existing statute requires the rental amounts to be adjusted every 10 years based on changes in the consumer price index for Anchorage. This statutory adjustment would most likely result in odd rental amounts that would make calculating, accounting, and collection more difficult. Additionally, adjusting rental amounts only at 10-year intervals could result in large changes at one time. The repeal and reenactment would allow rent adjustments to be made whenever the change in the consumer price index for all urban consumers in the Anchorage area equals or exceeds \$5, and would restrict the change to multiples of \$5. Both DNR and the mining claim or lease owners would appear to be better served if changes can be made more often, and in smaller increments than at cumulative 10-year intervals. The amendment also more clearly identifies the consumer price index on which changes are to be based.

Section 26 of the bill amends AS 38.05.255 to provide a more workable surface use authorization for mine millsites. The existing statute requires a millsite permit for millsites and tailings disposal. Millsites and tailings disposal sites involve large, long-term structures such as mills, dams, and tailing

impoundments, often constructed or installed at considerable expense. However, the term "permit" traditionally refers to an authorization to use land for a limited purpose, with the authorization revocable at the will of the grantor of the permit. A permit does not accommodate the realistic needs of a mining project, which requires long-term surface occupancy and some certainty of continuance if the authorization is maintained in good standing. A prudent operator would obviously be reluctant to invest the large amounts of capital and time necessary for a major mining project if the millsite authorization could be revoked without cause at any time. The amendment substitutes "lease" for "permit" in AS 38.05.255 and provides other conforming changes relating to that change of term. A lease provides for use of the land for a definite period of time if the leasehold is maintained in good standing. A lease generally requires good cause and notice for cancellation. The amendment also exempts millsite leases from the requirements of AS 38.05.070 - 38.05.105, which govern leases not for the extraction of natural resources. Those statutes require competitive bidding as the disposal method. A millsite lease, however, should not be competitively bid since there will almost always be only one party, the mine operator, applying for a particular tract for a millsite lease, and the characteristics of each mine probably will not generate more than one or two acceptable millsite tracts for disposal. Instead, the bill requires the commissioner of DNR to adopt regulations establishing appropriate procedures and annual rent amounts for millsite leases.

Section 27 of the bill amends existing AS 38.05.265 to eliminate the failure to file a lease application within a prescribed period of time as grounds for abandonment of a mining claim. In areas open to mining only under lease, a person who locates a mining claim first must record the certificate of location with DNR under AS 38.05.205(a). DNR then issues a public notice of the proposed mining lease and mails a lease application to the locator. The locator of the mining claim is required to return the lease application within 90 days after receipt of it. Under existing AS 38.05.265, if a lease applicant fails to file the application within 30 days after receipt, the mining claims included within the proposed lease area are abandoned. The 90-day deadline for return of the lease application appears to be for the purpose of issuing a lease timely after the required public notice, so that the notice is not "wasteful" when the lease is finally issued. However, if the application is not timely filed, the notice period could be repeated without the severe penalty of loss of the mining applicant's leasehold property rights. Under this bill, an applicant would still be prohibited from mining the claims, except for testing or sampling purposes, until a lease is issued and other filing requirements are met.

Section 28 of the bill amends AS 38.05.850(a) to clarify that the use of workable permits is allowable to authorize certain uses of limited value.

Sections 29, 31, and 33 of the bill amend existing AS 38.08.030, 38.08.040, and AS 38.09.030, respectively, to increase fees for the use of homesites and homesteads before patent, to defray DNR's administrative costs. Existing AS 38.08.030(b) sets a maximum \$10 application fee for the use of a homesite. Existing AS 38.08.030(a) limits the application fee for homesteads to \$5 per acre. These minimal fees presently paid by permittees for the use of state land do not even cover DNR's administrative costs. This proposal would amend AS 38.08.030(b) by increasing the fee for new homesite applications to the maximum of \$25 set out in AS 38.08.037(d), and would amend AS 38.08.040(a) to establish a \$100 application fee to receive and hold a homesite permit before patent. AS 38.09.030(a) would be amended to increase the application fee for homesteads to \$20 per acre if the land is not classified as agricultural. The fee increases would apply only to new applications filed after the effective date of this bill. Section 29 of the bill makes clear that the new requirement in AS 38.05.049 for payment of an annual rental fee for a homesite entry permit does not apply to a person who was issued a permit under the statute's existing guarantee that the \$10 "application fee is the sole rent chargeable on the permit for its duration."

In addition, secs. 30 and 31 make amendments to clarify that homesite entry permits are issued under lottery procedures in AS 38.05.057(e), (f), and (h). Under DNR regulations, lottery procedures apply to issuance of the permits, but AS 38.05.057 and

AS 38.09 are not clear regarding the applicable procedures.

Section 35 of the bill would repeal existing AS 38.09.050(d) and (e), which prohibit the sale of homesteads for five years after the issuance of patent and the subdivision of homesteads for either five or ten years after patent, depending on whether the land was purchased under AS 38.09.090. Section 38 of the bill would prohibit DNR from including the conditions of former AS 38.09.050(d) (prohibiting sale or subdivision of the parcel for 10 years after purchase) in a remote parcel purchase contract issued after the effective date of this bill. This section also would allow the DNR to amend a remote parcel or homestead purchase contract issued before the effective date of the bill if the holder of the contract or patent pays (1) the administrative costs of the amendment, and (2) the difference between the land's fair market value before and after the conditions on the land are removed. The latter requirement is proposed because the fair market value of remote parcel land and homestead entry land sold by the state under existing law has been reduced by 50 percent to account for the conditions in AS 38.05.078 and AS 38.09.050. Removal of the conditions under secs. 34 and 37 of the bill is designed to increase revenue from state land sales and to allow private landowners greater use of the land.

Section 39 of the bill, and its immediate effective date (sec. 39 of the bill), allow for timely adoption of regulations needed to

implement the changes made by the bill. Section 40 of the bill provides an effective date of July 1, 1994 for the remainder of the bill.

In addition to the changes described above, numerous "housekeeping" amendments are contained in many sections of the bill.

WALTER J. HICKEL
GOVERNOR



P. O. Box 110001
Juneau, Alaska 99811-0001
907/465-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 25, 1994

337

*The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making amendments to the Alaska Land Act, also referred to as Title 38.05. The bill also makes other amendments to the same title.

The Alaska Land Act dictates how the Department of Natural Resources manages state land. Since 1959, this set of statutes has been added to and amended so that it now exceeds 180 pages in length. This past summer, I asked Commissioner Noah to review the Alaska Land Act to recommend changes that would bring greater efficiency to the management of state lands without sacrificing public involvement in land use decisions. This legislation is the result of that effort.

This legislation will result in increased delivery of state government services to the citizens of Alaska at no additional costs. It will streamline procedures for mining and land actions, clarify definitions for agriculture, allow greater flexibility for managing our forests, provide for exchange of native allotments located within state park units, and make other changes necessary for cost effective and sound land management.

This legislation is not intended to be a comprehensive overhaul of the Alaska Land Act, but rather the first step in a process that will continue to review the requirements of law, the needs of Alaskans, and the cost effective operation of government. I look forward to working with you to assure your prompt consideration and passage of this bill.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel".

Walter J. Hickel
Governor

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

gmk

DATE: 2/28/94

FURTHER: Judiciary
Finance

Date of 5-Day Notice: 3/10/94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4/11/94

Resources Committee considered SB 339

"An Act relating to the management of state land and resources relating to certain remote parcel and homestead entry land purchase contracts and patents; and providing for an effective date."

and recommends:

and recommends it be replaced with

replace with CS SB 339 (RES)

- same title
- new title
- technical title change (HB only)

attaches amendment(s) **and report it back as follows**

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

END

revisions applied to CS

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DNR	2.1.94		100.0

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

Tom A. Luman

OTHER RECOMMENDATIONS:

Carol Donley (no rec)
Al Adams no Rec

Mike Miller Do Pass
Chair: Signature and Recommendation

SENATE COMMITTEE REPORT

DATE: 4/11/94

FURTHER: Finance

DATE TURNED INTO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 339

"An Act relating to the management of state land and resources; relating to certain remote parcel and homestead entry land purchase contracts and patents; and providing for an effective date."

and recommends:

- replace with _____ CS _____
- or adopt previous _____ CS _____
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

DO PASS:

OTHER RECOMMENDATIONS:

Chair: Signature and Recommendation

SB

341

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/19/94

FURTHER:

DATE TURNED INTO OFFICE: 4-26-94

The Finance Committee considered **SENATE BILL NO. 341**

"An Act extending the termination date of the Alaska Tourism Marketing Council; and providing for an effective date."

and recommends:

replace with CS SB 341 (FINANCE)
 or adopt previous CS _____
 attaches amendment(s)

same title
 new title
 technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DC & ED	2/8/94	<input checked="" type="checkbox"/>	

Appropriation No Fiscal Note

DO PASS:

OTHER RECOMMENDATIONS:

Tom Kelly - No Rec
After this No Recommendation
Scott Sharp No Rec

1. [Signature] Do Pass
 Co-Chair: Signature/Recommendation

2. [Signature] True Hearce - total
 Co-Chair: Signature/Recommendation

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 341

Revision Date: 3/9/94
 Title: Extending the termination date for
the Alaska Tourism Marketing Council
 Sponsor: Senate Labor and Commerce
 Requestor: Senate Labor and Commerce

Department Affected: Commerce and Economic Development
 BRU: Division of Tourism
 Component: Alaska Tourism Marketing Council

COMPONENT SERIAL NO. _____

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
-----------------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()	0	0	0	0	0	0
-------------------------------	---	---	---	---	---	---

FUND SOURCE

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) cost: \$ 0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

* The funds for the Alaska Tourism Marketing Council are in the Governor's FY 95 operating budget.

Prepared by: Wendy Mulder
 Division: Dept. of Commerce and Economic Development

Phone: 465-2500
 Date: _____

Approved by Commissioner: Paul Fuhs
 Agency: Commerce and Economic Development

Date: 3/8/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office

*Add
Section
see statute*

Fin
CS FOR SENATE BILL NO. 341(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/19/94
Referred: Finance

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Tourism Marketing Council; and providing for
2 an effective date."

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

4 * Section 1. AS 44.33.705(b) is amended to read:

5 (b) If the commissioner determines that it is in the best interests of the state
6 to promote the state as a destination through the cooperative marketing program, the
7 commissioner shall contract with a single qualified trade association to jointly manage
8 the council if the trade association agrees that, before the end of each fiscal year that
9 the contract covers, the association will contribute at least 25 [15] percent of the total
10 operating expenses of the council for that fiscal year. The term of a contract under
11 this section may not exceed two years.

12 * Sec. 2. AS 44.66.010(a)(15) is amended to read:

13 (15) Alaska Tourism Marketing Council (AS 44.33.700) --
14 December 30, 1996 [1994];

member of
 he depart-
 matter that
 de associa-
 f rights to
 bership in
 h may not
 nily mem-
 o, have a
 grant or
 ate family

t effective
 h 32 SLA

rd members"
 tituted "the
 mber of the
 or serves" in

a 5, ch. 32,
 of this sec-
 1988.

the council
 cil, which
 other em-
 ncil shall
 ployees of
 council is
 LA 1988)

- (7) establish offices in the state and otherwise incur expenses incidental to the performance of its duties;
 - (8) appear on behalf of the council before boards, commissions, departments, or other agencies of municipal, state, or federal government except as provided under (b) of this section;
 - (9) acquire, hold, lease, sell, or otherwise dispose of property, but such property is limited to that which is necessary to the administrative functioning of the council;
 - (10) appoint committees comprised of board and nonboard members; the presiding officer of each committee shall be a board member;
 - (11) prepare and implement plans for the promotion of travel to and inside the state;
 - (12) sell, at fair market value, tourism advertising space in publications and promotional materials developed by the council;
 - (13) provide space to a qualified trade association in publications and promotional materials developed by the council if the trade association has contracted with the department under AS 44.33.705(b) and pays its pro rata share of the production costs for the publication or promotional material; payment under this paragraph is ~~not~~ part of the association's required contribution under AS 44.33.705(b); and
 - (14) grant exclusive rights to a qualified trade association to sell or lease tourism mailing lists developed by the council if the trade association has contracted with the department under AS 44.33.705(b).
- (b) The board may not use funds appropriated by the legislature to employ a lobbyist. (§ 9 ch 78 SLA 1988; am § 2 ch 32 SLA 1990)

Revisor's notes. — Enacted as AS 44.33.730. Renumbered in 1988.

Effect of amendments. — The 1990 amendment, effective May 10, 1990, deleted "including the granting of distribution rights to tourism mailing lists" at the end of paragraph (a)(2); deleted "any" before "agreements" in paragraph (a)(4); and added paragraph (a)(14).

Editor's notes. — Section 5, ch. 32, SLA 1990 provides that the 1990 amendment to (a) of this section is retroactive to July 1, 1988.

Sec. 44.33.720. Duties of the council. (a) The council shall

- (1) conduct a tourism marketing program designed to accomplish the purposes of AS 44.33.700 — 44.33.735; the marketing program must include promotion of the state as a destination and promotion of all forms of travel to the state, including travel by air, highway, and water;
- (2) prepare and implement plans for the promotion of Alaska tourism, including necessary research;
- (3) submit an annual report to the governor and the legislature describing the activities of the council;
- (4) make available to all interested persons, including tourism businesses, a quarterly report of the council's actions and activities;
- (5) annually submit a proposed operating budget to the director, to be used by the Department of Commerce and Economic Development

(13)
 ←
 m
 REMOV
 The
 word
 NOT

amend
 add
 section

*Add
Section
see statute*

Fin
CS FOR SENATE BILL NO. 341(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/19/94
Referred: Finance

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Tourism Marketing Council; and providing for
2 an effective date."

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

4 * Section 1. AS 44.33.705(b) is amended to read:

5 (b) If the commissioner determines that it is in the best interests of the state
6 to promote the state as a destination through the cooperative marketing program, the
7 commissioner shall contract with a single qualified trade association to jointly manage
8 the council if the trade association agrees that, before the end of each fiscal year that
9 the contract covers, the association will contribute at least 25 [15] percent of the total
10 operating expenses of the council for that fiscal year. The term of a contract under
11 this section may not exceed two years.

12 * Sec. 2. AS 44.66.010(a)(15) is amended to read:

13 (15) Alaska Tourism Marketing Council (AS 44.33.700) --
14 December 30, 1996 [1994];

- 1 * Sec. 3. APPLICABILITY. AS 44.33.705(b), as amended by sec. 1 of this Act, applies
- 2 to contracts entered into or renewed on or after the effective date of this Act.
- 3 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

member of
the depart-
matter that
the associa-
f rights to
bership in
h may not
nily mem-
to, have a
grant or
ate family

t effective
h 32 SLA

ed members"
stituted "the
mber of the
or serves" in

5. ch. 32,
of this sec-
1988.

the council
il, which
ther em-
ncil shall
ployees of
ouncil is
LA 1988)

ay

he inter-

ions;
r agency
es of the
rams of

- (7) establish offices in the state and otherwise incur expenses incidental to the performance of its duties;
 - (8) appear on behalf of the council before boards, commissions, departments, or other agencies of municipal, state, or federal government except as provided under (b) of this section;
 - (9) acquire, hold, lease, sell, or otherwise dispose of property, but such property is limited to that which is necessary to the administrative functioning of the council;
 - (10) appoint committees comprised of board and nonboard members; the presiding officer of each committee shall be a board member;
 - (11) prepare and implement plans for the promotion of travel to and inside the state;
 - (12) sell, at fair market value, tourism advertising space in publications and promotional materials developed by the council;
 - (13) provide space to a qualified trade association in publications and promotional materials developed by the council if the trade association has contracted with the department under AS 44.33.705(b) and pays its pro rata share of the production costs for the publication or promotional material; payment under this paragraph is ~~not~~ part of the association's required contribution under AS 44.33.705(b); and
 - (14) grant exclusive rights to a qualified trade association to sell or lease tourism mailing lists developed by the council if the trade association has contracted with the department under AS 44.33.705(b).
- (b) The board may not use funds appropriated by the legislature to employ a lobbyist. (§ 9 ch 78 SLA 1988; am § 2 ch 32 SLA 1990)

Revisor's notes. — Enacted as AS 44.33.730. Renumbered in 1988.
Effect of amendments. — The 1990 amendment, effective May 10, 1990, deleted "including the granting of distribution rights to tourism mailing lists" at the end of paragraph (a)(2); deleted "any" be-

fore "agreements" in paragraph (a)(4); and added paragraph (a)(14).
Editor's notes. — Section 5, ch. 32, SLA 1990 provides that the 1990 amendment to (a) of this section is retroactive to July 1, 1988.

(13)
←
210
REMOVED
The
word
NOT

amend
~~the~~
add
section

- Sec. 44.33.720. Duties of the council.** (a) The council shall
- (1) conduct a tourism marketing program designed to accomplish the purposes of AS 44.33.700 — 44.33.735; the marketing program must include promotion of the state as a destination and promotion of all forms of travel to the state, including travel by air, highway, and water;
 - (2) prepare and implement plans for the promotion of Alaska tourism, including necessary research;
 - (3) submit an annual report to the governor and the legislature describing the activities of the council;
 - (4) make available to all interested persons, including tourism businesses, a quarterly report of the council's actions and activities;
 - (5) annually submit a proposed operating budget to the director, to be used by the Department of Commerce and Economic Development

Devin Biles
4/27/99 2:48 pm
Sen. Pearce
net +
contracts
effective

Terry Lauderback

[Signature]

asked if the
Committee considered
this amend (removing
"not") applies to the
~~the~~ current year?
or should she add an
amend. beg'g next
contract year.

Alaska Tourism Marketing Council

Organization

The Alaska Tourism Marketing Council was created by the Alaska Legislature in 1988 as a joint venture between the State of Alaska and the visitor industry. This truly unique melding of public and private expertise and funding is challenged with keeping Alaska a top contender in the highly competitive, worldwide tourism marketplace.

The ATMC is a public corporation mutually managed through a contract between the Alaska Department of Commerce and Economic Development and the Alaska Visitors Association.

The 21-member council is comprised of 10 directors appointed by the Governor, 10 directors appointed by AVA, and the Director of the Alaska Division of Tourism as an automatic appointment. The council works through a strong committee structure with each director serving on at least one of the following committees: fall/winter/spring promotion; collateral; public relations; research; advertising and planning.

The primary objective of the ATMC is to encourage expansion and growth of the state's visitor industry. It is also charged with ensuring the economic benefits derived from the industry remain in Alaska and that a maximum number of Alaska residents are employed in industry businesses. The council promotes cooperation between state and private sectors in developing visitor marketing campaigns and visitor industry facilities, both in the public and private domain, to ensure the visitor experience is, and continues to be, positive.

Funding

The council's operating budget is determined by a yearly appropriation from the State Legislature, plus funds from the private industry. The industry is responsible for no less than a 15% cash matching contribution, and must also share a portion of production costs for the Official State Vacation Planner. The sale of vacation planner advertisements, direct mailing labels and stock film footage to industry businesses is administered by the Alaska Visitors Association to generate the private sector's matching contribution.