

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2757 HRES HB 404 - HB 458

2757

1 species which the commissioner of fish and game designates as
2 developing commercial fish species for that calendar year; a fish or
3 shellfish species is a developing commercial fish species if, within a
4 specified geographical region,

5 (A) the optimum yield from the harvest of the species
6 has not been reached;

7 (B) a substantial portion of the allowable harvest of
8 the species has been allocated to fishing vessels of a foreign
9 nation; or

10 (C) a commercial harvest of the fish species has
11 recently developed;

12 (12) initiate or conduct research necessary or advisable to
13 carry out the purposes of AS 16 except AS 16.51 and AS 16.52;

14 (13) enter into cooperative agreements with agencies of the
15 federal government, educational institutions, or other agencies or or-
16 ganizations, when in the public interest, to carry out the purposes of
17 AS 16 except AS 16.51 and AS 16.52;

18 (14) contract with and make grants to agencies, organiza-
19 tions, and individuals under terms, established by the commissioner,
20 which make certain that the grants and contracts made are in the best
21 interests of the public and further the purposes of AS 16 except
22 AS 16.51 and AS 16.52.

23 * Sec. 3. AS 16.05.100 is amended to read:

24 Sec. 16.05.100. FISH AND GAME FUND ESTABLISHED. There is cre-
25 ated a revolving "Fish and Game Fund," which shall be used exclusively
26 for the following: (1) to carry out the purposes and provisions of
27 AS 16, except AS 16.51 and AS 16.52, [THIS CHAPTER] or other duties
28 that may be delegated by the legislature to the commissioner or the
29 department; and (2) to carry out such purposes and objectives within

1 the scope of AS 16 except AS 16.51 and AS 16.52 [THE CHAPTER] as may
2 be directed by the donor of any such funds.

3 * Sec. 4. AS 16.05.150 is amended to read:

4 Sec. 16.05.150. ENFORCEMENT AUTHORITY. The following persons
5 are peace officers of the state and they shall enforce AS 16 except
6 AS 16.51 and AS 16.52 [THIS CHAPTER]:

7 (1) an employee of the department authorized by the commis-
8 sioner;

9 (2) a police officer in the state;

10 (3) any other person authorized by the commissioner.

11 * Sec. 5. AS 16.05.160 is amended to read:

12 Sec. 16.05.160. DUTY TO ARREST. Each peace officer designated
13 in AS 16.05.150 shall arrest a person violating a provision of AS 16
14 except AS 16.51 and AS 16.52 [THIS CHAPTER], or any regulation adopted
15 [MADE] under AS 16 except AS 16.51 and AS 16.52 [THIS CHAPTER], in the
16 peace officer's presence or view, and shall take the person
17 [IMMEDIATELY] for examination or trial before an officer or court of
18 competent jurisdiction unless in the judgment of the peace officer it
19 would be in the state's best interest to issue a warning or a citation
20 under AS 16.05.165.

21 * Sec. 6. AS 16.05 is amended by adding a new section to read:

22 Sec. 16.05.165. FORM AND ISSUANCE OF CITATION. (a) Notwith-
23 standing AS 16.05.160, when a peace officer stops or contacts a person
24 concerning a violation of this chapter or of a regulation adopted un-
25 der this chapter that is a misdemeanor, the peace officer may, in the
26 officer's discretion, issue a citation to the person as provided in
27 AS 12.25.180.

28 (b) After consultation with the division of fish and wildlife
29 protection of the Department of Public Safety, the supreme court shall

1 specify by rule or order those misdemeanors that are appropriate for
 2 disposition without court appearance, and shall establish a schedule
 3 * of bail amounts. The maximum bail amount for an offense may not ex-
 4 ceed the maximum fine specified by law for that offense. If the mis-
 5 deaneor for which the citation is issued may be disposed of without
 6 court appearance, the issuing peace officer shall write on the cita-
 7 tion the amount of bail applicable to the violation.

8 (c) A person cited for a misdemeanor for which a bail amount has
 9 been established under (b) of this section may, within 15 days after
 10 the date of the citation, mail or personally deliver to the clerk of
 11 the court in which the citation is filed by the peace officer

12 (1) the amount of bail indicated on the citation for that
 13 offense; and

14 (2) a copy of the citation indicating that the right to an
 15 appearance is waived, a plea of no contest is entered and the bail is
 16 forfeited.

17 (d) When bail has been forfeited under (c) of this section, a
 18 judgment of conviction shall be entered. Forfeiture of bail and all
 19 seized items is a complete satisfaction for the misdemeanor. The
 20 clerk of the court accepting the bail shall provide the offender with
 21 a receipt stating that fact.

22 (e) If the person cited fails to pay the bail amount established
 23 under (b) of this section or to appear in court as required, the cita-
 24 tion is considered a summons for a misdemeanor.

25 (f) Notwithstanding other provisions of law, if a person cited
 26 for a misdemeanor for which a bail amount has been established under
 27 (b) of this section appears in court and is found guilty, the penalty
 28 that is imposed for the offense may not exceed the bail amount for
 29 that offense established under (b) of this section.

1 * Sec. 7. AS 16.05.170 is amended to read:

2 Sec. 16.05.170. POWER TO EXECUTE WARRANT. Each peace officer
3 designated in AS 16.05.150 may execute a warrant or other process
4 issued by an officer or court of competent jurisdiction for the en-
5 forcement of AS 16 except AS 16.51 and AS 16.52 [THIS CHAPTER], and
6 may, with a search warrant, search any place at any time. The judge
7 of a court having jurisdiction may, upon proper oath or affirmation
8 showing probable cause, issue a warrant in all cases.

9 * Sec. 8. AS 16.05.251(a) is amended to read:

0 Sec. 16.05.251. REGULATIONS OF THE BOARD OF FISHERIES. (a) The
1 Board of Fisheries may adopt regulations it considers advisable in
2 accordance with the Administrative Procedure Act (AS 44.62) for

3 (1) setting apart fish reserve areas, refuges and
4 sanctuaries in the waters of the state over which it has jurisdiction,
5 subject to the approval of the legislature;

6 (2) establishing open and closed seasons and areas for the
7 taking of fish;

8 (3) setting quotas, [AND] bag limits, harvest levels, and
9 sex and size limitations on the taking of fish;

0 (4) establishing the means and methods employed in the
1 pursuit, capture and transport of fish;

2 (5) establishing marking and identification requirements
3 for means used in pursuit, capture and transport of fish;

4 (6) classifying as commercial fish, sport fish or predators
5 other categories essential for regulatory purposes;

6 (7) [ENGAGING IN BIOLOGICAL RESEARCH,] watershed and habi-
7 tat protection [IMPROVEMENT], and [FISH] management, conservation,
8 protection, use, disposal, propagation and stocking of fish;

9 (8) investigating and determining the extent and effect of

1 disease, predation, and competition among fish in the state,
2 exercising control measures considered necessary to the resources of
3 the state;

4 [(9) ENTERING INTO COOPERATIVE AGREEMENTS WITH EDUCATIONAL
5 INSTITUTIONS AND STATE, FEDERAL, OR OTHER AGENCIES TO PROMOTE FISH
6 RESEARCH, MANAGEMENT, EDUCATION AND INFORMATION AND TO TRAIN PERSONS
7 FOR FISH MANAGEMENT;]

8 (9) [(10)] prohibiting and regulating the live capture,
9 possession, transport, or release of native or exotic fish or their
10 eggs;

11 (10) [(11)] establishing seasons, areas, quotas and methods
12 of harvest for aquatic plants;

13 (11) [(12)] establishing the times and dates during which
14 the issuance of fishing licenses, permits and registrations and the
15 transfer of permits and registrations between registration areas is
16 allowed; however, this paragraph does not apply to permits issued or
17 transferred under AS 16.43.

18 * Sec. 9. AS 16.05.251 is amended by adding a new subsection to read:

19 (c) If the Board of Fisheries denies a petition or proposal to
20 amend, adopt, or repeal a regulation, the board, upon receiving a
21 written request from the sponsor of the petition or proposal, shall in
22 addition to the requirements of AS 44.62.230 provide a written
23 explanation for the denial to the sponsor not later than 30 days after
24 the board has officially met and denied the sponsor's petition or
25 proposal, or 30 days after receiving the request for an explanation,
26 whichever is later.

27 * Sec. 10. AS 16.05.255(a) is amended to read:

28 (a) The Board of Game may adopt regulations it considers
29 advisable in accordance with the Administrative Procedure Act (AS

1 (AS 44.62) for

2 (1) setting apart game reserve areas, refuges and
3 sanctuaries in the water [WATERS] or on the land [LANDS] of the state
4 over which it has jurisdiction, subject to the approval of the
5 legislature;

6 (2) establishing open and closed seasons and areas for the
7 taking of game;

8 (3) establishing the means and methods employed in the
9 pursuit, capture and transport of game;

10 (4) setting quotas, [AND] bag limits, harvest levels, and
11 sex, age, and size limitations on the taking of game;

12 (5) classifying game as game birds, song birds, big game
13 animals, fur bearing animals, predators or other categories;

14 (6) methods, means, and harvest levels necessary to control
15 predation and competition among game in the state INVESTIGATING AND
16 DETERMINING THE EXTENT AND EFFECT OF PREDATION AND COMPETITION AMONG
17 GAME IN THE STATE, EXERCISING CONTROL MEASURES CONSIDERED NECESSARY TO
18 THE RESOURCES OF THE STATE AND DESIGNATING GAME MANAGEMENT UNITS OR
19 PARTS OF GAME MANAGEMENT UNITS IN WHICH BOUNTIES FOR PREDATORY ANIMALS
20 SHALL BE PAID];

21 (7) [ENGAGING IN BIOLOGICAL RESEARCH,] watershed and habi-
22 tat protection [IMPROVEMENT], and [GAME] management, conservation,
23 protection, use, disposal, propagation and stocking of game;

24 [(8) ENTERING INTO COOPERATIVE AGREEMENTS WITH EDUCATIONAL
25 INSTITUTIONS AND STATE, FEDERAL, OR OTHER AGENCIES TO PROMOTE GAME
26 RESEARCH, MANAGEMENT, EDUCATION, AND INFORMATION AND TO TRAIN PERSONS
27 FOR GAME MANAGEMENT;]

28 (8) [(9)] prohibiting the live capture, possession,
29 transport, or release of native or exotic game or their eggs;

1 (9) [(10)] establishing the times and dates during which
2 the issuance of game licenses, permits and registrations and the
3 transfer of permits and registrations between registration areas and
4 game management units or subunits is allowed.

5 * Sec. 11. AS 16.05.255 is amended by adding a new subsection to read:

6 (c) If the Board of ^{GAME}[Fisheries] denies a petition or proposal to
7 amend, adopt, or repeal a regulation, the board, upon receiving a
8 written request from the sponsor of the petition or proposal, shall in
9 addition to the requirements of AS 44.62.230 provide a written
0 explanation for the denial to the sponsor not later than 30 days after
1 the board has officially met and denied the sponsor's petition or
2 proposal, or 30 days after receiving the request for an explanation,
3 whichever is later.

4 * Sec. 12. AS 16.05.340(a)(7) is amended to read:

5 (7) Nonresident [VISITOR'S] special sport fishing li-
6 cense -- valid for the period inscribed on the license

7 (A) For 14-day license.....\$20

8 (B) For three-day license..... 10

9 * Sec. 13. AS 16.05.340(a)(10) is amended to read:

10 (10) Nonresident hunting and sport fishing license..... 96

11 A nonresident may not take a big game animal without previously pur-
12 chasing a numbered, nontransferable, appropriate tag, issued under [TO
13 THE NONRESIDENT AS PROVIDED IN] (15) of this subsection. The tag must
14 [SHALL] be affixed to the animal immediately upon capture and must
15 [SHALL] remain affixed until the animal is prepared for storage, con-
16 sumed, or exported. A tag issued but not used for an animal may be
17 used to satisfy the tagging requirement for an [ANY OTHER] animal of
18 any other [THE] species [NAMED] for which the tag fee is of equal or
19 less value.
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1 * Sec. 14. AS 16.05.350 is amended to read:

2 Sec. 16.05.350. EXPIRATION OF LICENSES AND TAGS. Licenses and
3 tags required under AS 16.05.330 - 16.05.430, except the nonresident
4 [VISITOR'S] special sport fishing license and the resident trapping
5 license, expire at the close of December 31 following issuance. The
6 resident trapping license expires at the close of September 30 of the
7 year following the year in which the license is issued.

8 * Sec. 15. AS 16.05.410 is amended by adding new subsections to read:

9 (f) Except as provided in (g) of this section, the provisions of
10 (a) - (c) of this section do not apply when the offense for which the
11 person is convicted is a misdemeanor for which a forfeitable bail
12 amount has been set under AS 16.05.165.

13 (g) When a person has been convicted during a two year period of
14 two or more misdemeanor offenses for which a forfeitable bail amount
15 has been set under AS 16.05.165, a peace officer may file a civil
16 action in the district court to revoke the person's license. Once an
17 action has been filed, the court shall set a time and date for a
18 hearing on the proposed license revocation, and shall send notice of
19 the hearing to the person. The hearing shall be before the court
20 without a jury. At the hearing the court shall hear evidence
21 regarding the nature and seriousness of the offenses for which the
22 person was convicted, the time period involved, the potential effect
23 of the person's actions upon the preservation of the resource, and
24 other relevant circumstances. If the court finds by a preponderance
25 of the evidence that the person's actions demonstrate a disregard for
26 the preservation of the state's fish or wildlife resources, the court
27 may revoke the person's license for a period of not less than one year
28 nor more than three years from the date of revocation.

29 * Sec. 16. AS 16.05.495 is amended to read:

1 Sec. 16.05.495. VESSEL LICENSE EXEMPTION. A vessel used
2 exclusively for the commercial capture of salmon in commercial salmon
3 administrative management areas that include state water between the
4 latitude of Cape Romanzof and the latitude of Cape Newenham, and state
5 water surrounding Nunivak Island [THE DRAINAGE SYSTEM OF THE YUKON AND
6 KUSKOKWIM RIVERS], or at a set net site, is exempt from the licensing
7 requirements of AS 16.05.490.

8 * Sec. 17. AS 16.05.685(c)(2) is amended to read:

9 (2) "registration area" means a specific king crab regis-
10 tration area as designated by regulation of the Board of Fisheries
11 [AND INCLUDES THE BERING SEA SHELLFISH AREA AND THE WESTERN ALEUTIAN
12 ISLANDS KING CRAB AREA].

13 * Sec. 18. AS 16.05.831(a) is amended to read:

14 (a) A person may not waste salmon intentionally, knowingly, or
15 with reckless disregard for the consequences. In this section,
16 "waste" means the failure to utilize the majority of the carcass,
17 excluding viscera and sex parts, of a salmon intended for [WHICH ARE
18 TO BE]

19 (1) sale [SOLD] to a commercial buyer or processor;

20 (2) [UTILIZED FOR] consumption by humans or domesticated
21 animals; or

22 (3) [UTILIZED FOR] scientific, educational, or display pur-
23 poses.

24 * Sec. 19. AS 16.05.900(a) is amended to read:

25 (a) A person who violates AS 16.05.870 - 16.05.895 [OR 16.05.920
26 OR ANY REGULATION ADOPTED UNDER THIS CHAPTER] is guilty of a class A
27 misdemeanor [AND, UPON CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE
28 THAN \$1,000 OR BY IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY
29 BOTH. A PERSON WHO VIOLATES A REGULATION ADOPTED UNDER THIS

1 CHAPTER FOR THE REGULATION OF COMMERCIAL FISHERIES SHALL BE PUNISHED
2 AS PROVIDED IN AS 16.05.720].

3 * Sec. 20. AS 16.05.920 is amended to read:

4 Sec. 16.05.920. CERTAIN ACTS MADE UNLAWFUL. (a) Unless permit-
5 ted by AS 16.05 - AS 16.40 [THIS CHAPTER] or by regulation adopted
6 under AS 16.05 - AS 16.40 [THIS CHAPTER], a person may not take,
7 possess, transport, sell, offer to sell, purchase, or offer to pur-
8 chase fish, game, or marine aquatic plants, or any part of fish, game
9 or aquatic plants, or a nest or egg of fish or game.

10 (b) A person may not knowingly disturb, injure, or destroy a
11 notice, signboard, seal, tag, aircraft, boat, vessel, automobile,
12 paraphernalia, equipment, building or other improvement or property of
13 the department used in the administration or enforcement of AS 16
14 except AS 16.51 and AS 16.52 [THIS CHAPTER], or a poster or notice to
15 the public concerning the provisions of AS 16 except AS 16.51 and
16 AS 16.52 [THIS CHAPTER], or a regulation adopted under AS 16 except
17 AS 16.51 and AS 16.52 [THIS CHAPTER], or a marker indicating the
18 boundary of an area closed to hunting, trapping, fishing or other
19 special use under AS 16 except AS 16.51 and AS 16.52 [THIS CHAPTER].
20 A person may not knowingly destroy, remove, tamper with, or imitate a
21 seal or tag issued or used by the department or attached under its
22 authority to a skin, portion, or specimen of fish or game, or other
23 article for the purpose of identification or authentication in accor-
24 dance with AS 16 except AS 16.51 and AS 16.52 [THIS CHAPTER] or a
25 regulation adopted under AS 16 except AS 16.51 and AS 16.52 [THIS
26 CHAPTER].

27 * Sec. 21. AS 16.05 is amended by adding a new section to read:

28 Sec. 16.05.925. PENALTY FOR VIOLATIONS. A person who violates
29 AS 16.05.920, or a regulation adopted under this chapter or AS 16.20,

1 is guilty of a class A misdemeanor. However, a person who violates a
2 regulation adopted under this chapter for the regulation of commercial
3 fisheries is subject to the penalties set out in AS 16.0.720.

4 * Sec. 22. AS 16.05.940 is amended to read:

5 Sec. 16.05.940. DEFINITIONS. In AS 16.05 - AS 16.40 [THIS
6 CHAPTER]

7 (1) "aquatic plant" means any species of plant, excluding
8 the rushes, sedges and true grasses, growing in a marine aquatic or
9 intertidal habitat;

10 (2) "barter" means the exchange or trade of fish or game,
11 or their parts, taken for subsistence uses

12 (A) for other fish or game or their parts; or

13 (B) for other food or for nonedible items other than
14 money if the exchange is of a limited and noncommercial nature;

15 (3) "a board" means either the Board of Fisheries or the
16 Board of Game;

17 (4) "commercial fisherman" means an individual who fishes
18 commercially for, takes, or attempts to take fish, shellfish, or other
19 fishery resources of the state by any means, and includes every indi-
20 vidual aboard a boat operated for fishing purposes who participates
21 directly or indirectly in the taking of these raw fishery products,
22 whether participation is on shares or as an employee or otherwise;
23 however, this definition does not apply to anyone aboard a licensed
24 vessel as a visitor or guest who does not directly or indirectly par-
25 ticipate in the taking; and the term "commercial fisherman" includes
26 the crews of tenders or other floating craft used in transporting
27 fish;

28 (5) "commercial fishing" means the taking, fishing for, or
29 possession of fish, shellfish, or other fishery resources with the

1 intent of disposing of them for profit, or by sale, barter, trade, or
2 in commercial channels; the failure to have a valid subsistence permit
3 in possession, if required by statute or regulation, is considered
4 prima facie evidence of commercial fishing if commercial fishing gear
5 as specified by regulation is involved in the taking, fishing for, or
6 possession of fish, shellfish, or other fish resources;

7 (6) "commissioner" means the commissioner of fish and game
8 unless specifically provided otherwise;

9 (7) "department" means the Department of Fish and Game un-
10 less specifically provided otherwise;

11 (8) "domestic mammals" include musk oxen, bison, and rein-
12 deer, if they are lawfully owned;

13 (9) "fish" means any species of aquatic finfish, inverte-
14 brate, or amphibian [INVERTEBRATES AND AMPHIBIANS], in any stage of
15 its [THEIR] life cycle, found in or introduced into the state, and in-
16 cludes any part of such aquatic finfish, invertebrate, or amphibian;

17 (10) "fish derby" means a contest in which prizes are award-
18 ed for catching fish;

19 (11) "fishing derby association" means a civic, service, or
20 charitable organization in the state, not for pecuniary profit, whose
21 primary purpose is to promote interest in fishing for recreational
22 purposes and which has been in existence for five years before apply-
23 ing for a permit under this chapter, but does not include an
24 organization formed or operated for gaming or gambling purposes;

25 (12) "fish or game farming" means the business of propagat-
26 ing, breeding, raising, or producing fish or game in captivity for the
27 purpose of marketing the fish or game or their products, and "captiv-
28 ity" means having the fish or game under positive control, as in a
29 pen, pond, or an area of land or water which is completely enclosed by

1 a generally escape-proof barrier;

2 (13) "fur dealing" means engaging in the business of buying,
3 selling, or trading in animal skins, but [; THE TERM] does not include
4 [APPLY TO A HUNTER OR TRAPPER SELLING] the sale of animal skins by a
5 [THE] trapper or hunter who [HE] has legally taken the animal, or the
6 purchase of [TO A PERSON, OTHER THAN A FUR DEALER, PURCHASING] animal
7 skins by a person, other than a fur dealer, for the person's own use;

8 (14) "game" means any species of bird, reptile, and mammal,
9 including a feral domestic animal, found or introduced in the state,
0 except domestic birds and mammals; and game may be classified by regu-
1 lation as big game, small game, fur bearers or other categories con-
2 sidered essential for carrying out the intention and purposes of
3 AS 16.05 - AS 16.40 [THIS CHAPTER];

4 (15) "hunting" means the taking of game under AS 16.05 -
5 AS 16.40 [THIS CHAPTER] and the regulations adopted under those chap-
6 ters [IT];

7 (16) "nonresident" means a person who is not a resident of
8 the state;

9 (17) "nonresident alien" means a person who is not a citizen
0 of the United States and whose permanent place of abode is not in the
1 United States;

2 (18) "operator" means the individual by law made responsible
3 for the operation of the vessel;

4 (19) "resident" means a person who for 12 consecutive months
5 has maintained a permanent place of abode in the state and who has
6 continually maintained a voting residence in the state; and in the
7 case of a partnership, association, joint stock company, trust, or
8 corporation, "resident" means one that has its main office or head-
9 quarters in the state; however, a member of the military service who

1 has been stationed in the state for the preceding 12 consecutive
2 months is a resident for the purposes of this paragraph [CHAPTER], and
3 the dependent of a resident member of the military service, who has
4 been living in the state for the preceding year is a resident for the
5 purposes of this paragraph [CHAPTER], and a person who is an alien but
6 who for one year has maintained a permanent place of abode in the
7 state is a resident for the purposes of this paragraph [CHAPTER];

8 (20) "seizure" means the actual or constructive taking or
9 possession of real or personal property subject to seizure under
10 AS 16.05 - AS 16.40 [THIS CHAPTER] by an enforcement or investigative
11 officer charged with enforcement of the fish and game laws of the
12 state;

13 (21) "sport fishing" means the taking of or attempting to
14 take for personal use, and not for sale or barter, any fresh water,
15 marine, or anadromous fish by hook and line held in the hand, or by
16 hook and line with the line attached to a pole or rod which is held in
17 the hand or closely attended, or by other means defined by the Board
18 of Fisheries;

19 (22) "subsistence fishing" means the taking of, fishing for,
20 or possession of fish, shellfish or other fisheries resources for
21 subsistence uses with gill net, seine, fish wheel, long line, or other
22 means defined by the Board of Fisheries;

23 (23) "subsistence uses" means the customary and traditional
24 uses in Alaska of wild, renewable resources for direct personal or
25 family consumption as food, shelter, fuel, clothing, tools, or trans-
26 portation, for the making and selling of handicraft articles out of
27 nonedible by-products of fish and wildlife resources taken for per-
28 sonal or family consumption, and for the customary trade, barter, or
29 sharing for personal or family consumption; for the purposes of this

1 paragraph, "family" means all persons related by blood, marriage, or
2 adoption, and any person living within the household on a permanent
3 basis;

4 (24) "take" means taking, pursuing, hunting, fishing, trap-
5 ping, or in any manner disturbing, capturing, or killing or attempting
6 to take, pursue, hunt, fish, trap, or in any manner capture or kill
7 fish or game;

8 (25) "taxidermy" means tanning, mounting, processing, or
9 other treatment or preparation of fish or game, or any part of fish or
0 game, as a trophy, for monetary gain, including the receiving of the
1 fish or game or parts of fish or game for such purposes;

2 (26) "trapping" means the taking of mammals declared by
3 regulation to be fur bearers;

4 (27) "vessel" means a floating craft powered, towed, rowed,
5 or otherwise propelled, which is used for delivering, landing, or tak-
6 ing fish within the jurisdiction of the state, but [FOR THE PURPOSES
7 OF THIS CHAPTER] does not include aircraft[;

8 (28) "VISITOR" MEANS A NONRESIDENT OR ALIEN TEMPORARILY
9 SOJOURNING IN THE STATE AS A VISITOR OR TOURIST].

20 * Sec. 23. AS 16.10.173 is amended by adding a new subsection to read:

21 (f) A person who violates this section is guilty of a class A
22 misdemeanor.

23 * Sec. 24. AS 16.10.280 is amended to read:

24 Sec. 16.10.280. PRICE DISPUTES BETWEEN FISHERMEN AND FISH PRO-
25 CESSORS. In an area where a price dispute exists between at least
26 one-third of the registered commercial fishermen for that area, as es-
27 timated [CERTIFIED] by the Department of Fish and Game on the basis of
28 information available to the department, and fish processors on the
29 price to be paid for salmon, and no agreement has been reached up to

1 120 days before the opening of the salmon fishing season in that area,
2 a representative from the Department of Labor shall intervene as medi-
3 ator of the dispute upon request of either party.

4 * Sec. 25. AS 16.70.036(a)(8) is amended to read:

5 (8) Township 14 North, Range 4 West, Seward Meridian

6 Sections: Lots 1 - 6, SE 1/4 NW 1/4, W 1/2 NE 1/4 NW 1/4,
7 SE 1/4 NE 1/4 NW 1/4, NE 1/4 SW 1/4, NW 1/4 SE 1/4, SE 1/4 SE 1/4, W
8 1/2 SW 1/4 NE 1/4, SE 1/4 SW 1/4 NE 1/4, S 1/2 NE 1/4 SW 1/4 NE 1/4 of
9 Section 31 [6]

10 * Sec. 26. AS 16.35.200 is amended to read:

11 Sec. 16.35.200. USE OF POISON [BY DEPARTMENTS AND OTHER STATE
12 AGENCIES]. A person or [DEPARTMENT, OTHER] state agency [OR PERSON]
13 may not use poison to kill [PREDATORY] animals unless authorized by
14 regulation [WITHOUT FIRST OBTAINING THE WRITTEN CONSENT] of the appro-
15 priate board. This section does not apply to poisons used within
16 buildings or to kill rats or mice at dumps or landfills operating in
17 compliance with state law or local ordinances.

18 * Sec. 27. AS 16.05.903; AS 16.10.230(1); AS 16.15; and AS 16.35.010 -
19 16.35.180 are repealed.
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STATE OF ALASKA 1984 LEGISLATIVE FISCAL NOTE

Revision Date: February 3, 1984

REQUEST

Bill/Resolution No.: CSSS HB 404
 Title: Miscellaneous amendments regarding Fish and Game
 Sponsor: House Resources Comm
 Requestor: Hou. Resources Comm
 Date of Request: Feb 3, 1984

FISCAL DETAIL

Agency Affected: Fish and Game
 Program Category Affected: NRMEC
 BRU, Program or Subprogram(s) Affected: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Beverly Reaume
 Division: Administration

Phone: 465-4120
 Date: February 3, 1984

Approved by Commissioner: [Signature]
 Agency: Department of Fish and Game

Date: Feb 3 1984

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

STATE OF ALASKA
THE LEGISLATURE

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 3, 1984

SUBJECT: House Resources Committee substitute
for SSHB 404

TO: Representative John Ringstad and
Representative Richard Schultz
Co-Chairmen, House Resources Committee

FROM: Edward H. Hein *EH*
Legislative Counsel

1. The provisions of CSSB 101 (Resources) are merged into the committee substitute at sections 1, 6, and 15. (See attached sectional analysis of CSSB 101 (Res) for details of that bill).
2. Section 5 of the CS reverts back to the mandatory language of existing law, but allows a peace officer discretion to issue a citation or a warning when, in the officer's judgment, "it is in the state's best interest".
3. In section 8 (page 6, lines 26 - 27) and section 10 (page 3, lines 22 - 23), the CS reinserts "stocking" within the scope of regulations that may be adopted by the boards of fisheries and game.
4. The CS deletes amendments to AS 16.05.870(b) that appeared in section 17 of SSHB 404.
5. Sections 9 and 11 add new language that requires the boards of fisheries and game to provide a written explanation of reasons for rejecting proposals for regulations submitted to the boards.
6. Section 16 amends AS 16.05.495 to redefine the area covered by the vessel license exemption.
7. All other changes reflected in the CS are technical changes required by the legislative drafting manual.

EHH:oj'
J3/049

STANCLIFF

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 3, 1984

SUBJECT: Sectional analysis of CSSB 101 (Resources)

TO: Representative John Ringstad
Representative Richard Shultz
Co-Chairmen, House Resource Committee

FROM: Edward H. Hein *EH*
Legislative Counsel

Section 1 adds a new section, AS 16.05.165, to the fish and game code that provides that a peace officer investigating a misdemeanor violation of the code or a regulation adopted under it may issue a citation as provided in AS 12.25.180, notwithstanding the provisions of AS 16.05.160, which requires a peace officer to arrest any person committing a code violation in the officer's presence. Note that SSHB 404 would amend AS 16.05.160 to make such arrests discretionary, but would expand the arrest authority to include violations of all of AS 16 except AS 16.51 and 16.52. Section 1 also directs the supreme court to establish a bail schedule for fish and game misdemeanor violations and provides for paying fines by mail, similar to what is done with traffic tickets.

Section 2 amends AS 16.05.410, which provides for revocation of licenses for conviction of sport fishing and hunting license violations. The amendment provides that the existing revocation provisions do not apply to violations for which a forfeitable bail amount is established under AS 16.05.165. Two convictions of such an offense, however, could result in a peace officer filing a civil action to have the person's license revoked. A non-jury court hearing is required. If the court finds that the person's actions demonstrate a disregard for the preservation of the state's fish or wildlife resources, the license may be revoked for a mandatory one-to-three year period.

Section 3 amends AS 12.25.190(c) to provide that a person receiving a citation under AS 16.05.165 is not required to

Representative John Ringstad and
Representative Richard Shultz
Page 2
February 3, 1984

give a written promise that he or she will appear in court
in response to the citation.

EHH:ojb
J3/050

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 404
Title: Misc. amendments to Fish & Game Code.

Sponsor: Rules
Requestor: Resources
Date of Request: 1-18-84

FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: FWP

BRU, Program or Subprogram(s) Affected: FWP Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Captain Wayne A. Fleek Phone: 269-5541
Division: Fish & Wildlife Protection Date: 1/16/84

Approved by Commissioner: RS. Date: 1-17-84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

A M E N D M E N T

Offered in the HOUSE

By Hurlbert

TO: SSHB 404

Page 3, after line 7, insert:

"* Sec. 9. AS 16.05.251 is amended by adding a new subsection to read:

(c) If the Board of Fisheries denies a petition for the amendment, adoption, or repeal of a regulation, the board upon request shall provide to the person who submitted the petition a written statement of the reasons for the denial not later than 30 days after denying the petition."

Renumber remaining sections accordingly.

Page 3, after line 17, insert:

"* Sec. 13. AS 16.05.255 is amended by adding a new subsection to read:

(c) If the Board of Game denies a petition for the amendment, adoption, or repeal of a regulation, the board upon request shall provide to the person who submitted the petition a written statement of the reasons for the denial not later than 30 days after denying the petition."

Renumber remaining sections accordingly.



Official Business

Alaska State Legislature House Resources Committee

SIGN-IN

JAN 25, 1984

SSHB 404
FISH & GAME
CODES

NAME	ADDRESS	PHONE	REPRESENTING
Ron Somerville	3780 Mc Minnis JNCA	9-3450	AK. Outdoors Council
Bob Clabey	P.O. Box 3-2000 Juneau	465-4210	Fish & Game
Dennis Kelso	P.O. Box 3-2000, Juneau AK 99802	465-4100	Fish & Game
LARRY EDWARDS	Box 2158 SITKA 99835	747-8996	SELF AK. ENVIRONMENTAL LOBBY
Ken CARTWRIGHT <small>NOT HEARD</small>	Box 558 Homer, AK 99603	235-8252	North Pacific Fisheries Assn.
Arthur S. Robinson	Box 3519 Soldotna 99669	262-9164	Ken. Pen. Fisherman's Co-op

Gott Lisa Larson Shultz Rungstad
Whaling

0014 Korsa - Dpty Comm's

Overview of background of bill

0043 Gott - Q. P2, line 14 - discretionary for
law enforcement - A. To conform more
to present practice - flexibility

0058 Gott - Discussion on point of prosecutor's discretion

0110 Shultz - incident near Tok involving tourists
1/2 citations - A - McGuire - incident at fish
creek with dog - no arrest

0149 Rungstad - Is this present situation - Yes. Enforcement
activities detracts from mgmt activities

0190 Lisa - how many people. More less 400 - Biologists
headquarters staff, etc.

0200 Gott - should put burden on officer to justify
post interest of state.

0220 Rungstad - asked for comments on amendments

0230 Shultz - 400 line 27-28, P3 - Why must instead
of shall - A. Simanics

0249 Gott P3, line 5-7 - Permit to protect habitat?
A. Protection includes improvement

0290 Shultz line 7, P3 - Why eliminate "and stocking"
A "Stocking" is included in propagation.

0320 - Schultz - how do you prove intentions -
A - Proof is in sale - or intent to sell.

0360 Larson Pg 5 in 12 use of wheeled vehicles or
intention thereof - Swamp buggy in creek bed
A - Depends on if it is a designated anadromous
stream.

0465 Lisa - What about fish like grayling -
A - Dept's authority in streams quite limited - Primarily
in anadromous.

0495 Ringstad - just addressing tech. questions & should
note policy questions for later.

0505 Goll - Doesn't seem like too great a problem - very
limited group of streams.

0540 Kelso - Not our intent to sweep into net a group of rec
users, but to protect very vulnerable streams.

0560 Ringstad - Vaska amendment -
A - Correct oversight in bill last year - slight reduction
in revenue - Salt water part of fishery

0590 Ringstad - Harbert amendment - written statement
on why denied - A - Petition

Respond to approx 1500 individuals
Can comply with amendment as now written
Administrative Procedures act petitions - possibly 20 yr.

0705 Goll - Any receipt for Petition
A - Normal response - notification, letter or
phone call w/ results -

0740 turn tape over -

continue discussion of petition

Alaska Outdoor Council

0756 Simeriville - Supports AB404 - lotting at 55

0770 Reasonable req. on fish crossings 50 average
guy would know where he stands -

0788 Listka - How address in mining community?
Dip to industry & gen'l public to get before
appropriate board.

0806 Goll - Working now, in his experience
representing self

0825 Larry Edwards - Sitka - agrees with Goll on stream
crossings. Sec. B. "Person" = indiv. or corp.

further definition of word "Person" and some
answer to repeat violations

0867 Goll - Class a mids. = more or same as that language
going out

0882 Paterson - Kenai Fishermen's Cooperative. Sec. 8
Should not delete [ERBA GINS IN BIO RESEARCH]
from BDFisheries. "Stocking" = Stock stay, as
it is more clear in directing regional AAs
Sec 5 - Right to arrest 4/12/25/80 has language

HSE RES. 3:10 Feb 3 -
Rings, Uehl, Goll, Liska, Bussell

0012 Ed Hein - Run
pg 9, line 6 should read "board of game"
6 changes - substantive -

0040 Sec 5 - mandatory arrest

0046 re-insert "stocking"

0055 delete sec. 17 of SS - wheeled vehicle changes

0064 ~~#9~~ Hurbert amendment

0075 Vaska amendment

0105 Liska - Citations guidelines §
bail amts determined by court ~~is~~ not discretionary

0164 Kelso - no objections to CS.

0174 Vebbing moved adoption of CS with change
discussed on Pg. 9 line 6.
No Objection.

0181 Uehling moved w/ indiv. recs.
No Objection

0985 Gold - Stiers - Judge, Citation & Warning
does dept want all. A - do not now have
authority to issue citations.
Sec. 18 & 20 - raises penalties by major
amount

Kelso - effort to create uniformity - technical
changes.

1096 Listka - what's diff - shall, may & must -
A - shall & must same in court - May not mandatory

1094 Kelso - Anadromous streams do not go to
headwaters - just that portion of streams
closed as important.

0165 Gold - Symantics

Clasby - gets into budgetary area, not where
board is intended to be.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: January 11, 1984

REQUEST

Bill/Resolution No.: SSHB 404
 Title: Miscellaneous amendments to AS 16: Fish and Game
 Sponsor: Governor Sheffield
 Requestor: House Resources Comm.
 Date of Request: January 11, 1984

FISCAL DETAIL

Agency Affected: Fish and Game
 Program Category Affected: NRMEC
 BRU, Program or Subprogram(s) Affected: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Beverly Reaume Phone: 465-4120
 Division: Administration Date: January 11, 1984

Approved by Commissioner: Don Williams Date: 1-11-84
 Agency: Fish and Game

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 404
 Title: Misc. amendments to Fish & Game Code.
 Sponsor: Rules
 Requestor: Resources
 Date of Request: 1-18-84

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: FWP
 BRU, Program or Subprogram(s) Affected: FWP Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Captain Wayne A. Fleek Phone: 269-5541
 Division: Fish & Wildlife Protection Date: 1/16/84

Approved by Commissioner: AB. Date: 1-17-84
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

12/1/83

A M E N D M E N T

Offered in the HOUSE

By Hurlbert

TO: SSHB 404

Page 3, after line 7, insert:

"* Sec. 9. AS 16.05.251 is amended by adding a new subsection to read:

(c) If the Board of Fisheries denies a petition for the amendment, adoption, or repeal of a regulation, the board upon request shall provide to the person who submitted the petition a written statement of the reasons for the denial not later than 30 days after denying the petition."

Renumber remaining sections accordingly.

Page 3, after line 17, insert:

"* Sec. 13. AS 16.05.255 is amended by adding a new subsection to read:

(c) If the Board of Game denies a petition for the amendment, adoption, or repeal of a regulation, the board upon request shall provide to the person who submitted the petition a written statement of the reasons for the denial not later than 30 days after denying the petition."

Renumber remaining sections accordingly.

Resource Committee

Section 1. AS 16.05.495 is amended to read:

Section 16.05.495. VESSEL LICENSE EXEMPTION. A vessel used exclusively for the commercial capture of salmon in [drainage system of the Yukon and Kuskokwim Rivers] those administrative areas for the management of commercial salmon fishing which include the waters of Alaska between the latitude of Point Romanof and the latitude of Cape Newenham, including those waters draining into the Bering Sea between those latitudes and including the waters of Alaska surrounding Nunivak Island, or at a set net site, is exempt from the licensing requirements of AS 16.05.490.

Section 2. This Act takes effect January 1, 1985.

Rep. Vaska

HB

410

5-13-83

I. REQUEST

Bill/Resolution No.: HB 410
 Title: Increasing trap. lic. fee
 Sponsor: Bettisworth
 Requestor: House Resources Committee

II. FISCAL DETAIL

Agency Affected: Revenue
 Program Category Affected: Coll. & Mgt.
 BRU, Program of Subprogram(s) Affected: Admin. & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL	1.5					
300 CONTRACTUAL	5.0					
400 COMMODITIES	1.5					
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	8.0	-0-	-0-	-0-	-0-	

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

REVENUE Game Mgt. Fund	-0-	25.0	25.0	25.0	25.0	
-------------------------------	-----	------	------	------	------	--

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	8.0					
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Linda Gene Lockridge
 Division: Public Services Division

Phone: (907) 465-2376
 Date: May 11, 1983

Approved by Commissioner: Joseph K. Donah
 Department: Revenue

Date: 5/13/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

Assumption:

Total class 3B Resident trapping license sales for FY 1982 was 1,551. There is minimal fluctuation in these sales from year to year.

Additional Cost of Program:

Licenses are sold on a calendar year basis. The cost to implement a mid-year change in license fees will be \$ 8,000.00 for printing and distribution of new licenses.

Amendment Recommended: Effective date of January 1, 1984, will enable cost to be absorbed into existing program.

Two other classes of Resident Trapping License not included in HB 410:

AS 16.05.340 (a) (3) (A) Resident hunting & trapping \$ 15.00

AS 16.05.340 (a) (5) Resident hunting, trapping and sport fishing \$ 25.00

Amendment Recommended: Increase the cost of the trapping portion of the above licenses to total:

Class 3A \$ 32.00

Class 5 \$ 42.00

This would result in an estimated increase of \$ 151,762.00 to the Game Management Fund.

Without this amendment, a resident trapper could purchase a combination hunting and trapping license for \$ 15.00 -- \$ 5.00 less than the proposed \$ 20.00 Resident trapping license.

H B

4 55

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/8/84

REQUEST

Bill/Resolution No.: CSHB 455 (Res)
Title: defects in the title of
State Land
Sponsor: Goll & Grussendorf
Requestor:
Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected: Information &
Record Management - Title Defense
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		46.2				
200 TRAVEL		1.2				
300 CONTRACTUAL		4.0				
400 SUPPLIES		2.0				
500 EQUIPMENT		1.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	54.5	57.7	61.1	64.7	68.5
CAPITAL	0	0	0	0	0	0
REVENUE	0	0				

FUNDING: (Thousands of Dollars)

GENERAL FUND		54.5	57.7	61.1	64.7	68.5
FEDERAL FUNDS						
OTHER						
TOTAL		54.5	57.7	61.1	64.7	68.5

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General Fund

ANALYSIS: Attach a separate page for analysis

Prepared By: Carol Shobe/Joe Burch Phone: 276-2653
Division: Technical Services Date: 2/8/84
Approved by Commissioner: *William D. Amundson* Date: 2/8/84
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Wrangell

Jan 26, 1984

Dear Sirs:

I am sorry I won't be able to attend
The House Resources hearing at the Capitol,
Room 118 on January 30th on House Bill 455.

We would all like you to know that we
support House Bill 455 and pray for its
unopposed passage.

Thank you

Viola Erickson

MEMBER OF

S.R.A. Council - WRANGELL

BOARD OF DIRECTORS.

Southeast ALASKA

Regional Health Corporation

STATEMENT OF ROBERT D. ARNOLD,
DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES
ON HOUSE BILL 455
BEFORE THE HOUSE RESOURCES COMMITTEE
JANUARY 30, 1984

Mr. Chairman, members of the Committee, I am pleased to appear in support of House Bill 455, introduced by Representatives Peter Goll and Ben Grussendorf.

This bill would authorize the Department of Natural Resources to correct defects in the State's title to lands received from the federal government. It is designed primarily to allow for the administrative settlement of Native allotment claims on State land.

The bill would authorize our department to reconvey lands that were mistakenly conveyed to the State by the federal government. To insure that the State receives credit for the reconveyed lands in its overall entitlements under the Statehood Act, the bill would also waive the provisions of AS 38.05.125 requiring reservation of the mineral estate.

The primary need for this legislation arises from the fact of more than 200 Native allotment claims on State land. In 1979, a federal district court ruled that land used and occupied by Native allotment applicants should not have been conveyed to the State, even though the allotment applications were not filed until after the State received title. Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979). The court also ruled that the federal government has a trust responsibility to recover any such lands it wrongfully conveyed to the State. Id.

The expedited settlement procedures established by the allotment applicants and the federal government provide that the State may reconvey the lands to the federal government and that the reconveyed acreage will be credited to the state's entitlements under the Alaska Statehood Act. The State desires to expedite settlement of the valid allotment claims where possible, but lacks express statutory authority to reconvey.

The State has also received defective title to lands from the federal government in a variety of other contexts. For example, through administrative error the federal government recently conveyed to the State six sections of land underlying the TAPS pipeline. This bill would authorize the department to correct those defects without the need for burdensome quiet title litigation which is now the only available means to do so. The federal government already has this type of authority.

Virtually all of Section 2 of the bill before you makes technical changes to subsection (b) of A.S. 38.05.035. The department has no objection to these changes (through line 15 of page 3). However, the Committee may want to take into account that Senator Bettye Fahrenkamp has introduced a bill that would make a large number of changes to Title 38, including a substantive change in subsection (b).

The substantive changes in the bill before you begin on line 16, page 3.

Subparagraph 9 of the bill would require a determination that the land was "wrongfully or erroneously conveyed to the State." In the case of a Native allotment claim, this would mean determining that Native use and occupancy predated State selection and that the allotment is otherwise valid. In the case of other title defects, this would mean determining that the federal government did not have the authority to transfer a tract of land to the State, owing, for instance to its title being held by others.

The following section of the bill would waive the requirement of AS 38.05.125 to reserve mineral estates. This provision is necessary because the State would not receive credit for the reconveyance if the mineral estate is reserved. Both our attorney general and the Bureau of Land Management regional solicitor are of the opinion that section 6(i) of the Statehood Act (the federal statute requiring reservation of the mineral estate) would not prohibit reconveyances made to the federal government under the bill. This section also waives the provisions of AS 38.05.32i which restricts disposal of State land classified as agricultural land.

The need for this bill has been discussed extensively with representatives from Native groups and various agencies of both the State and federal governments. It has the support of all of them. I hope the Committee will be able to promptly act on this measure.



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

JOHN RINGSTAD, CO-CHAIRMAN
RICHARD SHULTZ, CO-CHAIRMAN
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

TO: Co-Chairman Ringstad

From: Committee Staff *jm*

Date: January 30, 1984

Re: HB 455

This afternoon's meeting will consider HB 455, by Representative Goll, which would create a mechanism in the statutes by which the state could, by quitclaim deed, convey state-selected lands back to the federal government. The feds would then settle the Native Allotment claims on those lands. Apparently the problem has arisen due to Native Allotment claims being filed on lands the state has selected, after the selection had been made and acted upon. Why the federal government did not have record of or recognize the use or occupation of the lands by the claimants is, perhaps, a matter for another discussion, but this bill would enable the current claims to be settled.

Sec. 1 is the statement of purpose, and speaks for itself.

Sec. 2 makes a number of grammatical clean-ups of AS 38.05.035(b) (the discretionary duties of the director of the division of land and water management) up to page 3, line 16, where it adds the new subsection 9.

Sec. 3 adds a new subsection to AS 38.05.125, disallowing its application to any state lands re-conveyed to the federal government under the new subsection 9. AS 38.05.125 defines the rights to the lands the state generally reserves to itself when it conveys statehood lands.

Included in the member's files on HB 455 are:

The bill

An Attorney General's opinion on the issue, dated last Aug 12

A letter of support for the bill

Applicable statutes

Sec. 38.05.035. Powers and duties of the director. (a) The director shall

(1) have general charge and supervision of the division and may exercise the powers specifically delegated to him; may employ and fix the compensation of assistants and employees necessary for the operations of the division; and is the certifying officer of the division, with the consent of the commissioner, and may approve vouchers for disbursements of money appropriated to the division;

(2) manage, inspect and control state lands and improvements on them belonging to the state and under the jurisdiction of the division;

(3) execute laws, rules, regulations and orders adopted by the commissioner;

(4) prescribe application procedures and practices for the sale, lease or other disposition of available lands, resources, property, or interest in them;

(5) prescribe fees or service charges, with the consent of the commissioner, for any public service rendered;

(6) under the conditions and limitations imposed by law and the commissioner, issue deeds, leases or other conveyances disposing of available lands, resources, property or any interests in them;

(7) have jurisdiction over state lands, except those lands acquired by the Alaska World War II Veterans Board and the Agricultural Loan Board or the departments or agencies succeeding to their respective functions through foreclosure or default; to this end the director possesses the powers and, with the approval of the commissioner, shall perform the duties necessary to protect the state's rights and interest in state lands, including the taking of all necessary action to protect and enforce the state's contractual or other property rights;

(8) Repealed by § 20 ch 182 SLA 1978.

(9) maintain such records as the commissioner considers necessary, administer oaths, and do all things incidental to the authority imposed; the following records and files shall be kept confidential upon request of the person supplying the information;

(A) the name of the person nominating or applying for the sale, lease, or other disposal of lands by competitive bidding;

(B) before the announced time of opening, the names of the bidders and the amounts of the bids;

(C) all geological, geophysical and engineering data supplied, whether or not concerned with the extraction or development of natural resources;

(D) except as provided in AS 38.05.036, cost data and financial information submitted in support of applications, bonds, leases and similar items;

(E) applications for rights-of-way or easements;

(F) requests for information or applications by public agencies for lands which are being considered for use for a public purpose;

(10) account for the fees, licenses, taxes or other money received in the administration of AS 38.05.005 — 38.05.370 including the sale or leasing of land, identify their source, and promptly transmit them to the proper fiscal department after crediting them to the proper fund; receipts from land application filing fees and charges for copies of maps and records shall be deposited immediately in the general fund of the state by the director;

(11) select and employ or obtain at reasonable compensation cadastral, appraisal, or other professional personnel he considers necessary for the proper operations of the division;

(12) be the certifying agent of the state to select, accept and secure by whatever action is necessary in the name of the state, by deed, sale, gift, devise, judgment, operation of law, or other means any lands, of whatever nature or interest, available to the state, and shall be the certifying agent of the state, to select, accept or secure by whatever action is necessary in the name of the state any lands, or title or interest to lands available, granted, or subject to being transferred to the state for any purpose;

(13) Repealed by § 15 ch 181 SLA 1978; § 20 ch 182 SLA 1978.

(14) when he makes a written finding that the interests of the state will be best served, he may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available lands, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, he may impose additional conditions or limitations in the contracts as he, with the consent of the commissioner, determines will best serve the interests of the state; and no contract for the sale, lease, or other disposal of available lands or interests in them, is legally binding on the state until the commissioner formally records his consent to the contract; but if the appraised value is not greater than \$50,000 in the case of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or interest in land, the director may approve and issue the contract without the consent or approval of the commissioner; the written finding shall be available to the public upon request; before a public hearing, if held, or in any case no less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them, the director shall make available to the public a written decision in which he sets out the facts and applicable law upon which he based his determination that the sale, lease, or other disposal will best serve the interests of the state; a written finding is not required before the approval of

- (A) a contract for a negotiated sale authorized by AS 38.05.115;
 - (B) the lease of land for a shore fishery site under AS 38.05.082;
 - (C) a permit or other authorization revocable by the department.
- (b) The director may

(1) delegate the administrative duties, functions or powers imposed upon him to a responsible employee in the division;

(2) grant preference rights for the lease or purchase of state land without competitive bid in order to correct the past or future errors or omissions of a state or federal administrative agency when inequitable detriment would otherwise result to a diligent claimant or applicant due to situations over which the claimant or applicant had no control; the exercise of this discretionary power operates only to divest the state of its title to or interests in land and may be exercised only with the express approval of the commissioner;

(3) grant a preference right to a claimant who shows bona fide improvement of state land, or federal land subsequently acquired by the state, and who has in good faith sought to obtain title to the land but who, through error or omission of others, has been denied title to it; upon a showing satisfactory to the commissioner, the claimant may lease or purchase the land at the price set on the date of original entry on the land or, if a price was not set at that time at a price determined by the division to fairly represent the value of unimproved land at the time the claim was established, but in no event less than the cost of administration including survey; the error or omission of a predecessor in interest or an agent, administrator, or executor which has clearly prejudiced the claimant may be the basis for granting a preference right;

(4) sell lands by lottery for less than their appraised value when, in his judgment, past scarcity of land suitable for private ownership in any particular area has resulted in unrealistic land values;

(5) when he determines it is in the best interest of the state and will avoid injustice to a person or his heirs or devisees, dispose of land, by direct negotiation to that person who presently uses and who used and made improvements to that land before January 3, 1959 or his heirs or devisees; the amount paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director; a parcel of land disposed of under this paragraph shall be of a size consistent with the person's prior use, but may not exceed five acres;

(6) dispose of an interest in land limited to use for agricultural purposes by lottery;

(7) convey to an adjoining landowner a parcel of land created by a highway right-of-way alignment or realignment, or a parcel created by the vacation of a state-owned right-of-way if

(A) he determines that it is in the best interests of the state;

(B) the parcel does not exceed the minimum lot size under an applicable zoning code; and

(C) the director and the planning authority having land use planning jurisdiction agree that conveyance of the parcel to the adjoining landowner will result in boundaries that are convenient for the use of the land by the landowner and compatible with municipal land use plans;

(8) for good cause extend for up to 90 days the time for rental or installment payments by a lessee or purchaser of state land under AS 38.05.005 — 38.05.370 if reasonable penalties and interest set by the director are paid.

(c) A parcel of land may be conveyed under (b) of this section without classification or reclassification under AS 38.05.300.

(d) A parcel of land described in (b) (7) of this section must be sold at its fair market value as determined by the director on the basis of an appraisal completed as provided in AS 38.05.310. Nothing in this subsection prevents the sale of land under AS 38.05.055 or 38.05.057 to a person not qualifying as an adjoining landowner if the adjoining landowner declines to purchase the land. (§ 5 art II ch 169 SLA 1959; am § 1 ch 57 SLA 1960; am §§ 2 — 4 ch 61 SLA 1960; am § 1 ch 55 SLA 1962; am § 1 ch 56 SLA 1964; am § 1 ch 98 SLA 1964; am § 1 ch 5 SLA 1965; am § 1 ch 58 SLA 1965; am § 1 ch 194 SLA 1968; am § 1 ch 164 SLA 1972; am §§ 2, 3 ch 257 SLA 1976; am §§ 1, 2 ch 176 SLA 1978; am § 15 ch 181 SLA 1978; am § 20 ch 182 SLA 1978; am § 1 ch 61 SLA 1980; am §§ 9 — 13 ch 113 SLA 1981)

Revisor's notes. — In subsection (b) (7), the word "convey" was substituted for "dispose" at the beginning of the paragraph and in subsection (d), the words "of land" were added following "parcel" by the revisor of statutes under AS 01.05.031.

Effect of amendments. — The first 1978 amendment, in subsection (b), substituted "sell lands by lottery" for "dispose of lands by competitive bid" in paragraph (4) and inserted "suitable for private ownership" in paragraph (4).

The second 1978 amendment, in subsection (a), repealed paragraph (13), which related to the powers of the director to select, administer, and dispose of mental health lands for the support of the mental health program. The third 1978 amendment, in subsection (a), repealed paragraphs (8) and (13), which related to the power of the director to administer the Land Registration Law and to select, administer, and dispose of mental health land for support of the mental health program, respectively. Section 28 of this amendatory act makes the repeal of paragraph (13) effective July 1, 1978, while § 30 of the act makes the repeal of paragraph (8) effective July 19, 1978.

The 1980 amendment added "except as provided in AS 38.05.036" at the beginning of subparagraph (a)(9)(D).

The 1981 amendment substituted "\$50,000" for "\$10,000" preceding "in the case of the sale of land," substituted "\$5,000" for "\$1,000" preceding "in the

case of the annual rental of land," substituted semicolons for periods preceding "the written finding" and preceding "before a public hearing," added "a written finding is not required before the approval of" following "interest of the state" and added subparagraphs (A)-(C) in subsection (a)(14). In subsection (b)(3), the amendment added "the price set on the date of original entry on the land or, if a price was not set at that time at" preceding "a price determined by the division." In subsection (b)(5), the amendment substituted "on the date that the person first entered the land" for "as of that date" preceding "as determined by the director." The amendment also added paragraphs (7) and (8) of subsection (b) and added subsections (c) and (d).

Editor's notes. — Section 7, ch. 182, SLA 1978, purported to amend this section by adding a paragraph (7) of subsection (b). Section 27 of ch. 182 made this amendment effective on the date that the Board of Regents voted to approve the matters under consideration as provided in § 24 of the act.

The Board of Regents disapproved all matters on August 17, 1978. Consequently, this amendment was ineffective.

Opinions of attorney general. — The interaction of AS 38.05.030(b), 38.05.035(a)(7) and (12), AS 35.05.040(1), and AS 35.20.010 was examined to determine (1) which agency of the state had authority to accept title to land transferred

Article 5. Reservation of Rights to Alaska.

Section

125. Reservation

127. Access to navigable or public waters

130. Damages and posting of bond

Sec. 38.05.125. Reservation. Each contract for the sale, lease or grant of state land, and each deed to state land, properties or interest in state land, made under AS 38.05.315 — 38.05.325, 38.05.045 — 38.05.120, 38.08.010 — 38.08.120, or 38.50.010 — 38.50.170 except as provided in AS 38.50.050 is subject to the following reservations: "The party of the first part, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times for the purpose of opening, developing, drilling, and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved." (§ 1 art VII ch 169 SLA 1959; am § 14 ch 61 SLA 1960; am § 1 ch 42 SLA 1966; am § 3 ch 240 SLA 1976; am § 2 ch 175 SLA 1980)

Effect of amendments. — The 1980 amendment inserted the reference to AS 38.08.010 — 38.08.120, and "as" preceding "provided in AS 38.50.050" near the beginning of the section, inserted

"geothermal resources" wherever it appears throughout the section, and substituted "attorneys" for "attorney" near the middle of the section.

Editor's notes. — As to declaration of

Cities with AGUILAR class members

Aleknagik
Anchorage
Angoon
Aniak
Barrow
Bethel
Bellingham ✓
Chignik Lagoon
Chugiak
Clark's Point
Copper Center
Delta Junction
Dillingham
Dot Lake
Ekwok
Emmonak
English Bay
Fairbanks
Gakona
Glennallen
Grayling
Haines
Homer
Hoonah
Juneau
Kake
Kaktovik
Kaltag
Kenai
Ketchikan
Klukwan
Kodiak

Koliganek
Kotzebue
Minto
Montana Creek
Naknek
Nenana
New Stuyahok
Nondalton
Nulato
Old Harbor
Pedro Bay
Petersburg
Pilot Point
Pilot Station
Port Bailey
Port Graham
Port Lions
Portage Creek
Powell Butte
Quinhagak
Saint Mary's
Saint Michael
Seldovia
Skagway
Soldotna
South Naknek
Spenard
Tacoma ✓
Tanacross
Tanana
Tok
Tuluksak
Tyonek
Wrangell

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

February 7, 1984

The Honorable John Ringstad
Co-Chairman
House Resources Committee
Pouch V
Juneau, AK 99811

Dear Representative Ringstad:

At last week's Resources Committee hearing on HB 455, Representative Bussell asked what costs the State would bear in quitclaiming lands to the federal government for reconveyance to valid claimants. Although I responded in summary fashion to the question, I am providing more information for the consideration of Committee members.

The subject lands are largely Native allotments that the State must, by court finding, return to the federal government for reconveyance. The State has no choice but to return the lands. Whatever the value of the lands, they must be reconveyed to the federal government.

In most cases (for allotments on general grant selection lands) the State's outstanding land selection entitlement will be increased to reflect this reconveyance, so that there will be no net loss to the State. In other cases (for Mental Health grant lands and University grant lands), the deadline for state selections has passed, and federal legislation would be required to allow the State to recoup selection rights. There is no provision for the federal government otherwise to reimburse the State for retaking of these lands. The State has explored the possibility of federal legislation to achieve these purposes, and may press for it.

In summary, the State may not know what values it will give up in allowing these lands to be reconveyed to valid claimants, but it must reconvey them and it serves an important public purpose in doing so. Additionally, the legislation provides a new, less expensive mechanism for the process, saving the State legal costs that would have been associated with the processing of each claim that the State would have found itself unable otherwise to convey without court settlement.

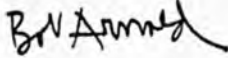
The Honorable John Ringstad

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February 7, 1984

Thank you for your interest. I will be available for further questions at Wednesday's hearing. Please contact me if I may provide any information before then.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. D. Arnold".

Robert D. Arnold
Deputy Commissioner

YAK-TAT KWAAN, INC.

PHONE 907-784-3335

P.O. BOX 416

YAKUTAT, ALASKA 99689

February 3, 1984

The Honorable John Ringstad, Co-Chairman
House Resources Committee
ALASKA STATE LEGISLATURE
Pouch V (MS 3100)
Juneau, AK 99811

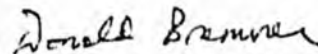
Re: House Bill No. 455

Dear Mr. Ringstad:

Yak-Tat Kwaan, Inc. is a Native Corporation formed under ANCSA. On behalf of our Shareholders and Native Allotment applicants, we would like to encourage the House Resources Committee to support House Bill No. 455 by Goll and Grussendorf. Our understanding is that this bill will enhance Native Allotment applicants. Any efforts to expedite Native Allotment applications is a worthy cause and should be supported.

Sincerely,

YAK-TAT KWAAN, INC.



Donald Bremner
Vice-President

/sb

cc: Representatives
Richard Shultz
Peter Goll
Rich Uehling
Tony Vaska
Ron Larson
Charlie Bussell
John Cowdery
John Liska

MEMORANDUM

State of Alaska

TO: Tom Hawkins
Division of Land and Water Management
DNR - Anchorage

DATE: August 4, 1983
FILE NO: 166-683-83
TELEPHONE NO: 276-3550

FROM: NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Barbara L. Malchick *BLM*
Assistant Attorney General
AGO - Anchorage

SUBJECT: Settlement of Haines
Aguilar allotment
claims.

Gary Gustafson, formerly of the Division of Research and Development, requested our opinion regarding the State's authority to settle five allotment claims on state patented lands in the Haines area under the settlement provisions of Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979). Under existing statutes, it is unclear whether the State has authority to implement the Aguilar settlement procedures. There are, however, other options available to the State. Of these options, it is our opinion that new legislation would be the best means of settling Aguilar allotment claims.

After a background discussion of Aguilar, three broad problem areas are discussed: (1) the State's authority to convey patented lands; (2) the State's ability to recoup selection rights; and (3) the existence of third-party rights on the patented lands. Although this memorandum focuses primarily on the five particular allotments in Haines, the issues discussed are applicable to the more than 220 other Aguilar allotments statewide.

I

BACKGROUND

Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979), was a class action suit brought by Natives whose allotment applications were rejected because the land they applied for had previously been conveyed to the State. Although the Natives claim that they used and occupied the land before the State selected it, their applications were not filed until after the state selections were made. The court held that if the land was used and occupied by Natives, it should not have been conveyed to the State. The court further held that the federal government has a trust responsibility to recover for the Natives any land

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wrongfully conveyed to the State. The State was not a party to the suit.

The plaintiffs and the federal government stipulated to procedures to implement the court's order. Under the procedures, BLM first conducts an informal adjudication to determine whether an allotment application is valid. If the application appears valid, BLM recommends that the U.S. Attorney bring suit against the State to cancel the State's patent. The stipulated procedures also provide for expedited settlement, whereby the State quitclaims all or part of its interest in the land to the federal government, which in turn grants the allotment to the Native applicant. The expedited procedures further provide that the acreage quitclaimed by the State shall be credited to the state entitlement under which the lands were originally conveyed.

Last year, the Commissioner's office indicated its intention to expedite settlement of some of the Aguilar claims in the Haines area. DNR divided the allotments into three categories: (1) those where the State is willing to quitclaim its entire interest; (2) those where the State is willing to quitclaim its interest with a reservation of an access easement; and (3) those where the State has an important interest and will insist upon full adjudication. One of the Haines area allotments that DNR proposes to quitclaim is from the first category, and four are from the second. The five parcels are on lands that were patented to the State under the Alaska Mental Health Enabling Act.

II

AUTHORITY

A. Existing Statutes.

Article VIII, Section 9 of the Alaska Constitution specifies that "the Legislature may provide for the sale or grant of state lands" Article VIII, Section 10 provides that "no disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law." In order to implement Section 10, the Legislature enacted the Alaska Land Act, AS 38.05. DNR, through the Commissioner and the Director of

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the Division of Lands, is the agency charged with administering the Alaska Land Act. AS 38.05.005.

DNR, as any administrative agency, has only those powers that are expressly granted or necessarily implied by statute. See, e.g., Washington State Human Rights Commission v. Cheney School District No. 30, 641 P.2d 163, 167 (Wash. 1982). The Alaska Land Act does not explicitly authorize DNR to quitclaim its interest in the land described in the five allotment applications. Arguably, however, the proposed conveyances fall within the terms of the public and charitable use statute. Moreover, the authority to quitclaim may be a "necessarily implied" power of the Commissioner's or the Director's.

1. Disclaimer

DNR has suggested that it simply "disclaim" its interest to the allotment lands. Where DNR is convinced of the validity of an allotment application, a disclaimer would in effect merely correct the mistake made by the federal government in granting the land to the State in the first place.

There is no express authority that would allow DNR to disclaim. Moreover, the Alaska Land Act already provides a procedure for correcting mistakes made by the federal government. Under AS 38.05.035(b)(2), DNR is authorized to grant a preference right to a diligent applicant for the purchase of state land in order to correct past errors of a federal agency.^{1/} The very fact that the Legislature provided a method for dealing with federal mistakes may be a "positive inhibition" against correcting the mistakes except by compliance with the preference

^{1/} This is not the procedure specified in Aguilar, and it is probably not a viable option for settling the Aguilar claims. Because the preference right would be given directly to the applicant rather than to the federal government, the property conveyed to the applicant would not have the trust status that allotments have. It is therefore questionable whether allotment applicants and the federal government would agree to this option.

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right statutes. See Hughes v. City of Torrance, 175 P.2d 290 (Cal. App. 1946).

2. Public and Charitable Use Statute

The public and charitable use statute provides that the State may dispose of land to a government agency for less than the appraised value if it is "fair and proper and in the best interests of the public" AS 38.05.315(a). Quitclaiming the land at issue here may be in the best interests of the public since it would settle the allotment claims without time-consuming and expensive litigation. Moreover, quitclaiming the land to the federal government may be in the public interest since it would allow BLM to discharge its duty as trustee for the Native applicants.

In determining whether a disposal to a government agency is in the public interest, "due consideration [must be] given to the nature of the public services or function rendered by the agency" AS 38.05.315(a). The statute's focus on an agency's public function implies that the Legislature envisioned that the ultimate use of the land would be in the public interest. Likewise, the title of the statute implies that the land will be used for a public and charitable purpose. Here, the federal government would be conveying the land into private ownership, rather than using the land for the benefit of the public.

In determining whether there is a public interest, due consideration must also be given to "the terms of the grant under which the land was acquired by the state." AS 38.05.315(a). The land at issue here was acquired by the State under the Mental Health Enabling Act. Under the terms of the grant, mental health lands "shall be administered by the Territory of Alaska as a public trust and [the] proceeds and income [therefrom] shall first be applied to meet the necessary expenses of the mental health program of Alaska." Thus, a conveyance of these lands for less than their appraised value would be contrary to the terms of the grant under which they were acquired. However, a superior court judge in Fairbanks recently upheld a state statute which in

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effect treats mental health lands as general grant lands.^{2/} Since the State is not obligated to administer general grant lands as a trust, this requirement may not be a problem.

In summary, it is unclear whether the proposed conveyances fall within the scope of the public and charitable use statute. For the protection of the State and the allotment applicants, we therefore do not recommend this option.

3. Implied Authority

The Director of the Division of Lands is authorized, with the consent of the Commissioner, to approve contracts for the sale, lease, or other disposal of available lands "when he makes a written finding that the interests of the State will be best served." AS 38.05.035(a)(14).^{3/} The Alaska Supreme Court has interpreted this statute as giving the Director broad discretion in deciding whether to approve a disposal. Moore v. State, 553 P.2d 8, 31 (Alaska 1976). It is possible that a court would construe the statute as a grant of authority sufficiently broad to encompass the proposed conveyances.

There are several problems with this approach, however. First, the Supreme Court interprets Article VIII, Section 10 of the Constitution as reflecting "the framers' recognition of the importance of our land resources and of the concomitant necessity for observance of legal safeguards in the disposal or leasing of

^{2/} The court went on to hold that the State is obligated to reimburse the trust for the full value of any lands transferred from it. See Weiss v. State of Alaska, 4FA-83-2208 Civ., June 15, 1983. It is unknown at this time whether the State will appeal this decision.

^{3/} Although this responsibility falls on the Director, the Commissioner may assume the responsibility if she does so in a clear and explicit manner. Moore v. State, 553 P.2d 8, 37 (Alaska 1976).

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state lands." Alveska Ski Corporation v. Holdsworth, 426 P.2d 1006, 1011 (Alaska 1967). Thus, a court may be reluctant to find authority to dispose of land unless it is expressly delegated by statute.

Further, a court may not interpret the statute as an independent grant of authority. Rather, the statute may be procedural (requiring the Director to make a written "best interest" finding), and may only apply where the disposal is otherwise authorized by law. This reading would be consistent with AS 38.05.035(a)(6), which provides that the Director shall, "under the conditions and limitations imposed by law and the commissioner, issue deeds, leases or other conveyances disposing of available lands, resources, property or any interest in them."

Finally, even if subsection (a)(14) is read as a broad grant of authority, a decision to quitclaim the lands at issue may not best serve the interests of the State. As discussed above, the State's interest may be served in that the allotment claims would be settled without time-consuming and expensive litigation. However, the interests of the State would not be served in that the State would not receive anything in return for the conveyances. This is so because the State must reserve the mineral estate and thus could not be credited for the surface estate acreage conveyed (see Section III, A. below) and because the State is precluded from selecting additional mental health lands to replace the conveyed lands (see Section III, B. below).

B. Other Options.

1. New Legislation.

In our opinion, the best option available to the State is to draft new legislation specifically authorizing the proposed conveyances. Once the legislation is passed, the State would be authorized to quitclaim its interest in the lands pursuant to the stipulated procedures of Aguilar. The tremendous advantage to this option is that the legislation would apply to settlement of all of the more than 220 Aguilar claims across the State. It is likely that this new legislation would be supported by the allotment applicants and Alaska Legal Services Corporation, and would be popular in the Legislature. Under this option, however,

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the State may lose its ability to recoup selection rights unless companion federal legislation is passed (see below).

2. Land Exchange.

Another option available to the State is to enter into a land exchange with the federal government. Under this option, the State would exchange the allotment lands for other lands in federal ownership. The land exchange statutes require that "exchanges shall be for the purpose of consolidating state land holdings, creating land ownership and use patterns which will permit more effective administration of the state public domain, facilitating the objectives of state programs, or other public purposes." AS 38.50.010. The general purpose of settling Native allotment claims would seem to fall within the "public purpose" language of the statute.

As discussed below, one advantage to this option is that the State would not lose its ability to recoup selection rights since it would be receiving specified lands in return for the allotment lands. The land exchange option does present procedural problems, however. It is time-consuming, since land must be identified, appraisals must be performed, public notice must be given, and public hearings must be held. Moreover, DNR has indicated that most of the remaining BLM lands in Alaska are undesirable. If the lands proposed for the exchange are of unequal value, the State would also need legislative approval before the exchange could take place. In addition, although the federal government is authorized to enter into such a land exchange (ANCSA § 22(F)), this is not the procedure specified in Aguilar. The Solicitor's office has indicated that BLM is unwilling to enter into a land exchange because of the time and expense involved.

3. Settlement of Litigation.

An additional option available to the State is to allow the federal government to proceed with the Aguilar procedures and

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bring suit in federal court to cancel the State's patents.^{4/} The Attorney General would then have the authority to settle the litigation by agreeing to a court order cancelling the patents. Any such settlement, of course, must be done in good faith and free from fraud.

III

RECOUPMENT OF SELECTION RIGHTS

The Aguilar stipulated procedures provide that if the State quitclaims its interest, the acreage shall be credited to the state entitlement under which the lands were originally conveyed. This provision, however, may be unenforceable. First, the requirement that the State reserve the mineral estate may prevent the State from receiving credit for the quitclaimed acreage. Secondly, the five allotment claims involved here are on mental health lands and the time for selecting mental health lands has passed.

A. Mineral Estate.

Under AS 38.05.125, the State must reserve the mineral estate in conveyances of land made under the Alaska Land Act (AS 38.05). Where the State receives a mineral estate, DLM must charge the acreage against the State's acreage entitlement. Thus, DLM would not be able to credit the State for the surface estate acreage conveyed, regardless of the provisions of the Aguilar settlement. Accordingly, if the State conveys the allotment lands under the Alaska Land Act (for example, under the public and charitable use statute), the surface acreage will simply be lost.

The requirement to reserve the mineral estate may not be a problem under the three other options discussed above. New legislation could specify that the State is authorized to convey

^{4/} Indeed, the State may be forced into this option by default. DLM recently sent out the "90-day letters" specified in the Aguilar procedures for the five allotment claims at issue.

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the mineral estate, along with the surface estate, to the federal government.^{5/} Likewise, in a land exchange, the State can exchange mineral rights to the extent authorized by applicable federal law (AS 38.50.050); section 22(f) of ANCSA authorizes the State to transfer the mineral estate in exchanges with the federal government. Finally, there would be no mineral estate problem under the settlement of litigation option since the

State's patent would be cancelled and the mineral estate would merely revert to the federal government.

B. Mental Health Lands.

The Aguilar procedures provide that the quitclaimed acreage shall be credited to the state entitlement under which the lands were originally conveyed. Under the terms of the Mental Health Enabling Act, however, the time for selecting mental health lands has expired. According to the Solicitor's office, DLM does not have the authority to extend the time for the State to select mental health lands. This was not considered at the time the Aguilar procedures were drafted.

Under any of the options other than a land exchange, the State would thus lose its ability to recoup its selection

^{5/} This problem may not be so easily solved for other than mental health lands. The Alaska Constitution specifies that grants of state land must contain such reservations to the State of all resources as may be required by Congress or the State. In Section 6(i) of the Alaska Statehood Act, Congress required the State to reserve the mineral estate when disposing of general grant lands. Thus, if the State wished to quitclaim Aguilar lands that are general grant lands, federal legislation in addition to state legislation may be required. See State v. Lewis, 559 P.2d 630 (Alaska 1977). We note, however, that if the State does dispose of the mineral estate, Section 6(i) provides that the mineral estate will be forfeited to the federal government in an action brought by the U.S. Attorney. Since the federal government would be getting the mineral estate anyway, such an action would be meaningless.

Tom Hawkins
Re: 166-683-63
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rights and the acreage will simply be lost.^{6/} However, the fact that the time for selecting mental health lands has passed would not result in a loss of acreage if the State enters into a land exchange because the State would be receiving specified lands in return for the allotment lands.

The inability to recoup selection rights is not a problem, of course, if the State has selected more than its statutory entitlement of one million acres of mental health lands. While DNR is convinced that the State is in fact under-selected, BLM maintains that the State is over-selected. The actual situation will not be known for years.

IV

THIRD-PARTY RIGHTS

The State has created many types of third-party rights on its patented Aguilar lands, including mining claims, special use permits, rights-of-way, disposals of resources from the land, and disposal of the land itself. Because the title reports for the five allotment claims involved here indicate that a timber sale contract was the only third-party interest created, the other types of interests will not be discussed in this memorandum. These interests and the State's ability to protect them must, of course, be considered as the situations arise.

In 1979, the State entered into a contract with the Schnabel Lumber Company. The contract describes a large area of land near Haines and provides that Schnabel is entitled to cut 10.2 million board feet (mmbf) of timber per year from this land. The five parcels at issue here are included in the contract, as are many other Aguilar allotment claims. Under the terms of the contract, the State may reserve lands from cutting, but the State is still obligated to provide 10.2 mmbf for harvest.

^{6/} It is possible that federal legislation could be drafted allowing the State to select replacement mental health lands in this situation.

Tom Hawkins
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The Division of Forestry is currently developing a management plan for the area. This involves inventorying the land available for cutting to determine the annual allowable cut; i.e. the amount that would permit timber to be harvested on a sustained yield basis. Forestry is hopeful that the annual allowable cut will be greater than the 10.2 mmbf specified in the contract even if the Native allotment lands are considered unavailable for cutting. Forestry will not be able to determine the allowable cut until late summer or fall.

Shortly after the Schnabel timber contract was signed, a lawsuit was brought by Southeast Alaska Conservation Council (SEACC). The basis of the lawsuit was SEACC's assertion that the contract volume of 10.2 mmbf per year would violate the constitutional requirement that timber be harvested on a sustained yield basis. SEACC argued in part that Forestry's allowable cut calculation was incorrect because the amount of land available for cutting was actually much lower than the amount used by Forestry in making its calculation. The Alaska Supreme Court recently held that the allowable cut calculation was "reasonable". However, if the State conveys the allotment lands to the allotment applicants, thousands more acres may be unavailable for cutting. This could potentially re-open the SEACC lawsuit.

V

CONCLUSION

There are more than 220 known Aguilar claims statewide, affecting well over 25,000 acres of general grant, mental health, university, and school lands. There is currently no explicit authority for the State to settle the claims by quitclaiming its interest in the lands. However, colorable arguments can be made that the Commissioner has implied authority to quitclaim or that the proposed conveyances are within the scope of the public and charitable use statute. It is our recommendation that new legislation specifically authorizing the Commissioner to settle Aguilar claims be drafted and presented to the Legislature as soon as possible. Whatever option is chosen, the State's ability to protect third-party rights and its statutory prerogative entitlements should be carefully considered.

H B

458



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

JOHN RINGSTAD, CO-CHAIRMAN
RICHARD SHULTZ, CO-CHAIRMAN
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

MEMORANDUM

To: House Resource Committee members

From: Committee Staff

Date: April 10, 1984

Re: CSHB 458 (2nd draft)

Since the last committee meeting when concerns expressed about DNR's authority to convey agricultural land were raised, the committee staff has thoroughly re-examined existing provisions in statute, and consulted with DNR.

The net result of this research is that authority to convey agricultural lands already exists as per AS 38.05.045, and no additional authority is needed to accomplish the purposes of this legislation.

The technical changes that Sharon Barton requested at the last meeting were accomplished and a more appropriate section in the statute was chosen in preparing the CS that is presently before the committee. That section was entitled, " LIMITATION ON PURCHASES OF AGRICULTURAL LAND " and the new CS merely expands that title to include " CONDITIONS " as well as " LIMITATION ".

According to DNR, there are at this time no conflicts in title 38 language that would prevent or hinder the implementation of this legislation should it be signed into law. Other technical changes that may improve title 38 with regard to this subject should more appropriately be considered in SB 375 which was drafted as an omnibus clean-up bill and will soon be before this committee.

Legislative history reports. — For adoption of the House Finance Committee letter of intent on the shift of responsibility from the Department of Natural Resources to the Department of Revenue, see 1980 House Journal, pp. 1030, 1143.

ity from the Department of Natural Resources to the Department of Revenue, see 1980 House Journal, pp. 1030, 1143.

Sec. 38.05.037. Zoning regulations in the unorganized borough to facilitate federal land sales.

Opinions of attorney general. — The zoning power vested in the Department of Natural Resources under this section is broad enough to encompass the creation of historical districts as a control over land use, but the exercise of that authority does

not make the property eligible for historic preservation loans under AS 45.98, which is aimed solely at historic districts established by municipalities. January 3, 1980, Op. Att'y Gen.

Article 2. Sale of Lands.

Section

- 45. Generally
- 47. [Repealed]
- 50. Disposal of land for private ownership
- 55. Auction sale procedures
- 57. Disposal of land by lottery
- 58. [Repealed]
- 59. Limitation on purchases of agricultural land

Section

- 65. Terms of contract of sale
- 66. [Repealed]
- 67. Veterans preference
- 68. Forest Service permittees' sales preference
- 69. Preference to persons for agricultural purposes

Editor's notes. — For provisions for preferences for occupants of land under a United States Forest Service timber

contract see ch. 47, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

Sec. 38.05.045. Generally. All lands owned in fee by the state or to which the state may become entitled, excepting tide, submerged or shorelands, and timber or grazing lands, may be sold as provided in AS 38.05.045 — 38.05.069 and 38.08.010 — 38.08.120. However, this section does not prevent the disposition of lands as provided in AS 38.05.300 — 38.05.348. (§ 1 art IV ch 169 SLA 1959; am § 50 ch 32 SLA 1971; am § 12 ch 85 SLA 1979)

Effect of amendments. — The 1979 amendment added "and 38.08.010 —

38.08.120" to the end of the first sentence.

Sec. 38.05.047. Classification and sale of state land in municipalities.

Repealed by § 45 ch 113 SLA 1981.

Cross references. — For provisions on the land disposal bank containing state land classified for disposal into private

ownership, see AS 38.04.020.

Editor's notes. — The repealed section derived from § 13, ch. 85, SLA 1979.

appraised fair market value, exclusive of value accruing from improvements or development, such as fill material, buildings or structures, by the occupant or his predecessor in interest or reflecting, equities of the occupant;

(8) "home rule cities and cities of the first class" do not include a borough. (§ 5 art III ch 169 SLA 1959; am § 6 ch 61 SLA 1960; am § 1 ch 18 SLA 1962; am §§ 1, 2 ch 81 SLA 1964; am § 1 ch 4 SLA 1966)

Editor's notes. — This section is set out above to correct an error in the main pamphlet.

NOTES TO DECISIONS

Purpose of section. — One purpose of the Alaska Land Act was to establish equitable methods of disposing of certain tidelands. Toward this end, and within the federal parameters requiring the recognition of "preference rights," this section was included in the Act. *City of Homer v. State*, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

Due process required. — Private parties are entitled to due process of law before property rights may be removed; therefore, the minimal protection provided by adjudicatory procedures of the Department of Natural Resources must meet that standard. *City of Homer v. State*, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

Municipalities are entitled to due process in the adjudication of claims to tide and submerged lands. *City of Homer v. State*, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

With respect to the disposition of tidelands, municipal corporations are to be afforded the same rights of due process as are private parties. *City of Homer v. State*, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

The language of subsection (b) is clear and unambiguous. *State Dep't of Nat'l Resources v. City of Haines*, Sup. Ct. Op. No. 2342 (File No. 5067), 627 P.2d 1047 (1981).

Scope of subsection (b) grant. — The

grant in subsection (b) of this section encompasses tideland adjacent to subsequently expanded municipal boundaries. *State, Dep't of Nat'l Resources v. City of Haines*, Sup. Ct. Op. No. 2342 (File No. 5067), 627 P.2d 1047 (1981).

In effect, this section gives the authorities of a city, etc.

In accord with original. See *Talbot's, Inc. v. Cessnun Enter., Inc.*, Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

In order for easement under subsection (b)(6) of this section to be established, it must appear that it is reasonably necessary for the enjoyment of the property, the term "necessary" meaning that there could be no other reasonable mode of enjoying the dominant tenement without the easement. An easement by implication does not arise merely because its use is convenient to the beneficial enjoyment of the dominant portion of the property. *Talbot's, Inc. v. Cessnun Enter., Inc.*, Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

While strict or absolute necessity is not required, something more than mere convenience must be shown before an occupant of tidelands is entitled to an easement under subsection (b)(6) of this section. *Talbot's, Inc. v. Cessnun Enter., Inc.*, Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

Sec. 38.05.321. Restriction on sale, lease or other disposal of agricultural land. (a) The sale, lease or other disposal of state land classified as agricultural land transfers only rights for agricultural purposes, and all other interests in the land remain with the state unless otherwise required by law.

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applicant who is entitled to receive a conveyance of the land by lottery. If the commissioner does not receive an application for a parcel of state land or if a purchaser fails to sign a lease agreement or contract of sale, the parcel shall be offered to the first eligible person to apply for the parcel. If the parcel was designated as a homestead and offered to the public under AS 38.05.047(f), the parcel shall be disposed of under the terms required by AS 38.08.010 — 38.08.120."

AS 38.05.047, referred to near the end of subsection (f), was repealed by § 15, ch. 113, SLA 1981.

AS 38.05.055, referred to in (g) of this section, was amended by § 15, ch. 113, SLA 1981. One of the changes was the deletion of language relating to the form of contract. See AS 38.05.065(b) for the terms required in contracts of sale for land sold under this section.

NOTES TO DECISIONS

Quoted in *Gilman v. Martin*, Sup. Ct. Op. No. 2652 (File No. 5937), 662 P.2d 120 (1983); *LeResche v. Lustig*, Sup. Ct. Op. No. 2656 (File No. 6058), P.2d (1983).

Sec. 38.05.058. Land discount program. [Repealed, § 19 ch 67 SLA 1983.]

Sec. 38.05.059. Limitation on purchases of agricultural land. A person may purchase from the state a total of not more than one parcel of land that is part of an agricultural development project under AS 44.33.475 during any eight-year period. (§ 3 ch 129 SLA 1982)

Sec. 38.05.060. Rejection of bids.

NOTES TO DECISIONS

Cited in *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 867 (1981).

Sec. 38.05.065. Terms of contract of sale. (a) The contract of sale for land sold at public auction under AS 38.05.055 shall require the remainder of the purchase price to be paid in monthly, quarterly or annual installments over a period of 20 years, with interest at the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed. Installment payments plus interest shall be set on the level-payment basis.

(b) The contract of sale for land sold under AS 38.05.057 and under AS 38.05.078 shall require the remainder of the purchase price to be paid in monthly, quarterly, or annual installments over a period of not more than 20 years. Installment payments plus interest shall be set on the level-payment basis. The interest rate to be charged on installment payments is the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed.

DRAFT

Version #2
Bradley
4/10/84

Original sponsors: Bettisworth and Shultz

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 458 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to agricultural rights to land."

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

8 * Section 1. AS 38.05.059 is repealed and reenacted to read:

9 Sec. 38.05.059. LIMITATIONS AND CONDITIONS ON SALE OR LEASE OF
10 AGRICULTURAL LAND. (a) A person may purchase from the state not more
11 than one parcel of land that is part of an agricultural development
12 project under AS 44.33.475 during any eight-year period.

13 (b) In a sale or other disposal of state land classified as
14 agricultural land the use of the land shall be restricted. The com-
15 missioner shall convey a fee simple conditional title to the surface
16 estate subject to a condition subsequent that the land be used only
17 for agricultural purposes. The commissioner shall reserve a right of
18 reentry after notice and an opportunity for a hearing if the land is
19 used for other than agricultural purposes. A reversion of title upon
20 reentry does not affect the validity of a prior lien or security
21 interest on the land.

22 (c) The lessee of state agricultural land shall receive a lease-
23 hold interest in the surface estate subject to the condition subse-
24 quent that the land leased be used only for agricultural purposes.

25 (d) As a condition to the issuance of a lease or a contract of
26 sale of state land classified as agricultural land, the commissioner
27 may require a farm development agreement and the submission of a
28 conservation plan that establish reasonable requirements based on
29 economic feasibility of development and sound agricultural principles.

1 (e) The commissioner may not convey title under (b) of this
2 section to a person who

3 (1) is in arrears on the purchase or lease of agricultural
4 land; or

5 (2) has not complied with a farm development agreement or
6 conservation plan required by the commissioner.

7 (f) In this section, "agricultural purposes" includes farming,
8 ranching, grazing, and storage or control of agricultural crops or
9 livestock, and the construction of the farm residence of the grantee
10 or lessee as well as other buildings commonly needed for agricultural
11 purposes on not more than 20 acres of the land transferred under this
12 section.

13 * Sec. 2. AS 38.05.321(a) is repealed.
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Original sponsors: Bettisworth and Shultz

DRAFT

IN THE HOUSE

BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 458 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to agricultural rights to land."

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

* Section 1. AS 38.05.321 is amended by adding new subsections to read:

(d) A grantee of title to state agricultural land shall receive fee simple conditional title to the surface estate in the land subject to the condition subsequent that the land be used only for agricultural purposes. The commissioner shall reserve the right of reentry after notice and an opportunity for a hearing in the event the grantee shall use the land for other than agricultural purposes. The reversion of title upon exercise of a right of reentry by the commissioner under this subsection shall be subject to valid prior liens and has no effect on the validity of a security interest on the land.

(e) The lessee of state agricultural land shall receive a leasehold interest in the surface estate subject to the condition that the land leased be used only for agricultural purposes.

(f) As a condition to the issuance of a grant under (d) of this section or to the issuance of a lease under (e) of this section, the commissioner may require a farm development agreement and the submission of a conservation plan. The farm development agreement and conservation plan shall be based on economically feasible and agriculturally viable department standards. The commissioner may not grant fee simple conditional title under (d) of the section to a

person who

(1) is in arrears on the purchase or lease of agricultural land; or

(2) has not complied with a farm development agreement or conservation plan required by the commissioner.

(g) In this section, "agricultural purposes" includes farming, ranching, grazing, and storage or control of agricultural crops or livestock, and the construction of the farm residence of the grantee or lessee as well as other buildings commonly needed for agricultural purposes on not more than 20 acres of the land transferred under this section.

* Sec. 2. AS 38.05.321(a) is repealed.

JAN 30 1984

Jan. 25, 1984

P.O.Box 313

Nenana, AK 99760

The Honorable Bob Bettisworth
Pouch V
Juneau, AK 99811

Dear Rep. Bettisworth:

This is in response to a letter to the Editor in the Jan. 24th edition of the News Miner regarding your intent to introduce legislation that would replace "Ag Rights" with Fee Simple Title for State Ag Land disposals. I fully support such legislation and if there is anything I can do to help with its passage please contact me.

"Ag Rights Only" creates many problems. A major one is the inability to secure financing from banks and other lending institutions to build a home because of that restrictive title. I have personal experience with that rejection.

Sincerely,

Don Kratzer

Don Kratzer

XC: Interior Delegation

1-25-84

Editorial Opinion and Comment of



Daily News - Miner

Independent in All Things Neutral in None

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

Agriculture needs support

The question of whether we need to extend the life of our Alaska Agricultural Action Council will be before lawmakers and the public Wednesday when the Senate Resources Committee holds a teleconference hearing.

A more important question about agriculture is the one that really needs to be answered, however. Is our state going to help develop this industry to its full potential, or continue the lukewarm, off-again-on-again support of the last few years?

Whether or not we funnel agricultural development issues through the action council or some other administrative structure probably isn't going to make much difference in the long run. We got pretty disenchanted with the council under Gov. Hammond's appointee, Bob Palmer, when one boondoggle followed another. The Sheffield group didn't get off to a very good start, either, in the way it shut down construction of the Seward grain terminal.

We're willing to let bygones be bygones, however, if only the Sheffield administration would offer its full support to development of an industry with an outstanding potential.

Focusing on our state's agricultural self-sufficiency is too narrow a view for Alaskans interested in the future. In fact, one of the most exciting aspects of recognizing the world role we could play is that as a by-product we would, indeed, gain agricultural self-sufficiency as a state.

If that self-sufficiency is our only goal, however, we may never be able to take advantage of the needed economies of scale to make production and processing of farmstuffs for our own consumption practical and self-supporting.

When Gov. Sheffield shared his agriculture policy with us last month, noticeably absent were any plans to move forward to develop high potential land in the Nenana area, or to complete work on the Seward grain terminal.

The grain terminal project is one of those chicken-and-egg questions that only needs to be settled if the other elements of agricultural development fall into place.

That won't happen unless we move to increase our land base in agriculture. The experts tell us there are 1.8 million acres of state or Native-owned potential agricultural land in the Tanana Valley.

Gov. Sheffield's goal for the next fiscal year is to sell another 27,000 acres of state land, 2,000 to 3,000 acre parcels scattered here and there between Delta Junction and Nenana. That simply isn't enough.

The Agricultural Action Council as early as February 1982 had proposed an aggressive land sale schedule for Nenana. Under that schedule, in fiscal year 1983, which ended last June, 75,000 acres would have been sold. Another 50,000 acre-sale was on the schedule for this fiscal year which ends in June, and yet another 50,000 acres were on the schedule for sale during fiscal year 1985.

With the lack of support from both the Hammond administration during its latter years and the Sheffield administration currently, it's little wonder farmers aren't forging aggressively ahead to pursue export markets. Unless we devise a land sale schedule that assures we'll get the needed acreage under production, farmers know they won't be producing enough grain to make exporting work.

Gov. Sheffield could show Alaskans that his commitment is to the future of our state by beefing up his support of agriculture. We've got a potential that's too rich to ignore. It's time to recognize that.

The argument for Ag Rights is that we are rapidly losing ag land to other forms of development. Not including Federal lands, 1.8 million acres of state or Native owned undeveloped ag. land in the Tanana Valley alone makes the above argument ridiculous.
Don Kratzer

Dubious position

Jan. 19, 1984
P.O. Box 1668
Fairbanks, AK 99707

To the Editor:

I'd like to urge all so-called winners of the state land lottery, to write to Rep. Bob Bettisworth, Pouch V, Juneau, Alaska 99811, and give him your support in introducing a bill giving us fee simple title to our property. As it stands now, we cannot get any-

thing but "Agriculture Rights" and we cannot get mortgage money to build, or money to develop our precious land, because we do not own it. We are in the dubious situation that should we spend thousands of our own money, and hours and hours of labor, we still do not own the property except rights to use it for agriculture. And with this situation, we have problems selling it, should we decide to do so at some time, because we cannot give a buyer title to it. It is as if we are expected to labor and spend our own money for the state. It is unfair.

The land that I "won" the opportunity to buy is appraised as is, at about the same as other land around it. If I clear it, and build on it, it still belongs to the state. Our hands are tied. What I thought was a great opportunity turns out to be an actual burden. Who wants to spend a great deal of money, and a great amount of labor developing something that will never belong to him? This is a dirty trick the state has pulled on the so-called winners. We are buying this land, and at a price that has been appraised high. Why should we not obtain title to it?

Please write and give your support to Bob Bettisworth's bill to help free us from this situation.

Sincerely,
P. Rhodes

Alaska State Legislature



REPRESENTATIVE

ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET
FARBANKS, ALASKA 99701

POUCH V
JUNEAU, ALASKA 99811

January 13, 1984

MEMORANDUM

To: Representative John Ringstad & Representative Dick Schultz,
Co-Chairs, House Resources Committee.

From: Representative Bob Bettisworth

PHB

Subject: Analysis of HB458 "An Act relating to agricultural rights to land."

1.) Purpose: It has become evident, since the Legislature enacted legislation allowing conveyance of designated agricultural land with only an agricultural easement, that the owner, lessees, and assigns have very little in the way of concrete, definable legal ownership in the traditional sense. What is actually conveyed by the state, when land classified as agricultural land is sold or leased, is in fact no more than an easement to utilize the land for agricultural purposes only and these restrictions result in the owner or legal occupant leaving traditional fee simple ownership rights and benefits with the state. As a direct result virtually no commercial lending institutions I contacted could really define agricultural rights land for lending purposes. In fact, only one instance of a commercial loan generated by a non-state lender was identified this past interim and that source expressed a distinct aversion to making another loan based on agricultural rights only. It is the view of experts queried that lending institutions will not generally lend where they know the state is ultimately ahead of them with respect to the security and in the case of agricultural land the state would be in such a position.

The situation wherein lands traditionally used for agriculture and related purposes are converted to residential or commercial use is a valid problem in many areas of the U.S. and has occurred near at least one urban center in Alaska. The problem of taxation and the classification of lands controlled by local government entities is also of concern but these problems should be dealt with in that local context where possible. Clearly some areas now identified and designated under Alaska Statutes as being primarily of agricultural character, presumably because it is perceived that this is their "highest and best use", are not likely candidates for conversion to residential or commercial development zones for urban centers. The geographic locations of most agricultural lands makes this conclusion self evident. Of course, exceptions can be found and may already exist among state designated agricultural lands already disposed of or planned for future disposal. It is my view that these potential problem areas should be dealt with on

a case-by-case basis; not through a wholesale prohibition of true fee ownership as currently exists in statute.

2.) MAJOR ELEMENTS IN HB458: The following major changes are affected in this legislation:

a. DNR shall convey remaining rights to agricultural lands if requested by the owner, lessee, etc. and certain conditions are met.

b. No additional compensation for the additional rights conveyed is to be required except for an administrative fee for normal costs of legal documentation etc.

c. covenants or other deed restrictions may be required of the requestor and the status of state purchase loans or lease agreements related to the unit must be essentially normal (not in arrears). A development plan may also be required.

d. The essential elements of preference rights to persons for agricultural purposes are retained but the upper limit of 320 acres is removed.

e. References to the value of improvements owned by the holder of a preference right are deleted as unnecessary for the additional acreage sought.

f. References in AS 38.05. (c) (1) and AS 38.05.321 (a) stating that the sale, lease or other disposal of state land classified as agricultural land transfers rights for agricultural purposes only, and all other rights remain with the state are deleted.

g. The commissioner is required to notify owners, lessees, etc. of designated agricultural land of the changes affected by this bill.

3.) SECTIONAL ANALYSIS--HB458

Section 1--Repeals AS 38.05.069 now entitled "Preference to persons for agricultural purposes" in its entirety and replaces it with a new section 069 entitled "Agricultural land". Section 069 is proposed for total repeal because several confusing, duplicative and unnecessary elements became apparent after careful review and legal analysis of its contents as a whole. Also, section 069 (c) (1) currently allows DNR officials too much discretion in making determinations as to whether a transfer "may be in the public interest". No standards are provided to guide DNR's decision makers when evaluating a proposed transfer of remaining interests from a public policy point of view.

AS 38.05.069, as currently enacted, deals with acquiring additional agricultural acreage located adjacent or in the approximate vicinity of already occupied agricultural holdings. The HB458 rewrite of AS 38.05.069 (a) replaces the current 069 (c) (1) & (2) which allowed the director total discretion in conveyance of remaining interests. Apparently, no transfers of remaining interests in agricultural land have been affected up to this point. Section 1 (in new 069 (a)) would require the commissioner--instead of the director--to convey remaining interest if conveyance is requested by the grantee etc. except that 069 (b) would prevent conveyance of the remaining interest if the requestor is in arrears on a state land purchase agreement. As a further protection to the state, the commissioner could require a development plan including covenants and/or deed restrictions. The proposed subsection 069 (c) contains the essential preference right elements now included in subsection 069 (a) and (c) (3) except that the commissioner may require a development plan with covenants on the additional land applied for.

The acreage ceiling on preference right options of 320 acres, now contained in subsection 069 (a), is removed but the current floor of 20 acres is retained.

069 (d) in HB458 reiterates that land acquired through the granting of a preference right option shall be used as specified in the development plan, covenants or deed restrictions.

069 (e) (1) through (4) is a rewrite of the elements contained currently in 069 (f) through (h) that deal with determination of priority for qualified applicants for the preference right.

069 (f) through (h) restate restrictions and definitions as contained in current statute.

Section 2--Requires the commissioner to notify current owners, lessees, etc. of agricultural rights land of the changes made by HB458.

Section 3--Repeals AS 38.05.321 (a) which currently prohibits the transfer of anything other than an easement to designated state agricultural lands (except of AS 38.05.321 included below). AS 38.05.321 (b) and (c) that deal with state designated agricultural land selected by or approved for patent to municipalities are not addressed in this legislation.

AS 38.05.069 and AS 38.05.321 (a) as currently set out in statute:

Sec. 38.05.069. Preference to persons for agricultural purposes. (a) If the director determines that the highest and best use

of unoccupied land is for agricultural purposes, and if he determines that it is in the best interests of the state to sell or lease the land, he shall grant to an Alaskan resident owning and using or leasing and using land for agricultural purposes a 60-day first option after the date of the auction to purchase or lease the unoccupied land situated adjacent to or in the approximate vicinity of his presently held land for the amount of the high bid received at public auction. A parcel of agricultural land sold under this section may not be less than 20 acres and a parcel of agricultural land which is acquired by exercise of the option granted in this subsection may not exceed 320 acres. Agricultural land which is acquired under this section must be used for agricultural purposes as required by law.

(b) If more than one person is eligible for a first option under (a) of this section, the director shall determine priority by granting precedence first to the person who demonstrates the greatest need for the unoccupied land in order to establish an economic unit and, secondly, to the eligible person who occupies land that is most readily accessible to unoccupied land to be sold or leased. In the event that two or more persons have approximately equal qualifications for priority under this section, the director shall grant priority to that person who is a veteran. If more than one person is approximately equally well qualified under this section, the director shall determine priority by lot.

(c) Under this section

(1) the director may convey or lease an interest in the land only for agricultural purposes, and all other interests in the land remain in the state; the sale or lease shall be at public auction;

(2) the remaining interests may subsequently be conveyed or leased by the director only upon the request of the grantee or lessee or his assigns and the determination of the director, with the written concurrence of the commissioner, that the conveyance or lease is in the public interest;

(3) the conveyance or lease of the remaining interests shall be at public auction; the original grantee or lessee or his assigns have a preference right to meet the high bid within 30 days after the day of the auction; if the right is exercised, the value of improvements owned by the holder of the preference right, included with the remaining interests sold, shall be deducted from the purchase price;

(4) by requesting the conveyance or lease of the remaining interest, the original grantee or lessee or his assigns

(A) consents to the sale or lease, and

(B) if the preference right provided by (3) of this subsection is not exercised, consents to sell at fair market value the improvements related to the remaining interest, as appraised by the director;

(5) the remaining interests in the land may not be conveyed or leased for less than their appraised value together with improvements except for the deduction allowed by (3) of this subsection.

AS 38.05.069 continued:

(d) When not in conflict with this section, other provisions of AS 38.05.045 — 38.05.105 apply to disposals under this section.

(e) For the purposes of this section,

(1) "agricultural purposes" includes farming, ranching, grazing, and storage or control of agricultural crops or livestock;

(2) "approximate vicinity" includes an area in which the land does not have a common boundary to presently held land or in which the land is physically separated from presently held land by any type of barrier.

(f) Nothing in (c) of this section affects the disposal of minerals under AS 38.05.135 — 38.05.183. (§ 1 ch 97 SLA 1965; am §§ 1, 2 ch 71 SLA 1976; am §§ 4 — 6 ch 257 SLA 1976; am § 30 ch 85 SLA 1979)

Effect of amendments. — The 1979 amendment, in subsection (a), deleted "provided the aggregate number of acres owned and acquired under the option shall not exceed 320 acres; and further provided

that the land acquired under this section is used for agricultural purposes as required by law" from the end of the first sentence and added the second and third sentences.

Sec. 38.05.321. Restriction on sale, lease or other disposal of agricultural land. (a) The sale, lease or other disposal of state land classified as agricultural land transfers only rights for agricultural purposes, and all other interests in the land remain with the state unless otherwise required by law.

(b) State land classified as agricultural land which has been selected by a municipality under AS 29.18.190 — 29.18.200 or 29.18.205(e) may be approved by the director for patent under AS 29.18.205(f); however, only rights in the land for agricultural purposes may be transferred and all other interests in the land will remain with the state. Agricultural land approved for patent to a municipality under AS 29.18.205(f) shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.18.201 — 29.18.203. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural land, those rights shall pass without consideration to the municipality in which the land is located. The notice and review provisions of AS 38.05.305 and 38.05.345 are applicable to conveyance of rights under this section.

(c) The provisions of this section do not apply to state land classified as agricultural land which has been selected by a municipality under the provisions of AS 29.18.190 — 29.18.200 if the selection is an approved selection before April 1, 1978 and is otherwise valid under AS 29.18.205(b). (§ 3 ch 71 SLA 1976; am § 3 ch 129 SLA 1978)

Effect of amendments. — The 1978 amendment rewrote this section.

Editor's notes. — Sections 29.18.190 and 29.18.200, referred to in subsections (b) and (c), were repealed by § 5, ch. 180, SLA 1978.

AS 38.05.305, referred to in subsection (b), was repealed by § 45, ch. 113, SLA 1981.

Not addressed in
HB458



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

MEMORANDUM

JOHN RINGSTAD, CO-CHAIRMAN
RICHARD SHULTZ, CO-CHAIRMAN
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

To: Rep. Ringstad
From: Committee staff
Date: April 4, 1984
Re: CS HB 458 (Resources)

This memorandum is to briefly explain how this proposed CS came about, and to review the major changes.

First, in studying HB 458, it became apparent that the bill was not accurate in addressing AS 38.05.069, which dealt with undisposed lands adjacent to agricultural lands. This was remedied by addressing the new cs to AS 38.05.321, to which we have added new sections.

Second, the main reason Rep. Bettisworth introduced the bill was to solve the problem with the "fee simple title" DNR said it would convey to ag parcel purchasers. The problem is that, because the title reverts to the State at any time the Director of the Division of Forest, Land and Water Management determines the grantee has not fulfilled the conditions of the title, the title is uninsurable, and financing is not possible to obtain. While the original solved this problem by giving all remaining rights to the landowner, the cs would change the title to "fee simple conditional" - with the condition that the land always be used for agricultural purposes. This language was worked out by Robin in Rep. Bussell's office, Dave, Sharon Barton, and Dick Bradley. It has been reviewed by Glen Prince at Title Insurance Agency and by Bruce Winton, who is on the Real Estate Commission.

The rest of the cs recognizes certain DNR policies regarding farm development plans, and provides a definition for the phrase "agricultural purposes".

BRIEF SYNOPSIS
For COMMITTEE SUBSTITUTE For HB 458

The purpose of this committee substitute (as is the purpose of the bill as it was originally introduced) is to provide legislative direction for the disposition of state lands classified as agricultural lands. It is apparent that AS 38.05.321(a) contains the only such direction now in the law, although AS 38.05.069 has also been referred to by the Department of Natural Resources for guidance. However, that section of Title 38 appears to apply only to unoccupied land adjacent to land already being used for agricultural purposes.

The committee substitute expands AS 38.05.321 to clarify the nature of the title that will be transferred to a person who purchases, leases, or is otherwise entitled to receive state lands that have been classified as agricultural. The clarification is needed to clear up differences between the understanding of those who have purchased lands under the agricultural land disposal program and the understanding of DNR as to the nature and format of the interest or land title being conveyed. These differences have come to light as a result of the issuance by the State of a few patents in the format of the one issued to Mr. John A. Baker, a copy of which is in the members' packets.

All parties appear to be in agreement that the intent of the State was to transfer the land to be used for agricultural purposes only and that the title transferred was to be restricted to insure that this would be the only use.

The problem is that the type of patent, as issued to Mr. Baker, is too restrictive. The interest transferred by that document is little more than an agricultural easement subject to forfeiture if the Director of the Division of Forest, Land and Water Management so declares. This forfeitable interest cannot be insured by a Title company, and is not sufficient to provide security for any financing into which the recipient of the patent may wish to enter.

As originally written, HB 458 would have solved the problem by requiring the commissioner to convey the remaining interests retained by the State on request of the grantee or lessee. Taken literally, such conveyance would require the State to grant a fee simple absolute title to the land, subject only to the covenants in the development plan, which would eventually terminate. At that point, the land would no longer be restricted to agricultural use.

As now worded, the proposed CS for HB 458 provides that the title to be transferred will be a fee simple conditional - the condition being that the land will always be used for agricultural purposes only. There is also provided a right of re-entry by the State if the condition is broken. What this means is that if the owner of the property or his or her successors start using the property for something other than agriculture, the State can require that the other use be terminated or the owner may lose the property. This type of title should solve the title insurance and financeability problems.

The remainder of the CS recognizes the existing practice of requiring that a development plan be entered into and completed, and provides a definition of the phrase "agricultural purposes".

Original sponsors: Bettisworth and Shultz

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 458 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to agricultural rights to land."

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

8 * Section 1. AS 38.05.321 is amended by adding new subsections to read:

9 (d) A grantee of title to state agricultural land shall receive
10 fee title to the surface estate in the land subject to the condition
11 subsequent that the land be used only for agricultural purposes. The
12 commissioner shall reserve a right of reentry after notice and an
13 opportunity for a hearing in the event the grantee or the successors
14 in interest of a grantee shall fail to use the land for agricultural
15 purposes. The exercise of a right of reentry by the commissioner
16 under this subsection has no effect on the validity of a security
17 interest on the land.

18 (e) The lessee of state agricultural land shall receive a lease-
19 hold interest in the surface estate subject to the condition subse-
20 quent that the land leased be used only for agricultural purposes.
21 The commissioner shall reserve a right of reentry after notice and an
22 opportunity for a hearing in the event that the lessee shall fail to
23 use the land for agricultural purposes. The exercise of a right of
24 reentry by the commissioner under this subsection has no effect on the
25 validity of a security interest on the land.

26 (f) As a condition to the issuance of a grant under (d) of this
27 section or to the issuance of a lease under (e) of this section, the
28 commissioner may require the submission of an agricultural development
29 and conservation plan. The commissioner may not grant or lease an

1 interest under (d) or (e) of this section to a person who

2 (1) is arrears on the purchase or lease of agricultural
3 land; or

4 (2) has not complied with an agricultural development and
5 conservation plan required by the commissioner.

6 (g) The use of not to exceed five acres of the land transferred
7 under this section for the construction of the residence of the
8 grantee, lessee, or a successor in interest of a grantee or a lessee
9 and for other buildings used for agricultural purposes is an
10 agricultural purpose.

11 (h) In this section, "agricultural purposes" includes farming,
12 ranching, grazing, and storage or control of agricultural crops or
13 livestock.

14 * Sec. 2. AS 38.05.321(a) is repealed.
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Introduced: 1/9/84
Referred: Resources and
Finance

1 IN THE HOUSE

BY BETTISWORTH

2

HOUSE BILL NO. 458

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an act entitled: "An Act relating to agricultural rights to land."

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

8 * Section 1. AS 38.05.069 is repealed and reenacted to read:

9 Sec. 38.05.069. AGRICULTURAL LAND. (a) If the commissioner has
10 conveyed or leased state land only for agricultural purposes, the
11 remaining interests retained by the state shall be conveyed or leased
12 by the commissioner on the request of the grantee or lessee or the
13 assigns of the grantee or lessee. The commissioner shall convey or
14 lease the remaining interests without compensation to the state except
15 for administrative costs of the conveyance or lease.

16 (b) The commissioner may not transfer an interest under (a) of
17 this section to a person who is in arrears on the purchase or lease of
18 the land. Before conveying or leasing under (a) of this section, the
19 commissioner ^{shall} require the submission of a development plan ^{in accordance} with
20 covenants ^{specified} by the commissioner ^{to provide that} regarding agricultural use ^{be the sale is} of
21 the land. ^{established}

22 (c) An Alaska resident may submit to the commissioner a request
23 for the sale or lease for agricultural purposes of unoccupied state
24 land situated adjacent to or in the approximate vicinity of land
25 presently used for agricultural purposes and held by the resident. If
26 the resident submits with the request a development plan that contains
27 covenants ^{specified} by the commissioner ^{providing that} regarding the agricultural use ^{be the}
28 ^{of the} land and if the commissioner determines that it is in the best
29 interests of the state to sell or lease the unoccupied state land for

1 agricultural purposes, the commissioner shall grant to a resident
2 owning and using or leasing and using land for agricultural purposes a
3 60-day first option after the date of the public auction to purchase
4 or lease the unoccupied land for the amount of the high bid received
5 at public auction. A parcel of agricultural land transferred under
6 this subsection may not be less than 20 acres.

7 (d) Land that is acquired under (c) of this section shall be
8 used consistently with ^{the Agricultural} covenants required in the development plan
9 ^{established} specified by the commissioner.

10 (e) If more than one person files a request under (c) of this
11 section for the same land and each person owns or leases land situated
12 adjacent to or in the approximate vicinity of the state land, the
13 commissioner shall determine priority among the applicants for the
14 state land under the following standards:

15 (1) to the person who demonstrates the greatest need for
16 the unoccupied land in order to establish an economic unit;

17 (2) to the person who occupies land that is most readily
18 accessible to the unoccupied land to be sold or leased if two or more
19 persons have qualified under (1) of this subsection;

20 (3) to the veteran if two or more persons have qualified
21 under (1) and (2) of this subsection;

22 (4) by lot if two or more persons have qualified under (1),
23 (2) and (3) of this subsection.

24 (f) When not in conflict with this section, other provisions of
25 AS 38.05.045 - 38.05.105 apply to disposals under this section.

26 (g) Nothing in (a) of this section affects the disposal of
27 minerals under AS 38.05.135 - 38.05.183.

28 (h) For the purposes of this section,

29 (1) "agricultural purposes" includes farming, ranching,