

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

3074 HOUSE RESOURCES

3 MR.	MIKE 1269 UPLAND CT	COATES	SORRY CHARLIE CH TSEY, HB 496 HOMER AK 99663 (907)235-2553
4 MR.	ROBERT PO BOX 631	WARD	A-HARD CHARTERS TSEY, HB 496 ANCHOR POINT AK 99556 (907)235-7014
5 MR.	TIM PO BOX 39547	EVERS	DEEP CREEK CHART TSEY, HB 496 NINILCHIK AK 99639 (907)567-3510
6 MR.	PAUL PO BOX 39415	GOLDERT	TSEY, HB 496 NINILCHIK AK 99639 (907)567-3665
7 MR.	ROGER PO BOX 511	WATNEY	ANCHOR POINT CH TSEY, HB 496 ANCHOR POINT AK 99556 (907)235-4063

PARTICIPANTS IN: JUNEAU JHU  
 1 REP BILL WILLIAMS TSEY, ALL ITEMS

LTN1100-R01 LEGISLATIVE TELECONFERENCE NETWORK PAGE 62  
 03/14/94 15:21:05  
 (CN: 40480 DATE & TIME: 03/14/94 08:15 TO 10:00 STATUS:7 STATS. IN

PARTICIPANTS IN: JUNEAU JHU

2 REP	CON	BUNDE	AK (907)000-0000 TSEY, ALL ITEMS
3 REP	PAT	CARNEY	AK (907)000-0000 TSEY, ALL ITEMS
4 REP	ELDON	MULDER	AK (907)000-0000 TSEY, ALL ITEMS
5 REP	JEANETTE	JAMES	AK (907)000-0000 TSEY, ALL ITEMS
6 REP	JOHN	DAVIES	AK (907)000-0000 TSEY, ALL ITEMS
7 REP	DAVID	FINKELSTEIN	AK (907)000-0000 TSEY, ALL ITEMS
8 REP	BILL	HUDSON	AK (907)000-0000 TSEY, ALL ITEMS
9 REP	JOE	GREEN	AK (907)000-0000 TSEY, ALL ITEMS
10	TO	OBSERVE	AK (907)000-0000 OBSV, ALL ITEMS
11	TO	OBSERVE	OBSV, ALL ITEMS
12	TO	OBSERVE	OBSV, ALL ITEMS
13	TO	OBSERVE	OBSV, ALL ITEMS
14	TO	OBSERVE	OBSV, ALL ITEMS
15	TO	OBSERVE	OBSV, ALL ITEMS
16	TO	OBSERVE	OBSV, ALL ITEMS
17	TO	TESTIFY	TSEY, ALL ITEMS
18	TO	TESTIFY	TSEY, ALL ITEMS
19	TO	TESTIFY	TSEY, ALL ITEMS
20	TO	TESTIFY	TSEY, ALL ITEMS

PARTICIPANTS IN: KETCHIKAN KTI

1 MR.	RICHARD BOX 7211	ANDREW	TSEY, HB 496 KETCHIKAN AK 99901 (907)225-2463
2 MR.	DONALD PO BOX 7883	WESTLUND	TSEY, HB 496 KETCHIKAN AK 99901 (907)225-9315
3 MR.	GARY 441 HILLCREST	PLUMB	TSEY, HB 496 KETCHIKAN AK 99901 (907)225-6409
4 MR.	DENNIS PO BOX 5883	MCLEROY	OBSV, HB 496 KETCHIKAN AK 99901 (907)225-5385
5 MR.	TOM 428 TOWER RD.	RAMISKEY	OBSV, HB 496 KETCHIKAN AK 99901 (907)225-5993

PARTICIPANTS IN: PETERSBURG PSG  
1 MR. ED JONES PETERSBURG TSPY. HB 496  
P.O. BOX 897 AK 99833 (907)772-4868  
2 MR. DAVE HELNICK PETERSBURG OBSV. HB 496  
P.O. BOX 913 AK 99833 (907)772-4790  
3 MR. STAN MALCOM PETERSBURG OBSV. HB 496  
P.O. BOX 361 AK 99833 (907)772-9255

PARTICIPANTS IN: WRANGELL LTC PSG WRG  
1 MR. HAROLD BAILEY TSPY. HB 496  
AK (907)000-0000  
2 MR. MICHAEL LOCKABEY TSPY. HB 496

LIN1100-R01 LEGISLATIVE TELECONFERENCE NETWORK PAGE 07  
93/14/94 15:21:05  
TCN: 40480 DATE & TIME: 03/14/94 08:15 TO 10:00 STATUS: 7 STATS. IN

PARTICIPANTS IN: WRANGELL LTC PSG WRG  
P.O. BOX 1542 WRANGELL AK 99833 (907)874-3723  
3 MR. TODD E. HARDING OBSV. HB 496  
P.O. BOX 934 WRANGELL AK 99833 (907)874-2085  
4 MR. JOHN A. BAKER OBSV. HB 496  
P.O. BOX 927 WRANGELL AK 99833 (907)874-3225

PARTICIPANTS IN: SITKA SIT  
1 MS. BARBARA BINGHAM SITKA SCROA TSPY. HB 496  
BOX 6112 AK 99835 (907)747-5777  
2 MS. THERESA WEISER SITKA TSPY. HB 496  
BOX 2300 AK 99835 (907)747-8883

PARTICIPANTS IN: KEN/SOL SOL  
1 MR. JEFF KING SELF OBSV. HB 496  
PO BOX 2711 SOLDOTNA AK 99669 (907)262-4543

PARTICIPANTS IN: VALDEZ VAL  
1 MR. JIM HESTON VALDEZ TSPY. HB 496  
PO BOX 331 AK 99686 (907)835-5115  
2 MR. TERRY HERNACH VALDEZ UNABL HJR 59  
PO BOX 2493 AK 99686 (907)835-5473  
3 MR. GRLG WILLIAMS KCHU OBSV. ALL ITEMS  
PO BOX 467 VALDEZ AK 99686 (907)835-4665

\* PLEASE PRINT AND  
INCLUDE COMPLETE MAILING ADDRESS \*



HOUSE RESOURCES COMMITTEE

DATE: March 14, 1994

PLACE: Capitol, Room 124

**SUBJECT OF MEETING:**  
HJR 59 - Wanton Waste of Fish N. Pacific Bering Sea  
HB 496 - Sport Fish Guide Licensing

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Paul Krasnowski	ADFC			4180	4180	(Y) N	HB 496
FRANK Homan	CFEC	4800 Glacier View #107	99580		789-6160	(Y) N	HB 496
John George ✓	ADP	9515 Moraine Way	99501		789-0172	(Y) N	HB 496
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

**HB**

**498**

(9)

Date Referred: February 14, 1994

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/25/94

The RESOURCES Committee considered:

HB 498

HOUSE BILL NO. 498

MINERAL EXPLORATION INCENTIVE CREDITS

"An Act providing for exploration incentive credits for activities involving locatable and leasable minerals and coal deposits on certain land in the state; and providing for an effective date."

RECOMMENDATIONS:

be replaced with

CS HB 498 (RES)

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal impact Revenue

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Bill Hudson</u> Hudson	<input checked="" type="checkbox"/>	<u>David Hubsten</u> Finkelstein		<input checked="" type="checkbox"/>	
<u>John Carney</u> Carney	<input checked="" type="checkbox"/>				
<u>Robert Green</u> Green	<input checked="" type="checkbox"/>				
<u>Ardenette James</u> James	<input checked="" type="checkbox"/>				
<u>John N. Davies</u> Davies	<input checked="" type="checkbox"/>				
<u>Car Bunde</u> Bunde	<input checked="" type="checkbox"/>				
<u>W.R. Williams</u> Williams	<input checked="" type="checkbox"/>				

W.R. Williams

CHAIRMAN'S SIGNATURE

# FISCAL NOTE

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL NO. CSHB 498 (RES)**

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Mineral Exploration Incentive Credits BRU: Revenue Operations  
 Component: Income and Excise Audit  
 Sponsor: Representatives Foster, MacLean  
 Requestor: (H) RES COMPONENT SERIAL NO. 113

**Expenditures/Revenues:** (Thousands of Dollars)

	FY95	FY96	FY97	FY98	FY99	FY00
<b>OPERATING</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL</b>						
<b>REVENUE FUND SOURCE: General</b>	Up to (17MM)	Up to (17MM)	Up to (17MM)	Up to (17MM)	Up to (17MM)	Up to (17MM)

**FUNDING:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

**ANALYSIS:** (Attach a separate page if necessary.)

MM equals millions  
(See Attached)

Prepared by: Larry E. Meyers Phone: 465-2320  
 Division: Income and Excise Audit Division Date: March 29, 1994  
 Approved by Commissioner: Darrel J. Rexwinkel Date: March 29, 1994  
 Agency: Department of Revenue

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

### **Bill Analysis**

This bill grants an exploration incentive credit to qualified applicants for activities related to determining the existence, location, extent and quality of a locatable or leasable mineral or coal deposits. The credit may be claimed against corporation net income and mining license taxes under AS 43.20 and AS 43.65, respectively, and royalties under AS 38.05.135 - 38.05.175.

The credit is limited in any one tax year to 60% of direct labor costs for Alaska residents and 50% of direct labor costs for nonresidents and other eligible costs that qualify for the credit not to exceed 50% of the sum amount payable as taxes and royalties under AS 43.20, AS 43.65 and AS 38.05. The credit is available as a carryforward for 15 years.

The credit may be assigned to the applicant's successor in interest for the site at which exploration activities occur if the successor is a qualified applicant.

This bill has a retroactive effective date of January 1, 1994.

### **Operating Costs**

Department of Revenue does not anticipate additional costs to administer the provisions of this bill. The Department would modify current forms to provide for taxpayers to claim credits.

### **Revenue**

Average corporation net income and mining license tax collections over the past three fiscal years were approximately \$186 million. According to Department of Natural Resources' publication *Alaska's Mineral Industry 1993: A Summary*, exploration expenditures in 1993 were \$28.2 million.

Since credits are limited to the lesser of the percentages of eligible costs outlined above or 50% of taxes payable, the maximum amount of credits which could have been claimed for 1993 would have been limited to 60% of expenditures (assuming all costs are for direct labor for residents) or approximately \$17 million. Total expenditures may increase as a result of the incentive program under this bill. Accordingly, the maximum amount of credits would increase over time in proportion to expenditures.

Amounts claimed as credits will vary each year depending on amounts expended for exploration, credits assigned to successor corporations, credits carried forward over the 15 year period allowed, and the effect of credits applied against royalty payments as provided for under this bill.

## Sponsor Statement

HB 498

Rep. Richard Foster

HB 498: An Act Providing for Exploration Credits for Activities Involving locatable and leasable minerals and coal deposits.

HB 498 allows credits of up to 50% of qualified exploration expenditures that can be used to offset state royalty payments and income taxes. The credit must be used within 15 years after it is extended by the commissioner of Natural Resources.

The credit must be granted if the applicant is authorized to do business in the state and adequately documents the exploration activity. Data provided to the Commissioner must be kept confidential for 36 months after receipt. Credits are assignable and may be carried forward and/or apportioned between royalty and taxes, in the applicants discretion, but may not exceed the combined amount of taxes and royalties due for the period in which the credit is being used.

This bill implements one of the recommendations of the Alaska Minerals Commission contained in their January 1994 Report (Report). Over the past several years there has been a mass exodus of mineral exploration investment from the lower 48 states and to a lesser extent away from Alaska. These dollars are now being invested in Mexico, Chile, Indonesia, and Russia, to name a few.

Much of this shift is attributable to ever-increasing regulatory and political obstacles in the U.S. and pro-active foreign mineral exploration and development policies, including elimination of royalties and tax incentives. Fortunately, and while this could change at any time, Alaska's image has been improving for the past several years after a long period of disfavor; although there is still a concern that our remoteness and lack of infrastructure and access to public lands work as significant disadvantages.

Alaska is blessed with an abundance of geologically favorable terrain. This bill is one of several things the legislature can do to reinforce the distinction between Alaska and the the lower 48, address the issue of foreign competition and encourage further investment in our mining industry.

HB 498 proposes a meaningful and reasonably attractive economic incentive that will help offset real and perceived problems facing exploration here and send a clear message to the world that Alaska is a good place to do business.

8-LS16440  
Chenoweth  
3/23/94

CS FOR HOUSE BILL NO. 498( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES FOSTER, MacLean

A BILL  
FOR AN ACT ENTITLED

1 "An Act providing for exploration incentive credits for activities involving locatable  
2 and leasable minerals and coal deposits on certain land in the state; and  
3 providing for an effective date."

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

5 \* Section 1. AS 27 is amended by adding a new chapter to read:

6 CHAPTER 30. EXPLORATION INCENTIVE CREDITS.

7 Sec. 27.30.010. EXPLORATION INCENTIVE CREDITS AUTHORIZED.

8 (a) The commissioner shall grant to a qualified applicant an exploration incentive  
9 credit for each of the following activities performed on or for the benefit of land in the  
10 state for the purpose of determining the existence, location, extent, or quality of a  
11 locatable or leasable mineral or coal deposit, regardless of whether the land is state-  
12 owned land:

13 (1) surveying by geophysical or geochemical methods;

14 (2) drilling exploration holes;

1 (3) conducting underground exploration; or

2 (4) performing other exploratory work, including aerial photographs,  
3 geological and geophysical logging, and sample analysis, for the purpose of  
4 determining the existence, location, extent, or quality of the deposit.

5 (b) An exploration incentive credit granted under (a) of this section may be

6 (1) applied, at the discretion of the qualified applicant and subject to  
7 the limit of AS 27.30.020, against

8 (A) taxes payable under AS 43.20 and AS 43.65; and

9 (B) mineral production royalty payments due the state under  
10 AS 38.05.135 - 38.05.175; and

11 (2) carried forward to a subsequent tax year or payment period, except  
12 as limited by AS 27.30.030.

13 (c) An exploration incentive credit shall be granted under (a) of this section  
14 to a qualified applicant if the qualified applicant provides the commissioner satisfactory  
15 documentation of exploration activity conducted and of the eligible costs. For  
16 purposes of this subsection, "satisfactory documentation of exploration activity"  
17 includes, where applicable,

18 (1) a representative skeleton core for each hole cored or a  
19 representative set of cuttings for each hole rotary drilled;

20 (2) chemical analytical data and noninterpretive geophysical data;

21 (3) aerial photographs or a topographic or geologic map showing the  
22 location of the drill holes, sample locations, or the other exploration activities  
23 undertaken; if the locations are shown on a map, the map must have a scale of not less  
24 than one inch to the mile showing reference to a recognized coordinate system; and

25 (4) a cost breakdown showing amounts claimed by the applicant as an  
26 exploration incentive under this subsection.

27 (d) Data provided to the commissioner under (c)(2) of this section shall be  
28 kept confidential for 36 months after receipt by the commissioner.

29 Sec. 27.30.020. LIMIT ON CREDITS. The amount of exploration incentive  
30 credits for each parcel or site may not exceed the lesser of

31 (1) 50 percent of the combined amount payable by the qualified

1 applicant as taxes under AS 43.20 and AS 43.65 and as mineral production royalty  
2 payments due under AS 38.05.135 - 38.05.175 for production from the parcel or site  
3 on which the exploration activity occurred; or

4 (2) 50 percent of eligible costs relating to activities that qualify for an  
5 exploration incentive credit that occur on the parcel or site on which the exploration  
6 activity occurred.

7 Sec. 27.30.030. USE OF CREDIT. An exploration incentive credit

8 (1) must be used within 15 years after it is extended under  
9 AS 27.30.010; and

10 (2) may, for the purposes described in AS 27.30.010(b), be assigned  
11 by the qualified applicant to the applicant's successor in interest for the site at which  
12 the exploration activities occur if the successor in interest is a qualified applicant.

13 Sec. 27.30.040. RELATIONSHIP TO OTHER FUNDS. Amounts due the  
14 permanent fund under AS 37.13.010 and the public school trust fund under  
15 AS 37.14.150 shall be calculated before the application of a credit extended under  
16 AS 27.30.010.

17 Sec. 27.30.050. REGULATIONS. The commissioner may adopt regulations  
18 necessary to implement this chapter.

19 Sec. 27.30.090. DEFINITIONS. In this chapter,

20 (1) "eligible costs" mean the costs incurred for activities in direct  
21 support of exploration activity conducted for the purpose of determining the existence,  
22 location, extent, or quality of a mineral or coal deposit; the term

23 (A) includes direct labor costs, including the cost of benefits,  
24 for employees directly associated with work described in AS 27.30.010(a)(1) -  
25 (4), the cost of renting or leasing equipment from parties not affiliated with  
26 the applicant, the reasonable costs of maintaining and operating equipment,  
27 payments to consultants and independent contractors not affiliated with the  
28 applicant, and costs of materials and supplies;

29 (B) does not include noncash expenses such as depreciation and  
30 reserves, interest or other costs of borrowed funds, return on investment,  
31 overhead, insurance or bond premiums, or any other expense that is

1 unreasonable or that the applicant has not incurred to complete work described  
2 in AS 27.30.010(a)(1) - (4);

3 (2) "geochemical methods" means soil, rock, vegetation, and similar  
4 samples collected and their chemical analyses;

5 (3) "geophysical methods" means all geophysical data gathering  
6 methods used in minerals exploration, including seismic, gravity, magnetic, and  
7 electromagnetic measurements;

8 (4) "qualified applicant" means

9 (A) a natural person who is at least 18 years of age;

10 (B) a partnership qualified to do business in the state;

11 (C) a corporation qualified to do business in the state;

12 (D) a limited liability company qualified to do business in the

13 state;

14 (E) a legal guardian or trustee of a qualified natural person  
15 described in (A) of this paragraph; or

16 (F) any association of persons listed in (A) - (E) of this  
17 paragraph.

18 \* Sec. 2. AS 38.05.135(a) is amended to read:

19 (a) Except as otherwise provided, valuable mineral deposits in land belonging  
20 to the state shall be open to exploration, development, and the extraction of minerals.  
21 All land, together with tide, submerged, or shoreland, to which the state holds title to  
22 or to which the state may become entitled, may be obtained by permit or lease for the  
23 purpose of exploration, development, and the extraction of minerals. Except as  
24 specifically limited by AS 38.05.135 - 38.05.181, land may be withheld from lease  
25 application on a first-come, first-served basis, and offered only on a competitive bid  
26 basis when determined by the commissioner to be in the best interests of the state.  
27 When authorized by AS 27.30.010, the commissioner shall allow an exploration  
28 incentive credit for activities undertaken to determine the existence, location,  
29 extent, or quality of a locatable or leasable mineral or coal deposit and in [IN]  
30 unproven areas the commissioner may offer additional incentives, including a reduction  
31 of royalty to a minimum of five percent in the case of oil and gas, and other terms in

1 and granting permit or lease for exploration and development whenever it appears to  
2 be in the best interests of the state to do so.

3 \* Sec. 3. AS 38.05.212(b) is amended to read:

4 (b) The production royalty

5 (1) is three percent of net income as determined under AS 43.65; and

6 (2) is subject to the exploration incentive credit authorized by

7 AS 27.30.

8 \* Sec. 4. AS 43.20 is amended by adding a new section to read:

9 Sec. 43.20.044. EXPLORATION INCENTIVE CREDIT. A taxpayer may  
10 apply as a credit against the tax levied under this chapter the exploration incentive  
11 credit authorized by AS 27.30.

12 \* Sec. 5. AS 43.65.020(a) is amended to read:

13 (a) A person subject to tax under this chapter shall make a return stating  
14 specifically the items of gross income from the property, including royalty received  
15 and the deductions and credits allowed by this chapter and the exploration incentive  
16 credit authorized by AS 27.30, and other information for carrying out this chapter  
17 that the department prescribes. The return must show the mining license number and  
18 must be signed by the taxpayer or an authorized agent of the taxpayer, under penalty  
19 of unsworn falsification. If receivers, trustees, or assigns are operating the property  
20 or business, they shall make returns for the person engaged in mining, or the recipient  
21 of royalty in connection with mining property. The tax due on the basis of the returns  
22 shall be collected in the same manner as if collected from the person of whose  
23 business they have custody and control.

24 \* Sec. 6. This Act is retroactive to January 1, 1994, and applies to activities that qualify  
25 for the exploration incentive credit authorized by AS 27.30 that are undertaken after  
26 December 31, 1993.

27 \* Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

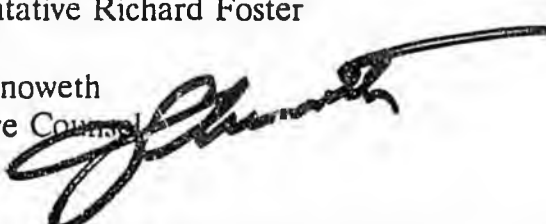
MEMORANDUM

February 22, 1994

**SUBJECT:** House Bill 498 -- Sectional analysis (Work Order No. 8-LS1644J)

**TO:** Representative Richard Foster

**FROM:** Jack Chenoweth  
Legislative Counsel



In addition to other credits or adjustments that may be allowed to someone conducting mining activity, the measure proposes to establish an exploration incentive credit for activities on land in the state that relate to locatable and leasable minerals and to coal.

**Bill section 1:** This provision, the heart of the measure, authorizes an exploration incentive credit for activities on or for the benefit of land in the state to determine "the existence, location, extent, or quality" of a locatable or leasable mineral or coal deposit. Specifically --

-- AS 27.30.010 authorizes the exploration incentive credit; describes the activities that qualify for the credit; determines how the credit, once granted, may be applied; prescribes the documentation of activity that must be submitted to qualify for the credit; and sets a time limit before which the commissioner may not release certain information or data obtained by the commissioner under the activity documentation provision;

-- AS 27.30.020 defines the limits of the credit, which are made the lesser of (1) the exploration incentive credit applicant's mineral production royalty payment obligation under AS 38.05, or tax obligation under the state income tax or mining license tax, or the combination of them, or (2) 50 percent of the credit applicant's eligible costs;

-- AS 27.30.030 sets a time limit on the use or application of the exploration incentive credit--15 years after approval--and permits use of the credit to be assigned by one qualified credit applicant to another;

Representative Richard Foster

February 22, 1994

Page 2

-- AS 27.30.040 follows a provision of the oil and gas exploration incentive credit now under consideration and is intended to hold the Alaska Permanent Fund harmless against loss of any amounts due the fund under article IX, section 15 and by law;

-- AS 27.30.050 authorizes the commissioner of natural resources to develop, adopt, and enforce regulations relating to the claim and use of the exploration incentive credit; and

-- AS 27.30.090 supplies definitions to terms used in AS 27.30.

**Bill section 2** amends the production royalty provisions of the Alaska Land Act, AS 38.05, to permit a person obligated to pay a mineral production royalty payment to claim the exploration incentive credit against the royalty payment that is due under that chapter.

**Bill section 3** revises the manner of computing the mineral production royalty due under AS 38.05 to recognize the exploration incentive credit.

**Bill section 4** amends the Alaska Net Income Tax, the current state income tax, to permit a taxpayer to claim the exploration incentive credit against the tax due under that chapter.

**Bill section 5** amends the method of calculating the Mining License Tax, AS 43.65, to recognize the claim of the exploration incentive credit.

**Bill section 6** amends the provision of the Mining License Tax, AS 43.65, to recognize, as an additional adjustment to computation of the tax due, the claim of the exploration incentive credit as a credit that may be claimed against that tax.

**Bill section 7** makes the proposed exploration incentive credit authorized by the measure retroactive to January 1, 1994, to cover activities qualifying for the credit that take place after December 31, 1993.

**Bill section 8** gives the measure an immediate effective date.

JBC:gc  
94-149.glc

# FISCAL NOTE

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL NO. HB 498**

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Mineral Exploration Incentive Credits BRU: Revenue Operations  
 Component: Income and Excise Audit  
 Sponsor: Representatives Foster, MacLean  
 Requestor: (H) RES COMPONENT SERIAL NO. 113

**Expenditures/Revenues: (Thousands of Dollars)**

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

REVENUE FUND SOURCE: General	0 - (186M)	0 - (\$186M)	0 - (\$186M)	0 - (\$186M)	0 - (\$186M)	0 - (\$186M)
------------------------------	------------	--------------	--------------	--------------	--------------	--------------

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED

Prepared by: Larry E. Meyers Phone: 465-2320  
 Division: Income and Excise Audit Division Date: February 24, 1994  
 Approved by Commissioner: Darrel J. Rexwinkel Date: February 24, 1994  
 Agency: Department of Revenue

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

## **Bill Analysis**

This bill grants an exploration incentive credit to qualified applicants for activities related to determining the existence, location, extent and quality of a locatable or leasable mineral or coal deposits. The credit may be claimed against corporation net income and mining license taxes under AS 43.20 and AS 43.65, respectively, and is available as a carryforward for 15 years.

The credit is limited in any one tax year to the lesser of 50% of eligible costs that qualify for the credit or sum amount payable as taxes and royalties under AS 43.20, AS 43.65 and AS 38.05.

The credit may be assigned to another qualified applicant. The other qualified applicant may use the credit in the same manner as the original applicant could have used the credit.

This bill has a retroactive effective date of January 1, 1994.

## **Operating Costs**

Department of Revenue does not anticipate additional costs to administer the provisions of this bill. The Department would modify current forms to provide for taxpayers to claim credits.

## **Revenue**

Depending on the amount of exploration expenditures made each year, taxpayers may claim credits against the total amount of their corporation income and mining license tax liabilities. According to Department of Natural Resources' publication *Alaska's Mineral Industry 1993: A Summary*, exploration expenditures in 1993 were \$28.2 million.

Since credits may be assigned to other corporations, potentially all corporation net income and mining license taxes could be reduced by exploration incentive credits allowed under this program. Average corporation net income and mining license tax collections over the past three fiscal years were approximately \$186 million.

Amounts claimed as credits will vary each year depending on amounts expended for exploration, credits assigned to other corporations, credits carried forward over the 15 year period allowed, and the effect of credits applied against royalty payments as provided for under this bill.



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

March 9, 1994

Honorable William Williams  
Chairman  
House Resources Committee  
State Capitol  
Juneau, AK 99811

RE: HB-498, Exploration Incentives

Dear Representative Williams,

The Alaska Miners Association wishes to go on record in support of House Bill 498 which provides financial incentives for companies and individuals to explore for and develop mineral deposits in the state. This is an important bill that will encourage both the small prospector as well as large international mining companies to invest here in Alaska.

In addition to being an encouragement to invest, HB-498 also insures that the state and the rest of the industry will have access to the data generated. This bill requires that the company wishing to receive the incentive credit document the expenditures it has made and provide the State Division of Geological & Geophysical Surveys with drill core, drill cuttings, sample analysis, etc. This can be a tremendous help for the other companies as they search for minerals and without this provision of the bill this data would remain proprietary and would not be available to the industry as a whole.

One important aspect of the bill is that a company can assign their exploration credit to another company. This can become very important when developing financing for a mineral project. A company that may otherwise not invest can be encouraged if they know they can assign their expenditures, if for example they are not able to continue in the project due to other unrelated financial reasons. If they can assign their credits to the next company to buy into the project, they can recover some of their expenditures. The bottom line is that more exploration will result and more mineral deposits will likely be discovered which can provide jobs, facilities that increase the local tax base, and ultimately company profits that can then be taxed by the state.

There is one location where a minor but important change is needed. That location is in Section 27.30.090. DEFINITIONS, where page 3, line 18 should be changed to read "(2) "geochemical methods" means [ore] soil, rock, water, vegetation, etc. samples collected and



ALASKA MINERS ASSOCIATION, INC.

their chemical analyses;". The term "ore" is not appropriate here because that term, by definition, means material that can be mined at a profit. Geochemical sampling on the other hand is a technique used to find minerals long before it is known if a minable deposit actually exists. Also, some geochemical samples are taken of soil or vegetation while looking for trace elements that may be present and could be an indicator of metals in the area.

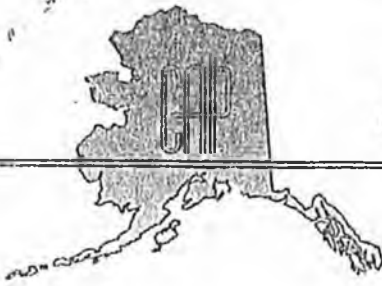
HB-498 comes at an important time for encouraging the minerals investments in Alaska. There is now a mass exodus of exploration funds away from federal lands throughout the western U.S. This is due primarily to the increasingly oppressive regulatory climate in the U.S. and to the efforts to change the federal mining law. Alaska cannot correct all of these problems but Alaska can add this incentive to encourage investment. HB-498 will send the message to the international mining industry that Alaska is seeking to improve the investment climate. This bill is one more indication that Alaska is working to encourage mineral development.

If you have any questions regarding this bill please contact me.

Sincerely,

Steven C. Borell, P.E.  
Executive Director

cc: Representative Foster  
Representative MacLean



**POSITION STATEMENT: HB 498**

The Council of Alaska Producers is an Alaska non-profit corporation whose members include Alaska Gold Company, American Copper and Nickel Company, Inc., Cambior Alaska, Cominco Alaska Incorporated, Echo Bay Alaska, Fairbanks Gold Mining, Inc., Greens Creek Mining Company, Kensington Venture, and North Pacific Mining. We strongly support CS for HB 498 which allows tax and royalty credits for qualified mineral exploration expenditures.

Alaska is competing with a global market for mineral exploration and development dollars. Throughout the world, countries are actively courting mining companies by offering economic incentives and other inducements. These efforts have been particularly successful in Chile and Mexico where privatization and tax incentives have revitalized their mining industries.

At the same time, ever-increasing regulatory and political obstacles in the lower 48 are forcing many companies to look elsewhere. While Alaska's image has actually improved over the last several years, exploration expenditures also are down here and we still must overcome legitimate concerns about our remoteness, weather and lack of access to public lands, along with an overriding perception that state and federal agencies are not that friendly to mining in the Last Frontier.

The proposed CS for HB 498 - which implements a key recommendation of the Alaska Minerals Commission in their January 1994 Report - begins to address these issues by proposing a fairly attractive incentive system that encourages reasonable exploration efforts, helps to offset logistical disadvantages and sends a clear message to industry that we want to see more, not less mining activity in this state. HB 498 will not solve all of our problems but it is one of several things we can and should do to draw more industry attention to Alaska and compete in this increasingly competitive global marketplace.

Our mineral industry is in its infancy and there is much room to grow. If we truly want to help diversify an oil dependent economy and fully develop our vast mineral resource potential we must take action now to encourage more exploration activity. Yes, there may be some impact on the treasury but there also may be more money circulating in the

economy. And if this strategy works as expected, expanded exploration efforts eventually will lead to more operating mines, and as important, more good jobs for Alaskans.



\* PLEASE PRINT AND INCLUDE \*  
 COMPLETE MAILING ADDRESS

HOUSE RESOURCES COMMITTEE

DATE: 3/25/94

PLACE: Capitol, Room 124

SUBJECT OF MEETING:

HB 498 - MINERAL EXPLORATION INCENTIVE CREDITS  
 HB 443 - FISH AND WILDLIFE CONFIDENTIAL RECORDS  
 HJR 61 - COMMUNITY DEVELOPMENT FISHING QUOTAS

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Wayne Regelin	Fish & Game	PO Box 25526 Juneau	99801			<input checked="" type="radio"/> Y	<input type="radio"/> N	HB 443
Carl Meyer	Revenue	PO Box 110420 Juneau	99801	465-2343	—	<input type="radio"/> Y	<input checked="" type="radio"/> N	HB 498
KAREN BRAND	Rep MOSES	Rm 204		<del>3765</del>	3765	<input checked="" type="radio"/> Y	<input type="radio"/> N	HJR 61
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	

**HB**

**515**

Date: March 1, 1994

Prepared By: Department of Natural Resources

Contact: Jerry Gallagher 465-2400

Neil Johannsen 762-2600

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

encouraging development.

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

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

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

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

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

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

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

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

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

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

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

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

AS 38.08 are not clear regarding the applicable procedures.

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

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

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

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

DRAFT AMENDMENTS FOR HB 515

## DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450

FAX (907) 465-2029

Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

March 24, 1994

**SUBJECT:** Sale or Disposal of State Land to Homeowner's Associations  
(Work Order No. 8-GH2023\A.1)

**TO:** Representative Jeannette James  
Attn: Walt

**FROM:** Jerry Luckhaupt *JLB*  
Legislative Counsel

The attached amendment gives DNR the authority to sell land at less than appraised value to nonprofit, tax-exempt homeowners' associations. I believe that DNR currently may have the authority to lease land to these homeowners' associations under AS 38.05.810(b) - (d), if the homeowners' association is operated exclusively for "charitable, religious, scientific, or educational purposes, or for the promotion of social welfare." AS 38.05.810(c).

Please be aware that the language added at the end of AS 38.05.810(a) applies to all disposals covered by that subsection, not just disposals to nonprofit tax-exempt homeowners' associations.

Finally, the title change is not entirely a result of this amendment. The bill already deals with lands disposals, and therefore it would be best if that were already noted in the title. However, since the amendment does address land disposals, we have included a title change.

GPL:mi  
94-070.mai

Attachment

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 515

Page 1, line 1, following "management":

Insert "and disposal"

Page 14, following line 12:

Insert a new bill section to read:

"\* Sec. 28. AS 38.05.810(a) is amended to read:

(a) Except as otherwise provided in AS 38.05.183(h), the (1) lease, sale, or other disposal of state land or resources may be made to a state or federal agency or political subdivision, (2) [THE] lease, sale, or disposal of coal deposits suitable for mining may be made to a utility owned and operated by a government agency or nonprofit cooperative association organized to participate under the Federal Rural Electrification Act for the purpose of generating electric power and energy or the production of process steam, or both, (3) [OR THE] sale or other disposal of state land may be made to a tax-exempt, nonprofit corporation, association, club, or society organized and operated exclusively for the management of a cemetery or a solid waste facility, or (4) sale or other disposal of state land may be made to a nonprofit, tax-exempt homeowners' association, for less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration given to the nature of the public services or function rendered by the agency, subdivision, tax-exempt, nonprofit corporation, association, club, or society, or utility making application, and of the terms of the grant under which the land was acquired by the state. The commissioner shall ensure that disposals of land or resources under this subsection are for a public purpose and in the public interest by the establishment of appropriate restrictions or conditions through the adoption of

regulations to govern the disposals or applications for disposals or otherwise by covenant or agreement."

Renumber the following bill sections accordingly.

Page 16, line 25:

Delete "sec. 40"

Insert "sec. 41"

Page 17, line 11:

Delete "Section 37"

Insert "Section 38"

Page 17, line 12:

Delete "1 - 36 and 38"

Insert "1 - 37 and 39"

STATUTES REPEALED OR REPEALED AND REENACTED  
IN HB 515



# Alaska Statutes

## Title 38. Public Land.

### Chapter

- 04. Policy for Use and Classification of State Land Surface (§ 38.04.020)
- 05. Alaska Land Act (§§ 38.05.035, 38.05.067, 38.05.073, 38.05.075, 38.05.082, 38.05.085, 38.05.105, 38.05.112, 38.05.113, 38.05.135, 38.05.180, 38.05.183, 38.05.185, 38.05.255, 38.05.300, 38.05.800, 38.05.810, 38.05.860, 38.05.940, 38.05.945, 38.05.965)
- 06. Alaska Royalty Oil and Gas Development Advisory Board (§§ 38.06.050 38.06.070)
- 07. Clearing and Draining of Agricultural Land (§ 38.07.030)
- 08. Homesites (§§ 38.08.040, 38.08.060, 38.08.100)
- 09. Homestead Act (§ 38.09.020)
- 35. Right-of-Way Leasing Act (§ 38.35.140)
- 95. Miscellaneous Provisions (§ 38.95.250)

### Chapter 04. Policy for Use and Classification of State Land Surface.

#### Article

- 2. Land Availability for Private Use (§ 38.04.020)

#### Article 2. Land Availability for Private Use.

#### Section

- 20. Land disposal bank

**Sec. 38.04.020. Land disposal bank.** (a) The commissioner shall establish a land disposal bank containing state land classified for disposal into private ownership.

(b) The land disposal bank does not include

(1) land nominated for selection or selected by a municipality to satisfy a general grant land entitlement under AS 29.65 or former AS 29.18.201 — 29.18.213;

(2) land retained in state ownership for multiple-use management;

(3) land where less than a fee simple title has been conveyed;

(4) land retained in state ownership under an enactment of the legislature or by the governor or a state agency under authority of law.

(c) Land to be retained in state ownership may be classified by the commissioner into multiple-use management categories under AS

38.05.300. Land outside a municipality to be retained in state ownership consists of land classified for retention in state ownership by the commissioner by July 1, 1985. Land conveyed to the state by the federal government that is to be retained in state ownership consists of land classified by the commissioner within two years of receipt of tentative approval or patent, whichever occurs first. State land not classified for retention in state ownership or selected by a municipality under this section shall be classified and included in the land disposal bank. The commissioner shall ensure that the bank includes at least 500,000 acres.

(d) On January 15 of the first session of each legislature, the commissioner shall report to the legislature on the status of land in the land disposal bank under the following categories:

- (1) land suitable for homestead disposal;
- (2) land suitable for subdivision disposal;
- (3) land suitable for agricultural, commercial, or industrial disposal; and
- (4) land suitable for other purposes.

(e) The commissioner shall annually submit to the governor an appropriation request for funding estimated to be necessary for the next two years to allow

(1) survey and disposal of land proposed to be made available for homestead staking, with the general location of the land;

(2) survey and disposal of land to be offered as agricultural, commercial, industrial, or other uses under AS 38.05.055 or 38.05.057, with the general location of the land;

(3) the survey and disposal of land proposed to be offered as subdivisions, with the general location of the land;

(4) preliminary feasibility studies, engineering design work, right-of-way acquisition, and construction of access roads and capital improvements required by municipal subdivision ordinance or regulation of the platting authority;

(5) identification of land that will be proposed for disposal under this subsection in future fiscal years.

(f) The request of the commissioner under (e) of this section shall include an analysis and an assessment of the market demand for the land proposed for disposal.

(g) After July 1 of each year, the commissioner shall direct the expenditure of money appropriated for the disposal of land in response to requests made under (e) and (f) of this section for the following:

(1) Land designated as suitable for homestead disposal shall be classified and surveyed under this chapter and AS 38.05 and made available for staking and lease under AS 38.09.

(2) Land designated as suitable for subdivision and homesite disposal shall be surveyed, subdivided, classified, and disposed of under this chapter, AS 38.05, and AS 38.08.

(3) Land desirable for other purposes.

(h) Individual parcels of five acres unless necessary to complete a viable subdivision, on-site sale, or other disposal, shall be sold for a price that does not have an adverse effect on the local economy or other residents.

(i) Nothing in this section shall affect the issuance of any other law.

(j) A person who has an interest in state-owned land may nominate land for disposal. The commissioner shall take nomination in state-owned land into consideration in the disposal bank through a classification under AS 38.05.055 or 38.05.057. The commissioner shall determine whether the land shall be reclassified as state-owned land.

(k) The commissioner shall state land that has been withdrawn from disposal for five years after the date of withdrawal shall be reclassified under AS 38.05.055 or 38.05.057. AS 38.05.055 — 4 ch 103 SL 1979; AS 38.05.057 — 74 SLA 1985.

Effect of amendment subsection

Sec. 38.04.

Cited in Fairbanks State, 826 P.2d

(3) Land designated agricultural, commercial, industrial, or suitable for other disposal shall be sold under AS 38.05.055 or 38.05.057.

(h) Individual parcels disposed of in subdivisions may not exceed five acres unless the commissioner determines that a larger size is necessary to comply with municipal ordinances, to permit the design of a viable subdivision because of topographical features, soil conditions, on-site sewage disposal requirements, or water drainage or supply considerations that are unique to the subdivision, to minimize adverse effect on wildlife, fishery, public recreation, timber, or other significant resources in the area, or to minimize adverse effect on other residential uses in the area.

(i) Nothing in this section prevents the disposal of other land by the commissioner in accordance with AS 38.05.055, 38.05.057, 38.05.070, the issuance of remote cabin permits under AS 38.05.079, AS 38.08, or other law.

(j) A person or an agency of the state may nominate land retained in state ownership for inclusion in the land disposal bank or may nominate land in the land disposal bank for retention in state ownership. The commissioner shall hold public hearings semiannually to take nominations under this subsection. A transfer of land from retention in state ownership to the land disposal bank or from the land disposal bank to retention in state ownership shall be accomplished through a classification order under AS 38.05.300 and with notice under AS 38.05.945. The commissioner shall make a written determination within six months after receipt of a nomination if the commissioner determines that the land nominated will not be classified or reclassified as requested.

(k) The commissioner may withdraw from the land disposal bank state land that has been offered for disposal but not conveyed within five years after the inclusion in the land disposal bank. State land withdrawn from the land disposal bank under this section must be reclassified under AS 38.04.065. (§ 5 ch 181 SLA 1978; am § 11 ch 85 SLA 1979; am § 4 ch 113 SLA 1981; am § 2 ch 90 SLA 1983; am §§ 2 — 4 ch 103 SLA 1983; am §§ 5 — 8 ch 152 SLA 1984; am §§ 51, 52 ch 74 SLA 1985; am § 4 ch 134 SLA 1990)

**Effect of amendments.** — The 1990 of each legislature" for "each year" in the amendment substituted "the first session introductory paragraph of subsection (d).

### Sec. 38.04.050. Access to private use areas.

#### NOTES TO DECISIONS

Cited in Fairbanks N. Star Borough v. State, 826 P.2d 760 (Alaska 1992).

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 for its fair market value a remnant of land that the director considers unmanageable or 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) the director 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 platting 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 this chapter if reasonable penalties and interest set by the director are paid;

(9) quitclaim land or an interest in land to the federal government on a determination that the land or the interest in land was wrongfully or erroneously conveyed by the federal government to the state;

(10) negotiate the sale or lease of state land at fair market value to a person who acquired by contract, purchase, or lease rights to improvements on the land from another state agency or who leased the land from another state agency.

(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 38.05.840. 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.

(e) Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state. A contract for the sale, lease, or other disposal of available land

or an interest in land is not legally binding on the state until the commissioner approves 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 execute the contract without the approval of the commissioner. 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 finding that sets out the facts and applicable law upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based. A written finding is not required before the approval of

- (1) a contract for a negotiated sale authorized under AS 38.05.115;
- (2) a lease of land for a shore fishery site under AS 38.05.082;
- (3) a permit or other authorization revocable by the commissioner;
- (4) a mineral claim located under AS 38.05.195;
- (5) a mineral lease issued under AS 38.05.205; or
- (6) a production license issued under AS 38.05.207; or
- (7) an exempt oil and gas sale under AS 38.05.180(d) for which a written best interest finding has been issued for the area of the sale within the 36 months before the date of the sale unless the commissioner determines that new information has become available that justifies a revision of the best interest finding.

(f) The director shall grant a preference right to the purchase or lease without competitive bid of up to five acres of state land to an individual who has erected a building on the land and used the land for bona fide business purposes for five or more years under a federal permit or without the need for a permit and, after selection by the state, under a state use permit or lease, if the business produced no less than 25 percent of the total income of the applicant for the five years preceding the application to purchase or lease the land. The director shall sell or lease the land at a price determined by the director to represent the current fair market value of the unimproved land but in no event less than the cost of administration including survey if required. If the director determines in a written finding that the purchase or lease of the land would interfere with public use by residents of the area, the director may condition the purchase or lease to mitigate the adverse effects on the public use or may reject the application for the preference right. A lease granted under this subsection may not be for a period in excess of 50 years. In this subsection, "business purposes" means a purpose permitted under the classification of the land at the time the land was entered. (§ 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

§ 38.05.035

received and the  
on balance, leas-  
5 art II ch 169  
31 SLA 1960; am  
ch 98 SLA 1964;  
§ 1 ch 194 SLA  
A 1976; am §§ 1,  
§ 20 ch 182 SLA  
3 SLA 1981; am  
A 1987; am §§ 1,  
paragraph (8); and

99 P.2d 289 (Alaska

clude consistency  
The Department of  
nsistency determina-  
its finding, made in  
ection (e), that a sale  
ate's best interest.  
v. State, 847 P.2d

of oil and gas de-  
offshore state land  
requiring a review  
Office of Management  
ether the project was  
Alaska Coastal Man-  
trustees for Alaska v.  
ural Resources, 795  
90).

oil and gas develop-  
re state land was re-  
ent of Natural Re-  
tion of the unique  
e oil transportation  
be necessary if the  
retic National Wild-  
remain unchanged.  
State, Dep't of Nat-  
P.2d 805 (Alaska

Alaska Prod. Co. v.  
24 (9th Cir. 1989);  
State, Dep't of Nat-  
P.2d 1061 (Alaska

§ 38.05.057

PUBLIC LAND

§ 38.05.067

Article 2. Sale of Land.

Section  
67. Veterans preference

Sec. 38.05.057. Disposal of land by lottery.

NOTES TO DECISIONS

Physical presence re- uirement vio- residents at each land lottery held, and  
lates equal protection clause. — The therefore is in violation of the equal pro-  
provision of subsection (a) requiring the tection clause of the Alaska Constitution.  
physical presence of an applicant unfairly Chambers v. State, Superior Court, 3rd  
discriminates between local and non-local Jud. Dist., C.A. No. 88-4634 (1989).

Sec. 38.05.067. Veterans preference. (a) Except as provided in  
(e) of this section, before offering to the general public any unoccupied  
residential land, the director shall offer the land at a restricted sale at  
which only veterans may buy.

(b) The director may not sell the land under this section at less than  
the fair appraised market value. The director shall adopt regulations  
necessary to ensure that land sold under this section is for bona fide  
residential use and not for speculation.

(c) When not in conflict with this section, other provisions of AS  
38.05.045 — 38.05.067 apply to sales under this section.

(d) This section does not apply to the sale of state land under AS  
38.04.020(g)(2) and AS 38.09.

(e) In this section, "veteran" means a person with 90 days or more  
of active service in the armed forces of the United States who has been  
honorably discharged or a person with 90 days or more of service in  
the Alaska Territorial Guard. (§ 4 art IV ch 169 SLA 1959; added by  
ch 102 SLA 1962; am § 1 ch 28 SLA 1963; am § 1 ch 1 SLA 1968; am  
§§ 28, 29 ch 85 SLA 1979; am § 35 ch 94 SLA 1980; am §§ 19, 20 ch  
113 SLA 1981; am § 6 ch 103 SLA 1983; am § 16 ch 93 SLA 1991)

Effect of amendments. — The 1991 service in the Alaska Territorial Guard"  
amendment, effective September 30, 1991, at the end of subsection (e).  
added "or a person with 90 days or more of

Article 3. Leasing of Lands Other Than for the Extraction  
of Natural Resources.

Section	Section
73. Recreational facilities development	85. Term of lease
leasing	105. Periodic rent adjustments
75. Leasing procedures	
82. Leases for shore fisheries develop- ment	

tery. 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 homesite and offered to the public under former AS 38.05.047(f), the parcel shall be disposed of under the terms required by AS 38.08.

(g) After receiving the deposit required under (a) of this section, the director shall immediately issue a receipt containing a description of the land or property to be conveyed, the price of the land, and the terms of disposal. The receipt shall be acknowledged in writing by the purchaser.

(h) An aggrieved lottery participant may appeal to the commissioner within five days after the lottery is conducted for a review of the lottery procedures.

(i) The director may include in contracts for sale of land under this section terms which

(1) require purchasers to use or occupy, or both, the land purchased for a reasonable period of time after a sale;

(2) prohibit the resale of land purchased by the initial purchaser until the requirements imposed under (1) of this subsection, if any, are satisfied.

(j) The commissioner may require a participant in a lottery under this section for the sale of land that is part of an agricultural development project under AS 44.35.475 to submit a single application for that land. Immediately following the drawing of an applicant's name in the lottery, the applicant shall be given an opportunity to select for purchase one parcel of the land that is offered in the lottery. The names of alternate applicants shall be drawn after all parcels have been selected. If the applicant who originally selected a parcel unequivocally rejects the offer to purchase the parcel or fails to sign the contract of sale within the period of time specified by the commissioner, the parcel shall be offered for sale to alternate applicants in the order in which their names were drawn. (§ 4 ch 176 SLA 1978; am §§ 15 — 22 ch 85 SLA 1979; am § 16 ch 113 SLA 1981; am § 2 ch 129 SLA 1982; am § 5 ch 103 SLA 1983; am §§ 96, 97 ch 6 SLA 1984; am § 53 ch 21 SLA 1985)

**Revisor's notes.** — In the first sentence of (b) of the section, the words "an applicant" were substituted in 1984 for "a potential purchaser" in order to attain uniformity in terminology.

**Cross references.** — For terms required in a contract of sale for land sold under this section, see AS 3C.05.065(b).

**Effect of amendments.** — The 1985 amendment deleted ", or if the purchaser elects to use land discounts granted under AS 38.05.058, five percent of the purchase

price after deduction of the discount" at the end of subsection (a).

**Editor's notes.** — AS 44.33.475, referred to in subsection (j), was repealed by § 4, ch. 75, SLA 1979.

Section 17, ch. 75, SLA 1987 provides that "[a] land management and disposal decision, including a disposal under AS 38.05.057, AS 38.08, or AS 38.09, or a commercial agricultural project under AS 38.05.020(b)(6), made before June 16, 1987, under a classification order under

AS 38.05.300 is valid, notwithstanding the adoption of the classification order before the adoption of the regional land use plan, if other requirements of law were met."

Opinions of attorney general — The state cannot use an application process for

its disposal of land near the boundaries of a city that gives preference to that city's residents with respect to lottery disposals under this section and probably also cannot do so with respect to homesite disposals under AS 38.08. July 15, 1985, Op. Att'y Gen.

#### NOTES TO DECISIONS

Quoted in *Gilman v. Martin*, 662 P.2d 663 P.2d 542 (Alaska 1983); *State v. 120* (Alaska 1983); *LeResche v. Lustig*, Weidner, 684 P.2d 103 (Alaska 1984).

*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)

Editor's notes. — AS 44.33.475, referred to in this section, was repealed by § 4, ch. 75, SLA 1979.

**Sec. 38.05.060. Rejection of bids.** Before the signing of the formal conveyance by the director, the commissioner may reject all bids when the best interests of the state justify this action. Land offered at public sale but not sold may be made available at private sale for not less than its appraised value. (§ 2 art IV ch 169 SLA 1959; am § 9 ch 61 SLA 1960; am § 2 ch 137 SLA 1962)

#### NOTES TO DECISIONS

Cited in *State v. University of Alaska*, 624 P.2d 807 (Alaska 1981).

*Sec. 38.05.063. Sales for pipeline purposes. [Repealed, § 31 ch 3 FSSLA 1973.]*

**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 or under former AS 38.05.078 shall require the remainder of the purchase price

to be paid in of not more t set on the l installment loans made Alaska at th

(c) The di set out in th installments with the con under this se sary and pro provision of t purchaser to but not lim other legal

(d) If a co director may at any time of the breac caused by th be cured wit ceived by th with the larg there are m chaser, the p ing for the r breach has

(e) On a d based on the hearing, the the purchase payments un sion to forec

(f) The dir personally t requested to failure to ma include a no pays to the s ing all accru the departm payment is r failure to m legal and ec

**Sec. 38.05.069. Preference to persons for agricultural purposes.** (a) On a determination that the highest and best use of unoccupied land is for agricultural purposes and that it is in the best interests of the state to sell or lease the land, the commissioner shall grant to an Alaskan resident owning and using or leasing and using land for agricultural purposes a first option at the auction to purchase or lease the unoccupied land situated adjacent to land presently held by the Alaskan resident for the amount of the high bid received at public auction. If more than one Alaskan resident qualifies for a first option under this section, eligibility for the first option shall be determined by lot and the option must be exercised on the conclusion of the public auction. A parcel of agricultural land sold under this section may not be less than 20 acres and a parcel of agricultural land that is acquired by exercise of the option granted in this subsection may not exceed 320 acres. Agricultural land that is acquired under this section must be used for agricultural purposes as required by law.

(b) *[Repealed, § 88 ch 152 SLA 1984.]*

(c) Under this section

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

(2) the sale or lease shall be at public auction.

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

(e) In 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; am §§ 25, 26, 88 ch 152 SLA 1984)

Cross references. — For provision restricting the sale, lease or other disposal of agricultural land in a manner inconsistent with this section, see AS 38.05.321.

#### NOTES TO DECISIONS

Quoted in *State v. Weidner*, 684 P.2d 103 (Alaska 1984).

#### Section

70. General

75. Leasing

79. Remote

80. Rejection

82. Leases

ment

83. Aquatic

leases

85. Term of

87. Forest

preferre

Cross refer  
to which con  
of state land

Sec. 38.  
shoreland,  
entitled, m  
in the ma

(b) The  
mine the l  
the lease.  
cess to sta  
is \$5,000 a  
not to exc  
that the d  
lease negc  
under AS

(c) A lea  
sioner det  
missioner  
and appro  
lease. If t  
which is t  
issued, th  
am § 21

Cross ref  
until July 1  
on issuance  
tion for the

preference between conflicting applicants for the same lease site on the basis of qualifications, the director shall select between the applicants by lot. An aggrieved applicant may appeal to the commissioner within five days for a review of the director's determination.

(c) A lease for set net fishing may be issued for any period not exceeding 10 years. If the commissioner determines that the land is not being utilized for the purpose for which the lease is issued, the lease may be declared void. The director shall establish a reasonable rental for the lease, equal to the administrative costs involved in processing the leasehold applications.

(d) Subleasing and renewals of leases are governed by AS 38.05.095 and 38.05.102.

(e) The lease of submerged land conveys no interest in the water above the land or in the fish in the water. (§ 2 ch 93 SLA 1963; am. § 99 ch 6 SLA 1984)

**Opinions of attorney general.** — This section, which authorizes shore fishery leases, does not create an exclusive right of fishery and therefore is not unconstitutional under § 15, art. VIII, of the state constitution. 1983 Op. Att'y Gen. No. 03.

This section can be amended to limit the issuance of state tidelands leases for fisheries development to residents of Alaska. 1983 Op. Att'y Gen. No. 03.

**Sec. 38.05.083. Aquatic farming and hatchery site leases.**

(a) The commissioner may offer to the public for lease a site that has been developed for aquatic farming or related hatchery operations under a permit issued under AS 38.05.856. Before offering the site to the public, the commissioner shall offer the site to the permittee.

(b) A site shall be leased under this section for not less than the appraised fair market value of the lease. The value of the lease shall be reappraised every five years.

(c) A lease under this section may be assigned, but if the assignee changes the use of the site the lease reverts to the state.

(d) Before entering into a lease under this section, the commissioner shall require the lessee to post a performance bond or provide other security to cover the costs to the department of restoring the leased site in the event the lessee abandons the site. (§ 13 ch 145 SLA 1988)

**Cross references.** — For applicability to persons operating an aquatic farm or related hatchery on June 9, 1988, see § 18, ch. 145, S' A 1988 in the Temporary and Special Acts.

**Sec. 38.05.085. Term of lease.** (a) The lease shall provide that

(1) for the initial 25-year period of the lease, the lessee shall pay the state a fixed base annual rent to be agreed upon by the parties in compliance with the provisions of this chapter;

(2) readju and, 1

(3) value more t preced

(b) of proj the pr

with t qualifi

the tw tion is

unable shall t

third a neares

shall value

ties. A subsec

(c) T portion may r

(d) payme perm

(e) lease

(f) A of a le not li

(g) (1) mined

puted subsec

(2) Institu praise appra tion, c comm (3) mark

would bring in the open market with the same conditions of lease as offered by the state. (§ 3 art V ch 169 SLA 1959; § 11 ch 61 SLA 1960; § 4 ch 74 SLA 1961; am § 9 ch 138 SLA 1977; am §§ 8, 9 ch 182 SLA 1978)

**Revisor's notes.** — Subsection (g) of this section was reorganized in 1984 to place the defined terms in alphabetical order.

**Opinions of attorney general.** — The lease conversion provisions enacted by 1977 legislation (§§ 12, 13, ch. 138, SLA 1977, as amended by § 21, ch. 182, SLA 1978) applied only to those leases entered into under the substantive statutory pro-

visions which were amended by the 1977 legislation. Hence, substantive amendments to AS 38.05 could not be applied to a lease which was not authorized by the leasing provisions of AS 38.05, but rather by the leasing provisions of AS 38.35, and the state was not estopped from challenging the validity of the terms of a wrongfully converted lease. December 10, 1985. Op. Att'y Gen.

#### NOTES TO DECISIONS

Quoted in *Alyeska Ski Corp. v. Holdsworth*, 426 P.2d 1006 (Alaska 1967).

#### Sec. 38.05.087. Forest Service permittees' leasing preference.

(a) Before offering to the public any land for lease which is subject to a valid existing United States Forest Service permit in effect in a state-selected area on the day before the area was tentatively approved for patent to the state, the director shall offer the land for leasing to the permittee at not less than its fair appraised market value before offering it to the general public.

(b) When not in conflict with this section, the provisions of AS 38.05.070 — 38.05.105 apply to leases under this section. (§ 1 ch 26 SLA 1963; am § 3 ch 26 SLA 1979)

**Sec. 38.05.090. Removal or reversion of improvements upon termination of leases.** (a) Improvements owned by a lessee on state land shall, within 60 days after the termination of the lease, be removed by the lessee if removal will not cause injury or damage to the land. The director may extend the time for removing improvements in cases where hardship is proven. The retiring lessee or permittee may, with the consent of the director, sell improvements to the succeeding lessee or permittee.

(b) If improvements or chattels, or both, having an appraised value exceeding \$10,000 as determined by the director are not removed within the time allowed, the improvements or chattels or both shall, upon notice to the lessee, be sold at public sale under the direction of the director. The proceeds of sale inure to the lessee who placed the improvements or chattels on the land after paying to the state all rents due and expenses incurred in making the sale. If there are no other bidders at the sale, the director may bid in the name of the state. The bid money shall be taken from the fund to which the land belongs

and the derived from state acquisition reason o

(c) If i of \$10,000 within t vests in t may foll tion of tl

(d) Im land sha land if t permit f addition fixtures former l an inde

(e) A shall st

(1) th

(2) th the sale amount ch 61 S

Cited in (Alaska 1

Collate Jur. 2d, 1 73A C.

Sec. section, it if, aft director ests of

(b) A state la a portio § 10 ch

f lease as  
SLA 1960;  
182 SLA

by the 1977  
ve amend-  
e applied to  
ized by the  
but rather  
38.35, and  
m challeng-  
of a wrong-  
er 10, 1985,

ference.  
subject to  
fect in a  
ively ap-  
land for  
l market

ns of AS  
1 ch 26

ts upon  
on state  
e, be re-  
ge to the  
ments in  
tee may,  
ceeding

ed value  
removed  
th shall,  
ection of  
aced the  
state all  
e are no  
he state.  
belongs

and the fund shall receive all money or other value subsequently derived from the sale or leasing of the improvements or chattels. The state acquires all the rights that any other purchaser could acquire by reason of the purchase.

(c) If improvements or chattels, or both, having an appraised value of \$10,000 or less, as determined by the director, are not removed within the time allowed, they revert to the state and absolute title vests in the state. The preference right lessees of grazing or forest land may follow the provisions for removal of improvements upon termination of the lease as authorized in the cancelled federal lease or permit.

(d) Improvements of the lessee which have become fixtures of the land shall be purchased by the subsequent purchaser or lessee of the land if the improvements were authorized in the former lease or by permit from the director. Upon the termination of a lease, and at additional times which may be necessary, the value of the authorized fixtures remaining on the land shall be set by agreement between the former lessee and the director or, if agreement cannot be reached, by an independent appraisal made at cost to the former lessee.

(e) A notice or offer by the state to sell or lease formerly leased land shall state

- (1) the value of the authorized fixtures remaining on the land;
- (2) that the purchaser or lessee will be required, as a condition of the sale or lease, to purchase the fixtures from the former lessee for an amount equal to the value specified. (§ 4 art V ch 169 SLA 1959; § 12 ch 61 SLA 1960; § 5 ch 74 SLA 1961; am § 1 ch 140 SLA 1966)

#### NOTES TO DECISIONS

Cited in *Swindel v. Kelly*, 499 P.2d 291  
(Alaska 1972).

Collateral references. — 63A Am.  
Jur. 2d, Public Lands, § 35.  
73A C.J.S., Public Lands, § 25.

**Sec. 38.05.095. Subleases.** (a) Except as provided in (b) of this section, a lessee may sublease or assign the leased land or a portion of it if, after application to the director, the director issues a permit. The director may issue a permit upon a finding that it is in the best interests of the state to do so.

(b) A nonprofit organization that is exempted from paying rent on state land under AS 38.05.810 may not sublease or assign the land or a portion of it on which it has a lease. (§ 5 art V ch 169 SLA 1959; am § 10 ch 182 SLA 1978; am § 29 ch 113 SLA 1981)

d notices.  
changed to  
not be made  
uments are  
ertificate of  
rded in the  
ertificate.

54 Am. Jur.  
25 et seq.  
erals, § 12 et

ocation and  
bject to AS  
erged land,  
and certifi-  
195. If the  
publish in  
notice of the  
ll be issued.  
ther in the  
tion exists,  
application  
he director.  
the locator  
land is not  
the director  
essee has the  
ls subject to  
the lease or  
or a group of  
e mined and  
ed amounts

ears, and is  
ed. Annual  
d under AS  
l held under  
application  
granted by a

mining lease may not be exercised until the lease has been filed for record in the recording district where the land is located. (§ 4 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 2 ch 108 SLA 1981; am § 39 ch 152 SLA 1984; am §§ 1, 10 ch 101 SLA 1989)

**Revisor's notes.** — Minor word changes related to the recording of documents were made in this section in 1988 under § 42, ch. 161, SLA 1988.

**Effect of amendments.** — The 1989 amendment, effective August 31, 1989, repealed subsection (b) and, in subsection (c), rewrote the present first and second sentences and made a grammatical change.

**Editor's notes.** — Section 11, ch. 101, SLA 1989 provides that the 1989 amend-

ments to (c) of this section "apply to mining claims, leasehold locations, and mining leases located before, on, or after August 31, 1989."

**Opinions of attorney general.** — Otherwise valid locations of prospecting sites or mining claims may be made on land subject to an unexercised right of repurchase, and any subsequent repurchaser would receive title encumbered by the rights which attach to such locations. January 12, 1984, Op. Att'y Gen.

#### NOTES TO DECISIONS

**Rents and royalties.** — Because they do not require rents or royalties, the state hardrock mineral leasing laws do not meet the leasing requirement of the Statehood Act, § 6(i). *Trustees for Alaska v. State*, Dep't of Natural Resources, 736

P.2d 324 (Alaska 1987), cert. denied, U.S. , 108 S. Ct. 2013, 99 L. Ed. 2d 699 (1988).

Cited in *Moore v. State*, 553 P.2d 8 (Alaska 1976).

**Collateral references.** — 54 Am. Jur. 2d, *Mines and Minerals*, §§ 97 to 101, 120 to 147.

58 C.J.S., *Mines and Minerals*, § 164 et seq.

"Mine" as used in written instrument, 92 ALR2d 868.

**Sec. 38.05.207. Production license.** (a) An application for a production license shall be filed with the commissioner when a locator of a mining claim under AS 38.05.195 or a lessee of a mining location under AS 38.05.205 is prepared to produce minerals for sale in commercial quantities. The application shall state under oath the location of the land and ownership of the mineral deposits involved in the mining operation and the date production began or is expected to begin. Upon receipt of an application, the commissioner shall publish in a paper of general circulation in the area of the location notice of the application and notice that a production license will be issued. The notice may be combined with notices of other applications either in the same general area or statewide. Pending completion of this public notice requirement and issuance of the production license, the locator or lessee has the right to produce minerals from the property.

(b) If the commissioner determines under AS 38.05.185(b) that a locator or lessee has complied as nearly as possible under the circumstances of the case with the provisions of AS 38.05.185 — 38.05.275 and that no conflicting rights are asserted by any other person, the

commissioner shall issue a transferable production license for mineral extraction. If conflicting rights are asserted the commissioner may resolve the conflict. (§ 2 ch 87 SLA 1982)

**Cross references.** — For purpose and legislative finding, see § 1, ch. 87, SLA 1982, in the Temporary and Special Acts and Resolves.

**Opinions of attorney general.** — The production license requirement of this sec-

tion apply to riverbeds that the state claims to own under § 6(m) of the Statehood Act as well as to lands tentatively approved to the state under § 6(a) and (b) of the Statehood Act. June 10, 1982, Op. Att'y Gen.

**Sec. 38.05.210. Annual labor.** (a) Labor shall be performed or improvements made annually on or for the benefit or development of each mining claim, leasehold location, and mining lease on state land except that where adjacent claims, leasehold locations, or mining leases are held in common, the expenditure may be made on any one claim, leasehold location, or mining lease. The commissioner shall establish the date of the commencement of the year during which the labor or improvements are to be performed. Labor shall be performed at the annual rate of \$100 per claim or leasehold location, and \$100 for each partial or whole 40 acres of each mining lease. If more work is performed than is required by this section to be performed in any one year, the excess value may be applied against labor required to be done during the subsequent year or years, for as many as four years. Instead of performing annual labor, the holder of a claim, leasehold location, or mining lease may make a cash payment to the state equal to the value of the labor required by this subsection.

(b) During the year in which annual labor is required or within 90 days after the close of that year, the owner of the mining claim, leasehold location, or mining lease, or some other person having knowledge of the facts shall record with the recorder of the district in which the claim, leasehold location, or mining lease is located a signed statement setting out the information, as may be required by the commissioner, concerning the annual labor of the preceding year, any labor in excess of that required for the preceding year, and any payment of cash instead of annual labor. The statement, properly recorded, is prima facie evidence of the performance of the labor. The failure of one of several co-owners to contribute the proportion of the expenditures required for annual labor from the co-owner shall be treated in accordance with AS 38.05.215 — 38.05.235.

(c) The statement of annual labor required in (b) of this section may be amended within two years of the date by which the annual labor statement was required to be recorded. An amended statement shall be recorded for record in the same manner as the original statement. Additional labor claimed in an amended statement may not be applied against labor required to be done during a subsequent year.

(d) [R  
am § 1  
1984; a

Revisor  
enacted a  
and a corr  
the intern  
of the sect  
tions (a).

Minor v  
cording of  
sections (b  
under § 4

Effect  
amendme  
serted the  
tions" and  
(a) and (b)  
second ser

Express  
Neither th  
concerning  
annual la  
ment that  
to be appli  
done durin  
Ashbrook  
(Alaska 19  
Express

Collater  
2d, Mines

Sec. 3  
claim, le  
under Al  
to contin  
lease, in  
rental a  
mining  
claim or

Numbr

Firs

0 —  
6 —

38.05.211

Number of Years Since First Located	Rental Amount Per Acre for Mining Leases	Rental Amount for Each Mining Claim or Leasehold Location
11 — or more	\$2.50	100

(b) A claim, leasehold location, or mining lease located on or before August 31, 1989 is considered to have been first located on August 31, 1989 for purposes of determining the amount of rental under this section.

(c) The rental for each year shall be credited against the production royalty under AS 38.05.212 as it accrues for that year.

(d) The rental established under this section shall be revised each 10 years by the commissioner based on the consumer price index for Anchorage and published in regulations by the commissioner. (§ 4 ch 101 SLA 1989)

**Cross references.** — For due date of first payment under this section and other transitional provisions, see § 11, ch. 101, SLA 1989 in the Temporary and Special Acts.

**Sec. 38.05.212. Production royalty.** (a) In exchange for and to preserve the right to extract and possess the minerals produced, the holder of a mining claim, leasehold location, or mining lease, including a mining lease under AS 38.05.250, shall pay a royalty on all minerals produced from land subject to the claim, leasehold location, or mining lease during each calendar year.

(b) The production royalty is three percent of net income as determined under AS 43.65.

(c) The commissioner shall adopt regulations to implement this section and to provide for combined reporting and paying of production royalties for mining operations that include more than one mining claim, leasehold location, or mining lease. (§ 4 ch 101 SLA 1989)

**Cross references.** — For due date of first payment under this section and other transitional provisions, see § 11, ch. 101, SLA 1989 in the Temporary and Special Acts.

**Sec. 38.05.215. Notice to co-owners to contribute to cost of annual labor or improvements and forfeiture for failure to contribute.** If one of several co-owners fails to contribute the proportion of the expenditures required for annual labor from the co-owner, the co-owners who have performed the labor or made the improvements may, at the expiration of the annual labor year, give the delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days. If at the expiration of 90 days after the service of the notice in

writing, (quent fai  
expendit  
forfeited  
ACLA 19

Scope of  
for purpose  
the delinqu  
each operat

Sec. 38  
vits. (a)  
after the  
38.05.215  
office of  
located a

(1) an  
place and  
was made  
affidavit  
giving th  
during w  
(2) an  
that neit  
delinquer  
quent's p  
ments.

(b) The  
prima fac  
1949)

Revisor's  
changes rel  
ments were

Cited in  
156 (Alaska

Sec. 38  
person w  
under a  
other lier  
go upon  
annual la

revocation of a permit or easement of land, the director shall give preference to that use of the land which will be of greatest economic benefit to the state and the development of its resources. However, first preference shall be granted to the upland owner for the use of a tract of tideland, or tideland and contiguous submerged land, which is seaward of the upland property of the upland owner and which is needed by the upland owner for any of the purposes for which the use may be granted.

(b) The fee charged for a right-of-way approved under (a) of this section shall be waived by the commissioner if the right-of-way is for a transmission or distribution line established by a nonprofit cooperative association organized under AS 10.25 for the purpose of supplying electric energy and power, or telephone service, to its members, and the waiver is considered by the commissioner to be in the best interests of the state. (§ 7 art III ch 169 SLA 1959; am § 7 ch 61 SLA 1960; am § 4 ch 72 SLA 1972; am § 28 ch 3 FSSLA 1973; am § 13 ch 257 SLA 1976; am §§ 1, 2 ch 25 SLA 1979)

Revisor's notes. — Formerly AS 38.05.330. Renumbered in 1984.

Opinions of attorney general. — A special land use permit may be revoked or

terminated given a permittee's death and his earlier unauthorized attempt to transfer it. December 15, 1983, Op. Att'y Gen.

#### NOTES TO DECISIONS

Quoted in *Swindel v. Kelly*, 499 P.2d 291 (Alaska 1972).

Cited in *Chevron U.S.A., Inc. v. LeResche*, 663 P.2d 923 (Alaska 1983).

Collateral references. — 63A Am. Jur. 2d, Public Lands, §§ 31 to 35.

**Sec. 38.05.855. Identification of sites for aquatic farms and hatcheries.** (a) The commissioner shall identify districts in the state within which sites may be selected for the establishment and operation of aquatic farms and related hatcheries required to have a permit under AS 16.40.100.

(b) The commissioner shall schedule at least one 60-day period each year during which a person may submit an application that identifies a site in a district for which the person wishes to be issued a permit under AS 38.05.856.

(c) Based on applications received under (b) of this section, and after consultation with the commissioner of fish and game and the commissioner of environmental conservation, the commissioner shall make a preliminary written finding under AS 38.05.035(e) that proposes sites in each district for which permits may be issued under AS 38.05.856.

(d) After under AS 3 finding under which permit conditions 145 SLA 1

Sec. 38.0 farming. (a) mit for the lated hatch three years ferred.

(b) Befor shall allow concerning date of the mony.

(c) Befor missioner s section or tion for iss applicant v

(d) Befor missioner provide oth the permit

(e) The for the app ing the num order to pr The regula ment polic with the ti located. (§

Cross refe to persons of related hatch § 18, ch. 145. and Special

Opinions Department adopt regula AS 41.21 if combination, cation proces ing permits, mits as disp

r shall give  
est economic  
s. However,  
the use of a  
nd, which is  
nd which is  
hich the use

r (a) of this  
-way is for a  
ofit coopera-  
of supplying  
embers, and  
e best inter-  
1 SLA 1960;  
§ 13 ch 257

tee's death and  
tempt to trans-  
Op. Att'y Gen.

.S.A., Inc. v.  
Alaska 1983).

farms and  
in the state  
t and opera-  
ave a permit

y period each  
that identifies  
ued a permit

section, and  
ame and the  
ssioner shall  
5(e) that pro-  
ed under AS

(d) After notice is given under AS 38.05.945 and a hearing is held under AS 38.05.946(b), the commissioner shall issue a final written finding under AS 38.05.035(e) that identifies sites in each district for which permits shall be issued under AS 38.05.856 and that specifies conditions and limitations for the development of each site. (§ 14 ch 145 SLA 1988)

**Sec. 38.05.856. Tideland and land use permits for aquatic farming.** (a) The commissioner may issue a tideland or land use permit for the establishment and operation of an aquatic farm and related hatchery operations. A permit under this section is valid for three years after the date of issuance. The permit may not be transferred.

(b) Before renewing a permit under this section, the commissioner shall allow interested persons to submit written or oral testimony concerning the renewal to the commissioner within 30 days after the date of the notice. The commissioner may hold a hearing to take testimony.

(c) Before issuing or renewing a permit under this section, the commissioner shall consider all relevant testimony submitted under this section or AS 38.05.946(b). The commissioner may deny the application for issuance or renewal for good cause, but shall provide the applicant with written findings that explain the reason for the denial.

(d) Before issuing or renewing a permit under this section, the commissioner shall require the permittee to post a performance bond or provide other security to cover the costs to the department of restoring the permitted site in the event the permittee abandons the site.

(e) The commissioner shall adopt regulations establishing criteria for the approval or denial of permits under this section and for limiting the number of sites for which permits may be issued in an area in order to protect the environment and natural resources of the area. The regulations must provide for the consideration of upland management policies and whether the proposed use of a site is compatible with the traditional and existing uses of the area in which the site is located. (§ 14 ch 145 SLA 1988)

**Cross references.** — For applicability to persons operating an aquatic farm or related hatchery on June 9, 1988, see § 18, ch. 145, SLA 1988 in the Temporary and Special Acts.

**Opinions of attorney general.** — The Department of Natural Resources should adopt regulations under this section and AS 41.21 if appropriate, separately or in combination, before beginning the application process for siting and aquatic farming permits, and should treat those permits as disposal of land with the atten-

dant statutory requirements. When compatible with the statutory purposes of a park, an aquatic farming permit for a park must be revocable at will, and no leases should be authorized there. September 13, 1988, Op. Att'y Gen.

The Department of Natural Resources has the discretion to reasonably interpret § 18, ch. 145, SLA 1988, and decide which categories of individuals had been "lawfully operating" an aquatic farm on the effective date of the legislation, which individuals are permitted to continue oper-

**Sec. 38.05.945. Notice.** (a) This section establishes the requirements for notice given by the department for the following actions:

(1) classification or reclassification of state land under AS 38.05.300 and the closing of land to mineral leasing or entry under AS 38.05.185;

(2) zoning of land under applicable law;

(3) a decision under AS 38.05.035(e) regarding the sale, lease, or disposal of an interest in state land or resources;

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

(5) a public hearing under AS 38.05.856(b);

(6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c) concerning sites for aquatic farms and related hatcheries.

(b) Notice of one or more actions described in (a) of this section shall be given at least 30 days before the action by publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action and one or more of the following methods:

(1) publication through public service announcements on the electronic media serving the area affected by the action;

(2) posting in a conspicuous location in the vicinity of the action;

(3) notification of parties known or likely to be affected by the action; or

(4) another method calculated to reach affected persons. A notice shall contain sufficient information in commonly understood terms to inform the public of the nature of the action and the opportunity of the public to comment on the action.

(c) Notice at least 30 days before action under (a) of this section shall also be given to the following:

(1) to a municipality if the land is within the boundaries of the municipality, to a coordinating body established by community councils in a municipality if the coordinating body or a community council within the area served by a coordinating body requests notice in writing: if there is no coordinating body within the municipality, notice shall be provided to each community council established by the charter or ordinance of the municipality if the land is located within the boundaries of the municipality and if the community council requests notice in writing;

(2) to a regional corporation if the boundaries of the corporation as established by sec. 7(a) of the Alaska Native Claims Settlement Act encompass the land and the land is outside a municipality;

(3) to a village corporation organized under sec. 8(a) of the Alaska Native Claims Settlement Act if the land is within 25 miles of the village for which the corporation was established and the land is located outside a municipality;

(4) to the persons located beside a municipally owned and conspicuous

(5) to a municipality that has requested notice, if the municipality has requested notice, if the municipality has requested notice,

(d) Notice under this section shall be given to the following:

(1) regional corporations;

(2) coastal municipalities under AS 46.40.210.

(e) Notice under this section shall be given to the following:

(f) The provisions of AS 38.05.200 shall apply to the following:

(g) The provisions of AS 38.05.200 shall apply to the following:

(h) Failure to comply with the provisions of this section shall constitute a violation of the provisions of AS 38.05.200.

(i) The provisions of AS 38.05.200 shall apply to the following:

(j) The provisions of AS 38.05.200 shall apply to the following:

(k) The provisions of AS 38.05.200 shall apply to the following:

(l) The provisions of AS 38.05.200 shall apply to the following:

Effect of amendment to gas leasing law

Quoted in Dep't of Natural Resources (Alaska 1999)

Sec. 38.05.965 otherwise

(1) "accrue" tide, sublease, purchase,

(2) "agricultural" purposes;

(3) "commercial" purposes;

(4) "departmental" purposes;

(4) to the postmaster of a permanent settlement of more than 25 persons located within 25 miles of the land if the land is located outside a municipality, with a request that the notice be posted in a conspicuous location;

(5) to a nonprofit community organization or a governing body that has requested notification in writing and provided a map of its boundaries, if the land is within the boundaries.

(d) Notice at least 30 days before action under (a)(5) or (6) of this section shall be given to appropriate

(1) regional fish and game councils established under AS 16.05.260; and

(2) coastal resource service areas organized under AS 46.40.110 — 46.40.210.

(e) Notice is not required under this section for a permit or other authorization revocable by the department.

(f) The provisions of this section do not apply to a lease issued under AS 38.05.205.

(g) The provisions of this section do not apply to a production license issued under AS 38.05.207.

(h) Failure to give notice under this section to a community council, a coordinating body established by community council, or an organization listed in (c)(5) of this section does not constitute a legal basis for invalidation or delay of the action. (§ 10 art III ch 169 SLA 1959; am § 8 ch 61 SLA 1960; am § 2 ch 74 SLA 1961; am § 3 ch 117 SLA 1976; am § 14 ch 257 SLA 1976; am §§ 39, 40 ch 85 SLA 1979; am § 4 ch 108 SLA 1981; am § 36 ch 113 SLA 1981; am § 3 ch 87 SLA 1982; am §§ 44 — 46 ch 152 SLA 1984; am §§ 6, 7 ch 100 SLA 1988; am §§ 15, 16 ch 145 SLA 1988; am § 5 ch 124 SLA 1990)

Effect of amendments. — The 1990 amendment deleted "Except for oil and gas leasing under AS 38.05.180 and geothermal leasing under AS 38.05.181" from the beginning of subsection (c).

NOTES TO DECISIONS

Quoted in Trustees for Alaska v. State, Dep't of Natural Resources, 795 P.2d 805 (Alaska 1990).

Sec. 38.05.965. Definitions. In this chapter, unless the context otherwise requires,

(1) "acquired land" means land belonging to the state including tide, submerged and shoreland which has been obtained by escheat, purchase, or any means other than by general land grant;

(2) "agricultural land" means land chiefly valuable for agricultural purposes;

(3) "commissioner" means the commissioner of natural resources;

(4) "department" means the Department of Natural Resources;

curs as a consequence of unitization since such extension is a measure to enhance the feasibility of unitized operation, not a

disposal action. November 25, 1977, Op. Att'y Gen.

## NOTES TO DECISIONS

**Chapter enacted pursuant to Alaska Const., art. VIII, § 10.** — Pursuant to Alaska Const., art. VIII, § 10, the legislature enacted the Alaska Land Act, the provisions of which are now found in AS 38.05.005 through 38.05.370 (now 38.05.990). Moore v. State, 553 P.2d 8 (Alaska 1976).

The supreme court is unwilling to hold that notice is purely a matter of agency regulation under this chapter, especially in light of the constitutional concern with notice expressed in Alaska

Const., art. VIII, § 10. Moore v. State, 553 P.2d 8 (Alaska 1976).

**Insufficient notice.** — Where the last publication in a newspaper was less than a week prior to the sale, there was not sufficient notice pursuant to this section. Moore v. State, 553 P.2d 8 (Alaska 1976).

**When newspaper is one of general circulation.** — A newspaper which contains news of general interest to the community and reaches a diverse readership is one of general circulation. Moore v. State, 553 P.2d 8 (Alaska 1976).

**Sec. 38.05.946. Hearings.** (a) A municipality or a corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the commissioner shall attend the hearing. The commissioner has discretion to hold a public hearing.

(b) The commissioner shall hold a public hearing in each district identified under AS 38.05.855 within 30 days after giving notice of a preliminary finding under AS 38.05.035(e) and 38.05.855(c) concerning sites for aquatic farms and related hatcheries. (§ 36 ch 113 SLA 1981; am § 17 ch 145 SLA 1988)

**Revisor's notes.** — Enacted as AS 38.05.345(d) and renumbered as AS 38.05.346 in 1981. Renumbered again in 1984.

**Effect of amendments.** — The 1988 amendment, effective June 9, 1988, added subsection (b).

**Sec. 38.05.950. Interference with bidding prohibited; penalties.** A person who bargains, contracts, or agrees, or attempts to bargain, contract, or agree with another that the other may not bid freely upon or purchase any parcel of land of the state offered at public sale; or by intimidation, combination, or unfair management, hinders, prevents, or attempts to hinder or prevent, a person from bidding upon or purchasing a tract of land offered for sale is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both. (§ 3 (e) art XIII ch 169 SLA 1959; added by § 22 ch 61 SLA 1960)

**Revisor's notes.** — Formerly AS 38.05.355. Renumbered in 1984.

(b) Nothing in this chapter prohibits a homestead entry permit holder from residing in a temporary dwelling on the homestead before erection of the permanent dwelling.

(c) The commissioner may reserve or exclude from a patent easements or rights-of-way for roads, trails, trap lines, public access ways, utility corridors, and transportation facilities.

(d) A patent to homestead entry land not purchased under AS 38.09.090 shall provide that the land may not be subdivided before five years after the issuance of patent.

38.09.050

(e) A patent to homestead entry land purchased under AS 38.09.090 shall contain the following conditions:

(1) the land may not be sold, leased, or otherwise conveyed until at least five years after the date that the patent is issued except under the provisions of AS 38.09.030(c); and

(2) the land may not be subdivided before ten years after the issuance of patent. (§ 1 ch 103 SLA 1983; am § 53 ch 152 SLA 1984; am § 15 ch 75 SLA 1987; am § 6 ch 123 SLA 1988)

Effect of amendments. — The 1987 amendment in subsection (a) in paragraph (2) substituted "five" for "two" and deleted "or under AS 38.09.040(b)" at the end of the paragraph, inserted "not described by aliquot parts or as a lot of record" in paragraph (4) and substituted

"cropland" for "land having class II or III" in paragraph (5).

The 1988 amendment, effective June 9, 1988, rewrote paragraph (a)(2), which read "completes an approved survey of the land within five years after the issuance of the permit."

NOTES TO DECISIONS

Applied in Alaska Survival v. State, Dep't of Natural Resources, 723 P.2d 1281 (Alaska 1986).

Sec. 38.09.060. Marking boundaries. If it is impractical to brush the boundaries of a homestead entry, an applicant shall flag the boundaries. (§ 1 ch 103 SLA 1983)

Sec. 38.09.070. Priority of applications. The commissioner shall issue a homestead entry permit to the first applicant for land to comply with AS 38.09.020(b). (§ 1 ch 103 SLA 1983)

Sec. 38.09.080. Land within municipalities. (a) If a municipality has filed a selection of state land under AS 29.65 or former AS 29.18.201 — 29.18.213 with the commissioner, the state land selected may not be designated for homestead entry; if the commissioner determines that land selected by a municipality is not available for patent to the municipality under AS 29.65 or former AS 29.18.201 — 29.18.213, the state land is available for designation by the commissioner for homestead entry under AS 38.09.010.

(b) The recording 29.35.180 1985)

Effect of amendment in two plac

Sec. 38 requirem commissioner within tw purchase market va mined by (b) An who tende present fa of the per chase pric purchase.

Cross ref to which con state land a

Sec. 38 mote par remote pa to obtain t the date (b) Exce affects the former AS (c) Notv 38.05.078, may sell t shall notif § 1 ch 12

Effect of 1987 amendr The second sentence of s tion (b) inser

Chapter 27

1 the applicant to utilize the location to its maximum potential, and other factors relevant to the  
2 equitable assignment of the disputed area. If the director cannot determine a preference between  
3 conflicting applicants for the same lease site on the basis of qualifications, the director shall  
4 select between the applicants by lot. An aggrieved applicant may appeal to the commissioner  
5 within 30 [FIVE] days for a review of the director's determination.

38.05.082(b)

6 \* Sec. 3. AS 38.05.082(b) is amended to read:

7 (b) The director may classify land as subject to leases for fisheries development, and [IN  
8 AN AREA OR REGION OF THE STATE FOR WHICH A LAND USE PLAN HAS NOT  
9 BEEN ADOPTED UNDER AS 38.04.065, THE DIRECTOR MAY CLASSIFY LAND FOR  
10 LEASE UNDER THIS SECTION AFTER NOTICE UNDER AS 38.05.945. THE DIRECTOR  
11 SHALL] publicly invite applications for lease of the selected areas. Each application shall be  
12 accompanied by an affidavit to the effect that the applicant presently intends to personally utilize  
13 the leased area for fishing purposes the following season. If two or more applications are  
14 received for the same shore area, the director shall award the lease to the most qualified  
15 applicant. In determining the qualifications of applicants, the director shall consider the length  
16 of time during which the applicant has been engaged in set netting, the proximity of the past  
17 fishing sites of the applicant to the land to be leased, the present ability of the applicant to utilize  
18 the location to its maximum potential, and other factors relevant to the equitable assignment of  
19 the disputed area. If the director cannot determine a preference between conflicting applicants  
20 for the same lease site on the basis of qualifications, the director shall select between the  
21 applicants by lot. An aggrieved applicant may appeal to the commissioner within 30 days for  
22 a review of the director's determination.

23 \* Sec. 4. COMPLETION OF LAND USE PLANS The commissioner of natural resources is directed  
24 to adopt a land use plan under AS 38.04.065 by January 1, 1997, for an area or region of the state  
25 containing tideland having shore fisheries development activities for which a land use plan has not  
26 already been adopted.

27 \* Sec. 5. Section 3 of this Act takes effect January 1, 1997.

28 \* Sec. 6. Except for sec. 3 of this Act, this Act takes effect immediately under AS 01.10.070(c).

Eff. § 3 takes  
effect 1/1/97;  
remainder of  
Act takes ef-  
fect 6/12/91

1 To provide f  
2 disabled vet  
3  
4  
5  
6 \* Section 1. AS  
7 (c) T  
8 annual state p  
9 a state park d  
10 of this section  
11 disabled veter  
12 developed ca  
13 applying for  
14 shall report  
15 subsection d

From 1982 Cumulative Supplement

§ 38.05.077

terior boundaries of  
l shall file a sketch  
n of the remote par-  
son who staked the  
on to lease the land  
tment. The annual  
be submitted to the  
lication to lease a  
l offer to lease the  
ease granted under

option of the lessee  
as provided for the

shall be \$10 for each

within one year of  
or the lease period,  
brushing a line so

veyed or otherwise  
by testate or intes-  
otherwise transfer

ote parcel lease,  
the land shall be  
05.090 for removal  
ases of state land.

but includes land  
person eligible to  
t part of the later  
ing and allow the  
l staking area.

but includes land  
area, the director  
the remote parcel  
onal land in the  
aking of the land

section, a person

r older;  
e has been a resi-  
ely preceding the

§ 38.05.078

PUBLIC LANDS

§ 38.05.078

(3) certify that he has not previously leased a remote parcel from the state within eight years immediately preceding the date of staking a remote parcel. (§ 1 ch 157 SLA 1968; am § 1 ch 18 SLA 1973; am § 31 ch 85 SLA 1979; AS 38.05.078(g), (h); am §§ 22 — 25, 28, 45 ch 113 SLA 1981)

Revisor's notes. — Subsection (i) of this section, as enacted, was designated as subsection (g) and was redesignated by the revisor of statutes under AS 01.05.031.

In the first sentence of subsection (c), the words "under (i)" were substituted for "under (g)" by the revisor of statutes pursuant to AS 01.05.031.

Effect of amendments. — The 1979 amendment rewrote this section.

The 1981 amendment so changed this section as to make a detailed comparison impracticable. Among other changes, the amendment rewrote subsection (a), repealed subsection (b)(2) which read "the maximum amount of land in a remote parcel that may be used for residential purposes," and added subsection (d)(4) and subsections (g), (h) and (i).

Editor's notes. — As to designation of land for disposal under the open-to-entry program and assessment of supply and demand under such program, see §§ 1 and 2, ch. 181, SLA 1978, in the 1978 Temporary and Special Acts and Resolves.

Subsections (g) and (h) of this section were originally enacted as AS 38.05.078 (g) and (h) and were transferred by the revisor of statutes pursuant to AS 01.05.031.

Section 46, ch. 113, SLA 1981 provides: "A person who selected a remote parcel or acquired a right to select a remote parcel before July 1, 1981, is entitled to convert his remote parcel lease agreement to a new lease agreement that contains terms and conditions consistent with AS 38.05.077(a) and (d), 38.05.078(a) and (c) and the repeal of AS 38.05.078(b) enacted in secs. 22, 24, 26, 27, and 45 of this Act. The director of the division of lands, Department of Natural Resources, shall prepare and distribute new lease forms to persons described in this section. The director shall apply rent paid in excess of the rental established in AS 38.05.077(d)(3) enacted in sec. 24 of this Act to rental payments coming due after July 1, 1981, or to the purchase of a remote parcel after July 1, 1981."

Section 49, ch. 113, SLA 1981, provides: "The commissioner of natural resources may disallow a municipal selection of mental health lands allowed under sec. 1(b), ch. 181, SLA 1978 if the commissioner determines that the municipality is not complying with land disposal requirements in chapter 181, SLA 1978."

Sec. 38.05.078. Purchase of land in a remote parcel. (a) A lessee of a remote parcel may purchase the land if, before expiration of the lease or a renewal of the lease, he surveys the land.

(b) Repealed by § 45 ch 113 SLA 1981.

(c) Upon payment to the commissioner of an amount equal to five percent of the fair market value, a lessee of a remote parcel may purchase land in a remote parcel area under the terms specified in AS 38.05.065. The purchase price shall be the fair market value of the remote parcel as determined by the commissioner at the time of lease.

(d) In addition to the terms specified in AS 38.05.065(b), a contract of sale for land in a remote parcel shall contain the following conditions:

(1) the land may not be sold, leased, or otherwise conveyed before 10 years after the date that the contract of sale is signed by the purchaser, but title to the land may uevolve by testate or intestate succession; and

1982 Cumulative Supplement

# 1982 Cumulative Supplement

§ 38.05.079

ALASKA STATUTES SUPPLEMENT

§ 38.05.079

(2) the land may not be subdivided before 10 years after the date that the contract of sale is signed.

(e) If a purchaser of land described in (a) and (b) of this section fails to comply with the conditions in the contract of sale required by (d) of this section, the contract of sale is void and the purchaser forfeits all rights in and title to the land. The commissioner shall request the attorney general to bring an action to eject the purchaser from the land and to declare the right of reentry of the state.

(f) In this section, "habitable dwelling" means a single-family dwelling, together with fixtures and facilities, including sanitary facilities required or customary in the vicinity of the land, and does not include a mobile home unless it is placed on a permanent foundation. (§ 32 ch 85 SLA 1979; am §§ 26, 27, 45 ch 113 SLA 1981)

**Effect of amendments.** — The 1981 amendment rewrote subsections (a) and (c). The amendment also repealed subsection (b) which provided for purchase of land in remote parcels by lessees and for the adoption of regulations by the commissioner.

**Editor's notes.** — Section 46, ch. 113, SLA 1981 provides: "A person who selected a remote parcel or acquired a right to select a remote parcel before July 1, 1981, is entitled to convert his remote parcel lease agreement to a new lease agreement that contains terms and conditions consist-

ent with AS 38.05.077(a) and (d), 38.05.078(a) and (c) and the repeal of AS 38.05.078(b) enacted in secs. 22, 24, 26, 27, and 45 of this Act. The director of the division of land, Department of Natural Resources, shall prepare and distribute new lease forms to persons described in this section. The director shall apply rent paid in excess of the rental established in AS 38.05.077(d)(3) enacted in sec. 24 of this Act to rental payments coming due after July 1, 1981, or to the purchase of a remote parcel after July 1, 1981."

**Sec. 38.05.079. Remote cabin permit.** (a) After September 1, 1980, the commissioner may issue a permit for the use of remote state land in a municipality for a cabin site if the land is classified for that purpose under AS 38.05.047(a)(5)(B). After September 1, 1981, the commissioner may issue a permit for the use of remote state land outside a municipality for a cabin site if the land is classified for that purpose under the procedures required by AS 38.05.300 and 38.05.305.

(b) The fee for a remote cabin permit is \$100 a year. The commissioner shall establish regulations which specify the application procedures for and the terms and conditions of a remote cabin permit. A permit must be for a term of not less than 25 years, and may be assigned by the original permittee during the term of the permit.

(c) A remote cabin permit may be terminated by the commissioner before the expiration of the term of the permit if a permittee fails to use the land under permit in the manner required by the terms of the permit. After termination of a remote cabin permit, improvements or personal property on the land subject to the permit shall be managed in the same manner as required by AS 38.05.090.

(d) If land subject to a remote cabin permit is offered for sale or long-term lease, the commissioner shall first offer to sell or lease the land to the permittee or his assigns. The land shall be sold for its fair market value. (§ 32 ch 85 SLA 1979)

1982 Cumulative Supplement

**\* These provisions would give DNR extraordinary latitude in determining and even predicting forest health, employment levels and timber values while removing from the decision-making process, the wisdom of local residents and the concerns of the public which owns and uses these resources.**

**\* Salvages sales would create a loophole allowing large scale, negotiated timber sales of up to 25 years to occur in areas such as the Kenai Peninsula -- all exempt from the planning process required in other timber sales.**

**\*Under current Title 38 regulations, DNR can complete the timber sale process in less than 2 years. Salvage sales should be unnecessary if DNR efficiently and competently planned sales under existing law.**

W. Dunne  
3/19/94



# Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

## HB 515 / SB 339: Changes to Title 38, Management of State Land and Resources

HB 515 and SB 339 amend or repeal a broad spectrum of Title 38, the body of statute which determines how Alaska's natural resources are managed. These bills are very complex, proposing changes in the state's management of lands, waters, forests, mineral deposits, gas and oil. While many of the revisions proposed are simple "housekeeping" measures attempting to increase efficiency and eliminate redundancy, other revisions may substantially reduce public involvement and cause adverse impacts to our natural resources as well as to recreational and subsistence activities on state lands and waters. The Administration has stated that this bill will potentially impact every resident of Alaska.

AEL has little or no objection to the majority of proposed changes to Title 38. We agree with the administration that certain provisions in Title 38 are outmoded and that some updating is required in order to comply with court decisions and constitutional issues. However, we feel that other provisions will cause great harm to our environment and need to be addressed separately.

Section 20 of HB 515/SB 339 would allow DNR to offer "salvage sales" of timber that it has determined will lose economic value due to insects, disease or fire within two years.

Section 21 would give DNR the power to negotiate timber sales in areas where certain conditions exist or will exist within two years. These conditions include high levels of unemployment or timber which will lose its economic value due to insects, disease or fire.

AEL opposes Sections 20 and 21 of HB 515/SB 339:

**\* Salvage timber sales as proposed would be exempt from existing size limits, public involvement, and reforestation provisions of state law.** Consideration would only be given to the economic value of timber while other economic values such as subsistence, recreation, fish and wildlife and other forest products would be ignored.

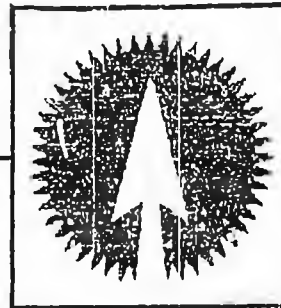
**\* Many biologists and forest ecologists believe that forest insect epidemics are often self-regulating and can actually improve wildlife habitat.** Records indicate that bark beetle outbreaks in Alaska have occurred regularly over the past 70 years, without undue effects to overall forest health. However, forest health problems are often associated with poor logging practices, road building and seismic line activities. As DNR acknowledges, cutting down the forest does not solve forest health problems.

### OVER

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB • ALASKA FRIENDS OF THE EARTH  
ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY • CLEAN AIR COALITION • DENALI CITIZENS' COUNCIL  
DENALI GROUP, SIERRA CLUB • JUNEAU AUDUBON SOCIETY • JUNEAU GROUP, SIERRA CLUB  
KACHEMAK BAY CONSERVATION SOCIETY • KENAI PENINSULA AUDUBON SOCIETY • KNIK CANOERS AND KAYAKERS  
KNIK GROUP, SIERRA CLUB • KODIAK AUDUBON SOCIETY • LYNN CANAL CONSERVATION • NORTHERN ALASKA ENVIRONMENTAL CENTER  
PRINCE WILLIAM SOUND CONSERVATION ALLIANCE • SIKA CONSERVATION SOCIETY • SOUTHEAST ALASKA CONSERVATION COUNCIL • TONGASS CONSERVATION SOCIETY



# Alaska Forest Association, Inc.



111 STEDMAN SUITE 200  
KETCHIKAN, ALASKA 99901-8689  
Phone 907-225-8114  
FAX 907-225-5920

## POSITION OF ALASKA FOREST ASSOCIATION IN SUPPORT OF THOSE SECTIONS RELATING TO FOREST MANAGEMENT IN HB 515 & SB 339

MARCH 15, 1994

AFA is in support of Sections 20 and 21 relating to HB 515. We believe these provisions will be beneficial in the long term sustainable management of our forests.

Periodically, forest health situations dramatically impact our forests. This is currently being exhibited on the Kenai Peninsula and the spruce bark beetle infestation. This situation will eventually destroy the health of the forest if it goes unchecked.

Section 20 of HB 515 and SB 339 would provide the Division of Forestry with the tools to quickly respond to forest health problems. This provision would allow, in times of emergency, for the Department of Forestry to move expediently to check insect or disease outbreaks. The current situation where only sales below 500 mmbf can be negotiated and where a timber sale must appear two years in a row as part of the five year sale program before auction makes responsive forest health management very difficult.

Timber is a valuable commodity. The current situation in the Pacific Northwest and the vast timber resources of Alaska will only make this more true.

Many of the communities of Southeast Alaska lie in the heart of Alaska's sustainable but undeveloped timber resources. Unfortunately, almost every one of these communities have high levels of unemployment. Section 21 of this Bill would help rectify this situation.

This section would especially help in responding to forest health issues such as the beetle outbreak on the Kenai Peninsula. Being able to quickly respond to such challenges is essential in protecting wildlife, fisheries and economic values.

AFA fully supports those Sections of HB 515 and SB 339 relating to forest management.



Rep. Bill Williams, chair  
House Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Rep. Williams:

The purpose of this letter is to express concern over the provisions of House Bill 515 relating to aquatic farming and hatchery site leases.

While the Alaskan Shellfish Growers Association (ASGA) hasn't yet taken a position on this bill, the measure is nearly identical to legislation the organization has opposed in the past. I have scheduled an ASGA board of directors conference call to discuss the measure on April 4, 1994, and I fully anticipate a similar outcome.

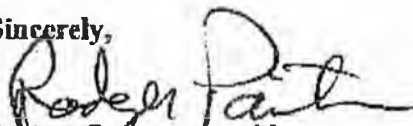
Our rationale for opposing the proposed changes could be expressed by the axiom "if it ain't broke, don't fix it." ASGA has worked very closely with the agencies involved with the aquatic farm permitting process, and over the course of the past five years we've been able to make a difficult process work.

Discussions with the Alaska Department of Natural Resources have failed to reveal any real gain for the industry from the proposed changes. In fact, we believe the elimination of the present permitting program will significantly slow down the issuance of new permits and will severely hamper the continued development of our embryonic industry.

DNR argues that the legislation will reduce program costs by eliminating unnecessary mandatory public notice and hearings, but the reality is that decreased public involvement is far more likely to result in far more costly appeals and outright opposition to any new aquatic farm. We also have consistently pointed out to DNR that administrative remedies are available for eliminating public hearings in every village where a farm is proposed.

Perhaps, DNR believes the proposal will lower administrative costs by decreasing the number of applications submitted. While this logic may be sound, we thought Governor Hickel and the Alaska Legislature was committed to economic development in rural Alaska.

Sincerely,



Rodger Painter, president

c.c. Gov. Walter J. Hickel

WRITTEN TESTIMONY ON HB 515

# SALVAGE LOGGING: HEALTH OR HOAX?



Dr. Robert Hrubec, a PFF advisor, walks out a healthy green pine salvaged on the Sequoia National Forest. PFF Photo.

The author, Roy Keene, is a forestry consultant and tireless monitor of public forest practices. He directs the Eugene-based Public Forestry Foundation, an advocacy group which seeks to renew public forest management.

Yes, there really is a forest health problem in the inland pine and mixed conifer forest of the western Pacific states. There is also indication that we will soon be facing similar forest health problems in parts of the drier westside forests. Degradation of once healthy forests has been caused essentially by poor stewardship. The most evident aspects of human mismanagement are:

- the market driven high-grading of the largest overstory trees such as pine and larch;

- the suppression of natural fire, a vital "reset-button" for most inland forest ecosystems;

- the destruction of long-term soil productivity by heavy-handed site preparation and soil compaction from

overly frequent tractor logging;

- the reduction of forest stand density to below-minimum basal area standards; and

- the loss of riparian forest cover on the watershed level.

The real debate is not whether there is a forest health problem. The debate is over *how* to respond to it and what activities are proposed to relieve it. The focus (and funded part) of our management agencies' current efforts to restore forest health is now concentrated on one activity: salvage logging. Historically, too much logging has helped cause the forest health problem. Can more logging cure the sick forest?

## The Meaning of Salvage

The word salvage is derived from an old French word, *salver*, meaning to rescue, save or to heal as in the word "salve." The Organic Act of 1897, passed six years after the establishment of our National Forest system, echoed this concept when it permitted mortal-

ity-risk logging. "For the purpose of preserving the living and growing timber and promoting the younger growth," Gifford Pinchot's early forestry manual added shape to the Organic Act by calling for "conservative lumbering to maintain and increase the productivity and the capital value of forest land; harvest the yield more completely although less rapidly; encourage and preserve the young growth; and tend to keep out fire, drawing from the forest the best return while protecting it." Had we followed the spirit of this advice over the course of the years, we might not have an inland forest health problem today.

Borrowing from the definition of salvage, the words and intent of the Organic Act, and the tenets of one of forest conservation's fathers, I would suggest that today's salvage activities meet, as a minimum, some of these well-proven historical standards:

- Forest health salvage logging should rescue, save, or heal the site, not impact it further.

- Salvage activities should focus on preserving living and growing timber and promote younger growth, particularly in shade-intolerant species.

- Salvage activities should maintain or increase productivity as well as the capital value of the stand.

- Salvage harvesting should be efficient, yet not too rushed.

- Salvage activities should help reduce fuel levels and fire hazards.

- Salvage activities should not draw further from the forest without first protecting it.

## Salvage Gets Corrupted

Although salvage activities in our public forests were fostered by doctrines of prudent forest management, salvage forestry has been bastardized and subsidized to serve special interests. Since the 1960s, management agencies and the timber industry have focused salvage activities on logging to produce budget and profit windfalls. To facilitate continuing windfalls, salvage logging has been protected from normal public forestry

reviews and controls. It has often become an excuse to "draw from the forest" without normal levels of social, economic, or biological protection.

The National Forest Management Act of 1976 (NFMA) paid homage to this sacred right to salvage. NFMA says, "Harvest size limits shall not apply to the size of acres harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm." NFMA also says, "Tree stands generally must reach their culmination of mean annual increment prior to harvest. This requirement shall not preclude salvage or sanitation harvesting of stands which are substantially damaged by fire, wind throw, or imminent danger from insect and disease attack."

What do our forest managers interpret as "catastrophic conditions," "substantial damage," or "imminent danger?" They may consent to the science that fire, insects, disease, and wind are all vital components of a healthy forest ecosystem, but they still react as though natural disturbances are the enemy of healthy forests. The bureaucratic overreaction to natural disturbance is enforced by budgets, tree farm mentalities, and the politically influential timber industry.

Modern timber companies, particularly the multi-state corporations, have long used multi-regional strategies to keep public logs rolling into their yards. There was little interest in eastside forest health during the spruce budworm epidemics of the early 1970s, when higher value westside old-growth was plentiful. But when the cut in westside Region 6 was temporarily stymied by the spotted owl injunctions, industry took a sudden interest in inland forest health and the Sierran forest fire hazard. They quickly convinced Congress and the Bush Administration to expedite salvage logging as a cure-all. This led to further enhancement of salvage logging as a sacred cow with Executive Orders, administrative intimidation, and further NEPA loopholes to expedite logging.

Continued on page 4

Association of Forest Service  
Employees for Environmental Ethics  
PO Box 11615  
Eugene OR 97440

Nonprofit  
Organization  
U.S. Postage  
PAID  
Eugene OR  
Permit No. 574

---

***The forest salvage issue is complex. There are opportunities to utilize prudent salvage to restore forest health, but they will not necessarily produce market-desirable timber. Behind the smoke screen of timber production-biased salvage logging, there are some sincere restorative activities.***

---

Current salvage logging has produced a replacement supply of undervalued logs, often from the far corners of inland western regions. This undervaluing allows mills in Oregon's Willamette Valley to profitably truck or "tail" timber in from far away salvage sales in Washington, California, Idaho, and Utah, as well as the relatively near eastside of Oregon. I call this the "waterbed allowable cut" (WAC): When the cut is pushed down in one place, it pops up in another. This time the cut has resurfaced in the form of salvage logging, candy-coated for the Congressional conscience with ecological phrases like "fire prevention" or "forest health."

### **Data-Free Analysis?**

In some rural forests dominated by local mills, there is little pretense in salvage timber sales of addressing real forest health or fuel loading problems. This lack of concern for our forests in favor of the "cut" is supported by scant research, thin environmental assessments, and a general lack of publicly available information on forest stands marked for salvage logging.

When Public Forestry Foundation's staff foresters reviewed a great number of salvage EAs and EISs, including the acclaimed Blue Mountain Forest Health Report, they found little information on actual tree mortality broken down by previous activity history, site quality, tree species, age classes, or stem diameters. This lack of data allows forest stands to be conveniently lumped together and the remnant market-desirable trees like pine, larch, and Douglas-fir (usually the least affected by a "catastrophe") to be removed with or instead of smaller, white-wood stems.

It is these stands of smaller, younger true fir and spruce that generally have the highest observable mortality (usually due to budworm and pathogens) and, conversely, the lowest market value. These shade-tolerant, understory stands were regularly thinned or removed by frequent historic fires as well as by insect defoliation and pathogens. Today, in many areas, defoliators like spruce budworm are functioning as a natural backup system to reduce crowded, shade-tolerant understories in the absence of fire.

### **Cautions**

The forest salvage issue is complex. There are opportunities to utilize prudent salvage to restore forest health, but they will not necessarily produce market-desirable timber. Behind the smoke screen of timber production-biased salvage logging, there are some sincere restorative activities. Consequently, citizens attempting to block salvage logging need to be careful not to throw the baby out with the bath water. Judgment calls made from desktops, highways, or airplanes will not be as productive as site-level visits in providing intelligent, site-specific monitoring and reporting. These visits will help separate the bad from the good, allowing us to expound models and build standards from them. Identifying good models and standards will help expose and correct misguided salvage activities and will also allow us to renew and redefine the original mission and concept of forest salvage.

In the next couple of years, we will see many inland districts produce a much larger portion of their timber quotas from salvage sales. This could be beneficial if we can capture mortality without degrading the site and can count salvage toward green tree allowable sale quantities. Current regulatory exemptions for salvage sales will be stretched far and wide. Lawsuits may create opportunities for change, but will not foster change in themselves. The power to change salvage logging from a scam to produce substitute timber supplies at the expense of forests and taxpayers into a sincere effort to restore dysfunctional forest ecosystems is vested in an intelligently concerned public.

Looking back into history and considering today's growing human populations and shrinking forests, it is obvious that where there are forests and people, there will be forestry. Stopping forestry, including fire suppression on public lands, is not socially or politically realistic. Concerned citizens and benevolent public forest managers must continue to work together to create the definitions, dialogues, and models that will redirect public forestry toward restoring our national forest heritage rather than exploiting it.

March 24, 1994

Representative Bill Williams, Chair  
Members of the House Resources Committee  
Alaska State Capitol  
Juneau, AK 99801-1182

Dear Representative Williams and Committee Members:

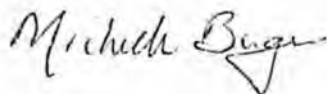
I would like to voice my opposition to HB 515 and SB 339- Management of State Land and Resources.

I was informed this bill has been proposed for housekeeping purposes, but later learned the bill has further implications. I am adamantly opposed to reducing public input on timber sales as I feel timber on state lands is a natural resource owned by the citizens of Alaska. We citizens should be an integral part of all timber sales, including those termed salvage.

Although the timber industry may deem insect infested trees as salvage, other values of the forest must be considered in determining the economic worth of the trees. Managers given the responsibility of timber sales must be advised the forests serve multiple uses, not just one industry.

I request the resource committee not pass this bill out of committee. Thank you for considering my viewpoint.

Sincerely,



Michelle Bugni  
3718 El Camino  
Juneau, AK 99801

March 28, 1994 SB 339, HB 515 Re: Salvage Sales of Timber

Legislative Resources Committees, Division of Forestry, Forest Resources Working Group, distribution

From: Larry Smith, Kachernak Resource Institute

Not only is the proposal to enact As 38.05117 lacking historical perspective in suggesting that salvage sales can in any way retard the advance of the spruce bark beetle, or other forest pathogens, but, more importantly, does not provide for the sustained yield of the multiple forest resources on which the mixed rural economies depend. No negative effects, whatsoever, have been recorded in the known scientific literature of beetle epidemics, on wildlife and fish populations. In contrast there are many studies detailing harm to fish and wildlife from logging activities, including salvage.

I believe it to be important to design timber sales to advance our knowledge of the beetle and of how to avoid encouraging infestations. The tools for doing this were included in the amendments to the Forest Resources and Practices Act which were enacted in 1990, and belatedly interpreted by the much delayed regulation package of midsummer in 1993. The new clearing standards have often not been enforced. No Zone of Infestation has yet been declared. The regulations improperly include Region I (The Southern half of the Kenai Peninsula and south of that.) from the full effect of the beetle fighting revisions of 1990.

Sec. 38.05.117. Salvage Sales: If there is a fast moving project dependent on clearing more acreage than is presently exempt from the planning process, the variation procedure at 41.17.087 should be used. However, I do not remember any project of that magnitude, that did not take substantially more time to plan and finance than the minimal period required for public notice and comment. The present requirement is for a sale of state timber to appear two consecutive years on the five year schedule. Not two full years, but only a year and a day plus 30 to 60 days of notice: fewer than 430 days altogether.

Those familiar with the geological (After The Ice Age, E.C. Pielou, Cornell University Press) and historical record (Such as USFS: Spruce Beetle activity in Alaska 1920-1989: R10-90-18) of infestation know that neither the periodicity or duration of large-scale outbreaks are susceptible to some method of rapid response. Indeed, all the sky is falling rhetoric about the fearsome bark beetles does not change the fact that there have been no successes in attempts to stop epidemics: therefore no one qualifies as a

Page Two SB339/HB515 Timber Salvage L. Smith/KRI 3/28/94

doctor able to prescribe for forest health. Maybe that's why our forest health appropriations were given to a bright salesman from the Department of Commerce to spend. And why the Forest Health Initiative has been renamed the Timber Sale Initiative by the Division of Forestry.

There are botanist/biologist combinations I would like to see do a diagnosis. These scientists often refer to beetles, like fire as 'wide-scale disturbances' necessary for habitat health. Fire, after all, is rare in much of Alaska, and has not been successfully suppressed for long enough, in any part of the State, to be the concern it is in the very different situations in the lower 48.

What I don't like is the pretense that 'experiments' are empirically based "treatments" or the pious and oily assertions of a few subsidy-seeking promoters that what puts money in their pocket is forest health. The honest logger is sincerely interested in solving problems, including sustainable employment. The solutions of the last 30 years have not retarded the beetle, predicted its increases and declines, or had other beneficial effects. In fact, the last great over-reponse cost the state upwards of \$2 million dollars more than was received, severely mangled habitat, failed to employ locals and left the state on the losing end of a damage suit.

Review the sale of 223,000 acres of timber rights to Mitsui Corporation, in 1973, near Tyonek on the West side of Cook Inlet for \$1 per 1,000 board feet. By 1982 the sale had fallen apart and receipts were about 10% of expenses. Reforestation costs were estimated by the state forester to be \$200 an acre. Having already bathed in losses the state has so far not chosen to find another million bucks to go reforest the part of the mess in which natural regeneration did not occur. It's just lucky the chip market collapsed when only about one quarter of the area had been blitzed. Otherwise our dollar losses could have been \$12 million. Of course we learned from this experience and only guaranteed \$2 million dollars of the loan to build the chip facility on the Homer Spit which loads the ships of, guess who? Mitsui, of course.

If we have to have the SB 339 timber sales amendments lets get it right and call them what they have turned out to be: SAVAGE sales not salvage. We got badly savaged and didn't salvage a thing the last time around. It would be of great use to have legislative research look into the abysmal history of our state timber sales.

Page Three SB339/HB515 Timber Salvage L. Smith/KRI

Reforestation requirements have been contested by large land-owners these past couple years. Landowner to Forestry: "...of which 19,789 acres are considered to be of commercial quality. As has been mentioned to you on numerous occasions, reforestation is a significant consideration in a sale of this nature, specifically because of the expense that could be involved in meeting the requirements .... These expenses, when compared to the value of the resource, have a major impact on the economic viability of this sale." Thereafter the landowner raises issues to support variation from reforestation including: "In addition to the above, consideration of ..... 's variation request should include the following: 4. Tracts 1 and 2 and a large portion of Tract 5 are currently heavily impacted by the spruce bark beetle. If AAC 95.375(b)(2) contemplates an exception to the proposed reforestation requirements when stands proposed to be harvested 'are significantly composed of insect and disease-killed, fire-killed, wind-thrown or fatally damaged trees."

Reforestation is a primary method to avoid harm to the values intended to be protected by the act. Unless there is a bona fide conversion the forest must be maintained to protect the wildlife and fish held in trust, by the State, for its people. This is a very old provision of the common law since memorialized in the federal and state constitutions and interpreted by our statutes. The rights of private property owners are recognized: sustained yield logging is allowed; the rights of society are enunciated: no significant impairment of forest habitat is permitted except by sanctioned conversions (Even then fish and wildlife must be protected.)

I would not like the side-effect of a state panic sale program to be a weakening of the state's position that reforestation is more important on private lands than salvaging one value at the expense of others. There are many other values than trees, but every tree can be logged without harming the forest if its done sensibly: gradually, neatly and with reforestation.

The present requirements for logging the state lands are the product of a hard-won consensus of all users and government. Government should not repudiate this agreement.

Sacrifice of so many considerations in the name of 'salvage' seems imprudent when previous poorly conceived sales inspired by the spruce bark beetle have spread infestations, damaged habitat and cost us a lot of money.

Bruce Baker  
P.O. Box 211384  
Auke Bay, Alaska 99821  
(907) 789-9354  
March 23, 1994

Senator Jim Duncan  
Representative Fran Ulmer  
Representative Bill Hudson  
Members of Senate Resources Committee  
→ Members of House Resources Committee  
c/o State Capitol  
Juneau, Alaska 99801

Dear Senator Duncan, Representatives Hudson and Ulmer, and Senate and House Resources Committee Members:

With the Legislative session picking up momentum in the second half, there are several natural resource management bills and resolutions that, as a forest resource consultant, I would like to comment on. Although it's difficult to address all of these on one page, I'll try to be brief.

HB 515/SB 339

These bills would make numerous changes to Title 38, one of which is to allow so-called "salvage" timber sales to be awarded outside the normal required public review process when DNR's Forestry Division determines that insects or disease will cause the timber to lose economic value. That change would invite reduced consideration of fish, wildlife, and other forest values.

An exemption from the normal public review process is not as urgently needed as some might think. It is true that in Alaska's boreal forest, the wood of white spruce can deteriorate in quality within 2 or 3 years after it has been killed by the spruce beetle, a forest insect indigenous to our state. It would, however, be perfectly adequate for DNR to expedite its timber sale planning process in a way that does not disenfranchise other state agencies and the public from exercising their responsibilities or rights in reviewing a proposed project. Both timber interests and those using the state's fish and wildlife resources would benefit from a more surgical approach than that contained in these bills.

I urge you to oppose the salvage sale and negotiated sale provisions of HB 515 and SB 339 and to maintain the public process by opposing language that limits public involvement in managing our forest resources.