

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8723 HOUSE RESOURCES

**HB**

**191**

# HOUSE COMMITTEE REPORT

(9)

Date Referred: March 15, 1995

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/10/95

The RESOURCES Committee considered:

SSHB 191

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 191

MANAGEMENT OF STATE LAND AND RESOURCES

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

recommends it be replaced

with the following committee substitute

CS 554B 191 (RES)

the same title  
 a new title

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

attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

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

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

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

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

zero fiscal note(s) DNR, F&G

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

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Gen. W. T. Davis</i>			X	
<i>John East</i>			X	
<i>Chad Hunter</i>			X	
<i>Shelley</i>			<input type="checkbox"/>	
<i>W. T. Williams</i>	<input checked="" type="checkbox"/>			
<i>Joseph</i>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE *[Signature]*

9-LS0766G ✓  
Luckhaupt  
4/4/95

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 191(RES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE RESOURCES COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE THERRIAULT**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

5 **\* Section 1. AS 38.04.010(b) is amended to read:**

6 (b) State land that is located beyond the range of existing schools and other  
7 necessary public services, or that is located where development of sources of  
8 employment is improbable, may be made available for seasonal recreational purposes  
9 or for low density settlement. The seasonal recreation use or low density settlement  
10 shall have sufficient separation between residences so that public services will not be  
11 necessary or expected. The availability of timber, firewood, and water resources shall  
12 be considered in determining separation between residences. By considering the  
13 availability of timber, firewood, and water under this subsection or in making any  
14 disposal decision, the state does not by virtue of that consideration imply any

1 right of the person receiving the disposal to an exclusive or other right to the  
2 timber, firewood, or water, that the state will not make any other disposals in the  
3 area, or that any disposals made will be limited in type or any other manner.

4 \* Sec. 2. AS 38.04.020(a) is amended to read:

5 (a) The state [COMMISSIONER SHALL ESTABLISH A] land disposal  
6 program consists of [BANK CONTAINING] state land identified and classified  
7 under adopted regional land use plans for disposal into private ownership.

8 \* Sec. 3. AS 38.04.020(b) is amended to read:

9 (b) The state land disposal program [BANK] does not include  
10 (1) land nominated for selection or selected by a municipality to satisfy  
11 a general grant land entitlement under AS 29.65 or former AS 29.18.201 - 29.18.213;  
12 (2) land retained in state ownership for multiple-use management;  
13 (3) land where less than a fee simple title has been conveyed;  
14 (4) land retained in state ownership under an enactment of the  
15 legislature or by the governor or a state agency under authority of law.

16 \* Sec. 4. AS 38.04.020(d) is repealed and reenacted to read:

17 (d) On January 15 of the first regular session of each legislature, the  
18 commissioner shall report to the legislature on the total acreage of land planned and  
19 classified as suitable under this title for

- 20 (1) settlement purposes, including homestead, commercial, or industrial  
21 disposal;  
22 (2) agricultural disposal; and  
23 (3) grazing leases.

24 \* Sec. 5. AS 38.04.020(e) is repealed and reenacted to read:

25 (e) The commissioner may annually submit to the governor an appropriation  
26 request for the entire amount of funding estimated to be necessary for each project  
27 proposal to allow survey and disposal of land proposed to be offered for (1) homestead  
28 staking under AS 38.09; (2) agricultural, commercial, industrial, or other uses under  
29 AS 38.05.055 or 38.05.057; or (3) other subdivisions. Each project proposal shall  
30 include the general location of the land and the estimated cost of preliminary feasibility  
31 studies, engineering design work, right-of-way acquisition, and construction of access

1 roads and capital improvements required by municipal subdivision ordinance or  
2 regulation of the platting authority or otherwise necessary to develop and market the  
3 land.

4 \* Sec. 6. AS 38.04.020(g) is amended to read:

5 (g) The [AFTER JULY 1 OF EACH YEAR, THE] commissioner shall direct  
6 the expenditure of money appropriated for the disposal of land in response to requests  
7 made under (e) [AND (f)] of this section for the following:

8 (1) land [LAND] designated as suitable for homestead disposal shall  
9 be [CLASSIFIED AND] surveyed under this chapter and AS 38.05 and made available  
10 for entry [STAKING AND LEASE] under AS 38.09; [.]

11 (2) land [LAND] designated as suitable for subdivision and homesite  
12 disposal shall be surveyed, subdivided, [CLASSIFIED,] and disposed of under this  
13 chapter, AS 38.05, and AS 38.08; [.]

14 (3) land [LAND] designated agricultural, commercial, industrial, or  
15 suitable for other disposal shall be sold under AS 38.05.055 or 38.05.057.

16 \* Sec. 7. AS 38.04.020(h) is amended to read:

17 (h) Individual parcels disposed of in subdivisions intended for private  
18 residential or recreational use may not exceed five acres unless the commissioner  
19 determines that a larger size is necessary to comply with municipal ordinances; [.] to  
20 permit the design of a viable subdivision because of topographical features, soil  
21 conditions, on-site sewage disposal requirements, or water drainage or supply  
22 considerations that are unique to the subdivision; to increase the return to the state  
23 from the sale of the parcels; [.] to minimize adverse effect on wildlife, fishery, public  
24 recreation, timber, or other significant resources in the area; [.] or to minimize adverse  
25 effect on other residential uses in the area.

26 \* Sec. 8. AS 38.04.020(i) is amended to read:

27 (i) Nothing in this section prevents the disposal of other land by the  
28 commissioner in accordance with AS 38.05.055, 38.05.057, 38.05.070, the issuance of  
29 remote recreational cabin site leases or sales [PERMITS] under AS 38.05.079,  
30 AS 38.08, AS 38.09, or other law.

31 \* Sec. 9. AS 38.04.021(a) is amended to read:

1 (a) A municipality may apply for financial assistance for the execution of a  
2 land disposal program of general grant land entitlements received from the state under  
3 AS 29.65 or former AS 29.18.201 - 29.18.213 by submitting a request to the  
4 commissioner for inclusion in the request submitted to the governor [LEGISLATURE]  
5 under AS 38.04.020(e). A municipality may request financial assistance for expenses  
6 of surveying land, designing subdivision plats, installing improvements required by  
7 municipal ordinance or regulation of the local platting authority, and other reasonable  
8 direct costs of land disposal.

9 \* Sec. 10. AS 38.04.021(b) is amended to read:

10 (b) A request by a municipality under this section must be accompanied by  
11 (1) a schedule for the disposal of municipal land for the next five years;  
12 the schedule shall be based on an assessment of the demand for private land within the  
13 municipality [AND INCLUDED IN THE ASSESSMENT SUBMITTED UNDER  
14 AS 38.04.020(f)];  
15 (2) an estimate of the number of acres of municipal land that the  
16 municipality plans to dispose of during each fiscal year of the five-year period;  
17 (3) a description of the methods to be used for the disposal of  
18 municipal land and the terms under which it will be offered to the public; and  
19 (4) a description of the municipal land that the municipality plans to  
20 dispose of each fiscal year during the five-year period.

21 \* Sec. 11. AS 38.04.030 is amended to read:

22 Sec. 38.04.030. LAND AVAILABILITY PROGRAMS. Programs that may  
23 be used by the director to make the state's land surface available for private use under  
24 AS 38.04.020 - 38.04.055 include sale of whole or partial rights to the fee simple  
25 estate, including conveyance of agricultural use rights; leasing; [OPEN-TO-ENTRY;]  
26 homesiting; homesteading; permitting for construction and occupation of cabins in  
27 isolated locations on land retained in state ownership; and other methods as provided  
28 by regulation or other law. Notwithstanding a contrary provision of this title, a  
29 land availability program adopted by regulation must provide for competitive  
30 disposal, based on no less than fair market value, to serve the best interests of the  
31 state.

1 \* Sec. 12. AS 38.04.035 is amended to read:

2 Sec. 38.04.035. CRITERIA FOR PROGRAM SELECTION. In determining  
3 which land availability program is appropriate for state land in different locations, the  
4 director shall be guided by the following criteria:

5 (1) to cover public costs associated with private land use and to provide  
6 the public with a fair return for publicly owned property, conveyance of state land to  
7 private parties shall [SHOULD] be at fair market value except where otherwise  
8 authorized by statute, or by an administrative regulation the adoption of which is  
9 specifically permitted by statute;

10 (2) sale or lease programs should be used where land is readily  
11 accessible to a major community center or where, because of a prime location on  
12 waterfront or a transportation route or some other location characteristic, land has  
13 relatively high real estate value;

14 (3) sale programs are preferred but lease programs should be used

15 (A) where special land use controls are required and there is a  
16 high public interest in having certain types of land used for particular purposes;

17 (B) when the intended use is a temporary one;

18 (C) in commercial or industrial situations when a leasehold can  
19 provide cash flow advantages to the lessee;

20 (D) when a unique location with special public values is  
21 involved, as in a deep water port, hydroelectric site, or aquaculture facility;

22 (E) where current demand for private use is high, but  
23 projections suggest that, in the future, the land may be more valuable for public  
24 use, as in accessible waterfront recreation areas;

25 (4) [FOR ENABLING ISOLATED CABIN DEVELOPMENT IN  
26 REMOTE LOCATIONS WHERE SURVEY AND CONVEYANCE IS  
27 IMPRACTICAL, OR WHERE DISPOSAL OF LAND WOULD CAUSE POTENTIAL  
28 CONFLICTS WITH OTHER RESOURCES AND USES, OR WHERE A LONG-  
29 RANGE INTEREST IN PUBLIC OWNERSHIP AND USE EXIST, A SYSTEM FOR  
30 CABIN PERMITS ON PUBLIC LAND MAY BE USED;

31 (5)] limited or conditional title may be granted when the state's best

1 interest so dictates; among other things, title limitations may include grants of  
2 agricultural interest only, retention of development rights, and retention of scenic or  
3 other easements; a conditional title may be tied to a development schedule or other  
4 standards of performance.

5 \* Sec. 13. AS 38.04.045(b) is amended to read:

6 (b) Before the issuance of a long-term lease under AS 38.05.070 or of a patent  
7 for state land, an official cadastral survey shall be accomplished, unless a comparable,  
8 approved survey exists that has been conducted by the federal Bureau of Land  
9 Management. Before land may be offered under AS 38.05.055, 38.05.057, AS 38.08,  
10 or AS 38.09, an official rectangular survey grid shall be established. The rectangular  
11 survey section corner positions shall be monumented and shown on a cadastral survey  
12 plat approved by the state. For those areas where the state may wish to convey  
13 surface estate outside of an official rectangular survey grid, the commissioner may  
14 waive monumentation of individual section corner positions and substitute an official  
15 control survey with control points being monumented and shown on control survey  
16 plats approved by the state. The commissioner may not issue more than one  
17 conveyance for each section within a township outside of an official rectangular survey  
18 grid. No portion of land to be conveyed may be located more than two miles from an  
19 official survey control monument except that the commissioner may waive this  
20 requirement on a determination that a single purpose use does not justify the  
21 requirement if the existing status of the land is known with reasonable certainty. The  
22 lots and tracts in state subdivisions shall be monumented and the cadastral survey and  
23 plats for the subdivision shall be approved by the state. Where land is located within  
24 a municipality with planning, platting, and zoning powers, plats for state subdivisions  
25 shall comply with local ordinances and regulations in the same manner and to the same  
26 extent as plats for subdivisions by other landowners. State subdivisions shall be filed  
27 and recorded in the district recorder's office. The requirements of this section do not  
28 apply to land made available [THROUGH A CABIN PERMIT SYSTEM,] for material  
29 sales, for short-term leases, or for parcels adjoining a surveyed right-of-way, [OR FOR  
30 LAND THAT HAS BEEN OPEN TO RANDOM STAKING UNDER THE REMOTE  
31 PARCEL PROGRAM OR HOMESTEAD PROGRAM IN THE PAST]; however, for

1 short-term leases the lessee must comply with local subdivision ordinances unless  
2 waived by the municipality under procedures specified by ordinance. In this subsection,  
3 "a single purpose use" includes a communication site, an aid to navigation, and a park  
4 site.

5 \* Sec. 14. AS 38.05.050 is amended to read:

6 Sec. 38.05.050. DISPOSAL OF LAND FOR PRIVATE OWNERSHIP. The  
7 commissioner shall determine the land to be disposed of for private use. The  
8 commissioner shall determine the time and place of disposal. An auction sale, a  
9 lottery sale, or a disposal of land for homesites may [SHALL] be held in a community  
10 that is near the land to be sold or disposed of.

11 \* Sec. 15. AS 38.05.055 is amended to read:

12 Sec. 38.05.055. AUCTION SALE PROCEDURES. Unless another method of  
13 sale is required under this chapter, [AS 38.07, OR] AS 38.08, or AS 38.09, the sale  
14 of state land shall be made at public auction to the highest qualified bidder as  
15 determined by the director. The director may accept bids and sell state land under this  
16 section at no less than 70 percent of the appraised fair market value of the land. [A  
17 BIDDER MUST APPEAR IN PERSON AT THE AUCTION UNLESS MEDICAL  
18 REASONS, ATTENDANCE AT SCHOOL, OR MILITARY SERVICE OUTSIDE  
19 THE STATE PREVENT ATTENDANCE.] A bidder may be represented by an  
20 attorney or agent at the auction [IF THE LAND OFFERED FOR DISPOSAL IS  
21 COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL LAND]. An aggrieved  
22 bidder may appeal to the commissioner within five days after the sale for a review of  
23 the director's determination. The sale shall be conducted by the director and at the  
24 time of sale the successful bidder shall deposit an amount equal to five percent of the  
25 purchase price. The director shall immediately issue a receipt containing a description  
26 of the land or property purchased, the price bid, and the amount deposited. The  
27 receipt shall be acknowledged in writing by the bidder.

28 \* Sec. 16. AS 38.05.057(a) is amended to read:

29 (a) The commissioner may dispose of land, including land limited to use for  
30 agricultural purposes, by lottery. The purchase price of land sold by lottery shall be  
31 the fair market value of the land as determined by the commissioner. The

1 commissioner may sell land by lottery for less than the fair market value of the land  
2 on a determination that scarcity of land for private use in the area of the land to be  
3 sold has resulted in unrealistic land values. [THE COMMISSIONER SHALL  
4 CONSULT WITH THE ASSESSOR OF A MUNICIPALITY BEFORE  
5 DETERMINING THE PURCHASE PRICE FOR LAND THAT IS LOCATED IN  
6 THE MUNICIPALITY AND THAT IS TO BE SOLD UNDER THIS SECTION.] The  
7 lottery shall be conducted in public by the commissioner. A [AN APPLICANT MAY  
8 NOT BE SELECTED TO PURCHASE LAND UNLESS THE APPLICANT IS  
9 PRESENT ON THE DATE AND AT THE PLACE THAT THE LOTTERY IS  
10 CONDUCTED UNLESS MEDICAL REASONS, ATTENDANCE AT SCHOOL, OR  
11 MILITARY SERVICE OUTSIDE THE STATE PREVENT ATTENDANCE. AN  
12 APPLICANT MAY BE REPRESENTED BY AN AGENT ON THE DAY OF THE  
13 LOTTERY IF THE LAND OFFERED FOR SALE IS COMMERCIAL,  
14 INDUSTRIAL, OR AGRICULTURAL LAND. ON THE DAY OF THE LOTTERY  
15 A] purchaser selected by lot shall deposit an amount equal to five percent of the  
16 purchase price within 30 days after receiving notification of the selection.

17 \* Sec. 17. AS 38.05.065(a) is amended to read:

18 (a) The contract of sale for land sold at public auction under AS 38.05.055  
19 shall require the remainder of the purchase price to be paid in monthly, quarterly, or  
20 annual installments over a period of not more than 20 years, with interest at the  
21 [PREVAILING] rate provided in (i) of this section [FOR REAL ESTATE  
22 MORTGAGE LOANS MADE BY THE FEDERAL LAND BANK FOR THE FARM  
23 CREDIT DISTRICT FOR ALASKA AT THE TIME THE CONTRACT IS SIGNED].  
24 Installment payments plus interest shall be set on the level-payment basis.

25 \* Sec. 18. AS 38.05.065(b) is amended to read:

26 (b) The contract of sale for land sold under AS 38.05.057 or under former  
27 AS 38.05.078 shall require the remainder of the purchase price to be paid in monthly,  
28 quarterly, or annual installments over a period of not more than 20 years. Installment  
29 payments plus interest shall be set on the level-payment basis. The interest rate to be  
30 charged on installment payments is the [PREVAILING] rate provided in (i) of this  
31 section [FOR REAL ESTATE MORTGAGE LOANS MADE BY THE FEDERAL

1 LAND BANK FOR THE FARM CREDIT DISTRICT FOR ALASKA AT THE TIME  
2 THE CONTRACT IS SIGNED].

3 \* Sec. 19. AS 38.05.065 is amended by adding a new subsection to read:

4 (i) The interest rate for contracts under this section is the prime rate as  
5 reported in the Wall Street Journal on the first business day of the month in which the  
6 contract is sent to the purchaser for signature, plus 4 percent; however, the total rate  
7 of interest may not exceed 13.5 percent.

8 \* Sec. 20. AS 38.05.069(a) is amended to read:

9 (a) On a determination that the highest and best use of unoccupied land is for  
10 agricultural purposes and that it is in the best interests of the state to sell or lease the  
11 land, the commissioner may [SHALL] grant to an Alaska [ALASKAN] resident  
12 owning and using or leasing and using land for agricultural purposes a first option at  
13 the auction to purchase or lease the unoccupied land situated adjacent to land presently  
14 held by the Alaska [ALASKAN] resident for the amount of the high bid received at  
15 public auction. If more than one Alaska [ALASKAN] resident qualifies for a first  
16 option under this section, eligibility for the first option shall be determined by lot and  
17 the option must be exercised on the conclusion of the public auction. A parcel of  
18 agricultural land sold under this section may not be less than 20 acres and a parcel of  
19 agricultural land that is acquired by exercise of the option granted in this subsection  
20 may not exceed 320 acres. Agricultural land that is acquired under this section must  
21 be used for agricultural purposes as required by law.

22 \* Sec. 21. AS 38.05.069(e)(2) is repealed and reenacted to read:

23 (2) "adjacent" means that a tract of land has one common boundary  
24 point with presently held land or is separated from the presently held land only by a  
25 physical barrier such as a road or stream.

26 \* Sec. 22. AS 38.05.079(a) is amended to read:

27 (a) The [AFTER SEPTEMBER 1, 1980, THE] commissioner may provide for  
28 the sale or lease of state land for remote recreational cabin sites in areas of the  
29 state with dispersed populations [ISSUE A PERMIT FOR THE USE OF REMOTE  
30 STATE LAND IN A MUNICIPALITY FOR A CABIN SITE IF THE LAND WAS  
31 CLASSIFIED FOR THAT PURPOSE UNDER FORMER AS 38.05.047(a)(5)(B).

1 AFTER SEPTEMBER 1, 1981, THE COMMISSIONER MAY ISSUE A PERMIT  
2 FOR THE USE OF REMOTE STATE LAND OUTSIDE A MUNICIPALITY FOR  
3 A CABIN SITE] if the land is classified for that purpose under the procedures required  
4 by AS 38.05.300 and 38.05.945. Sales under this section shall be at fair market  
5 value and the purchaser shall reimburse the state for the appraisal, survey, and  
6 platting costs for the recreational cabin site.

7 \* Sec. 23. AS 38.05.079(b) is amended to read:

8 (b) The annual fee for a remote recreational cabin site lease shall be set by  
9 the commissioner so as to ensure that the state receives a fair return for the use  
10 granted by the lease for the term of the lease [PERMIT IS \$100 A YEAR]. The  
11 commissioner shall establish regulations that [WHICH] specify the application  
12 procedures for and the terms and conditions of a remote recreational cabin site lease  
13 [PERMIT]. A lease [PERMIT] must be for a term of not more [LESS] than five [25]  
14 years, and may be renewed for one additional five-year period. At any time during  
15 the lease, the leasee may purchase the remote recreational cabin site by having  
16 the site appraised and surveyed in a manner acceptable to the department and by  
17 paying to the state the fair market value for the site. The lease may not be  
18 assigned by the original leasee [PERMITTEE] during the term of the lease [PERMIT].

19 \* Sec. 24. AS 38.05.079(c) is amended to read:

20 (c) A remote recreational cabin site lease [PERMIT] may be terminated by  
21 the commissioner before the expiration of the term of the lease [PERMIT] if a  
22 permittee fails to use the land under lease [PERMIT] in the manner required by the  
23 terms of the lease [PERMIT]. After termination of a remote recreational cabin site  
24 lease [PERMIT], improvements or personal property on the land subject to the lease  
25 [PERMIT] shall be managed in the same manner as required by AS 38.05.090.

26 \* Sec. 25. AS 38.05.082(b) is amended to read:

27 (b) The director may classify land as subject to leases for fisheries  
28 development. In an area or region of the state for which a land use plan has not been  
29 adopted under AS 38.04.065, the director may classify land for lease under this section  
30 after notice under AS 38.05.945. The director may [SHALL] publicly invite  
31 applications for lease of the selected areas. Each application shall be accompanied by

1 an affidavit to the effect that the applicant presently intends to personally utilize the  
2 leased area for fishing purposes throughout the term of the lease [THE  
3 FOLLOWING SEASON]. If two or more applications are received for the same shore  
4 area, the director may offer [SHALL AWARD] the lease at public auction under  
5 AS 38.05.075(a). If only one application is received and the appraisal value of the  
6 lease is \$5,000 a year or less, the commissioner may issue a negotiated lease under  
7 AS 38.05.070(b) [TO THE MOST QUALIFIED APPLICANT. IN DETERMINING  
8 THE QUALIFICATIONS OF APPLICANTS, THE DIRECTOR SHALL CONSIDER  
9 THE LENGTH OF TIME DURING WHICH THE APPLICANT HAS BEEN  
10 ENGAGED IN SET NETTING, THE PROXIMITY OF THE PAST FISHING SITES  
11 OF THE APPLICANT TO THE LAND TO BE LEASED, THE PRESENT ABILITY  
12 OF THE APPLICANT TO UTILIZE THE LOCATION TO ITS MAXIMUM  
13 POTENTIAL, AND OTHER FACTORS RELEVANT TO THE EQUITABLE  
14 ASSIGNMENT OF THE DISPUTED AREA. IF THE DIRECTOR CANNOT  
15 DETERMINE A PREFERENCE BETWEEN CONFLICTING APPLICANTS FOR  
16 THE SAME LEASE SITE ON THE BASIS OF QUALIFICATIONS, THE  
17 DIRECTOR SHALL SELECT BETWEEN THE APPLICANTS BY LOT. AN  
18 AGGRIEVED APPLICANT MAY APPEAL TO THE COMMISSIONER WITHIN 30  
19 DAYS FOR A REVIEW OF THE DIRECTOR'S DETERMINATION].

20 \* Sec. 26. AS 38.05.082(c) is amended to read:

21 (c) A lease for set net fishing may be issued for any period not exceeding 10  
22 years. If the commissioner determines that the land is not being utilized for the  
23 purpose for which the lease is issued, the lease may be declared void. [THE  
24 DIRECTOR SHALL ESTABLISH A REASONABLE RENTAL FOR THE LEASE,  
25 EQUAL TO THE ADMINISTRATIVE COSTS INVOLVED IN PROCESSING THE  
26 LEASEHOLD APPLICATIONS.]

27 \* Sec. 27. AS 38.05.082(d) is amended to read:

28 (d) Subleasing and renewals of leases are governed by AS 38.05.095 and  
29 38.05.102. Notwithstanding (b) of this section, a person holding <sup>a lease held</sup> a permit under  
30 this section on the effective date of this bill section may <sup>be so</sup> renew that permit under  
31 terms and conditions prescribed by the commissioner.

1 \* Sec. 28. AS 38.05.083 is repealed and reenacted to read:

2 Sec. 38.05.083. AQUATIC FARMING AND HATCHERY SITE LEASES.

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

11 (b) The commissioner, for good cause, may deny an application for issuance  
12 or renewal of a lease under this section, but shall provide the applicant with written  
13 findings that explain the reasons for the denial.

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

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

18 (e) Before entering into a lease under this section, the commissioner shall  
19 require the lessee to post a performance bond or provide other security to cover the  
20 costs to the department of restoring the leased site in the event the lessee abandons the  
21 site.

22 (f) The commissioner shall adopt regulations establishing criteria for the  
23 approval or denial of leases under this section and for limiting the number of sites for  
24 which leases may be issued in an area in order to protect the environment and natural  
25 resources of the area. The regulations must provide for the consideration of upland  
26 management policies and whether the proposed use of a site is compatible with the  
27 traditional and existing uses of the area in which the site is located.

28 \* Sec. 29. AS 38.05.090 is repealed and reenacted to read:

29 Sec. 38.05.090. REMOVAL OR REVERSION OF IMPROVEMENTS UPON  
30 TERMINATION OF LEASES. (a) Unless otherwise agreed to in writing by the  
31 commissioner, a lessee shall remove from a former leasehold

1 (1) all personal property, including above-ground and below-ground  
2 tanks, transportable buildings, equipment, machinery, tools, and other goods, not  
3 belonging to the state, within 30 days after termination of the lease; and

4 (2) all buildings and fixtures, including gravel pads, foundations, and  
5 slabs, not belonging to the state, within 60 days after termination of the lease.

6 (b) Unless otherwise agreed to in writing by the commissioner, the lessee shall  
7 restore the leasehold to a good and marketable condition, acceptable to the  
8 commissioner, within 120 days after termination of the lease.

9 (c) If the lessee does not remove personal property, buildings, and fixtures as  
10 required within the time specified under (a) of this section, title to the personal  
11 property, buildings, and fixtures that remain automatically vests in the state unless the  
12 commissioner elects to remove and dispose of the remaining personal property,  
13 buildings, and fixtures of the lessee. The commissioner may assess upon the lessee  
14 the cost of removing and disposing of personal property, buildings, and fixtures  
15 remaining upon the land.

16 (d) If the lessee does not restore the land within the time period specified  
17 under (b) of this section, the commissioner may have the land restored and assess the  
18 costs upon the lessee.

19 (e) As part of a lease agreement, and in order to protect the public interest, the  
20 commissioner may require terms for removal or reversion of improvements additional  
21 to those specified in (a) - (d) of this section.

22 (f) Private residential improvements of a lessee that have become fixtures of  
23 the land and that are not removed by that lessee upon termination of the lease shall be  
24 purchased by the subsequent purchaser of the land if the improvements were  
25 authorized in the former lease or by permit from the director and if they have a net  
26 value of more than \$10,000. The net value is the value of the improvements as  
27 determined by an appraisal approved by the commissioner, less all rents due the  
28 department, all costs of restoration under (d) of this section, and all department  
29 expenses estimated to be incurred in making the sale. After termination of the former  
30 lessee's lease, and at additional times as determined necessary by the commissioner,  
31 the value of the authorized residential fixtures shall be determined by an independent

1 appraisal made at the cost of the former lessee. A notice or offer by the state to sell  
2 formerly leased land under this subsection must state (1) the appraised value of  
3 authorized residential fixtures remaining on the land that must be purchased, and (2)  
4 that that cost is included in the purchase price. Out of the proceeds of the sale, the  
5 department shall pay to the former lessee the appraised value of the residential  
6 improvements, less all rents due the department, all costs of restoration due the  
7 department under (d) of this section, and all department expenses incurred in making  
8 the sale.

9 (g) Personal property described in (c) of this section is not subject to AS 34.45  
10 (Uniform Unclaimed Property Act).

11 \* Sec. 30. AS 38.05.130 is amended to read:

12 Sec. 38.05.130. DAMAGES AND POSTING OF BOND. Except for entry  
13 to post mining location corners under AS 38.05.195, 38.05.205, or 38.05.245, rights  
14 [RIGHTS] may not be exercised by the state, its lessees, successors or assigns under  
15 the reservation as set out in AS 38.05.125 until the state, its lessees, successors, or  
16 assigns make provision to pay the owner of the land full payment for all damages  
17 sustained by the owner, by reason of entering upon the land. If the owner for any  
18 cause refuses or neglects to settle the damages, the state, its lessees, successors,  
19 assigns, or an applicant for a lease or contract from the state for the purpose of  
20 prospecting for valuable minerals, or option, contract or lease for mining coal or lease  
21 for extracting geothermal resources, petroleum, or natural gas, may enter upon the land  
22 in the exercise of the reserved rights after posting a surety bond determined by the  
23 director, after notice and an opportunity to be heard, to be sufficient as to form,  
24 amount, and security to secure to the owner payment for damages, and may institute  
25 legal proceedings in a court where the land is located, as may be necessary to  
26 determine the damages that [WHICH] the owner may suffer.

27 \* Sec. 31. AS 38.05.131(a) is amended to read:

28 (a) Unless specifically provided otherwise in AS 38.05.132 - 38.05.134, the  
29 provisions of AS 38.05.005 - 38.05.037 [AS 38.05.005 - 38.05.040], 38.05.140(f),  
30 38.05.180, 38.05.182 - 38.05.184, and 38.05.920 - 38.05.990 apply to the issuance of  
31 oil and gas exploration licenses and leases under AS 38.05.132 - 38.05.134.

1 \* Sec. 32. AS 38.05.185(a) is amended to read:

2 (a) The acquisition and continuance of rights in and to deposits on state land  
3 of minerals, which on January 3, 1959, were subject to location under the mining laws  
4 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in  
5 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to  
6 mineral deposits owned by any other person or government. The director, with the  
7 approval of the commissioner, shall determine that land from which mineral deposits  
8 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that  
9 land that shall be closed to location under AS 38.05.185 - 38.05.275 [MINING].  
10 State land may not be closed to [MINING OR MINERAL] location under  
11 AS 38.05.185 - 38.05.275 except as provided in AS 38.05.300 and unless the  
12 commissioner makes a finding that mining would be incompatible with significant  
13 surface uses on the state land. State land may not be restricted to mining under lease  
14 unless the commissioner determines that potential use conflicts on the state land -  
15 require that mining be allowed only under written leases issued under AS 38.05.205  
16 or the commissioner has determined that the land was mineral in character at the time  
17 of state selection. The determinations required under this subsection shall be made in  
18 compliance with land classification orders and land use plans developed under  
19 AS 38.05.300.

20 \* Sec. 33. AS 38.05.190(a) is amended to read:

21 (a) The right to acquire exploration and mining rights under AS 38.05.185 -  
22 38.05.275 may be acquired or held only by

- 23 (1) citizens of the United States at least 18 years of age;
- 24 (2) legal guardians or trustees of citizens of the United States under 18  
25 years of age on behalf of the citizens;
- 26 (3) persons at least 18 years of age who have declared their intention  
27 to become citizens of the United States;
- 28 (4) [ALIENS AT LEAST 18 YEARS OF AGE IF THE LAWS OF  
29 THEIR COUNTRY GRANT LIKE PRIVILEGES TO CITIZENS OF THE UNITED  
30 STATES;
- 31 (5)] corporations organized under the laws of the United States or of

1 any state or territory of the United States and qualified to do business in this state [,  
2 EXCEPT THAT IF MORE THAN 50 PERCENT OF THE STOCK OF A  
3 CORPORATION IS OWNED OR CONTROLLED BY ALIENS WHO ARE NOT  
4 QUALIFIED, THE CORPORATION IS NOT QUALIFIED TO ACQUIRE OR HOLD  
5 THE RIGHTS];

6 (5) [(6)] associations of persons described in (1) - (4) [(1) - (5)] of this  
7 subsection.

8 \* Sec. 34. AS 38.05.211(d) is repealed and reenacted to read:

9 (d) The rental amount established under this section shall be revised by the  
10 commissioner as provided in this section based on changes in the Consumer Price  
11 Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average)  
12 compiled by the Bureau of Labor Statistics, United States Department of Labor, as  
13 revised, rebased or replaced by that bureau. The reference base index is the index for  
14 January - June, 1989, as revised or rebased by that bureau. The rental amount shall  
15 be revised by the commissioner if the change between the index for the first six  
16 months of the current year and the most recent index used to revise the rental, or the  
17 reference base index if the rental amount has never been revised, equals or exceeds \$5.  
18 The rental amount shall be increased or decreased, as appropriate, by an amount equal  
19 to the change in the index described in this subsection rounded to the nearest whole  
20 \$5 unit. The commissioner shall calculate the change in the index annually and, if the  
21 rental amount must be revised, shall adopt a regulation establishing the revised rental  
22 amount. A revised rental amount applies to a rental payment if the regulation  
23 establishing the revised rental amount took effect at least 90 days before the date the  
24 rental payment is due.

25 \* Sec. 35. AS 38.05.255 is amended to read:

26 Sec. 38.05.255. SURFACE USE OF LAND OR WATER. Surface uses of  
27 land or water included within mining properties by owners of those properties shall be  
28 limited to those necessary for the prospecting for, extraction of, or basic processing of  
29 mineral deposits and shall be subject to reasonable concurrent uses. Leases  
30 [PERMITS] for millsites and tailings disposal may be issued [GRANTED] by the  
31 director. The leases [PERMITS] shall be conditioned upon payment of a reasonable

1        annual rent [CHARGE] for the lease [USE] and restriction to [CONTINUANCE OF]  
2        the limited use. Timber from land open to mining without lease, except timberland,  
3        may be used by a mining claimant or prospecting site locator for the mining or  
4        development of the location or adjacent claims under common ownership. On other  
5        land, timber may be acquired as provided in this chapter. Use of water shall be made  
6        in accordance with AS 46.15.

7        \* Sec. 36. AS 38.05.255 is amended by adding a new subsection to read:

8                (b) A lease issued under this section is exempt from the provisions of  
9                AS 38.05.075 - 38.05.080. The commissioner, by regulation, shall establish  
10                appropriate leasing procedures and annual rent amounts for leases under this section.

11        \* Sec. 37. AS 38.05.265 is amended to read:

12                Sec. 38.05.265. ABANDONMENT. Failure to properly record a certificate of  
13                location or a statement of annual labor, [FILE WITH THE DIRECTOR WITHIN THE  
14                TIME PRESCRIBED A LEASE APPLICATION,] pay any required annual rental, pay  
15                any required production royalty, or keep location boundaries clearly marked as  
16                required by AS 38.05.185 - 38.05.275 and by regulations adopted under these sections  
17                constitutes abandonment of all rights acquired under the mining claim, leasehold  
18                location, lease, or site involved, and the claim, location, lease, or site is subject to  
19                relocation by others. A locator or claimant of an abandoned location or a successor  
20                in interest may not relocate the location until one year after abandonment. A statement  
21                of annual labor that does not accurately set out the essential facts is void and of no  
22                effect. If an annual rental or a royalty payment is deficient but is otherwise timely  
23                paid, abandonment does not result if full payment is made within

24                        (1) the period prescribed by a deficiency notice from the commissioner;

25                or

26                        (2) 30 days after a final judgment establishing the amount due if the  
27                deficiency amount due was contested.

28        \* Sec. 38. AS 38.05.810(a) is amended to read:

29                (a) Except as otherwise provided in AS 38.05.183(h), the (1) lease, sale, or  
30                other disposal of state land or resources may be made to a state or federal agency or  
31                political subdivision, (2) [THE] lease, sale, or disposal of coal deposits suitable for

1 mining may be made to a utility owned and operated by a government agency or  
2 nonprofit cooperative associati~~cn~~ organized to participate under the Federal Rural  
3 Electrification Act for the purpose of generating electric power and energy or the  
4 production of process steam, or both, (3) [OR THE] sale or other disposal of state land  
5 may be made to a tax-exempt, nonprofit corporation, association, club, or society  
6 organized and operated exclusively for the management of a cemetery or a solid waste  
7 facility, or (4) sale or other disposal of land within a state subdivision may be  
8 made to that subdivision's nonprofit, tax-exempt homeowners' association, for less  
9 than the appraised value as determined by the director and approved by the  
10 commissioner to be fair and proper and in the best interests of the public, with due  
11 consideration given to the nature of the public services or function rendered by the  
12 applicant [AGENCY, SUBDIVISION, TAX-EXEMPT, NONPROFIT  
13 CORPORATION, ASSOCIATION, CLUB, OR SOCIETY, OR UTILITY MAKING  
14 APPLICATION], and of the terms of the grant under which the land was acquired by  
15 the state. The commissioner shall ensure, by regulation, deed restriction, covenant,  
16 or otherwise, that disposals of land under this subsection serve a public purpose  
17 and are in the public interest.

18 \* Sec. 39. AS 38.05.850(a) is amended to read:

19 (a) The director, without the prior approval of the commissioner, may issue  
20 permits, rights-of-way or easements on state land for roads, trails, ditches, field  
21 gathering lines or transmission and distribution pipelines not subject to AS 38.35,  
22 telephone or electric transmission and distribution lines, log storage, oil well drilling  
23 sites and production facilities for the purposes of recovering minerals from adjacent  
24 land under valid lease, and other similar uses or improvements, or revocable,  
25 nonexclusive permits for the [LIMITED] personal or commercial use or removal of  
26 resources that the director has determined to be of limited value [OF TIMBER OR  
27 MATERIALS]. The commissioner, upon recommendation of the director, shall  
28 establish a reasonable rate or fee schedule to be charged for these uses, subject to the  
29 exception for nonprofit cooperative associations specified in (b) of this section. In the  
30 granting, suspension or revocation of a permit or easement of land, the director shall  
31 give preference to that use of the land which will be of greatest economic benefit to

1 the state and the development of its resources. However, first preference shall be  
2 granted to the upland owner for the use of a tract of tideland, or tideland and  
3 contiguous submerged land, which is seaward of the upland property of the upland  
4 owner and which is needed by the upland owner for any of the purposes for which the  
5 use may be granted.

6 \* Sec. 40. AS 38.05.945(a) is amended to read:

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

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

11 (2) zoning of land under applicable law;

12 (3) issuance of a

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

16 (B) final written finding under AS 38.05.035(e)(5)(B) regarding  
17 the sale, lease, or disposal of an interest in state land or resources for oil and  
18 gas subject to AS 38.05.180(b);

19 (C) written finding for the sale, lease, or disposal of an interest  
20 in state land or resources under AS 38.05.035(e)(6);

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

23 (5) [A PUBLIC HEARING UNDER AS 38.05.856(b);

24 (6)] a preliminary finding under AS 38.05.035(e) [AND 38.05.855(c)]  
25 concerning sites for aquatic farms and related hatcheries;

26 (6) [(7)] a decision under AS 38.05.132 - 38.05.134 regarding the sale,  
27 lease, or disposal of an interest in state land or resources.

28 \* Sec. 41. AS 38.08.030(b) is amended to read:

29 (b) Fees for filing an application may not exceed \$25 [\$10].

30 \* Sec. 42. AS 38.08.040(a) is amended to read:

31 (a) An applicant meeting the qualifications for homesite entry under

1 AS 38.08.030 and selected under (f) of this section shall be issued a revocable permit  
2 to occupy and improve the homesite in order to qualify for issuance of patent as  
3 provided in this chapter. The holder of a homesite entry permit shall pay, in  
4 advance, an annual rental fee of \$100. [THE APPLICATION FEE IS THE SOLE  
5 RENT CHARGEABLE ON THE PERMIT FOR ITS DURATION.]

6 \* Sec. 43. AS 38.08.040 is amended by adding a new subsection to read:

7 (f) If only one application for a homesite parcel is received, the commissioner  
8 shall offer an entry permit for the parcel to the applicant provided the applicant is  
9 otherwise qualified. If more than one application is received for a parcel, the  
10 commissioner shall select by lottery the applicant who is entitled to receive the permit  
11 for the parcel. The lottery shall be conducted under regulations adopted by the  
12 commissioner that are to the maximum extent practicable consistent with the provisions  
13 of AS 38.05.057 and the regulations adopted under that section.

14 \* Sec. 44. AS 38.09.010(g) is amended to read:

15 (g) The commissioner may limit the number of persons permitted to obtain  
16 [STAKE] homestead entries within an area designated under (a) of this section by a  
17 lottery of qualified applicants. [THE COMMISSIONER MAY CONDUCT A  
18 LOTTERY HELD UNDER THIS SUBSECTION IN THE COMMUNITY THAT IS  
19 CLOSEST TO THE AREA DESIGNATED FOR HOMESTEAD ENTRY. THE  
20 COMMISSIONER MAY REQUIRE THAT EACH PARTICIPANT IN THE  
21 LOTTERY BE PRESENT UNLESS ATTENDANCE AT THE LOTTERY IS  
22 PREVENTED BY

23 (1) MEDICAL REASONS, ATTENDANCE AT SCHOOL, OR  
24 MILITARY SERVICE OUTSIDE THE STATE; OR

25 (2) A MANDATORY, UNAVOIDABLE EMPLOYMENT  
26 COMMITMENT DETERMINED VALID BY THE COMMISSIONER BEFORE THE  
27 SALE.]

28 \* Sec. 45. AS 38.09.030(a) is amended to read:

29 (a) An applicant for a homestead entry permit shall

30 (1) submit proof acceptable to the commissioner that the applicant is  
31 at least 18 years of age and has been a resident of the state for not less than one year

1 immediately before the date of application; and

2 (2) pay a fee of \$5 per acre according to the description provided by  
3 the applicant if the entry is on land classified agricultural, or \$20 per acre if the  
4 entry is on land not classified agricultural;

5 (3) agree to comply with the requirements of AS 38.09.050 [;

6 (4) CERTIFY THAT THE CORNERS OF THE LAND ENTERED  
7 HAVE BEEN STAKED AND THE BOUNDARIES HAVE BEEN FLAGGED; OR

8 (5) ASSUME FULL RESPONSIBILITY FOR THE ACCURACY OF  
9 THE DESCRIPTION OF THE LAND FILED WITH THE COMMISSIONER UNDER  
10 AS 38.09.020(b)].

11 \* Sec. 46. AS 38.09.050(a) is amended to read:

12 (a) The commissioner shall issue a patent to homestead entry land if the permit  
13 holder

14 (1) either

15 (A) resides and lives on the homestead entry land for not less  
16 than 25 months within five years after the issuance of the homestead entry  
17 permit and reimburses the state for the survey and platting of the  
18 homestead parcel; or

19 (B) within five years pays the state the fair market value of  
20 the homestead parcel at the time of patent and reimburses the state for the  
21 survey and platting of the homestead parcel; and

22 (2) [SUBMITS AN ALIQUOT PARTS DESCRIPTION OR  
23 COMPLETES AN APPROVED SURVEY OF THE LAND IN AN AREA WHERE  
24 THE COMMISSIONER WAIVES THE RECTANGULAR SURVEY GRID WITHIN  
25 FIVE YEARS AFTER THE ISSUANCE OF THE PERMIT;

26 (3) ERECTS A HABITABLE, PERMANENT DWELLING ON THE  
27 HOMESTEAD WITHIN THREE YEARS AFTER THE ISSUANCE OF THE  
28 HOMESTEAD ENTRY PERMIT;

29 (4) BRUSHES THE BOUNDARIES OF THE LAND NOT  
30 DESCRIBED BY ALIQUOT PARTS OR AS A LOT OF RECORD WITHIN 90  
31 DAYS AFTER THE ISSUANCE OF THE PERMIT;

1 (5)] clears and either puts into production or prepares for cultivation  
2 either 25 percent of the land classified for agricultural use or 50 percent of the  
3 cropland soils, whichever is less, within five years after issuance of the permit.

4 \* Sec. 47. AS 38.09.050(b) is amended to read:

5 (b) Nothing in this chapter prohibits a homestead entry permit holder from  
6 residing in a temporary dwelling on the homestead [BEFORE ERECTION OF THE  
7 PERMANENT DWELLING].

8 \* Sec. 48. AS 38.09 is amended by adding a new section to read:

9 Sec. 38.09.105. REMOVAL OF CONDITIONS ON REMOTE PARCEL AND  
10 HOMESTEAD ENTRY LAND. (a) The commissioner may not include the  
11 conditions of former AS 38.05.078(d) in a remote parcel purchase contract issued on  
12 or after the effective date of this section.

13 (b) The commissioner shall amend a remote parcel or homestead entry land  
14 purchase contract or patent issued before the effective date of this section to remove  
15 the conditions of former AS 38.05.078(d) or former AS 38.09.050(e) if the holder of  
16 the purchase contract or patent

17 (1) requests the amendment;

18 (2) pays the reasonable administrative costs of the amendment as  
19 determined by the commissioner; and

20 (3) pays the difference, as established by the commissioner, between  
21 the land's fair market value before the amendment and the estimated fair market value  
22 after the amendment.

23 \* Sec. 49. AS 38.95 is amended by adding a new section to read:

24 ARTICLE 7. NO OBLIGATION TO PROVIDE SERVICES TO DISPOSALS  
25 OF STATE LAND; NO LIMITATION ON FURTHER DISPOSALS.

26 Sec. 38.95.300. DISCLAIMER APPLICABLE TO STATE DISPOSALS.

27 Except as otherwise specifically provided, nothing in this title

28 (1) obligates the state to provide services to land that is disposed of by  
29 the state, or any grantee of the state, or is the subject of any disposal program;

30 (2) limits the authority of the state to dispose of land or any interest  
31 in land or resources in the area of the current disposal, provides any exclusive right

1 or interest in the area of the disposal, or implies or requires that any disposals made  
2 will be limited in type or any other manner.

3 \* **Sec. 50.** AS 38.04.020(c), 38.04.020(f), 38.04.020(j), 38.04.020(k);  
4 AS 38.05.035(e)(6)(F), 38.05.040, 38.05.057(g), 38.05.057(j), 38.05.079(d), 38.05.207,  
5 38.05.855, 38.05.856, 38.05.945(g), 38.05.946(b); AS 38.08.090; AS 38.09.010(e), 38.09.020,  
6 38.09.040(a)(2), 38.09.040(a)(3), 38.09.040(a)(4), 38.09.050(d), 38.09.050(e), 38.09.060,  
7 38.09.070, 38.09.090, 38.09.900(1), 38.09.900(3), and 38.09.900(4) are repealed.

8 \* **Sec. 51.** Notwithstanding AS 41.21.120 - 41.21.125, within Township 10 North, Range  
9 1 East, Seward Meridian, the commissioner of natural resources may

10 (1) convey a property interest in land to the Alaska Railroad Corporation for  
11 the purpose of realigning the railroad in conjunction with the relocation of the Seward  
12 Highway, provided that the property interest conveyed must be equivalent to that conveyed  
13 to the state-owned railroad under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of  
14 1982) and shall be held and managed by the Alaska Railroad Corporation under AS 42.40;

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

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

21 \* **Sec. 52. APPLICABILITY.** The change to the interest rate to be charged on contracts  
22 for the sale of land under AS 38.05.065, made by secs. 17 - 19 of this Act, applies to all  
23 contracts under AS 38.05.065 sent by the Department of Natural Resources to purchasers for  
24 signature on or after the effective date of secs. 17 - 19 of this Act.

25 \* **Sec. 53. REVISOR'S INSTRUCTION.** The amendments to AS 38.05.082(b), made by  
26 sec. 25 of this Act, do not affect the amendments made to that subsection by sec. 3, ch. 27,  
27 SLA 1991, effective January 1, 1997. Unless amended or repealed by Act of the legislature  
28 after the effective date of this section, the amendments to AS 38.05.082(b), made by sec. 25  
29 of this Act, continue in effect after the amendments made by sec. 3, ch. 27, SLA 1991, take  
30 effect January 1, 1997.

31 \* **Sec. 54. TRANSITIONAL PROVISIONS: REGULATIONS.** (a) Notwithstanding

1 sec. 55 of this Act, the Department of Natural Resources may proceed to adopt regulations  
2 necessary to implement the changes made by this Act. The regulations take effect under  
3 AS 44.62 (Administrative Procedure Act), but not before July 1, 1995.

4 (b) To the extent they are consistent with AS 38.08, regulations governing the  
5 selection of applicants for homesite parcels under AS 38.08 in effect on the effective date of  
6 secs. 42 - 43 of this Act remain in effect notwithstanding the amendment to AS 38.08.040,  
7 made by secs. 42 - 43 of this Act, until the regulations are amended, repealed, or superseded.

8 \* Sec. 55. Except for sec. 54 of this Act, this Act takes effect July 1, 1995.

9 \* Sec. 56. Section 54 of this Act takes effect immediately under AS 01.10.070(c).

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 191(RES), Version "G", Work Draft dated 4/4/95

1 Page 11, line 29:

2 Delete "person holding a permit"

3 Insert "lease held"

4 Page 11, line 30:

5 Delete "renew that permit"

6 Insert "be renewed"

Sectional Analysis of CSSH B 191  
(9-LS0766\G 4/4/95)

Secs. 1-32, 35-36, and 38-54 affect the Division of Land. Secs. 30 and 32-37 affect the Division of Mining and Water Management. Sec. 31 affects the Division of Oil and Gas. Sec. 51 affects the Division of Parks and Outdoor Recreation.

Sec. 1 would clarify that the department's consideration of timber, firewood, and water supplies before offering land for disposal does not imply that any person has exclusive use of those resources or constitute a limitation on future state disposals. (AS 38.04.010(b).)

Secs. 2-10 are basic housekeeping:

- Secs. 2 and 3 would merge the old "land disposal bank" into the existing state land disposal program. Under laws passed in the last decade, regional land use plans are used to identify land that will be offered for private ownership. More than 2,000,000 acres have been classified through this process, making the land bank obsolete. Related references to the land disposal bank are repealed in Sec. 50. (AS 38.04.020(a)-(b), plus repealers of (c), (f), (j), and (k).)
- Sec. 4 would rewrite AS 38.04.020(d) to retain its substance--a biennial report to the legislature on the current inventory of state land available for disposal--without requiring a separate "land disposal bank." For efficiency, the report would be tailored to the way that inventory is catalogued: by its classification. Land suitable for most commercial, industrial, residential, and private recreational use is grouped together in the "settlement" classification, but is separate from the "agricultural" and "grazing" classifications. (AS 38.04.020(d).)
- Sec. 5 would put the state land disposal program on the same footing as other natural resource sale programs: whether to submit a budget request each year would be discretionary, not mandatory. But each budget proposal would be complete. It would request the full funding needed to get the land disposal projects ready for sale, including any access roads or other capital improvements that might be required. (AS 38.04.020(e).)
- Sec. 6 would make technical corrections, dropping an out-of-order classification reference (land must already be planned and classified for disposal before it is surveyed and platted), an erroneous reference to a homestead "lease," and a reference to homestead staking that would be made obsolete by Secs. 44-45 of this bill. (AS 38.04.020(g).)

- Sec. 7 would make clear that the five-acre limit on subdivision lots applies to land sold for residential and recreational uses, not agricultural parcels, commercial parcels, etc. This clarification is needed because under current law, any division of a tract for purposes of sale constitutes a subdivision. The amendment would also allow larger lots if that would be a better marketing decision for the state. (AS 38.04.020(h).)
- Sec. 8 would update a list of state land disposal programs by adding the homestead law and the remote cabin site lease/sale program, amended by Secs. 22-24 of the bill. (AS 38.04.020(i).)
- Sec. 9 would correct a missing item in the budget appropriation process, clarifying that the commissioner's disposal funding request must go to the governor first, not be sent straight to the legislature. (AS 38.04.021(a).)
- Sec. 10 would delete a cross-reference to an annual land demand study, repealed by this bill. (AS 38.04.021(b).)

Sec. 11 would let the Department of Natural Resources create new land disposal programs by regulation, so long as they provide for competition and produce at least fair market value for the land. (AS 38.04.030.)

Sec. 12 clarifies the legislature's policy that sales of public land to private individuals should be at fair market value unless specifically exempted, and changes a reference to cabin sites in remote areas to conform to Secs. 22-24 of the bill. (AS 38.04.035.)

Sec. 13 deletes language exempting random-staked homesteads and remote parcels from cadastral survey requirements. The remote parcel program was repealed in 1983, effective 1984, and the homestead program was changed in 1988 to preclude random staking. (Remote cabin site leases, as amended by Secs. 22-24 of this section, would be exempt from this statute because they are short-term leases.) (AS 38.04.045(b).)

Secs. 14-16 and 44 respond to a Superior Court decision that it is unconstitutional to make state land purchasers appear in person at a state land sale.

- Sec. 14 would make it discretionary where to hold land auctions and lotteries. (AS 38.05.050.)
- Sec. 15 would delete the personal-appearance requirement for land auctions, allowing bidders to be represented by an agent. (AS 38.05.055.)

- Sec. 16, and a related repealer in Sec. 50, would delete the requirement that purchasers appear in person at land lotteries and pay the down payment on the spot. Instead, they would have 30 days to make the payment. It also drops language about consulting with the local assessor to determine land values, which is unnecessary because AS 38.05.840 requires a formal appraisal before the land can be offered for sale. (AS 38.05.057(a), plus repeal of (g).)
- Sec. 44 deletes the authority to make applicants appear in person at a homestead lottery. (AS 38.09.010(g).)

Secs. 17-19 would change how interest rates are computed for state land sale contracts.

- Secs. 17-18 would repeal the current system that relies on the old Federal Land Bank's "prevailing" rate. (The Federal Land Bank's successor now uses many different rate systems with multiple variables, rather than a single prevailing rate.) It would also change the point at which the rate is determined, solving the problem of the rate changing after the contract is mailed out for signature but before both parties have signed. (State land sale contracts are not signed in a face-to-face closing ceremony.) Sec. 17 would also let contracts for auction parcels be issued for less than 20 years, as already allowed for lottery parcels. (AS 38.05.065(a)-(b).)
- Sec. 19 would replace the old Federal Land Bank interest rate with a new system for state land sale contracts. Interest would be based on the prime rate, the widely quoted market rate used for a bank's most credit-worthy corporate loan customers. A four percent add-on would adjust for the unique circumstances of state land sale contracts, which do not involve any credit check. The total would be capped at 13.5 percent. The rate would be computed monthly and would apply to all contracts prepared that month. (AS 38.05.065(i).)

Sec. 20 would allow agricultural land to be sold at true market value by making it discretionary whether to grant a preference right to adjacent agricultural landowners. A mandatory preference right tends to depress competition or eliminate it altogether, while unaffected parcels are bid up beyond their appraised value. (AS 38.05.069(a).)

Sec. 21 updates the agricultural preference right law (see Sec. 21) by defining the term "adjacent," instead of "approximate vicinity." The latter was removed from the body of the law in 1984. (AS 38.05.069(e)(2).)

Secs. 22-24 would change the remote cabin permit program (a system of 25-year leases with \$100-per-year rental) into a remote cabin site lease/sale program for land disposals in remote, lightly populated areas. At any time during a total term of ten years, the lessee could purchase the site after getting it appraised and surveyed, just as in the former "open-to-entry" and "remote parcel" program (repealed in 1979 and 1993 respectively). (AS 38.05.079(a)-(c), plus a repealer of (d) in Sec. 50.)

Secs. 25-28 and 40, along with certain repealers in Sec. 50, would simplify the process of leasing "shore fishery" (set-net) sites and aquatic farmsites (shellfish and sea vegetable farms). They would repeal requirements that increase administrative costs or keep the state from obtaining a fair return for the use of tidelands and submerged lands.

- Sec. 25 would eliminate a unique leasing process for set-net sites, allowing standard state leasing laws to apply. Negotiated leases could be used up to the standard rental ceiling of \$5,000. Higher-value or contested leases could be awarded at auction, rather than making the director decide who is the "most qualified" applicant. (AS 38.05.082(b).)
- Sec. 26 would eliminate special provisions that prevent the state from obtaining fair market value rental for shore fishery leases. (AS 38.05.082(c).)
- Sec. 27 would amend AS 38.05.082(d), which currently lets the director offer existing lessees a preference right to a renewal lease when it is in the state's best interests. The new language would give existing shore fishery lessees (as of the effective date of the section) the right to a renewal lease.
- Sec. 28 would rewrite the aquatic farmsite law to let standard state leasing laws be used. Sites could be offered directly at auction or by negotiated lease, rather than first being developed under a three-year permit process. As with other types of land disposals and leases, public hearings on the leasing decision would be held as needed, but would not be mandatory. (AS 38.05.083, plus repealers of AS 38.05.855, AS 38.05.856, AS 38.05.946(b).)
- Sec. 40 would delete references in the public notice law to special aquatic farmsite permit procedures repealed by Sec. 40 of the bill: mandatory public hearings and preliminary findings before issuing permits. (AS 38.05.945(a)(5)-(6).)

Sec. 29 would modernize requirements to restore surface lease sites after lease termination, protecting the state against liability and high cleanup costs. Because other provisions of AS 38 apply this leasing statute to terminated homesites, homesteads, remote cabins, etc., special measures of the existing AS 38.05.090 would be retained to compensate individuals for authorized private residential improvements that are not removed from the site and are worth more than \$10,000 net value. (AS 38.05.090.)

Sec. 30 would amend a statute that requires mineral developers to make arrangements with the surface owner, before entering onto the land, to pay for any surface damages that might result. The exception would allow entry to stake the corners of a mining claim, leasehold location, or prospecting site location, an activity that has little or no potential to cause any surface damage. (AS 38.05.130.)

Sec. 31 is a technical amendment narrowing a reference to the "Administration" article of AS 38.05, whose last section (a bonding requirement for the director of the statutory Alaska Division of Lands) would be repealed by Sec. 50 of this bill. (AS 38.05.131(a).)

Sec. 32 would eliminate overly broad language that theoretically allows the department to close state land to "mining," not just to "mineral location" (the act of staking new mining locations). A valid mining claim includes the "exclusive right of ...extraction," i.e. mining rights. The department could not close off already-acquired mining rights without effecting a "taking" of valid existing rights, which would run afoul of Art. I, Sec. 18, and Art. VIII, Sec. 16, of the Alaska Constitution. This amendment would eliminate a potential pitfall. (AS 38.05.185(a).)

Sec. 33 would amend AS 38.05.190(a) to clarify the qualifications for ownership of mining rights 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. U.S. 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." 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. (AS 38.05.190(a).)

Sec. 34 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 is likely to yield 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, possibly causing hardships to mining locators and lessees. The amendment would require the department to check the consumer price index each year and adjust the rate if the adjustment is \$5 or more. Changes could only be made in \$5 increments. The amendment also more clearly identifies the consumer price index on which changes are to be based. (AS 38.05.211(d).)

Sec. 35 would authorize surface leases for certain mineral development uses. Surface use needs for small mines are generally modest enough to meet with a simple land use permit, protected by the underlying "exclusive right of possession and extraction of the [locatable] minerals" acquired by a valid mining location. However, most major mines require large-scale, costly surface improvements such as dams, mills, and tailings impoundments. The mineral developer needs long-term security of tenure to protect this investment, something that cannot be provided by a revocable permit. Surface leases for millsites, tailings disposal sites, and similar purposes would require reasonable annual rental. (AS 38.05.255.)

Sec. 36 would add a new subsection to clarify that mining developers' surface leases are not subject to competitive bidding statutes. Requiring the department to hold a lease auction would serve no purpose, as the mineral developer would be the only party in a position to bid for and use the lease. The department would be required to adopt regulations setting leasing procedures and annual rentals. (AS 38.05.255(b).)

Sec. 37 would eliminate the failure to file a lease application on time as grounds for abandonment of a mining location. In areas open to mining only under lease, a locator must apply for and obtain a lease before gaining the right to mine. AS 38.05.205(a). After the department gives public notice of the proposed mining lease, it must promptly mail an application to the leasehold locator, who then has 90 days to file the application. But under the existing AS 38.05.265, failing to file on time automatically causes "abandonment" (voiding) of the leasehold locations involved, too harsh a penalty for a late application. (AS 38.05.265.)

Sec. 38 would allow the department to convey "common areas" in state subdivisions to the subdivision's homeowners' association for retention and management. Many state subdivisions were platted with certain lots reserved from disposal to provide open space and recreation for subdivision residents. The intention was eventually to transfer these reserved lots to local government. But

where there is no local government or it does not want to assume management responsibility, conveyance to the homeowners' association is a logical substitute. The department would be required to ensure that the conveyance serves a public purpose. (AS 38.05.810(a).)

Sec. 39 would clarify that the division can allow livestock grazing, commercial berry picking or mushroom harvesting, and similar minimal-value consumptive uses by issuing permits, an authority the Department of Law recently questioned. (AS 38.05.850(a).)

Sec. 40: See under Secs. 25-28.

Sec. 41 would raise the application fee for homesites from the current \$10 to a maximum of \$25, the same as for lottery parcels. (AS 38.08.030(b).)

Sec. 42 would add a cross-reference to the lottery process used to select the winner of a homesite entry permit (see Sec. 43). It would also require a token annual rental of \$100 until the permit holder "proves up" or purchases the lot. Because a homesite entry permit is a contract, the rental requirement would not apply to existing entry permits. (AS 38.08.040(a).)

Sec. 43 would add a new subsection directing that homesite entry permits be offered at lottery. Using the lottery procedures of AS 38.05.057 was formerly a statutory requirement, but a 1984 amendment left the connection unclear. The department would be required to adopt regulations as consistent as possible with AS 38.05.057. (AS 38.08.040(f).)

Sec. 44: See under Sec. 14-16.

Sec. 45 would raise the fee to receive a non-agricultural homestead entry permit to \$20 per acre. This is a one-time rental fee, lasting for the entry permit's five-year term. The rental fee for agricultural homesteads would remain at the current \$5 per acre. In combination with repealers in Sec. 50 of the bill, it also eliminates staking and legal-description requirements that became obsolete in 1988. In that year, the homestead law was changed to require the department to do a cadastral survey before offering the parcels, instead of making the homesteader survey it five years later. (AS 38.09.030(a), plus repealers of AS 38.09.010(e), 38.09.020, 38.09.040(a)(2), 38.09.040(a)(4), AS 38.09.060, AS 38.09.070, and 38.09.900(1).)

Secs. 46-47, along with repealers in Sec. 50 of the bill, reduce and simplify the ways to get title to a homestead parcel. (Currently there are three methods. A homesteader can obtain the land for free by living on it and building a house, plus meeting clearing requirements applicable to agricultural homesteads only. Or he can buy the parcel at almost-current fair market value without building a house

and living on it, if he applies within two years. Or he can buy the parcel at current fair market value without living on the parcel, if he builds a house and applies to purchase within five years.) The revised language in Sec. 46 eliminates the house-building requirement and the distinction between two-year and five-year purchase. The homesteader either buys the parcel at fair market value within five years, or "proves up" by living on the parcel for 25 months. With either method, he must reimburse the state for survey and platting costs, and must meet agricultural clearing requirements if the land is classified agricultural. Sec. 47 is a conforming amendment eliminating a reference to a permanent dwelling. (AS 38.09.050(a)-(b), plus repealers of AS 38.09.040(a)(3), 38.09.090, 38.09.900(3), and 38.09.900(4).)

Sec. 48, along with repealers in Sec. 50 of the bill, affects both the remote parcel program and the homestead program. (The remote parcel law was repealed in 1983, effective in 1984, but the program will be alive until at least the year 2016. The last parcels were staked in 1984, and the last leases issued in 1985-1986. The lessces will have until 1996 or later to survey their parcels, and can then enter into 20-year purchase contracts.) This section would prohibit the department from imposing the conditions of the former AS 38.05.078(d) in new remote parcel purchase contracts. These conditions restricted the sale or subdivision of remote parcel land after it was conveyed into private ownership. It would also allow the department to amend existing remote parcel or homestead purchase contracts or patents to remove these restrictions if the holder consents and reimburses the state for the difference in value. (Each parcel's purchase price was cut by 50% to account for the resale restrictions.) (AS 38.09.105, plus repealers of AS 38.09.050(d)-(e).)

Sec. 49 transfers the homesite disclaimer language of AS 38.08.090 (to be repealed by Sec. 50 of this bill) to a general location applicable to all state land disposals: unless specifically provided, the state is not obligated to provide services to the grantee of a state land disposal. An additional disclaimer would make clear that the state is free to dispose of other land or resources in the future, without restrictions as to type, parcel density, etc.

Sec. 50:

- Repealers affecting the land disposal bank (AS 38.04.020) and down payments at land lotteries (AS 38.05.057(g)) are discussed under Secs. 2 and 16.
- Repealing AS 38.05.057(j) eliminates special lottery procedures for an agricultural project statute that was repealed in 1979.

- Repealing AS 38.05.035(e)(6)(F), AS 38.05.207, and AS 38.05.945(g) would eliminate the mining production license program, an early attempt to solve the "6(i) problem" that became moot when AS 38.05.211-212 were enacted in 1989.
- Repealing AS 38.05.040 would eliminate the requirement for a \$150,000 bond for the director of the statutory Division of Lands, which was subsequently reorganized and subdivided into several different divisions.
- Repealing AS 38.05.079(d) eliminates an optional sale clause no longer needed for remote cabin site leases (see Secs. 22-24), which are designed to result in sale of the site.
- Repealing AS 38.05.855, AS 38.05.356, and AS 38.05.946(b) eliminates requirements associated with aquatic farmsite permits; see Secs. 28 and 40.
- AS 38.08.090 is made unnecessary by Sec. 49, which broadens its language and expands it to other land disposals.
- Repealing 38.09.010(e), 38.09.020, 38.09.040(a)(2), 38.09.040(a)(4), AS 38.09.060, AS 38.09.070, and 38.09.900(1) eliminates requirements related to staking, flagging, brushing, and filing a legal description on a homestead; see Sec. 45. Repealing AS 38.09.040(a)(3), 38.09.090, 38.09.900(3), and 38.09.900(4) eliminates homestead dwelling requirements and the distinction between two- and five-year purchase; see Sec. 46. Repealing AS 38.09.050(d) and (e) would remove restrictions on selling or subdividing land after it has been conveyed to a homesteader; see related changes under Sec. 39.

Sec. 51 would authorize railroad, highway, and utility line rights-of-way within Chugach State Park necessitated by a Seward Highway relocation project at Bird Point (between Anchorage and Girdwood).

Sec. 52 would specify that the interest rate changes made by Secs. 17-19 of the bill apply to all contracts sent out to be signed after the bill's effective date.

Sec. 53 would ensure that changes made to AS 38.05.082 by Sec. 25 of the bill will continue in effect after 1997, when unrelated changes enacted in 1991 take effect.

Sec. 54 would allow the department to adopt regulations in advance of the bill's effective date, and includes a savings clause for the existing homesite disposal regulations until they can be changed.

Secs. 55-56 are effective date clauses; the regulation clause would take effect immediately, with the remainder of the bill effective July 1, 1995.

03/31/95

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

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PUBLIC HEARING

HOUSE RESOURCES

✓ LOCATION:FAIRBANKS

HR 7

MR.

JOHN

SIMS

TESTIFY

*122 1st Ave 99701 452-2625*

*Robert Hall Box 871986 Wasilla 99687 892-6555*

HOUSE RESOURCES COMMITTEE



Alaska State Legislature  
House of Representatives

DATE: 3/31/95

PLACE: ROOM 124

SUBJECT OF MEETING:  
 HB 191 - Management of State Land + Resources  
 HR 7 - Oppose Coal Disposal of Nuclear  
 Substance  
 HB 225 - African Elephant Exhibition Permit

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
						Y	N	
Wayne Regelin	Fish & Game	PO Box 25526 Juneau				Y	N	HB 225
Kristel Leaf	Rep. Kohring	State Cap Bldg 428 JUNEAU			2195	Y	N	H 225
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

HOUSE RESOURCES COMMITTEE  
Roll Call and Members' Bill Votes

\* (indicates first public hearing)

Room 124, Capitol Bldg.

Mon., Wed., Fri.

Date: 3/31/95

Tape# 95-44 Joint \_\_\_\_\_

Time: 8:11 am pm Time Adjourned: \_\_\_\_\_ am/pm

ROLL CALL:	PRES	ABS	TIME	AR	_____	_____	_____
Rep. Joe Green	✓	_____	_____	_____	_____	_____	_____
Rep. Bill Williams	✓	_____	_____	_____	_____	_____	_____
Rep. Scott Ogan	✓	_____	_____	_____	_____	_____	_____
Rep. Alan Austerman	_____	_____	_____	_____	_____	_____	_____
Rep. Ramona Barnes	_____	_____	_____	_____	_____	_____	_____
Rep. John Davies	✓	_____	_____	_____	_____	_____	_____
Rep. Pete Kott	_____	_____	_____	✓	_____	_____	_____
Rep. Eileen MacLean	_____	_____	_____	_____	_____	_____	_____
Rep. Irene Nicholas	_____	_____	_____	_____	_____	_____	_____

Other Legislators Present \_\_\_\_\_

AGENDA:

Bill No.	Short Title	Action Taken
<u>H13191</u>	<u>Management of State Land + Resources</u>	<u>Heard + Held</u>
<u>HR 17</u>	<u>Oppose Coal As Hazardous/Woxious Substance</u>	<u>HR 7 Out</u>
<u>H13225</u>	<u>African Elephant Cribbeter Permit</u>	<u>CS113 225(RES) Out</u>
_____	_____	_____
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Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

*House Resources  
3-31-95 8:11 am  
Tape #95-44  
HB191*

9-LS0766\F

Luckhaupt

3/30/95

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 191(RES)****IN THE LEGISLATURE OF THE STATE OF ALASKA****NINETEENTH LEGISLATURE - FIRST SESSION****BY THE HOUSE RESOURCES COMMITTEE**

Offered:

Referred:

Sponsor(s): **REPRESENTATIVE THERRIAULT****A BILL****FOR AN ACT ENTITLED**

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

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

5 \* Section 1. AS 38.04.010(b) is amended to read:

6 (b) State land that is located beyond the range of existing schools and other  
7 necessary public services, or that is located where development of sources of  
8 employment is improbable, may be made available for seasonal recreational purposes  
9 or for low density settlement. The seasonal recreation use or low density settlement  
10 shall have sufficient separation between residences so that public services will not be  
11 necessary or expected. The availability of timber, firewood, and water resources shall  
12 be considered in determining separation between residences. By considering the  
13 availability of timber, firewood, and water under this subsection or in making any  
14 disposal decision, the state does not by virtue of that consideration imply any

1 right of the person receiving the disposal to an exclusive or other right to the  
2 timber, firewood, or water, that the state will not make any other disposals in the  
3 area, or that any disposals made will be limited in type or any other manner.

4 \* Sec. 2. AS 38.04.020(a) is amended to read:

5 (a) The state [COMMISSIONER SHALL ESTABLISH A] land disposal  
6 program consists of [BANK CONTAINING] state land identified and classified  
7 under adopted regional land use plans for disposal into private ownership.

8 \* Sec. 3. AS 38.04.020(b) is amended to read:

9 (b) The state land disposal program [BANK] does not include

- 10 (1) land nominated for selection or selected by a municipality to satisfy  
11 a general grant land entitlement under AS 29.65 or former AS 29.18.201 - 29.18.213;  
12 (2) land retained in state ownership for multiple-use management;  
13 (3) land where less than a fee simple title has been conveyed;  
14 (4) land retained in state ownership under an enactment of the  
15 legislature or by the governor or a state agency under authority of law.

16 \* Sec. 4. AS 38.04.020(d) is repealed and reenacted to read:

17 (d) On January 15 of the first regular session of each legislature, the  
18 commissioner shall report to the legislature on the total acreage of land planned and  
19 classified as suitable under this title for

- 20 (1) settlement purposes, including homestead, commercial, or industrial  
21 disposal;  
22 (2) agricultural disposal; and  
23 (3) grazing leases.

24 \* Sec. 5. AS 38.04.020(e) is repealed and reenacted to read:

25 (e) The commissioner may annually submit to the governor an appropriation  
26 request for the entire amount of funding estimated to be necessary for each project  
27 proposal to allow survey and disposal of land proposed to be offered for (1) homestead  
28 staking under AS 38.09; (2) agricultural, commercial, industrial, or other uses under  
29 AS 38.05.055 or 38.05.057; or (3) other subdivisions. Each project proposal shall  
30 include the general location of the land and the estimated cost of preliminary feasibility  
31 studies, engineering design work, right-of-way acquisition, and construction of access

1 roads and capital improvements required by municipal subdivision ordinance or  
2 regulation of the platting authority or otherwise necessary to develop and market the  
3 land.

4 \* Sec. 6. AS 38.04.020(g) is amended to read:

5 (g) The [AFTER JULY 1 OF EACH YEAR, THE] commissioner shall direct  
6 the expenditure of money appropriated for the disposal of land in response to requests  
7 made under (e) [AND (f)] of this section for the following:

8 (1) land [LAND] designated as suitable for homestead disposal shall  
9 be [CLASSIFIED AND] surveyed under this chapter and AS 38.05 and made available  
10 for entry [STAKING AND LEASE] under AS 38.09; [.]

11 (2) land [LAND] designated as suitable for subdivision and homesite  
12 disposal shall be surveyed, subdivided, [CLASSIFIED,] and disposed of under this  
13 chapter, AS 38.05, and AS 38.08; [.]

14 (3) land [LAND] designated agricultural, commercial, industrial, or  
15 suitable for other disposal shall be sold under AS 38.05.055 or 38.05.057.

16 \* Sec. 7. AS 38.04.020(h) is amended to read:

17 (h) Individual parcels disposed of in subdivisions intended for private  
18 residential or recreational use may not exceed five acres unless the commissioner  
19 determines that a larger size is necessary to comply with municipal ordinances; [.] to  
20 permit the design of a viable subdivision because of topographical features, soil  
21 conditions, on-site sewage disposal requirements, or water drainage or supply  
22 considerations that are unique to the subdivision; to increase the return to the state  
23 from the sale of the parcels; [.] to minimize adverse effect on wildlife, fishery, public  
24 recreation, timber, or other significant resources in the area; [.] or to minimize adverse  
25 effect on other residential uses in the area.

26 \* Sec. 8. AS 38.04.020(i) is amended to read:

27 (i) Nothing in this section prevents the disposal of other land by the  
28 commissioner in accordance with AS 38.05.055, 38.05.057, 38.05.070, the issuance of  
29 remote cabin permits or sales under AS 38.05.079, AS 38.08, AS 38.09, or other law.

30 \* Sec. 9. AS 38.04.021(a) is amended to read:

31 (a) A municipality may apply for financial assistance for the execution of a

1 land disposal program of general grant land entitlements received from the state under  
2 AS 29.65 or former AS 29.18.201 - 29.18.213 by submitting a request to the  
3 commissioner for inclusion in the request submitted to the governor [LEGISLATURE]  
4 under AS 38.04.020(e). A municipality may request financial assistance for expenses  
5 of surveying land, designing subdivision plats, installing improvements required by  
6 municipal ordinance or regulation of the local platting authority, and other reasonable  
7 direct costs of land disposal.

8 \* Sec. 10. AS 38.04.021(b) is amended to read:

9 (b) A request by a municipality under this section must be accompanied by

10 (1) a schedule for the disposal of municipal land for the next five years;  
11 the schedule shall be based on an assessment of the demand for private land within the  
12 municipality [AND INCLUDED IN THE ASSESSMENT SUBMITTED UNDER  
13 AS 38.04.020(f)];

14 (2) an estimate of the number of acres of municipal land that the  
15 municipality plans to dispose of during each fiscal year of the five-year period;

16 (3) a description of the methods to be used for the disposal of  
17 municipal land and the terms under which it will be offered to the public; and

18 (4) a description of the municipal land that the municipality plans to  
19 dispose of each fiscal year during the five-year period.

20 \* Sec. 11. AS 38.04.030 is amended to read:

21 Sec. 38.04.030. LAND AVAILABILITY PROGRAMS. Programs that may  
22 be used by the director to make the state's land surface available for private use under  
23 AS 38.04.020 - 38.04.055 include sale of whole or partial rights to the fee simple  
24 estate, including conveyance of agricultural use rights; leasing; [OPEN-TO-ENTRY;]  
25 homesiting; homesteading; permitting for construction and occupation of cabins in  
26 isolated locations on land retained in state ownership; and other methods as provided  
27 by regulation or other law. Notwithstanding a contrary provision of this title, a  
28 land availability program adopted by regulation must provide for competitive  
29 disposal, based on no less than fair market value, to serve the best interests of the  
30 state.

31 \* Sec. 12. AS 38.04.035 is amended to read:

1           Sec. 38.04.035. CRITERIA FOR PROGRAM SELECTION. In determining  
2           which land availability program is appropriate for state land in different locations, the  
3           director shall be guided by the following criteria:

4                   (1) to cover public costs associated with private land use and to provide  
5           the public with a fair return for publicly owned property, conveyance of state land to  
6           private parties shall [SHOULD] be at fair market value except where otherwise  
7           authorized by statute, or by an administrative regulation the adoption of which is  
8           specifically permitted by statute;

9                   (2) sale or lease programs should be used where land is readily  
10          accessible to a major community center or where, because of a prime location on  
11          waterfront or a transportation route or some other location characteristic land has  
12          relatively high real estate value;

13                  (3) sale programs are preferred but lease programs should be used

14                   (A) where special land use controls are required and there is a  
15          high public interest in having certain types of land used for particular purposes;

16                   (B) when the intended use is a temporary one;

17                   (C) in commercial or industrial situations when a leasehold can  
18          provide cash flow advantages to the lessee;

19                   (D) when a unique location with special public values is  
20          involved, as in a deep water port, hydroelectric site, or aquaculture facility;

21                   (E) where current demand for private use is high, but  
22          projections suggest that, in the future, the land may be more valuable for public  
23          use, as in accessible waterfront recreation areas;

24                  (4) for enabling isolated cabin development in remote locations where  
25          survey and conveyance is impractical at the anticipated time of cabin development,  
26          or where disposal of land would cause potential conflicts with other resources and  
27          uses, or where a long-range interest in public ownership and use exist, a system for  
28          cabin permits on public land may be used;

29                  (5) limited or conditional title may be granted when the state's best  
30          interest so dictates; among other things, title limitations may include grants of  
31          agricultural interest only, retention of development rights, and retention of scenic or

1 other easements; a conditional title may be tied to a development schedule or other  
2 standards of performance.

3 \* Sec. 13. AS 38.04.045(b) is amended to read:

4 (b) Before the issuance of a long-term lease under AS 38.05.070 or of a patent  
5 for state land, an official cadastral survey shall be accomplished, unless a comparable,  
6 approved survey exists that has been conducted by the federal Bureau of Land  
7 Management. Before land may be offered under AS 38.05.055, 38.05.057, AS 38.08,  
8 or AS 38.09, an official rectangular survey grid shall be established. The rectangular  
9 survey section corner positions shall be monumented and shown on a cadastral survey  
10 plat approved by the state. For those areas where the state may wish to convey  
11 surface estate outside of an official rectangular survey grid, the commissioner may  
12 waive monumentation of individual section corner positions and substitute an official  
13 control survey with control points being monumented and shown on control survey  
14 plats approved by the state. The commissioner may not issue more than one  
15 conveyance for each section within a township outside of an official rectangular survey  
16 grid. No portion of land to be conveyed may be located more than two miles from an  
17 official survey control monument except that the commissioner may waive this  
18 requirement on a determination that a single purpose use does not justify the  
19 requirement if the existing status of the land is known with reasonable certainty. The  
20 lots and tracts in state subdivisions shall be monumented and the cadastral survey and  
21 plats for the subdivision shall be approved by the state. Where land is located within  
22 a municipality with planning, platting, and zoning powers, plats for state subdivisions  
23 shall comply with local ordinances and regulations in the same manner and to the same  
24 extent as plats for subdivisions by other landowners. State subdivisions shall be filed  
25 and recorded in the district recorder's office. The requirements of this section do not  
26 apply to land made available through a cabin permit system, for material sales, for  
27 short-term leases, or for parcels adjoining a surveyed right-of-way, [OR FOR LAND  
28 THAT HAS BEEN OPEN TO RANDOM STAKING UNDER THE REMOTE  
29 PARCEL PROGRAM OR HOMESTEAD PROGRAM IN THE PAST]; however, for  
30 short-term leases the lessee must comply with local subdivision ordinances unless  
31 waived by the municipality under procedures specified by ordinance. In this subsection,

1 "a single purpose use" includes a communication site, an aid to navigation, and a park  
2 site.

3 \* Sec. 14. AS 38.05.050 is amended to read:

4 Sec. 38.05.050. DISPOSAL OF LAND FOR PRIVATE OWNERSHIP. The  
5 commissioner shall determine the land to be disposed of for private use. The  
6 commissioner shall determine the time and place of disposal. An auction sale, <sup>or a</sup> ~~a~~  
7 lottery sale, or a disposal of land for homesites may [SHALL] be held in a community  
8 that is near the land to be sold or disposed of.

9 \* Sec. 15. AS 38.05.055 is amended to read:

10 Sec. 38.05.055. AUCTION SALE PROCEDURES. Unless another method of  
11 sale is required under this chapter, [AS 38.07, OR] AS 38.08, or AS 38.09, the sale  
12 of state land shall be made at public auction to the highest qualified bidder as  
13 determined by the director. The director may accept bids and sell state land under this  
14 section at no less than 70 percent of the appraised fair market value of the land. [A  
15 BIDDER MUST APPEAR IN PERSON AT THE AUCTION UNLESS MEDICAL  
16 REASONS, ATTENDANCE AT SCHOOL, OR MILITARY SERVICE OUTSIDE  
17 THE STATE PREVENT ATTENDANCE.] A bidder may be represented by an  
18 attorney or agent at the auction [IF THE LAND OFFERED FOR DISPOSAL IS  
19 COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL LAND]. An aggrieved  
20 bidder may appeal to the commissioner within five days after the sale for a review of  
21 the director's determination. The sale shall be conducted by the director and at the  
22 time of sale the successful bidder shall deposit an amount equal to five percent of the  
23 purchase price. The director shall immediately issue a receipt containing a description  
24 of the land or property purchased, the price bid, and the amount deposited. The  
25 receipt shall be acknowledged in writing by the bidder.

26 \* Sec. 16. AS 38.05.057(a) is amended to read:

27 (a) The commissioner may dispose of land, including land limited to use for  
28 agricultural purposes, by lottery. The purchase price of land sold by lottery shall be  
29 the fair market value of the land as determined by the commissioner. The  
30 commissioner may sell land by lottery for less than the fair market value of the land  
31 on a determination that scarcity of land for private use in the area of the land to be

1 sold has resulted in unrealistic land values. [THE COMMISSIONER SHALL  
2 CONSULT WITH THE ASSESSOR OF A MUNICIPALITY BEFORE  
3 DETERMINING THE PURCHASE PRICE FOR LAND THAT IS LOCATED IN  
4 THE MUNICIPALITY AND THAT IS TO BE SOLD UNDER THIS SECTION.] The  
5 lottery shall be conducted in public by the commissioner. A [AN APPLICANT MAY  
6 NOT BE SELECTED TO PURCHASE LAND UNLESS THE APPLICANT IS  
7 PRESENT ON THE DATE AND AT THE PLACE THAT THE LOTTERY IS  
8 CONDUCTED UNLESS MEDICAL REASONS, ATTENDANCE AT SCHOOL, OR  
9 MILITARY SERVICE OUTSIDE THE STATE PREVENT ATTENDANCE. AN  
10 APPLICANT MAY BE REPRESENTED BY AN AGENT ON THE DAY OF THE  
11 LOTTERY IF THE LAND OFFERED FOR SALE IS COMMERCIAL,  
12 INDUSTRIAL, OR AGRICULTURAL LAND. ON THE DAY OF THE LOTTERY  
13 A] purchaser selected by lot shall deposit an amount equal to five percent of the  
14 purchase price within 30 days after receiving notification of the selection.

15 \* Sec. 17. AS 38.05.065(a) is amended to read:

16 (a) The contract of sale for land sold at public auction under AS 38.05.055  
17 shall require the remainder of the purchase price to be paid in monthly, quarterly, or  
18 annual installments over a period of not more than 20 years, with interest at the  
19 [PREVAILING] rate provided in (i) of this section [FOR REAL ESTATE  
20 MORTGAGE LOANS MADE BY THE FEDERAL LAND BANK FOR THE FARM  
21 CREDIT DISTRICT FOR ALASKA AT THE TIME THE CONTRACT IS SIGNED].  
22 Installment payments plus interest shall be set on the level-payment basis.

23 \* Sec. 18. AS 38.05.065(b) is amended to read:

24 (b) The contract of sale for land sold under AS 38.05.057 or under former  
25 AS 38.05.078 shall require the remainder of the purchase price to be paid in monthly,  
26 quarterly, or annual installments over a period of not more than 20 years. Installment  
27 payments plus interest shall be set on the level-payment basis. The interest rate to be  
28 charged on installment payments is the [PREVAILING] rate provided in (i) of this  
29 section [FOR REAL ESTATE MORTGAGE LOANS MADE BY THE FEDERAL  
30 LAND BANK FOR THE FARM CREDIT DISTRICT FOR ALASKA AT THE TIME  
31 THE CONTRACT IS SIGNED].

1 \* Sec. 19. AS 38.05.065 is amended by adding a new subsection to read:

2 (i) The interest rate for contracts under this section is the prime rate as  
3 reported in the Wall Street Journal on the first business day of the month in which the  
4 contract is sent to the purchaser for signature, plus 4 percent; however, the total rate  
5 of interest may not exceed 13.5 percent.

6 \* Sec. 20. AS 38.05.069(a) is amended to read:

7 (a) On a determination that the highest and best use of unoccupied land is for  
8 agricultural purposes and that it is in the best interests of the state to sell or lease the  
9 land, the commissioner may [SHALL] grant to an Alaska [ALASKAN] resident  
10 owning and using or leasing and using land for agricultural purposes a first option at  
11 the auction to purchase or lease the unoccupied land situated adjacent to land presently  
12 held by the Alaska [ALASKAN] resident for the amount of the high bid received at  
13 public auction. If more than one Alaska [ALASKAN] resident qualifies for a first  
14 option under this section, eligibility for the first option shall be determined by lot and  
15 the option must be exercised on the conclusion of the public auction. A parcel of  
16 agricultural land sold under this section may not be less than 20 acres and a parcel of  
17 agricultural land that is acquired by exercise of the option granted in this subsection  
18 may not exceed 320 acres. Agricultural land that is acquired under this section must  
19 be used for agricultural purposes as required by law.

20 \* Sec. 21. AS 38.05.069(e)(2) is repealed and reenacted to read:

21 (2) "adjacent" means that a tract of land has a common boundary <sup>at 9:00 AM</sup> or  
22 corner <sup>at 9:00 AM</sup> to presently held land or is separated from the presently held land only by a  
23 physical barrier such as a road or stream.

24 \* Sec. 22. AS 38.05.079(a) is amended to read:

25 (a) The [AFTER SEPTEMBER 1, 1980, THE] commissioner may provide for  
26 the sale or lease of state land for remote recreational cabin sites in areas of the  
27 state with dispersed populations [ISSUE A PERMIT FOR THE USE OF REMOTE  
28 STATE LAND IN A MUNICIPALITY FOR A CABIN SITE IF THE LAND WAS  
29 CLASSIFIED FOR THAT PURPOSE UNDER FORMER AS 38.05.047(a)(5)(B).  
30 AFTER SEPTEMBER 1, 1981, THE COMMISSIONER MAY ISSUE A PERMIT  
31 FOR THE USE OF REMOTE STATE LAND OUTSIDE A MUNICIPALITY FOR

1 A CABIN SITE] if the land is classified for that purpose under the procedures required  
2 by AS 38.05.300 and 38.05.945. Sales under this section shall be at fair market  
3 value and the purchaser shall reimburse the state for the appraisal, survey, and  
4 platting costs for the recreational cabin site.

5 \* Sec. 23. AS 38.05.079(b) is amended to read:

6 (b) The annual fee for a remote recreational cabin lease permit shall be set  
7 by the commissioner so as to ensure that the state receives a fair return for the  
8 use granted by the permit for the term of the permit [IS \$100 A YEAR]. The  
9 commissioner shall establish regulations that [WHICH] specify the application  
10 procedures for and the terms and conditions of a remote recreational cabin lease  
11 permit. A permit must be for a term of not more [LESS] than five [25] years, and  
12 may be renewed for one additional five-year period. At any time during the lease,  
13 the permittee may purchase the remote cabin site by having the site appraised  
14 and surveyed in a manner acceptable to the department and by paying to the  
15 state the fair market value for the site. The lease permit may not be assigned by  
16 the original permittee during the term of the permit.

17 \* Sec. 24. AS 38.05.082(b) is amended to read:

18 (b) The director may classify land as subject to leases for fisheries  
19 development. In an area or region of the state for which a land use plan has not been  
20 adopted under AS 38.04.065, the director may classify land for lease under this section  
21 after notice under AS 38.05.945. The director may [SHALL] publicly invite  
22 applications for lease of the selected areas. Each application shall be accompanied by  
23 an affidavit to the effect that the applicant presently intends to personally utilize the  
24 leased area for fishing purposes throughout the term of the lease [THE  
25 FOLLOWING SEASON]. If two or more applications are received for the same shore  
26 area, the director may offer [SHALL AWARD] the lease at public auction under  
27 AS 38.05.075(a). If only one application is received and the appraisal value of the  
28 lease is \$5,000 a year or less, the commissioner may issue a negotiated lease under  
29 AS 38.05.070(b) [TO THE MOST QUALIFIED APPLICANT. IN DETERMINING  
30 THE QUALIFICATIONS OF APPLICANTS, THE DIRECTOR SHALL CONSIDER  
31 THE LENGTH OF TIME DURING WHICH THE APPLICANT HAS BEEN

1 ENGAGED IN SET NETTING, THE PROXIMITY OF THE PAST FISHING SITES  
2 OF THE APPLICANT TO THE LAND TO BE LEASED, THE PRESENT ABILITY  
3 OF THE APPLICANT TO UTILIZE THE LOCATION TO ITS MAXIMUM  
4 POTENTIAL, AND OTHER FACTORS RELEVANT TO THE EQUITABLE  
5 ASSIGNMENT OF THE DISPUTED AREA. IF THE DIRECTOR CANNOT  
6 DETERMINE A PREFERENCE BETWEEN CONFLICTING APPLICANTS FOR  
7 THE SAME LEASE SITE ON THE BASIS OF QUALIFICATIONS, THE  
8 DIRECTOR SHALL SELECT BETWEEN THE APPLICANTS BY LOT. AN  
9 AGGRIEVED APPLICANT MAY APPEAL TO THE COMMISSIONER WITHIN 30  
10 DAYS FOR A REVIEW OF THE DIRECTOR'S DETERMINATION].

11 \* Sec. 25. AS 38.05.082(c) is amended to read:

12 (c) A lease for set net fishing may be issued for any period not exceeding 10  
13 years. If the commissioner determines that the land is not being utilized for the  
14 purpose for which the lease is issued, the lease may be declared void. [THE  
15 DIRECTOR SHALL ESTABLISH A REASONABLE RENTAL FOR THE LEASE,  
16 EQUAL TO THE ADMINISTRATIVE COSTS INVOLVED IN PROCESSING THE  
17 LEASEHOLD APPLICATIONS.]

18 \* Sec. 26. AS 38.05.082(d) is amended to read:

19 (d) Subleasing and renewals of leases are governed by AS 38.05.095 and  
20 38.05.102. Notwithstanding (b) of this section, a person holding a permit under  
21 this section on the effective date of this bill section may renew that permit under  
22 terms and conditions prescribed by the commissioner.

23 \* Sec. 27. AS 38.05.083 is repealed and reenacted to read:

24 Sec. 38.05.083. AQUATIC FARMING AND HATCHERY SITE LEASES.

25 (a) The commissioner may offer to the public for lease at public auction under  
26 AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic farming or  
27 related hatchery operations. Before a final decision to issue or renew a lease under  
28 this section, the commissioner shall give notice and allow opportunity for comment in  
29 accordance with AS 38.05.945, and may hold a hearing to take testimony. Before a  
30 final decision to issue or renew a lease under this section, the commissioner shall  
31 consider all relevant comment or testimony submitted under this section, AS 38.05.945,

1 or 38.05.946.

2 (b) The commissioner, for good cause, may deny an application for issuance  
3 or renewal of a lease under this section, but shall provide the applicant with written  
4 findings that explain the reasons for the denial.

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

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

9 (e) Before entering into a lease under this section, the commissioner shall  
10 require the lessee to post a performance bond or provide other security to cover the  
11 costs to the department of restoring the leased site in the event the lessee abandons the  
12 site.

13 (f) The commissioner shall adopt regulations establishing criteria for the  
14 approval or denial of leases under this section and for limiting the number of sites for  
15 which leases may be issued in an area in order to protect the environment and natural  
16 resources of the area. The regulations must provide for the consideration of upland  
17 management policies and whether the proposed use of a site is compatible with the  
18 traditional and existing uses of the area in which the site is located.

19 \* Sec. 28. AS 38.05.090 is repealed and reenacted to read:

20 Sec. 38.05.090. REMOVAL OR REVERSION OF IMPROVEMENTS UPON  
21 TERMINATION OF LEASES. (a) Unless otherwise agreed to in writing by the  
22 commissioner, a lessee shall remove from a former leasehold

23 (1) all personal property, including above-ground and below-ground  
24 tanks, transportable buildings, equipment, machinery, tools, and other goods, not  
25 belonging to the state, within 30 days after termination of the lease; and

26 (2) all buildings and fixtures, including gravel pads, foundations, and  
27 slabs, not belonging to the state, within 60 days after termination of the lease.

28 (b) Unless otherwise agreed to in writing by the commissioner, the lessee shall  
29 restore the leasehold to a good and marketable condition, acceptable to the  
30 commissioner, within 120 days after termination of the lease.

31 (c) If the lessee does not remove personal property, buildings, and fixtures as

1 required within the time specified under (a) of this section, title to the personal  
2 property, buildings, and fixtures that remain automatically vests in the state unless the  
3 commissioner elects to remove and dispose of the remaining personal property,  
4 buildings, and fixtures of the lessee. The commissioner may assess upon the lessee  
5 the cost of removing and disposing of personal property, buildings, and fixtures  
6 remaining upon the land.

7 (d) If the lessee does not restore the land within the time period specified  
8 under (b) of this section, the commissioner may have the land restored and assess the  
9 costs upon the lessee.

10 (e) As part of a lease agreement, and in order to protect the public interest, the  
11 commissioner may require terms for removal or reversion of improvements additional  
12 to those specified in (a) - (d) of this section.

13 (f) Private residential improvements of a lessee that have become fixtures of  
14 the land and that are not removed by that lessee upon termination of the lease shall be  
15 purchased by the subsequent purchaser of the land if the improvements were  
16 authorized in the former lease or by permit from the director and if they have a net  
17 value of more than \$10,000. The net value is the value of the improvements as  
18 determined by an appraisal approved by the commissioner, less all rents due the  
19 department, all costs of restoration under (d) of this section, and all department  
20 expenses estimated to be incurred in making the sale. After termination of the former  
21 lessee's lease, and at additional times as determined necessary by the commissioner,  
22 the value of the authorized residential fixtures shall be determined by an independent  
23 appraisal made at the cost of the former lessee. A notice or offer by the state to sell  
24 formerly leased land under this subsection must state (1) the appraised value of  
25 authorized residential fixtures remaining on the land that must be purchased, and (2)  
26 that that cost is included in the purchase price. Out of the proceeds of the sale, the  
27 department shall pay to the former lessee the appraised value of the residential  
28 improvements, less all rents due the department, all costs of restoration due the  
29 department under (d) of this section, and all department expenses incurred in making  
30 the sale.

31 (g) Personal property described in (c) of this section is not subject to AS 34.45

1 (Uniform Unclaimed Property Act).

2 \* Sec. 29. AS 38.05.130 is amended to read:

3 Sec. 38.05.130. DAMAGES AND POSTING OF BOND. Except for entry  
4 to post mining location corners under AS 38.05.195, 38.05.205, or 38.05.245, rights  
5 [RIGHTS] may not be exercised by the state, its lessees, successors or assigns under  
6 the reservation as set out in AS 38.05.125 until the state, its lessees, successors, or  
7 assigns make provision to pay the owner of the land full payment for all damages  
8 sustained by the owner, by reason of entering upon the land. If the owner for any  
9 cause refuses or neglects to settle the damages, the state, its lessees, successors,  
10 assigns, or an applicant for a lease or contract from the state for the purpose of  
11 prospecting for valuable minerals, or option, contract or lease for mining coal or lease  
12 for extracting geothermal resources, petroleum, or natural gas, may enter upon the land  
13 in the exercise of the reserved rights after posting a surety bond determined by the  
14 director, after notice and an opportunity to be heard, to be sufficient as to form,  
15 amount, and security to secure to the owner payment for damages, and may institute  
16 legal proceedings in a court where the land is located, as may be necessary to  
17 determine the damages that [WHICH] the owner may suffer.

18 \* Sec. 30. AS 38.05.131(a) is amended to read:

19 (a) Unless specifically provided otherwise in AS 38.05.132 - 38.05.134, the  
20 provisions of AS 38.05.005 - 38.05.037 [AS 38.05.005 - 38.05.040], 38.05.140(f),  
21 38.05.180, 38.05.182 - 38.05.184, and 38.05.920 - 38.05.990 apply to the issuance of  
22 oil and gas exploration licenses and leases under AS 38.05.132 - 38.05.134.

23 \* Sec. 31. AS 38.05.185(a) is amended to read:

24 (a) The acquisition and continuance of rights in and to deposits on state land  
25 of minerals, which on January 3, 1959, were subject to location under the mining laws  
26 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in  
27 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to  
28 mineral deposits owned by any other person or government. The director, with the  
29 approval of the commissioner, shall determine that land from which mineral deposits  
30 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that  
31 land that shall be closed to location under AS 38.05.185 - 38.05.275 [MINING].

1 State land may not be closed to [MINING OR MINERAL] location under  
2 AS 38.05.185 - 38.05.275 except as provided in AS 38.05.300 and unless the  
3 commissioner makes a finding that mining would be incompatible with significant  
4 surface uses on the state land. State land may not be restricted to mining under lease  
5 unless the commissioner determines that potential use conflicts on the state land  
6 require that mining be allowed only under written leases issued under AS 38.05.205  
7 or the commissioner has determined that the land was mineral in character at the time  
8 of state selection. The determinations required under this subsection shall be made in  
9 compliance with land classification orders and land use plans developed under  
10 AS 38.05.300.

11 \* Sec. 32. AS 38.05.190(a) is amended to read:

12 (a) The right to acquire exploration and mining rights under AS 38.05.185 -  
13 38.05.275 may be acquired or held only by

14 (1) citizens of the United States at least 18 years of age;

15 (2) legal guardians or trustees of citizens of the United States under 18  
16 years of age on behalf of the citizens;

17 (3) persons at least 18 years of age who have declared their intention  
18 to become citizens of the United States;

19 (4) [ALIENS AT LEAST 18 YEARS OF AGE IF THE LAWS OF  
20 THEIR COUNTRY GRANT LIKE PRIVILEGES TO CITIZENS OF THE UNITED  
21 STATES;

22 (5)] corporations organized under the laws of the United States or of  
23 any state or territory of the United States and qualified to do business in this state [,  
24 EXCEPT THAT IF MORE THAN 50 PERCENT OF THE STOCK OF A  
25 CORPORATION IS OWNED OR CONTROLLED BY ALIENS WHO ARE NOT  
26 QUALIFIED, THE CORPORATION IS NOT QUALIFIED TO ACQUIRE OR HOLD  
27 THE RIGHTS];

28 (5) [(6)] associations of persons described in (1) - (4) [(1) - (5)] of this  
29 subsection.

30 \* Sec. 33. AS 38.05.211(d) is repealed and reenacted to read:

31 (d) The rental amount established under this section shall be revised by the

1 commissioner as provided in this section based on changes in the Consumer Price  
2 Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average)  
3 compiled by the Bureau of Labor Statistics, United States Department of Labor, as  
4 revised, rebased or replaced by that bureau. The reference base index is the index for  
5 January - June, 1989, as revised or rebased by that bureau. The rental amount shall  
6 be revised by the commissioner if the change between the index for the first six  
7 months of the current year and the most recent index used to revise the rental, or the  
8 reference base index if the rental amount has never been revised, equals or exceeds \$5.  
9 The rental amount shall be increased or decreased, as appropriate, by an amount equal  
10 to the change in the index described in this subsection rounded to the nearest whole  
11 \$5 unit. The commissioner shall calculate the change in the index annually and, if the  
12 rental amount must be revised, shall adopt a regulation establishing the revised rental  
13 amount. A revised rental amount applies to a rental payment if the regulation  
14 establishing the revised rental amount took effect at least 90 days before the date the  
15 rental payment is due.

16 \* Sec. 34. AS 38.05.255 is amended to read:

17 Sec. 38.05.255. SURFACE USE OF LAND OR WATER. Surface uses of  
18 land or water included within mining properties by owners of those properties shall be  
19 limited to those necessary for the prospecting for, extraction of, or basic processing of  
20 mineral deposits and shall be subject to reasonable concurrent uses. Leases  
21 [PERMITS] for millsites and tailings disposal may be issued [GRANTED] by the  
22 director. The leases [PERMITS] shall be conditioned upon payment of a reasonable  
23 annual rent [CHARGE] for the lease [USE] and restriction to [CONTINUANCE OF]  
24 the limited use. Timber from land open to mining without lease, except timberland,  
25 may be used by a mining claimant or prospecting site locator for the mining or  
26 development of the location or adjacent claims under common ownership. On other  
27 land, timber may be acquired as provided in this chapter. Use of water shall be made  
28 in accordance with AS 46.15.

29 \* Sec. 35. AS 38.05.255 is amended by adding a new subsection to read:

30 (b) A lease issued under this section is exempt from the provisions of  
31 AS 38.05.075 - 38.05.080. The commissioner, by regulation, shall establish

1 appropriate leasing procedures and annual rent amounts for leases under this section.

2 \* Sec. 36. AS 38.05.265 is amended to read:

3 Sec. 38.05.265. ABANDONMENT. Failure to properly record a certificate of  
4 location or a statement of annual labor, [FILE WITH THE DIRECTOR WITHIN THE  
5 TIME PRESCRIBED A LEASE APPLICATION,] pay any required annual rental, pay  
6 any required production royalty, or keep location boundaries clearly marked as  
7 required by AS 38.05.185 - 38.05.275 and by regulations adopted under these sections  
8 constitutes abandonment of all rights acquired under the mining claim, leasehold  
9 location, lease, or site involved, and the claim, location, lease, or site is subject to  
10 relocation by others. A locator or claimant of an abandoned location or a successor  
11 in interest may not relocate the location until one year after abandonment. A statement  
12 of annual labor that does not accurately set out the essential facts is void and of no  
13 effect. If an annual rental or a royalty payment is deficient but is otherwise timely  
14 paid, abandonment does not result if full payment is made within

15 (1) the period prescribed by a deficiency notice from the commissioner;

16 or

17 (2) 30 days after a final judgment establishing the amount due if the  
18 deficiency amount due was contested.

19 \* Sec. 37. AS 38.05.810(a) is amended to read:

20 (a) Except as otherwise provided in AS 38.05.183(h), the (1) lease, sale, or  
21 other disposal of state land or resources may be made to a state or federal agency or  
22 political subdivision, (2) [THE] lease, sale, or disposal of coal deposits suitable for  
23 mining may be made to a utility owned and operated by a government agency or  
24 nonprofit cooperative association organized to participate under the Federal Rural  
25 Electrification Act for the purpose of generating electric power and energy or the  
26 production of process steam, or both, (3) [OR THE] sale or other disposal of state land  
27 may be made to a tax-exempt, nonprofit corporation, association, club, or society  
28 organized and operated exclusively for the management of a cemetery or a solid waste  
29 facility, or (4) sale or other disposal of land within a state subdivision may be  
30 made to that subdivision's nonprofit, tax-exempt homeowners' association, for less  
31 than the appraised value as determined by the director and approved by the

1 commissioner to be fair and proper and in the best interests of the public, with due  
2 consideration given to the nature of the public services or function rendered by the  
3 applicant [AGENCY, SUBDIVISION, TAX-EXEMPT, NONPROFIT  
4 CORPORATION, ASSOCIATION, CLUB, OR SOCIETY, OR UTILITY MAKING  
5 APPLICATION], and of the terms of the grant under which the land was acquired by  
6 the state. The commissioner shall ensure, by regulation, deed restriction, covenant,  
7 or otherwise, that disposals of land under this subsection serve a public purpose  
8 and are in the public interest.

9 \* Sec. 38. AS 38.05.850(a) is amended to read:

10 (a) The director, without the prior approval of the commissioner, may issue  
11 permits, rights-of-way or easements on state land for roads, trails, ditches, field  
12 gathering lines or transmission and distribution pipelines not subject to AS 38.35,  
13 telephone or electric transmission and distribution lines, log storage, oil well drilling  
14 sites and production facilities for the purposes of recovering minerals from adjacent  
15 land under valid lease, and other similar uses or improvements, or revocable,  
16 nonexclusive permits for the [LIMITED] personal or commercial use or removal of  
17 resources that the director has determined to be of limited value [OF TIMBER OR  
18 MATERIALS]. The commissioner, upon recommendation of the director, shall  
19 establish a reasonable rate or fee schedule to be charged for these uses, subject to the  
20 exception for nonprofit cooperative associations specified in (b) of this section. In the  
21 granting, suspension or revocation of a permit or easement of land, the director shall  
22 give preference to that use of the land which will be of greatest economic benefit to  
23 the state and the development of its resources. However, first preference shall be  
24 granted to the upland owner for the use of a tract of tideland, or tideland and  
25 contiguous submerged land, which is seaward of the upland property of the upland  
26 owner and which is needed by the upland owner for any of the purposes for which the  
27 use may be granted.

28 \* Sec. 39. AS 38.05.945(a) is amended to read:

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

31 (1) classification or reclassification of state land under AS 38.05.300

1 and the closing of land to mineral leasing or entry under AS 38.05.185;

2 (2) zoning of land under applicable law;

3 (3) issuance of a

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

7 (B) final written finding under AS 38.05.035(e)(5)(B) regarding  
8 the sale, lease, or disposal of an interest in state land or resources for oil and  
9 gas subject to AS 38.05.180(b);

10 (C) written finding for the sale, lease, or disposal of an interest  
11 in state land or resources under AS 38.05.035(e)(6);

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

14 (5) [A PUBLIC HEARING UNDER AS 38.05.856(b);

15 (6)] a preliminary finding under AS 38.05.035(e) [AND 38.05.855(c)]  
16 concerning sites for aquatic farms and related hatcheries;

17 ~~(5)~~ [(7)] a decision under AS 38.05.132 - 38.05.134 regarding the sale,  
18 lease, or disposal of an interest in state land or resources.

19 \* Sec. 40. AS 38.08.030(b) is amended to read:

20 (b) Fees for filing an application may not exceed \$25 [\$10].

21 \* Sec. 41. AS 38.08.040(a) is amended to read:

22 (a) An applicant meeting the qualifications for homesite entry under  
23 AS 38.08.030 and selected under (f) of this section shall be issued a revocable permit  
24 to occupy and improve the homesite in order to qualify for issuance of patent as  
25 provided in this chapter. The holder of a homesite entry permit shall pay, in  
26 advance, an annual rental fee of \$100. [THE APPLICATION FEE IS THE SOLE  
27 RENT CHARGEABLE ON THE PERMIT FOR ITS DURATION.]

28 \* Sec. 42. AS 38.08.040 is amended by adding a new subsection to read:

29 (f) If only one application for a homesite parcel is received, the commissioner  
30 shall offer an entry permit for the parcel to the applicant provided the applicant is  
31 otherwise qualified. If more than one application is received for a parcel, the

1 commissioner shall select by lottery the applicant who is entitled to receive the permit  
2 for the parcel. The lottery shall be conducted under regulations adopted by the  
3 commissioner that are to the maximum extent practicable consistent with the provisions  
4 of AS 38.05.057 and the regulations adopted under that section.

5 \* Sec. 43. AS 38.09.010(g) is amended to read:

6 (g) The commissioner may limit the number of persons permitted to obtain  
7 [STAKE] homestead entries within an area designated under (a) of this section by a  
8 lottery of qualified applicants. [THE COMMISSIONER MAY CONDUCT A  
9 LOTTERY HELD UNDER THIS SUBSECTION IN THE COMMUNITY THAT IS  
10 CLOSEST TO THE AREA DESIGNATED FOR HOMESTEAD ENTRY. THE  
11 COMMISSIONER MAY REQUIRE THAT EACH PARTICIPANT IN THE  
12 LOTTERY BE PRESENT UNLESS ATTENDANCE AT THE LOTTERY IS  
13 PREVENTED BY

14 (1) MEDICAL REASONS, ATTENDANCE AT SCHOOL, OR  
15 MILITARY SERVICE OUTSIDE THE STATE; OR

16 (2) A MANDATORY, UNAVOIDABLE EMPLOYMENT  
17 COMMITMENT DETERMINED VALID BY THE COMMISSIONER BEFORE THE  
18 SALE.]

19 \* Sec. 44. AS 38.09.030(a) is amended to read:

20 (a) An applicant for a homestead entry permit shall

21 (1) submit proof acceptable to the commissioner that the applicant is  
22 at least 18 years of age and has been a resident of the state for not less than one year  
23 immediately before the date of application; and

24 (2) pay a fee of \$5 per acre according to the description provided by  
25 the applicant if the entry is on land classified agricultural, or \$20 per acre if the  
26 entry is on land not classified agricultural;

27 (3) agree to comply with the requirements of AS 38.09.050 [;

28 (4) CERTIFY THAT THE CORNERS OF THE LAND ENTERED  
29 HAVE BEEN STAKED AND THE BOUNDARIES HAVE BEEN FLAGGED; OR

30 (5) ASSUME FULL RESPONSIBILITY FOR THE ACCURACY OF  
31 THE DESCRIPTION OF THE LAND FILED WITH THE COMMISSIONER UNDER

1 AS 38.09.020(b)].

2 \* Sec. 45. AS 38.09.050(a) is amended to read:

3 (a) The commissioner shall issue a patent to homestead entry land if the permit  
4 holder

5 (1) either

6 (A) resides and lives on the homestead entry land for not less  
7 than 25 months within five years after the issuance of the homestead entry  
8 permit and reimburses the state for the survey and platting of the  
9 homestead parcel; or

10 (B) within five years pays the state the fair market value of  
11 the homestead parcel at the time of patent and reimburses the state for the  
12 survey and platting of the homestead parcel; and

13 (2) [SUBMITS AN ALIQUOT PARTS DESCRIPTION OR  
14 COMPLETES AN APPROVED SURVEY OF THE LAND IN AN AREA WHERE  
15 THE COMMISSIONER WAIVES THE RECTANGULAR SURVEY GRID WITHIN  
16 FIVE YEARS AFTER THE ISSUANCE OF THE PERMIT;

17 (3) ERECTS A HABITABLE, PERMANENT DWELLING ON THE  
18 HOMESTEAD WITHIN THREE YEARS AFTER THE ISSUANCE OF THE  
19 HOMESTEAD ENTRY PERMIT;

20 (4) BRUSHES THE BOUNDARIES OF THE LAND NOT  
21 DESCRIBED BY ALIQUOT PARTS OR AS A LOT OF RECORD WITHIN 90  
22 DAYS AFTER THE ISSUANCE OF THE PERMIT;

23 (5)] clears and either puts into production or prepares for cultivation  
24 either 25 percent of the land classified for agricultural use or 50 percent of the  
25 cropland soils, whichever is less, within five years after issuance of the permit.

26 \* Sec. 46. AS 38.09.050(b) is amended to read:

27 (b) Nothing in this chapter prohibits a homestead entry permit holder from  
28 residing in a temporary dwelling on the homestead [BEFORE ERECTION OF THE  
29 PERMANENT DWELLING].

30 \* Sec. 47. AS 38.09 is amended by adding a new section to read:

31 Sec. 38.09.105. REMOVAL OF CONDITIONS ON REMOTE PARCEL AND

1 HOMESTEAD ENTRY LAND. (a) The commissioner may not include the  
2 conditions of former AS 38.05.078(d) in a remote parcel purchase contract issued on  
3 or after the effective date of this section.

4 (b) The commissioner shall amend a remote parcel or homestead entry land  
5 purchase contract or patent issued before the effective date of this section to remove  
6 the conditions of former AS 38.05.078(d) or former AS 38.09.050(e) if the holder of  
7 the purchase contract or patent

8 (1) requests the amendment;

9 (2) pays the reasonable administrative costs of the amendment as  
10 determined by the commissioner; and

11 (3) pays the difference, as established by the commissioner, between  
12 the land's fair market value before the amendment and the estimated fair market value  
13 after the amendment.

14 \* Sec. 48. AS 38.95 is amended by adding a new section to read:

15 ARTICLE 7. NO OBLIGATION TO PROVIDE SERVICES TO DISPOSALS  
16 OF STATE LAND; NO LIMITATION ON FURTHER DISPOSALS.

17 Sec. 38.95.300. DISCLAIMER APPLICABLE TO STATE DISPOSALS.

18 Except as otherwise specifically provided, nothing in this title

19 (1) obligates the state to provide services to land that is disposed of by  
20 the state, or any grantee of the state, or is the subject of any disposal program;

21 (2) limits the authority of the state to dispose of land or any interest  
22 in land or resources in the area of the current disposal, provides any exclusive right  
23 or interest in the area of the disposal, or implies or requires that any disposals made  
24 will be limited in type or any other manner.

25 \* Sec. 49. AS 38.04.020(c), 38.04.020(f), 38.04.020(j), 38.04.020(k);  
26 AS 38.05.035(e)(6)(F), 38.05.040, 38.05.057(g), 38.05.057(j), 38.05.079(d), 38.05.207,  
27 38.05.855, 38.05.856, 38.05.945(g), 38.05.946(b); AS 38.08.090; AS 38.09.010(e), 38.09.020,  
28 38.09.040(a)(2), 38.09.040(a)(3), 38.09.040(a)(4), 38.09.050(d), 38.09.050(e), 38.09.060,  
29 38.09.070, 38.09.090, 38.09.900(1), 38.09.900(3), and 38.09.900(4) are repealed.

30 \* Sec. 50. Notwithstanding AS 41.21.120 - 41.21.125, within Township 10 North, Range  
31 1 East, Seward Meridian, the commissioner of natural resources may

1 (1) convey a property interest in land to the Alaska Railroad Corporation for  
2 the purpose of realigning the railroad in conjunction with the relocation of the Seward  
3 Highway, provided that the property interest conveyed must be equivalent to that conveyed  
4 to the state-owned railroad under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of  
5 1982) and shall be held and managed by the Alaska Railroad Corporation under AS 42.40;

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

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

12 \* Sec. 51. APPLICABILITY. The change to the interest rate to be charged on contracts  
13 for the sale of land under AS 38.05.065, made by secs. 17 - 19 of this Act, applies to all  
14 contracts under AS 38.05.065 sent by the Department of Natural Resources to purchasers for  
15 signature on or after the effective date of secs. 17 - 19 of this Act.

16 \* Sec. 52. REVISOR'S INSTRUCTION. The amendments to AS 38.05.082(b), made by  
17 sec. 24 of this Act, do not affect the amendments made to that subsection by sec. 3, ch. 27,  
18 SLA 1991, effective January 1, 1997. Unless amended or repealed by Act of the legislature  
19 after the effective date of this section, the amendments to AS 38.05.082(b), made by sec. 24  
20 of this Act, continue in effect after the amendments made by sec. 3, ch. 27, SLA 1991, take  
21 effect January 1, 1997.

22 \* Sec. 53. TRANSITIONAL PROVISIONS: REGULATIONS. (a) Notwithstanding  
23 sec. 54 of this Act, the Department of Natural Resources may proceed to adopt regulations  
24 necessary to implement the changes made by this Act. The regulations take effect under  
25 AS 44.62 (Administrative Procedure Act), but not before July 1, 1995.

26 (b) To the extent they are consistent with AS 38.08, regulations governing the  
27 selection of applicants for homesite parcels under AS 38.08 in effect on the effective date of  
28 secs. 41 - 42 of this Act remain in effect notwithstanding the amendment to AS 38.08.040,  
29 made by secs. 41 - 42 of this Act, until the regulations are amended, repealed, or superseded.

30 \* Sec. 54. Except for sec. 53 of this Act, this Act takes effect July 1, 1995.

31 \* Sec. 55. Section 53 of this Act takes effect immediately under AS 01.10.070(c).

Changes from SS HB 191 to CS SS HB 191 (RES) work draft "F" 3/30/95:

- Section 1: Clarifies that when determining separation of residences, the department's consideration of the availability of timber, firewood, and water resources does not imply a person has exclusive use of these resources. This is intended to reduce a purchaser's expectation of no further disposals or development in the area.
- Secs 2-5: Same as SS HB 191
- Section 6: Technical amendment from section 5 of SS HB 191, removes references to staking.
- Section 8: Technical amendment from section 7 of SS HB 191, needed to conform with changes in remote cabin permit program, see sections 22 and 23.
- Section 13: New section, removes references to staking.
- Section 20: New section, intended to allow agricultural land to be sold at true market value by making preference right to the adjacent agricultural landowners at the discretion of the department. Mandating the preference right tends to depress competition or eliminate it altogether while unaffected parcels are bid up past appraised value.
- Sec 22-23: Amends the remote cabin permit program. These permits have never been offered because of the cost to implement, with no return to the state. These changes will allow the department to provide for the sale or lease of state land for remote recreational cabin sites. Sales must be at fair market value and the purchaser must reimburse the state for appraisal, survey and platting costs.
- The term of a lease permit is no more than 5 years which may be renewed for one additional 5 year period. During the term of the lease the permittee may purchase the site by paying fair market value for the site.
- Section 26: New section, intended to clarify that a person holding shore fisheries permit has the right to renew that permit.
- Section 43: Technical amendment from section 37 of SS HB 191, removes references to staking.
- Section 44: Technical amendment from section 38 of SS HB 191, removes references to staking.
- Sec 45-46: New sections, amends the homestead entry program. Allows for a person to reside on the homestead land and reimburse the state for survey and platting, or within 5 years pays the state the fair market value of the homestead at the time of patent and reimburses the state for the survey.
- Removes the staking and brushing requirements, and removes references to "habitable, permanent dwelling".
- Section 48: New section, clarifying that the state has no obligation to provide services to disposals of state land, and a disposal does not by itself limit further disposals.
- Section 49: Repealers

HOUSE RESOURCES COMMITTEE



Alaska State Legislature  
House of Representatives

DATE: 3/22/95

PLACE: ROOM 124

SUBJECT OF MEETING:  
HB 191 - management of State  
Land and Resources

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Doug Redburn	DEC	410 Willoughby Ave. <sup>Turkey</sup>	99801			Y	(N)	
✓ Ron Swanson	DNR	3601 C St. Anch	99503		762-2692	(Y)	N	
HUGH MALOWE	KENAI PENINSULA FISHERMEN'S ASSOC.	119 SEWARD ST #3 Kenai Alaska	99821	586356		(Y)	N	SHORT LEASES HB 191
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

HOUSE RESOURCES COMMITTEE  
Roll Call and Members' Bill Votes

\* (indicates first public hearing)

Room 124, Capitol Bldg.

Mon., Wed., Fri.

Date: 3/22/95

Tape# 95-38 Joint \_\_\_\_\_

Time: 8:08 am/pm Time Adjourned: \_\_\_\_\_ am/pm

ROLL CALL:	PRES	ABS	TIME	AR	_____	_____	_____
Rep. Joe Green	✓	_____	_____	_____	_____	_____	_____
Rep. Bill Williams	_____	_____	<u>8:21</u>	_____	_____	_____	_____
Rep. Scott Ogan	✓	_____	_____	_____	_____	_____	_____
Rep. Alan Austerman	✓	_____	_____	_____	_____	_____	_____
Rep. Ramona Barnes	_____	_____	<u>8:40</u>	_____	_____	_____	_____
Rep. John Davies	_____	_____	<u>8:09</u>	_____	_____	_____	_____
Rep. Pete Kott	✓	_____	_____	_____	_____	_____	_____
Rep. Eileen MacLean	_____	_____	_____	_____	_____	_____	_____
Rep. Irene Nicholia	_____	_____	_____	_____	_____	_____	_____

Other Legislators Present \_\_\_\_\_

AGENDA:

Bill No.	Short Title	Action Taken
<u>113191</u>	<u>Management of State Land + Resources</u>	<u>Heard + Held</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

House Resources  
3-22-95 8:08am  
Tape #95-38  
HB 191

# Alaska State Legislature

REPRESENTATIVE  
**GENE THERRIALT**  
P O Box 55326  
North Pole, Alaska 99705  
(907) 488-0862

House District 33



White in Juneau  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4797

## House Of Representatives

**SS HB 191**      "An Act relating to the management and disposal of state land and resources; relating to certain remote parcel and homestead entry land purchase contracts and patents; and providing and effective date."

**SPONSOR:** Rep. Gene Therriault

### **SPONSOR STATEMENT:**

This bill is a housekeeping measure intended to clarify certain Title 38 statutes governing DNR's management of state land and resources. SS HB 191 is intended to bring greater efficiency to the management of state lands without sacrificing public involvement in land use decisions.

As the House finance subcommittee chairman for the DNR budget, I have worked with the Department to come up with changes to Title 38 that would simplify programs and reduce costs to DNR. The passage of this bill will result in a more administratively efficient agency.

Although this bill is not intended to be a complete rewrite of Title 38, I believe it is a positive effort, supported by the administration to streamline state government.

POSSIBLE AMENDMENTS TO SSHA 191  
TO ADDRESS AS 38 LAND DISPOSAL POLICIES

During the budget review, legislators expressed interest in encouraging innovative land disposal procedures; ensuring fair return from land disposals, while dropping costly administrative requirements that produce little benefit; minimizing future public service costs and expectations of "entitlements;" and reducing the risk that new landowners will oppose subsequent land disposals and other resource development.

The following are possible ways to incorporate those goals into AS 38. As noted (.), some of these are already included in SSHB 191. Additional ideas to address specific concerns are also noted (\*).

**Encouraging innovative land disposal methods:** Sec. 10 of SSHB 191 would allow DNR to adopt new land disposal methods by regulation, so long as the sale process is competitive and ensures the state will receive at least fair market value for the land.

**Ensuring fair market value from state land sales:**

- The existing AS 38.04.035 says that sales of public land to private individuals "should" be at fair market value unless specifically exempted by the legislature. The word "should" leaves too much room for interpretation. Sec. 11 of SSHB 191 would replace it with "shall."
- An existing five-acre size limit on subdivision lots in AS 38.04.020(h) should be waivable if larger lots would be more marketable. Sec. 6 of SSHB 191 would allow this.
- The homestead law, AS 38.09.050(d) and (e), and the repealed remote parcel law AS 38.05.078(d) (still applicable to existing remote leases and sale contracts), limit the new owner's ability to resell or subdivide the homestead or remote parcel for varying periods of time. These restrictions cut the price received by the state by 50 percent. Eliminating them would double the return to the state from future purchase contracts. Even the amount received from existing purchasers and patentees could be increased by letting them "buy out" their restrictions on a voluntary basis. Secs. 39-40 of SSHB 191 would do this.
- \* AS 38.05.069(a) mandates that when DNR sells or leases agricultural land at auction, "adjacent" agricultural landowners have the right to meet the high bid. Such preference rights tend to depress competition for the parcel, sometimes eliminating other bids altogether--while unaffected parcels are bid up to two or three times their

appraised price. Making this subsection discretionary would allow agricultural land to be sold at its true market value.

- Under the current homesite law (AS 38.08.040(a)), the \$10 application fee for an entry permit is the "sole rent chargeable" for seven years' exclusive use and occupancy of the site. The homestead law (AS 38.09.030(a)) charges the homesteader \$5 per acre for five years' exclusive occupancy. Both laws should be updated to charge at least token rentals: \$100 per year for a homesite, and \$20 per acre, paid in advance, for a homestead. Secs. 35 and 37 of HB 191 would make these changes.
- \* Because of changes to the homestead law in 1988, all homestead parcels must now be pre-surveyed by the department instead of being surveyed by the homesteaders five years after entry. AS 38.09.020 says that the commissioner "may require the homesteader to establish a deposit for the costs of survey," thus permitting the state to recoup its survey and platting expenditures. This should be made mandatory, similar to AS 38.05.060(a)(3) for the homesite program: "The commissioner shall require the homesteader to reimburse the state for the survey and platting of the homestead parcel."
- \* Those same 1988 survey changes made the staking and line-brushing requirements of AS 38.09 obsolete. They should be repealed, relieving a burden on the homesteader (especially for physically disabled applicants) and eliminating extra paperwork for the department. This would be done by repealing AS 38.09.010(e), the first sentence in AS 38.09.020(b), AS 38.09.030(a)(4), AS 38.09.040(a)(4), AS 38.09.050(a)(4), AS 38.09.060, the cross-reference to AS 38.09.050(a)(4) in AS 38.09.090(a), and AS 38.09.900(1), and by replacing the word "stake" in AS 38.09.010(g) with "obtain."
- Remote cabin permits, AS 38.05.079, could be an excellent way to allow dispersed recreational use. Although these permits are actually 25-year leases, they would be less costly to issue than standard leases because they are exempt from the survey law, AS 38.04.045. But their statutory rental of \$100 per year (AS 38.05.079(b)) is well below present fair market value. It should be replaced by instructions to ensure a fair return for the use.

**Minimizing future public service costs or expectations of entitlements:**

- \* The homesite law (AS 38.08.090) states, "DISCLAIMER OF INTENT TO PROVIDE SERVICES. Nothing in this chapter

obligates the state to provide services to land which is the subject of homestead entry and patent." This disclaimer could be made applicable to other state land disposal programs by putting it in AS 38.04 (land policy generally), AS 38.05 (auctions, lotteries, leases, etc.), and AS 38.09 (homesteads).

- The existing AS 38.04.010 and 38.04.015 direct that land disposals be planned to minimize public service costs. If public services and sources of employment do not exist in the area, land may be offered for seasonal recreational use or low-density settlement. These statutes provide sound policy guidance for residential offerings, but their assumptions for remote or recreational land disposals may not be correct. Once state land has passed into private ownership, only local platting and zoning restrictions (which may be minimal or non-existent) control its use and further subdivision. Calls for new public services may result, despite the department's original intentions. One possible solution is to amend the remote cabin permit statute as recommended above and use it for dispersed recreational offerings, prohibiting residential use as a condition of the lease.

#### Reducing the purchasers' opposition to new development:

- \* AS 38.04.010(b) directs the department to consider the availability of timber, firewood, and water in determining separation between residences. Some purchasers assume they have an "entitlement" to use surrounding state land as a free woodlot and have opposed further disposals on this basis. The language could be clarified to eliminate that assumption.
- \* Proper regional land use planning, already being done under AS 38.04.065, should minimize "Not-in-my-Back-Yard" syndrome by land purchasers. If the land use plan calls for further land disposals or a future timber sale, purchasers will have time to adjust to the idea and cannot assume the land will remain wilderness. The plan may even be able to schedule resource extraction before the surface land disposal, eliminating a source of conflict. Such planning was not possible during the land disposal quota era, when scores of new subdivisions and remote staking areas were created, especially in the Susitna Valley. These offerings were classified for the "land disposal bank" with minimal planning, resulting in many unforeseen problems (e.g. they created so many scattered inholdings in the Susitna Valley that a major timber sale proved impossible). AS 38.04.065(h) was amended in 1987 to require that regional land use planning precede most major state land disposals.

which should prevent similar problems in the future. The requirement does not apply to auction sales, a loophole that could be corrected.

- One proposed solution to let the Susitna Valley timber sale proceed was to create buffer areas around each land disposal area; cutting could take place just beyond it. Although not possible in that case because there were too many separate disposals, future subdivisions could be platted with their own surrounding greenbelt of reserve lots, just as they are often platted with reserve lots in the center. However, it has proved costly for the department to manage reserve lots, that primarily benefit subdivision residents. AS 38.05.810 could be amended to allow the department to convey these reserved "common areas" to the subdivision's homeowners' association for retention and management, with each parcel purchaser sharing in the cost. Sec. 31 of SSHB 191 would allow this.

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. HB 191

Revision Date: \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title: Management of State Land and Resources BRU: Habitat and Restoration  
 Component: Habitat  
 Sponsor: Representative Therriault  
 Requester: Resources, Finance COMPONENT SERIAL NO. 486

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

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY95) cost: \$ \_\_\_\_\_

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

This bill is anticipated to have little or no affect on the department's programs. It may have a long-term positive fiscal impact by reducing land use conflicts and thereby reducing the department's workload pertaining to review and response to the Department of Natural Resources' actions.

Prepared by: Ellen Fritts, Acting Director  
 Division: Habitat and Restoration  
 Approved by Commissioner: Frank...  
 Agency: ADP&G

Phone: 465-4105  
 Date: \_\_\_\_\_  
 Date: 3.15.95

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# FISCAL NOTE

**STATE OF ALASKA**  
**1995 LEGISLATIVE SESSION**

**BILL NO. SSHB191**

Revision Date: 20-Mar-95 Dept Affected: Natural Resources  
 Title: An Act relating to the management and disposal of BRU: Resource Development  
state land and resources; relating to certain remote parcels and ... Component: Land Development  
 Sponsor: Representative Therrault  
 Requestor: \_\_\_\_\_ Component Serial No. 431

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
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 EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

Estimate of any current year (FY95) cost: \$ None

POSITIONS	FY96	FY97	FY98	FY99	FY00	FY01
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

See attached sectional analysis.

Prepared by: Ron Swanson, Director Phone: 762-2692  
 Division: Land Date: 20-Mar-95  
 Approved by Commissioner: \_\_\_\_\_ Date: 3-20-95  
 Agency: Natural Resources

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Sectional Analysis of SSHB 191  
(9-LS0766\C 3/15/95)

Secs. 1-25, 28-29, and 31-44 affect the Division of Land. Secs. 23 and 25-30 affect the Division of Mining and Water Management. Sec. 24 affects the Division of Oil and Gas. Sec. 41 affects the Division of Parks and Outdoor Recreation.

Secs. 1-9 are basic housekeeping:

- Secs. 1 and 2 would merge the old "land disposal bank" into the existing state land disposal program. Under laws passed in the last decade, regional land use plans are used to identify land that will be offered for private ownership. More than 2,000,000 acres have been classified through this process, making the land bank obsolete. Related references to the land disposal bank are repealed in Sec. 40. (AS 38.04.020(a)-(b), plus repealers of (c), (f), (j), and (k).)
- Sec. 3 would rewrite AS 38.04.020(d) to retain its substance--a biennial report to the legislature on the current inventory of state land available for disposal--without requiring a separate "land disposal bank." For efficiency, the report would be tailored to the way that inventory is catalogued: by its classification. Land suitable for most commercial, industrial, residential, and private recreational use is grouped together in the "settlement" classification, but is separate from the "agricultural" and "grazing" classifications. (AS 38.04.020(d).)
- Sec. 4 would put the state land disposal program on the same footing as other natural resource sale programs: whether to submit a budget request each year would be discretionary, not mandatory. But each budget proposal would be complete. It would request the full funding needed to get the land disposal projects ready for sale, including any access roads or other capital improvements that might be required. (AS 38.04.020(e).)
- Sec. 5 would make technical corrections, dropping an out-of-order classification reference: land must already be planned and classified for disposal before the surveying and platting process begins. (AS 38.04.020(g).)
- Sec. 6 would make clear that the five-acre limit on subdivision lots applies to land sold for residential and recreational uses, not agricultural parcels, commercial parcels, etc. This clarification is needed because under current law, any division of a tract for purposes of sale constitutes a subdivision. The amendment would also allow

larger lots if that would be a better marketing decision for the state. (AS 38.04.020(h).)

- Sec. 7 would update a list of state land disposal programs by adding the homestead law. (AS 38.04.020(i).)
- Sec. 8 would correct a missing item in the budget appropriation process, clarifying that the commissioner's disposal funding request must go to the governor first, not be sent straight to the legislature. (AS 38.04.021(a).)
- Sec. 9 would delete a cross-reference to an annual land demand study, repealed by this bill. (AS 38.04.021(b).)

Sec. 10 would let the Department of Natural Resources create new land disposal programs by regulation, so long as they provide for competition and produce at least fair market value for the land. (AS 38.04.030.)

Sec. 11 clarifies the legislature's policy that sales of public land to private individuals should be at fair market value unless specifically exempted, and gives further guidance on the remote-cabin program. (AS 38.04.035.)

Secs. 12-14 and 37 respond to a Superior Court decision that it is unconstitutional to make state land purchasers appear in person at a state land sale.

- Sec. 12 would make it discretionary where to hold land auctions and lotteries. (AS 38.05.050.)
- Sec. 13 would delete the personal-appearance requirement for land auctions, allowing bidders to be represented by an agent. (AS 38.05.055.)
- Sec. 14, and a related repealer in Sec. 40, would delete the requirement that purchasers appear in person at land lotteries and pay the down payment on the spot. Instead, they would have 30 days to make the payment. It also drops language about consulting with the local assessor to determine land values, which is unnecessary because AS 38.05.840 requires a formal appraisal before the land can be offered for sale. (AS 38.05.057(a), plus repeal of (g).)
- Sec. 37 deletes the authority to make applicants appear in person at a homestead lottery. (AS 38.09.010(g).)

Secs. 15-17 would change how interest rates are computed for state land sale contracts.

- Secs. 15-16 would repeal the current system that relies on the old Federal Land Bank's "prevailing" rate. (The Federal Land Bank's successor now uses many different rate systems with multiple variables, rather than a single prevailing rate.) It would also change the point at which the rate is determined, solving the problem of the rate changing after the contract is mailed out for signature but before both parties have signed. (State land sale contracts are not signed in a face-to-face closing ceremony.) Sec. 15 would also let contracts for auction parcels be issued for less than 20 years. This is already allowed for lottery parcels. (AS 38.05.065(a)-(b).)
- Sec. 17 would replace the old Federal Land Bank interest rate with a new system for state land sale contracts. Interest would be based on the prime rate, the widely quoted market rate used for a bank's most credit-worthy corporate loan customers. A four percent add-on would adjust for the unique circumstances of state land sale contracts, which do not involve any credit check. The total would be capped at 13.5 percent. The rate would be computed monthly and would apply to all contracts prepared that month. (AS 38.05.065(i).)

Sec. 18 updates a law that allows a preference right to purchase "adjacent" agricultural land. It defines the term "adjacent" instead of "approximate vicinity," a term that was removed from the body of the law in 1984. (AS 38.05.069(e)(2).)

Secs. 19-21 and 33, along with certain repealers in Sec. 40, would simplify the process of leasing "shore fishery" (set-net) sites and aquatic farmsites (shellfish and sea vegetable farms). They would repeal requirements that increase administrative costs or keep the state from obtaining a fair return for the use of tidelands and submerged lands.

- Sec. 19 would eliminate a unique leasing process for set-net sites, allowing standard state leasing laws to apply. Negotiated leases could be used up to the standard rental ceiling of \$5,000. Higher-value or contested leases could be awarded at auction, rather than making the director decide who is the "most qualified" applicant. AS 38.05.082(d), which allows existing lessees to be given a preference to a renewal lease, would be left intact. (AS 38.05.082(b).)
- Sec. 20 would eliminate special provisions that prevent the state from obtaining fair market value rental for shore fishery leases. (AS 38.05.082(e).)
- Sec. 21 would rewrite the aquatic farmsite law to let standard state leasing laws be used. Sites could be

offered directly at auction or by negotiated lease, rather than first being developed under a three-year permit process. As with other types of land disposals and leases, public hearings on the leasing decision would be held as needed, but would not be mandatory. (AS 38.05.083, plus repealers of AS 38.05.855, AS 38.05.856, AS 38.05.946(b).)

- Sec. 33 would delete references in the public notice law to special aquatic farmsite permit procedures repealed by Sec. 40 of the bill: mandatory public hearings and preliminary findings before issuing permits.

Sec. 22 would modernize requirements to restore surface lease sites after lease termination, protecting the state against liability and high cleanup costs. Because other provisions of AS 38 apply this leasing statute to terminated homesites, homesteads, remote cabin permits, etc., special measures of the existing AS 38.05.090 would be retained to compensate individuals for authorized private residential improvements that are not removed from the site and are worth more than \$10,000 net value. (AS 38.05.090.)

Sec. 23 would amend a statute that requires mineral developers to make arrangements with the surface owner, before entering onto the land, to pay for any surface damages that might result. The exception would allow entry to stake the corners of a mining claim, leasehold location, or prospecting site location, an activity that has little or no potential to cause any surface damage. (AS 38.05.130.)

Sec. 24 is a technical amendment narrowing a reference to the "Administration" article of AS 38.05, whose last section (a bonding requirement for the director of the statutory Alaska Division of Lands) would be repealed by Sec. 40 of this bill. (AS 38.05.131(a).)

Sec. 25 would eliminate overly broad language that theoretically allows the department to close state land to "mining," not just to "mineral location" (the act of staking new mining locations). A valid mining claim includes the "exclusive right of ...extraction," i.e. mining rights. The department could not close off already-acquired mining rights without effecting a "taking" of valid existing rights, which would run afoul of Art. I, Sec. 18, and Art. VIII, Sec. 16, of the Alaska Constitution. This amendment would eliminate a potential pitfall. (AS 38.05.185(a).)

Sec. 26 would amend AS 38.05.190(a) to clarify the qualifications for ownership of mining rights 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. U.S. 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." 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. (AS 38.05.190(a).)

Sec. 27 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 is likely to yield 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, possibly causing hardships to mining locators and lessees. The amendment would require the department to check the consumer price index each year and adjust the rate if the adjustment is \$5 or more. Changes could only be made in \$5 increments. The amendment also more clearly identifies the consumer price index on which changes are to be based. (AS 38.05.211(d).)

Sec. 28 would authorize surface leases for certain mineral development uses. Surface use needs for small mines are generally modest enough to meet with a simple land use permit, protected by the underlying "exclusive right of possession and extraction of the [locatable] minerals" acquired by a valid mining location. However, most major mines require large-scale, costly surface improvements such as dams, mills, and tailings impoundments. The mineral developer needs long-term security of tenure to protect this investment, something that cannot be provided by a revocable permit. Surface leases for millsites, tailings disposal sites, and similar purposes would require reasonable annual rental. (AS 38.05.255.)

Sec. 29 would add a new subsection to clarify that mining developers' surface leases are not subject to competitive bidding statutes. Requiring the department to hold a lease auction would serve no purpose, as the mineral developer would be the only party in a position to bid for and use the lease. The department would be required to adopt regulations setting leasing procedures and annual rentals. (AS 38.05.255(b).)

Sec. 30 would eliminate the failure to file a lease application on time as grounds for abandonment of a mining location. In areas open to mining only under lease, a locator must apply for and obtain a lease before gaining the right to mine. AS 38.05.205(a). After the department gives public notice of the proposed mining lease, it must promptly mail an application to the leasehold locator, who then has 90 days to file the application. But under the existing AS 38.05.265, failing to file on time automatically causes "abandonment" (voiding) of the leasehold locations involved, too harsh a penalty for a late application. (AS 38.05.265.)

Sec. 31 would allow the department to convey "common areas" in state subdivisions to the subdivision's homeowners' association for retention and management. Many state subdivisions were platted with certain lots reserved from disposal to provide open space and recreation for subdivision residents. The intention was eventually to transfer these reserved lots to local government. But where there is no local government or it does not want to assume management responsibility, conveyance to the homeowners' association is a logical substitute. The department would be required to ensure that the conveyance serves a public purpose. (AS 38.05.810(a).)

Sec. 32 would clarify that the division can allow livestock grazing, commercial berry picking or mushroom harvesting, and similar minimal-value consumptive uses by issuing permits, an authority the Department of Law recently questioned. (AS 38.05.850(a).)

Sec. 33: See under Sec. 21.

Sec. 34 would raise the application fee for homesites from the current \$10 to a maximum of \$25, the same as for lottery parcels. (AS 38.08.030(b).)

Sec. 35 would add a cross-reference to the lottery process used to select the winner of a homesite entry permit. It would also require a token annual rental of \$100 until the permit holder "proves up" or purchases the lot. Because a homesite entry permit is a contract, the rental requirement would not apply to existing entry permits. (AS 38.08.040(a).)

Sec. 36 would add a new subsection directing that homesite entry permits be offered at lottery. Using the lottery procedures of AS 38.05.057 was formerly a statutory requirement, but a 1984 amendment left the connection unclear. The department would be required to adopt regulations as consistent as possible with AS 38.05.057.

Sec. 37: See under Sec. 12.

Sec. 38 would raise the fee to receive a non-agricultural homestead entry permit to \$20 per acre. This is a one-time rental fee, lasting for the entry permit's five-year term. The rental fee for agricultural homesteads would remain at the current \$5 per acre. (AS 38.09.030(a).)

Sec. 39 affects both the remote parcel program and the homestead program. (The remote parcel law was repealed in 1983, effective in 1984, but the program will be alive until at least the year 2016. The last parcels were staked in 1984, and the last leases issued in 1985-1986. The lessees will have until 1996 or later to survey their parcels, and can then enter into 20-year purchase contracts.) This section would prohibit the department from imposing the conditions of the former AS 38.05.078(d) in new remote parcel purchase contracts. These conditions restricted the sale or subdivision of remote parcel land after it was conveyed into private ownership. It would also allow the department to amend existing remote parcel or homestead purchase contracts or patents to remove these restrictions if the holder consents and reimburses the state for the difference in value. (Each parcel's purchase price was cut by 50% to account for the resale restrictions.) (AS 38.09.105.)

Sec. 40's repealers affecting the land disposal bank (AS 38.04.020) and down payments at land lotteries (AS 38.05.057(g)) are discussed under Secs. 1 and 14. Repealing AS 38.05.057(j) eliminates special lottery procedures for an agricultural project statute that was repealed in 1979. Repealing AS 38.05.035(e)(6)(F), AS 38.05.207, and AS 38.05.945(g) would eliminate the mining production license program, an early attempt to solve the "6(i) problem" that became moot when AS 38.05.211-.212 were enacted in 1989. Repealing AS 38.05.040 would eliminate the requirement for a \$150,000 bond for the director of the statutory Division of Lands, which was subsequently reorganized and subdivided into several different divisions. Repealing AS 38.05.855, AS 38.05.856, and AS 38.05.946(b) eliminates requirements associated with aquatic farmsite permits; see Secs. 21 and 33. Repealing AS 38.09.050(d) and (e) would remove restrictions on selling or subdividing land after it has been conveyed to a homesteader; see related changes under Sec. 39.

Sec. 41 would authorize railroad, highway, and utility line rights-of-way within Chugach State Park necessitated by a Seward Highway relocation project at Bird Point (between Anchorage and Girdwood).

Sec. 42 would specify that the interest rate changes made by Secs. 15-17 of the bill apply to all contracts sent out to be signed after the bill's effective date.

Sec. 43 would ensure that changes made to AS 38.05.082 by Sec. 19 of the bill will continue in effect after 1997, when unrelated changes enacted in 1991 take effect,

Sec. 44 would allow the department to adopt regulations in advance of the bill's effective date, and includes a savings clause for the existing homesite disposal regulations until they can be changed.

Secs. 45-46 are effective date clauses; the regulation clause would take effect immediately, with the remainder of the bill effective July 1, 1995.

# MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

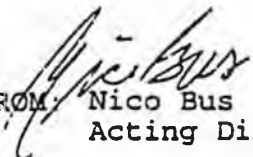
SUPPORT SERVICES DIVISION

TO: John Shively  
Commissioner

DATE: February 15, 1995

FILE NO.: landintr

TELEPHONE NO.: 465-2406

  
FROM: Nico Bus  
Acting Director

SUBJECT: Interest Rate  
Charged Under  
AS 38.05.065

The working group that was established to review the interest rate charged under AS 38.05.065 has completed its work. The findings of the work group are summarized below.

## FINDINGS:

### 1. General Information

The Alaska Lands Act provides for the disposal of State land for private use. Commercial banks and lending institutions normally will not finance the acquisition of unimproved land, especially in remote areas. To reduce the instances of speculation and promote the transfer of State land to the broadest spectrum of the Alaskan population, AS 38.05.065 was passed by the legislature to allow the purchase of land on an installment basis. The contract obligors are not subject to a credit check. A five percent down payment is the only requirement. Title to the land is not conveyed until the installment contract is completely paid.

### 2. History of Interest Rate Charged

In 1979, the statute (AS 38.05.065) was changed to establish how the interest rate on land sale contracts should be determined. The statute allows for installment payments 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.

The federal land bank was superseded by the Farm Credit Service (FCS) in the 1980's. From 1979 to 1987, only one rate was furnished each month to Division of Land (DOL) by either the federal land bank or FCS. In 1987, FCS provided DOL three variable interest rates classified as Tier I, II, or III. The rates varied from 9.75% for Tier I to 12.25% for Tier III. FCS used the Tier I rate for the most credit worthy applicants. DOL chose to use the Tier III rate since credit information was not required from the contract applicant.

In 1988, FCS replaced the three variable rate tier system. The new system for agriculture loans included four variable interest rates for each of eight different terms (one to thirty years). Each of the 32 rates was subject to a rate code adjustment for credit worthiness. A credit of .61% was allowed for a 5% buy down of the principal (down payment). On November 28, 1988, DOL Director's Policy 89-06, established rate code 6 as the rate that

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DOL would use as the adjustment for the financial condition of the average Alaskan borrower. Rate code 6 increased the base rate by 1%.

FCS again changed their rate methodology in September 1989. They established one base rate for the eight different terms. A variable rate was used for shorter duration loans (one or five years). For long term loans (ten to thirty years) the one rate that was quoted was a fixed interest rate mortgage. FCS continued to use the six rate codes for credit worthiness. Although they offered fixed rate and variable rate loans, most loans issued were variable rate loans. An attorney for FCS, in July 1989, determined that an equitable fixed rate mortgage loan rate would be 1.75% more than the variable rate used by FCS. Therefore, from September 1989 through December 1994, DOL used the base rate provided by FCS for a 20-year mortgage and adjusted this interest rate upwards 1.75% for the variable to fixed rate adjustment, and increased it an additional 1.00% for the rate code 6 adjustment. This 2.75% increase was then reduced by .61% because land sale contract obligors were required to make a 5% down payment.

In April 1991, FCS again changed their rating system for credit worthiness from six rate codes to five alpha ratings (AAA, AA, A, B, C) for both fixed and variable rate mortgages. They continued to offer the eight different terms. A loan with a rating of AAA was reserved for the most credit worthy applicants. At this time, FCS stopped granting a credit for a down payment amount. Since the FCS is not a public lending institution, it can establish its own rates that favor particular markets and customers. It can, and does, discriminate against less credit worthy borrowers.

### 3. Prevailing Rate

The Attorney General's Office advised the work group that there is more than one possible interpretation of the "prevailing rate" under AS 38.05.065. Under one interpretation, the prevailing rate could be characterized as the rate used "most frequently" by FCS for real estate mortgages. Under this interpretation, the rate numerically used most often would become the "prevailing rate." This interpretation could result in widely fluctuating rates on DNR land sale contracts. Rates would fluctuate not only as market conditions changed, but also as the "prevailing" mix of mortgages made by FCS changed. The shorter the period (daily, weekly, monthly) used, the more DNR's rate would fluctuate.

Under a second interpretation, the prevailing rate could be characterized as the rate FCS would "generally" use if the land sale contract was a mortgage loan. The FCS uses many different rates based upon the terms of the loan and financial condition of the borrowers. Therefore, FCS cannot fairly be characterized as having "one" prevailing interest rate for real estate mortgages. For January 1995, the "prevailing" rate, in terms of "generally

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current, widespread, or prevalent" is a range of rates, from 14.7% to 11.0% for twenty-year fixed rate mortgages and a broader range for other types of mortgages. The work group believes that this interpretation is best because the interest rate will more accurately reflect the type of credit DNR extends and DNR's interest rate would not fluctuate merely because FCS makes different types of mortgages.

The Attorney General's office considers both interpretations of the "prevailing rate" under AS 38.05.065 are defensible, as neither is clearly correct nor clearly incorrect.

#### 4. Interest Rate Methodology

Because the base methodology for determining the interest rate has changed since the statute was originally passed in 1979 and is now subject to different interpretations, the Attorney General's Office has advised the work group that the method used to determine the interest rate charged on land sale contracts should either be formalized in a regulation or enacted in legislation. The work group is concerned that, for several reasons, adopting regulations using the interest rates provided by FCS may not be in the best interest of the land sale contract obligors or the State. First, the contract obligors cannot independently verify the interest rates. Second, the rates are not decided by market forces; they fluctuate based on internal management decisions of FCS. Third, there has been a lack of consistency in how FCS has presented interest rates to DNR. In the past eight years, the method of presenting rates by FCS has changed four times. Each change introduced new factors from the previous method. Therefore, FCS's methodology to determine the rates was not consistent, causing DNR to make multiple adjustments.

An alternative to writing a regulation would be to change AS 38.05.065. The statute could be amended to charge a rate that is regularly reported in financial publications like the Wall Street Journal. This rate could be based on the prime rate, a universally accepted rate. The prime rate is the rate that banks charge their most credit worthy corporate borrowers. Since land sale contracts are intended for individuals and not for the most credit worthy corporations, and since no credit information is required, an interest rate higher than the prime rate should be charged. An upper limit could be placed on this rate. The current prime rate is 9.0% and the current interest rate for land sale contracts is 13.14%.

Until a regulation is approved or the statute is amended, an internal management decision should be made to address how the interest rate is calculated by DNR. The rate used in this internal management decision should be one of the five rates (AAA, AA, A, B, C) used by FCS for twenty-year, fixed-rate real estate mortgages. The reasons for choosing the "A" rate include:

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- a. The "A" rate is the midpoint rate. If one standard rate is chosen, then contract obligors at both ends of the credit worthiness spectrum may pay more or less interest than they should; however, using a mid-range will lessen the financial impact to the average contract obligor.
- b. The rating methodology used by FCS to determine the credit worthiness of an applicant is proprietary information and is not known by DNR. Therefore, even if DNR would obtain credit information from the contract obligor, it would be impossible for DNR to match the credit worthiness of a land sale contract obligor to any one of the five rates provided by FCS.
- c. DNR does not require credit information from the contract obligors. Therefore, DNR does not have the information to decide what credit worthiness rate to apply to each land sale contract. Absent a specific rate to charge, a midpoint rate is the logical one to use.
- d. The AAA rate is reserved for the most credit worthy contract obligor. Normally, a borrower who has received the highest credit worthiness rating from a financial institution will not default on loan payments or have the loan terminated because of lack of payment. The average new DNR land sale contract obligor does not meet these high credit worthy criteria. During 1994, DNR issued 1,126 default notices on approximately 3,700 land sale contracts. The default notice is the first action in the foreclosure process. Most of these defaults were cured before DNR took final action to foreclose on the contracts. However, since 1987 approximately 1,000 contracts were relinquished, terminated, or foreclosed on. Therefore, using the midpoint A rate would recognize the implied financial condition of the average DNR land sale contract obligor.

**CONCLUSION:**

1. The current interest rate charged by DNR on land sale contracts is an acceptable rate. However, an internal management decision should be made on how this rate is calculated in the future. Our suggestion for this rate is that it be the "A" rate provided by FCS for 20-year, fixed-rate real estate mortgages. Impact: The net impact of following the "A" rating is a drop in the interest rate of roughly .5 percent charged under AS 38.05.065.

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2. DNR should submit a change to AS 38.05.065 that will revise the interest rate charged on land sale contracts.

Eliminate: "... prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska . . . "

Add: "... prime rate as reported in the Wall Street Journal on the first business day of each month, plus 4%, with the total rate not to exceed 13.5% . . . "

3. While the statutory change is preferred, DOL should adopt a regulation on how the interest rate should be determined. The starting point for this process should be as outlined in 1 above. If legislation is passed, the regulation adoption process should be dropped.

DETERMINATION

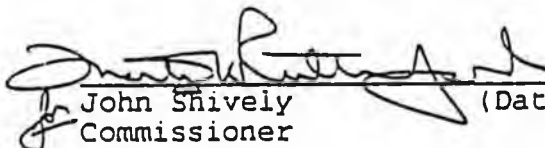


I concur with the conclusions stated in this memo and instruct the Director, Division of Land to implement them

*Plus, begin drafting legisl. language for introduction*



I do not concur with the conclusions in this memo

 2-24-95  
John Shively (Date)  
Commissioner

# DEPARTMENT OF FISH AND GAME POSITION PAPER

**BILL NO:** HB 191

**SPONSOR:** Representative Therriault

**DIVISION:** Habitat and Restoration

**DEPARTMENT POSITION:**

The department supports the passage of HB191.

This is a housekeeping bill that would clarify certain Title 38 statutes governing DNR's land disposal program, surface uses of mining properties, and permits for rights-of-way. Among other things, the bill contains provisions strengthening the use of the state's land planning process to identify lands suitable for disposal and improves the ability of state to condition ancillary activities (millsites and tailings disposal) associated with the development of mining claims.

The provisions of this bill would have a positive effect on fish and wildlife resources and the management of public lands.

COMMISSIONER'S SIGNATURE

Frank R.

DATE

3.10.95

March 31, 1995

To: Rep. Joe Green, Co-Chair House Resources  
fax no. 465-4316

From: Mike Schultz  
Schultz Farms, Inc  
HC 62 Box 5440,  
Delta Jet, AK 99737  
907-895-4368

Dear Mr. Green and the House Resource Committee;

SS HB 191

I have recently spent 6 months arguing with DNR about the interest rates they are charging on land contracts. The current law ties the DNR rate to the rate charged by the Spokane Farm Credit System. In August Spokane FCS had a variety of interest rates listed ranging from 8.2% to 11.3%. DNR was charging 13.4%. As a result of my appeal to the commissioner, they now choose a different rate from the Spokane information and are charging 12.15%, a