

**ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672**

**9004 SENATE RESOURCES**

default, a notice is sent, and the lessee has 30 days to fix the default and pay any penalty. This change to 38.05.265 will remove this potential fatal flaw and allow for correction of a missed payment without automatic abandonment of a lease.

2. The original edition of this bill included an item regarding State mining claims that was subsequently removed from the bill and established as a separate bill numbered HB-331. We suggest that the provisions of HB-331 be returned to this bill. The material in HB-331 clarifies that where the State has disposed of the surface estate but retains the mineral estate, that mineral estate remains open to mineral entry and that before activity other than claim staking is allowed, the claimant must obtain permission from the surface owner or obtain a bond.

Thank you for the opportunity to comment on this important bill. If you have any questions please contact me.

Sincerely



Steven C. Borrell, P.E.  
Executive Director

cc: Representative Gene Therriault

9-LS0766\W  
Luckhaupt  
4/26/96

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 191(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES THERRIAULT, James, Brice

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  
3 and patents; and providing for an effective date."

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

5 • Section 1. AS 09.10.120 is amended by adding a new subsection to read:

6 (b) Notwithstanding (a) of this section or any other provision of law, the state  
7 may bring an action in the name of or for the benefit of the state to (1) quiet or  
8 confirm the state's interests in real property, or (2) protect resources held in trust for  
9 the public, at any time.

10 • Sec. 2. AS 38.04.010(b) is amended to read:

11 (b) State land that is located beyond the range of existing schools and other  
12 necessary public services, or that is located where development of sources of  
13 employment is improbable, may be made available for seasonal recreational purposes  
14 or for low density settlement. The seasonal recreation use or low density settlement

1 shall have sufficient separation between residences so that public services will not be  
2 necessary or expected. The availability of timber, firewood, and water resources shall  
3 be considered in determining separation between residences. By considering the  
4 availability of timber, firewood, and water under this subsection or in making any  
5 disposal decision, the state does not by virtue of that consideration imply any  
6 right of the person receiving the disposal to an exclusive or other right to the  
7 timber, firewood, or water, that the state will not make any other disposals in the  
8 area, or that any disposals made will be limited in type or any other manner.

9 \* Sec. 3. AS 38.04.020(a) is amended to read:

10 (a) State [THE COMMISSIONER SHALL ESTABLISH A] land disposals  
11 must include [DISPOSAL BANK CONTAINING] state land identified and classified  
12 under adopted regional land use plans for disposal into private ownership.

13 \* Sec. 4. AS 38.04.020(b) is amended to read:

14 (b) State [THE] land disposals may [DISPOSAL BANK DOES] not include  
15 (1) land nominated for selection or selected by a municipality to satisfy  
16 a general grant land entitlement under AS 29.65 or former AS 29.18.201 - 29.18.213;  
17 (2) land retained in state ownership for multiple-use management;  
18 (3) land where less than a fee simple title has been conveyed;  
19 (4) land retained in state ownership under an enactment of the  
20 legislature or by the governor or a state agency under authority of law.

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

22 (d) By January 15 of the first regular session of each legislature, the  
23 commissioner shall notify the legislature that the commissioner has available a report  
24 on the total acreage of land planned and classified as suitable under this title for

25 (1) settlement purposes, including homestead, commercial, or industrial  
26 disposal;

27 (2) agricultural disposal; and

28 (3) grazing leases.

29 \* Sec. 6. AS 38.04.020(e) is repealed and reenacted to read:

30 (e) The commissioner may annually submit to the governor an appropriation  
31 request for the entire amount of funding estimated to be necessary for each project

1 proposal to allow survey and disposal of land proposed to be offered for (1) homestead  
2 staking under AS 38.09; (2) agricultural, commercial, industrial, or other uses under  
3 AS 38.05.055 or 38.05.057; or (3) other subdivisions. Each project proposal shall  
4 include the general location of the land and the estimated cost of preliminary feasibility  
5 studies, engineering design work, right-of-way acquisition, and construction of access  
6 roads and capital improvements required by municipal subdivision ordinance or  
7 regulation of the platting authority or otherwise necessary to develop and market the  
8 land.

9 \* Sec. 7. AS 38.04.020(g) is amended to read:

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

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

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

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

21 \* Sec. 8. AS 38.04.020(h) is amended to read:

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

31 \* Sec. 9. AS 38.04.020(i) is amended to read:

1 (i) Nothing in this section prevents the disposal of other land by the  
2 commissioner in accordance with AS 38.05.055, 38.05.057, 38.05.070, the issuance of  
3 remote recreational cabin site leases or sales [PERMITS] under AS 38.05.600  
4 [AS 38.05.079], AS 38.08, AS 38.09, or other law.

5 \* Sec. 10. AS 38.04.021(a) is amended to read:

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

14 \* Sec. 11. AS 38.04.021(b) is amended to read:

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

26 \* Sec. 12. AS 38.04.030 is amended to read:

27 Sec. 38.04.030. LAND AVAILABILITY PROGRAMS. Programs that may  
28 be used by the director to make the state's land surface available for private use under  
29 AS 38.04.020 - 38.04.055 include: sale of whole or partial rights to the fee simple  
30 estate, including conveyance of agricultural use rights; leasing; [OPEN-TO-ENTRY;]  
31 homesiting; homesteading; permitting for construction and occupation of cabins in

1 isolated locations on land retained in state ownership; and other methods as provided  
 2 by regulation or other law. Notwithstanding a contrary provision of this title, a  
 3 land availability program adopted by regulation must provide for competitive  
 4 disposal, based on no less than fair market value, to serve the best interests of the  
 5 state.

6 \* Sec. 13. AS 38.04.035 is amended to read:

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

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

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

19 (3) sale programs are preferred but lease programs <sup>may</sup> [should] be used

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

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

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

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

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

30 (4) [FOR ENABLING ISOLATED CABIN DEVELOPMENT IN  
 31 REMOTE LOCATIONS WHERE SURVEY AND CONVEYANCE IS

*Amended  
 Chapter  
 38.04.035*

1 IMPRACTICAL, OR WHERE DISPOSAL OF LAND WOULD CAUSE POTENTIAL  
2 CONFLICTS WITH OTHER RESOURCES AND USES, OR WHERE A LONG-  
3 RANGE INTEREST IN PUBLIC OWNERSHIP AND USE EXIST, A SYSTEM FOR  
4 CABIN PERMITS ON PUBLIC LAND MAY BE USED;

5 (5)] limited or conditional title may be granted when the state's best  
6 interest so dictates; among other things, title limitations may include grants of  
7 agricultural interest only, retention of development rights, and retention of scenic or  
8 other easements; a conditional title may be tied to a development schedule or other  
9 standards of performance.

10 • Sec. 14. AS 38.04.045(b) is amended to read:

11 (b) Before the issuance of a long-term lease under AS 38.05.070 or of a patent  
12 for state land, an official cadastral survey shall be accomplished, unless a comparable,  
13 approved survey exists that has been conducted by the federal Bureau of Land  
14 Management. Before land may be offered under [AS 38.05.055, 38.05.057,] AS 38.08  
15 [.] or AS 38.09, or before land may be offered under AS 38.05.055 or 38.05.057,  
16 except land that is classified for agricultural uses, an official rectangular survey grid  
17 shall be established. The rectangular survey section corner positions shall be  
18 monumented and shown on a cadastral survey plat approved by the state. For those  
19 areas where the state may wish to convey surface estate outside of an official  
20 rectangular survey grid, the commissioner may waive monumentation of individual  
21 section corner positions and substitute an official control survey with control points  
22 being monumented and shown on control survey plats approved by the state. The  
23 commissioner may not issue more than one conveyance for each section within a  
24 township outside of an official rectangular survey grid. Land [NO PORTION OF  
25 LAND] to be conveyed may not be located more than two miles from an official  
26 survey control monument except that the commissioner may waive this requirement  
27 on a determination that a single purpose use does not justify the requirement if the  
28 existing status of the land is known with reasonable certainty. The lots and tracts in  
29 state subdivisions shall be monumented and the cadastral survey and plats for the  
30 subdivision shall be approved by the state. Where land is located within a  
31 municipality with planning, platting, and zoning powers, plats for state subdivisions

1 shall comply with local ordinances and regulations in the same manner and to the same  
2 extent as plats for subdivisions by other landowners. State subdivisions shall be filed  
3 and recorded in the district recorder's office. The requirements of this section do not  
4 apply to land made available [THROUGH A CABIN PERMIT SYSTEM,] for material  
5 sales, for short-term leases, or for parcels adjoining a surveyed right-of-way, [OR FOR  
6 LAND THAT HAS BEEN OPEN TO RANDOM STAKING UNDER THE REMOTE  
7 PARCEL PROGRAM OR HOMESTEAD PROGRAM IN THE PAST]; however, for  
8 short-term leases, the lessee shall [MUST] comply with local subdivision ordinances  
9 unless waived by the municipality under procedures specified by ordinance. In this  
10 subsection, "a single purpose use" includes a communication site, an aid to navigation,  
11 and a park site.

12 \* Sec. 15. AS 38.05.050 is amended to read:

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

18 \* Sec. 16. AS 38.05.055, as amended by sec. 1, ch. 3, SLA 1996, is amended to read: Total 4.1

19 Sec. 38.05.055. AUCTION SALE PROCEDURES. Unless another method of  
20 sale is required under this chapter, [AS 38.07, OR] AS 38.08, or AS 38.09, the sale  
21 of state land shall be made at public auction to the highest qualified bidder as  
22 determined by the director. The director may accept bids and sell state land under this  
23 section at no less than 70 percent of the appraised fair market value of the land. To  
24 qualify to participate under this section in a public auction of state land that is other  
25 than commercial, industrial, or agricultural land, a bidder shall have been a resident  
26 of the state for at least one year immediately preceding the date of the auction and  
27 submit proof of that fact, as the commissioner requires by regulation. [A BIDDER  
28 MUST APPEAR IN PERSON AT THE AUCTION UNLESS MEDICAL REASONS,  
29 ATTENDANCE AT SCHOOL, OR MILITARY SERVICE OUTSIDE THE STATE  
30 PREVENT ATTENDANCE.] A bidder may be represented by an attorney or agent  
31 at the auction [IF THE LAND OFFERED FOR DISPOSAL IS COMMERCIAL.

1 INDUSTRIAL, OR AGRICULTURAL LAND]. An aggrieved bidder may appeal to  
2 the commissioner within five days after the sale for a review of the director's  
3 determination. The sale shall be conducted by the director and at the time of sale the  
4 successful bidder shall deposit an amount equal to five percent of the purchase price.  
5 The director shall immediately issue a receipt containing a description of the land or  
6 property purchased, the price bid, and the amount deposited. The receipt shall be  
7 acknowledged in writing by the bidder.

8 \* Sec. 17. AS 38.05.057(a) is amended to read:

9 (a) The commissioner may dispose of land, including land limited to use for  
10 agricultural purposes, by lottery. The purchase price of land sold by lottery shall be  
11 the fair market value of the land as determined by the commissioner. The  
12 commissioner may sell land by lottery for less than the fair market value of the land  
13 on a determination that scarcity of land for private use in the area of the land to be  
14 sold has resulted in unrealistic land values. [THE COMMISSIONER SHALL  
15 CONSULT WITH THE ASSESSOR OF A MUNICIPALITY BEFORE  
16 DETERMINING THE PURCHASE PRICE FOR LAND THAT IS LOCATED IN  
17 THE MUNICIPALITY AND THAT IS TO BE SOLD UNDER THIS SECTION.] The  
18 lottery shall be conducted in public by the commissioner. ~~Δ~~ [AN APPLICANT MAY  
19 NOT BE SELECTED TO PURCHASE LAND UNLESS THE APPLICANT IS  
20 PRESENT ON THE DATE AND AT THE PLACE THAT THE LOTTERY IS  
21 CONDUCTED) UNLESS MEDICAL REASONS, ATTENDANCE AT SCHOOL, OR  
22 MILITARY SERVICE OUTSIDE THE STATE PREVENT ATTENDANCE. AN  
23 APPLICANT MAY BE REPRESENTED BY AN AGENT ON THE DAY OF THE  
24 LOTTERY IF THE LAND OFFERED FOR SALE IS COMMERCIAL,  
25 INDUSTRIAL, OR AGRICULTURAL LAND. ON THE DAY OF THE LOTTERY  
26 A) purchaser selected by lot shall deposit an amount equal to five percent of the  
27 purchase price: within 30 days after receiving notification of the selection.

28 \* Sec. 18. AS 38.05.065(a) is amended to read:

29 (a) The contract of sale for land sold at public auction under AS 38.05.055  
30 shall require the remainder of the purchase price to be paid in monthly, quarterly, or  
31 annual installments over a period of not more than 20 years, with interest at the

1 [PREVAILING] rate provided in (i) of this section [FOR REAL ESTATE  
2 MORTGAGE LOANS MADE BY THE FEDERAL LAND BANK FOR THE FARM  
3 CREDIT DISTRICT FOR ALASKA AT THE TIME THE CONTRACT IS SIGNED].

4 Installment payments plus interest shall be set on the level-payment basis.

5 \* Sec. 19. AS 38.05.065(b) is amended to read:

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

14 \* Sec. 20. AS 38.05.065 is amended by adding a new subsection to read:

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

19 (1) 9.5 percent, in contracts for the sale of land classified under  
20 AS 38.05.020(b)(6) for agricultural uses; or

21 (2) 13.5 percent, in other contracts for the sale of land.

22 \* Sec. 21. AS 38.05.067(d) is amended to read:

23 (d) This section does not apply to the sale of state land under AS 38.05.057,  
24 AS 38.08, or [AS 38.04.020(g)(2) AND] AS 38.09.

25 \* Sec. 22. AS 38.05.069(a) is amended to read:

26 (a) On a determination that the highest and best use of unoccupied land is for  
27 agricultural purposes and that it is in the best interests of the state to sell or lease the  
28 land, the commissioner shall grant to an Alaska [ALASKAN] resident owning and  
29 using or leasing and using land for agricultural purposes a first option at the auction  
30 to purchase or lease the unoccupied land situated adjacent to land presently held by the  
31 Alaska [ALASKAN] resident for the amount of the high bid received at public

1 auction. If more than one Alaska [ALASKAN] resident qualifies for a first option  
2 under this section, eligibility for the first option shall be determined by lot and the  
3 option must be exercised on the conclusion of the public auction. A parcel of  
4 agricultural land sold under this section may not be less than 20 acres and a parcel of  
5 agricultural land that is acquired by exercise of the option granted in this subsection  
6 may not exceed 320 acres. Agricultural land that is acquired under this section must  
7 be used for agricultural purposes as required by law.

8 \* Sec. 23. AS 38.05.069(e)(2) is repealed and reenacted to read:

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

12 \* Sec. 24. AS 38.05.075(a) is amended to read:

13 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, [38.05.079,]  
14 38.05.082, 38.05.083, 38.05.087, 38.05.102, 38.05.600, 38.05.810, and this section,  
15 leasing shall be made at public auction to the highest qualified bidder as determined  
16 by the commissioner. In the public notice of a lease to be offered at public auction,  
17 the commissioner shall specify a minimum acceptable bid and the lease compensation  
18 method. The lease compensation method shall be designed to maximize the return on  
19 the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).  
20 An aggrieved bidder may appeal to the commissioner within five days for a review of  
21 the determination. The leasing shall be conducted by the commissioner and the  
22 successful bidder shall deposit at the auction the first year's rental or other lease  
23 compensation as specified by the commissioner, or that portion of it that the  
24 commissioner requires in accordance with the bid. The commissioner shall require,  
25 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or  
26 appraisal costs reasonably incurred by another qualified bidder acting in accordance  
27 with the regulations of the commissioner or incurred by the department under  
28 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal  
29 costs is determined by the commissioner to be the highest qualified bidder under this  
30 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those  
31 costs or to the department if the department incurred the costs. All costs for survey

1 and appraisal shall be approved in advance in writing by the commissioner. The  
2 commissioner shall immediately issue a receipt containing a description of the land or  
3 interest leased, the price bid, and the terms of the lease to the successful qualified  
4 bidder. If the receipt is not accepted in writing by the bidder under this subsection,  
5 the commissioner may offer the land for lease again under this subsection. A lease,  
6 on a form approved by the attorney general, shall be signed by the successful bidder  
7 and by the commissioner within the period specified in the auction notice.

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

9 (b) The director may classify land as subject to leases for fisheries  
10 development. In an area or region of the state for which a land use plan has not been  
11 adopted under AS 38.04.065, the director may classify land for lease under this section  
12 after notice under AS 38.05.945. The director may [SHALL] publicly invite  
13 applications for lease of the selected areas. Each application shall be accompanied by  
14 an affidavit to the effect that the applicant presently intends to personally utilize the  
15 leased area for fishing purposes throughout the term of the lease. If only one  
16 application is received, the commissioner may issue a lease at the rental rate  
17 established under (c) of this section [THE FOLLOWING SEASON]. If two or more  
18 applications are received for the same shore area, the director may offer [SHALL  
19 AWARD] the lease to the most qualified applicant. In determining the qualifications  
20 of applicants, the director shall consider the length of time during which the applicant  
21 has been engaged in set netting, the proximity of the past fishing sites of the applicant  
22 to the land to be leased, the present ability of the applicant to utilize the location to  
23 its maximum potential, and other factors relevant to the equitable assignment of the  
24 disputed area. If the director cannot determine a preference between conflicting  
25 applicants for the same lease site on the basis of qualifications, the director shall select  
26 between the applicants by lot. An aggrieved applicant may appeal to the commissioner  
27 within 30 days for a review of the director's determination.

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

29 (c) A lease for set net fishing may be issued for any period not exceeding 10  
30 years. If the commissioner determines that the land is not being utilized for the  
31 purpose for which the lease is issued, the lease may be declared void. The director

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Am #1

1 shall establish a [REASONABLE] rental rate for the lease. The rental rate may not  
 2 exceed \$600 and shall be [,] equal to the greater of (1) the administrative costs  
 3 involved in processing the leasehold applications; or (2) .6 percent of the year-end  
 4 estimated monthly permit value for that district as determined from the latest  
 5 estimated monthly permit value report from the Commercial Fisheries Entry  
 6 Commission. The rental rate under this subsection shall be adjusted annually  
 7 based upon the latest estimated monthly permit value report at the time of the  
 8 adjustment from the Commercial Fisheries Entry Commission.

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

10 (d) Subleasing and renewals of leases are governed by AS 38.05.095 and  
 11 38.05.102. Notwithstanding (b) of this section, a lease held under this section on  
 12 the effective date of this bill section may be renewed by the lessee if the lessee is  
 13 not in default under the lease and is not in violation of the terms and conditions  
 14 of the lease.

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

for schedule use, not lease

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

17 (a) The commissioner may offer to the public for lease at public auction under  
 18 AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic farming or  
 19 related hatchery operations. Before a final decision to issue or renew a lease under  
 20 this section, the commissioner shall give notice and allow opportunity for comment in  
 21 accordance with AS 38.05.945, and may hold a hearing to take testimony. Before a  
 22 final decision to issue or renew a lease under this section, the commissioner shall  
 23 consider all relevant comment or testimony submitted under this section, AS 38.05.945,  
 24 or 38.05.946.

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

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

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

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

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

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

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

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

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

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

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

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

*Am #4*  
*just transfer 2 days*  
*to be removed property*  
*to be modified in*  
*revised*

1 costs upon the lessee.

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

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

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

25 • Sec. 30. AS 38.05.131(a) is amended to read:

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

30 • Sec. 31. AS 38.05.185(a) is amended to read:

31 (a) The acquisition and continuance of rights in and to deposits on state land

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

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

19 (a) The right to acquire exploration and mining rights under AS 38.05.185 -  
20 38.05.275 may be acquired or held only by

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

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

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

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

29 (5) corporations organized under the laws of the United States or of  
30 any state or territory of the United States and qualified to do business in this state [,  
31 EXCEPT THAT IF MORE THAN 50 PERCENT OF THE STOCK OF A

1 CORPORATION IS OWNED OR CONTROLLED BY ALIENS WHO ARE NOT  
2 QUALIFIED, THE CORPORATION IS NOT QUALIFIED TO ACQUIRE OR HOLD  
3 THE RIGHTS];

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

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

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

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

24 Sec. 38.05.255. SURFACE USE OF LAND OR WATER. Surface uses of  
25 land or water included within mining properties by owners of those properties shall be  
26 limited to those necessary for the prospecting for, extraction of, or basic processing of  
27 mineral deposits and shall be subject to reasonable concurrent uses. Leases  
28 [PERMITS] for millsites and tailings disposal may be issued [GRANTED] by the  
29 director. The leases [PERMITS] shall be conditioned upon payment of a reasonable  
30 annual rent [CHARGE] for the lease [USE] and restriction to [CONTINUANCE OF]  
31 the limited use. Timber from land open to mining without lease, except timberland.

1 may be used by a mining claimant or prospecting site locator for the mining or  
2 development of the location or adjacent claims under common ownership. On other  
3 land, timber may be acquired as provided in this chapter. Use of water shall be made  
4 in accordance with AS 46.15.

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

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

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

10 Sec. 38.05.265. ABANDONMENT. Failure to properly record a certificate of  
11 location or a statement of annual labor, [FILE WITH THE DIRECTOR WITHIN THE  
12 TIME PRESCRIBED A LEASE APPLICATION,] pay any required annual rental, pay  
13 any required production royalty, or keep location boundaries clearly marked as  
14 required by AS 38.05.185 - 38.05.200, 38.05.207 - 38.05.245, 38.05.252 - 38.05.275,  
15 [AS 38.05.185 - 38.05.275] and by regulations adopted under these sections constitutes  
16 abandonment of all rights acquired under the mining claim, leasehold location,  
17 [LEASE,] or site involved, and the claim, location, [LEASE,] or site is subject to  
18 relocation by others. A locator or claimant of an abandoned location or a successor  
19 in interest may not relocate the location until one year after abandonment. A statement  
20 of annual labor that does not accurately set out the essential facts is void and of no  
21 effect. If an annual rental or a royalty payment is deficient but is otherwise timely  
22 paid, abandonment does not result if full payment is made within

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

24 or

25 (2) 30 days after a final judgment establishing the amount due if the  
26 deficiency amount due was contested.

27 \* Sec. 37. AS 38.05 is amended by adding a new section to read:

28 **ARTICLE 12A. REMOTE RECREATIONAL CABIN SITE SALES AND LEASES.**

29 Sec. 38.05.600. REMOTE RECREATIONAL CABIN SITES. (a) The  
30 commissioner may provide for the sale or lease of state land for remote recreational  
31 cabin sites in areas of the state with dispersed populations if the land is classified for

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

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

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

20 • Sec. 38. AS 38.05.810(a) is amended to read:

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

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

10 • Sec. 39. AS 38.05.850(a) is amended to read:

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

29 • Sec. 40. AS 38.05.945(a) is amended to read:

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

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

3 (2) zoning of land under applicable law;

4 (3) issuance of a

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

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

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

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

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

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

18 ~~(6)~~ [(7)] a decision under AS 38.05.132 - 38.05.134 regarding the sale,  
19 lease, or disposal of an interest in state land or resources.

20 • Sec. 41. AS 38.08.030(b) is amended to read:

21 (b) Fees for filing an application may not exceed \$25 [S10].

22 • Sec. 42. AS 38.08.040(a) is amended to read:

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

29 • Sec. 43. AS 38.08.040 is amended by adding a new subsection to read:

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

1 otherwise qualified. If more than one application is received for a parcel, the  
2 commissioner shall select by lottery the applicant who is entitled to receive the permit  
3 for the parcel. The lottery shall be conducted under regulations adopted by the  
4 commissioner that are to the maximum extent practicable consistent with the provisions  
5 of AS 38.05.057 and the regulations adopted under that section.

6 • Sec. 44. AS 38.09.010(g) is amended to read:

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

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

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

20 • Sec. 45. AS 38.09.030(a) is amended to read:

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

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

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

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

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

31 (5) ASSUME FULL RESPONSIBILITY FOR THE ACCURACY OF

1 THE DESCRIPTION OF THE LAND FILED WITH THE COMMISSIONER UNDER  
2 AS 38.09.020(b)].

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

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

6 (1) either

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

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

14 (C) pays to the state the fair market value of the homestead  
15 parcel under the terms of a contract under AS 38.05.065 to purchase the  
16 parcel, entered into within five years of the issuance of the permit, and  
17 reimburses the state for the survey and platting of the parcel; under this  
18 subparagraph, the fair market value of the homestead parcel shall be  
19 determined as of the date of the contract; and

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

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

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

30 (5) clears and either puts into production or prepares for cultivation  
31 either 25 percent of the land classified for agricultural use or 50 percent of the

1 cropland soils, whichever is less, within five years after issuance of the permit.

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

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

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

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

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

15 (1) requests the amendment;

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

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

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

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

24 Sec. 38.95.300. DISCLAIMER APPLICABLE TO STATE DISPOSALS.

25 Except as otherwise specifically provided, nothing in this title

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

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

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

6           \* Sec. 51. Notwithstanding AS 41.21.120 - 41.21.125, within Township 10 North, Range  
7 1 East, Seward Meridian, the commissioner of natural resources may

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

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

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

19           \* Sec. 52. A disposal by the Department of Natural Resources of a homesite under  
20 AS 38.08 by lottery, on or after July 6, 1984, and before the effective date of this section, is  
21 valid and effective, notwithstanding the fact that the disposal was by lottery, if the disposal  
22 otherwise complied with the requirements of AS 38.08.

23           \* Sec. 53. APPLICABILITY. The change to the interest rate to be charged on contracts  
24 for the sale of land under AS 38.05.065, made by secs. 18 - 20 of this Act, applies to all  
25 contracts under AS 38.05.065 sent by the Department of Natural Resources to purchasers for  
26 signature on or after the effective date of secs. 18 - 20 of this Act.

27           \* Sec. 54. REVISOR'S INSTRUCTION. The amendments to AS 38.05.082(b), made by  
28 sec. 25 of this Act, do not affect the amendments made to that subsection by sec. 3, ch. 27,  
29 SLA 1991, effective January 1, 1997. Unless amended or repealed by Act of the legislature  
30 after the effective date of this section, the amendments to AS 38.05.082(b), made by sec. 25  
31 of this Act, continue in effect after the amendments made by sec. 3, ch. 27, SLA 1991, take

1 effect January 1, 1997.

2 \* Sec. 55. TRANSITIONAL PROVISIONS: REGULATIONS. (a) Notwithstanding  
3 sec. 56 of this Act, the Department of Natural Resources may proceed to adopt regulations  
4 necessary to implement the changes made by this Act. The regulations take effect under  
5 AS 44.62 (Administrative Procedure Act), but not before July 1, 1996.

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

11 \* Sec. 56. To the maximum extent constitutionally permissible, sec. 1 of this Act is  
12 retroactive to January 3, 1959.

13 \* Sec. 57. Except for sec. 55 of this Act, this Act takes effect July 1, 1996.

14 \* Sec. 58. Section 1 and 55 of this Act take effect immediately under AS 01.10.070(c).

MEMORANDUM

To :Tam Cook  
Fr :Ted Popely  
Date :March 25, 1996  
Re :AS 09.10.120 Amendment

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Please utilize this draft amendment to assist in a draft Bill amending AS 09.10.120. Initially, we'd like a separate Bill, but we may later ask you to amend a particular House Bill with this provision.

Attached is a draft from Joanne Grahe, Assistant Attorney General [Tel. 269-5237] for Alaska. Please feel free to use this draft [preferably version 2] in whole or in part and to work in concert with her and with Ron Somerville on this issue. This is a time sensitive issue, and we'd appreciate prompt action. Thank you; if you have questions, please call me [ext. 3439] or Ron Somerville [463-3830].

cc: Joanne Grace

**Version 1**

A BILL  
FOR AN ACT ENTITLED

"An Act amending the statute of limitations for an action brought by or on behalf of the state, political subdivisions, or public corporations; and providing for an effective date."

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

\*Section 1: AS 09.10.120 is amended to read:

Sec. 09.10.120. Actions in name of state, political subdivisions, or public corporations. An action brought in the name of or for the benefit of the state, any political subdivision, or public corporation may be commenced only within six years of the date of accrual of the cause of action. This section does not apply to actions brought to quiet title to interests in real property. However, if the action is for relief on the ground of fraud, the limitation commences from the time of discovery by the aggrieved party of the facts constituting the fraud.

\*Section 2: Section 1 of this Act is retroactive to January 3, 1959.

Version 2

## A BILL

## FOR AN ACT ENTITLED

"An Act amending the statute of limitations for an action brought by or on behalf of the state, political subdivisions, or public corporations; and providing for an effective date."

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

\*Section 1: AS 09.10.120 is amended to read:

Sec. 09.10.120. Actions in name of state, political subdivisions, or public corporations. An action brought in the name of or for the benefit of the state, any political subdivision, or public corporation may be commenced only within six years of the date of accrual of the cause of action. This section does not apply to actions brought to quiet title to interests in real property or to protect resources held in trust for the public. However, if the action is for relief on the ground of fraud, the limitation commences from the time of discovery by the aggrieved party of the facts constituting the fraud.

\*Section 2: Section 1 of this Act is retroactive to January 3, 1959.



# Alaska State Legislature

## Senate Resources Committee

Official Business

Memo

State Capitol  
Juneau AK 99801

TO: Gerry Luckhaupt  
Legal Services  
*via fax. 2019. (2 pages)*

FROM: Annette Kreitzer, Aide to  
Senate Resources Committee *(911. x4907)*

DATE: April 23, 1996

RE: CS for HB 191(RES)

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Using LS0766U as the base document, create a Senate Resources Committee Substitute for HB 191 with the following changes:

- 1) Page 11, Line 28:  
DELETE:  
    [\$1,000]  
Insert:  
    \$600
- 2) Page 11, Line 31:  
DELETE:  
    [ONE]  
Insert:  
    0.60 percent
- 3) Page 12, Line 2:  
Following "Comercial Fisheries Entry Commission" Insert a new subsection 3  
    (3) The rental rate shall be adjusted annually based on the latest estimated monthly permit value report from the Commercial Fisheries Entry Commission.
- 4) Page 17, Line 8:  
Following "38.05.275" Insert:  
    except for AS 38.05.205 and 38.05.250.  
Page 17, Line 10:  
DELETE [lease] (delete both times it appears)

Next Page, Please

①

5) Page 1, Line 5:

Insert new Section 1: AS 09.10.120 is amended to read:

Sec. 09.10.120. Actions in name of state, political subdivisions, or public corporations. An action brought in the name of or for the benefit of the state, any political subdivision, or public corporation may be commenced only within six years of the date of accrual of the cause of action. This section does not apply to actions brought to quiet title to interests in real property or to protect resources held in trust for the public. However, if the action is for relief on the ground of fraud, the limitation commences from the time of discovery by the aggrieved party of the facts constituting the fraud.

Need section saying that this section is retroactive to January 3, 1959.

Dirig-

Also, when this CS is done, concurrently  
deliver a copy to Rep. Shumaker's office

CS main Lockhart

②

9-LS0766U  
Luckhaupt  
3/28/96

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 191( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES THERRIAULT, James, Brice

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  
3 and 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) State [THE COMMISSIONER SHALL ESTABLISH A] land disposals  
6 must include [DISPOSAL 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) State [THE] land disposals may [DISPOSAL 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) By January 15 of the first regular session of each legislature, the  
18 commissioner shall notify the legislature that the commissioner has available a report  
19 on the total acreage of land planned and 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 38.05.0.7; 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 critical 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 38.05.600  
30 [AS 38.05.079], AS 38.08, AS 38.09, or other law.

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

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

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

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

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

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

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

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

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

Sec. 38.04.030. LAND AVAILABILITY PROGRAMS. Programs that may be used by the director to make the state's land surface available for private use under AS 38.04.020 - 38.04.055 include sale of whole or partial rights to the fee simple estate, including conveyance of agricultural use rights; leasing; [OPEN-TO-ENTRY;] homesiting; homesteading; permitting for construction and occupation of cabins in isolated locations on land retained in state ownership; and other methods as provided by regulation or other law. Notwithstanding a contrary provision of this title, a land availability program adopted by regulation must provide for competitive disposal, based on no less than fair market value, to serve the best interests of the 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, or before land may be offered under AS 38.05.055 or 38.05.057,  
11 except land that is classified for agricultural uses, an official rectangular survey grid  
12 shall be established. The rectangular survey section corner positions shall be  
13 monumented and shown on a cadastral survey plat approved by the state. For those  
14 areas where the state may wish to convey surface estate outside of an official  
15 rectangular survey grid, the commissioner may waive monumentation of individual  
16 section corner positions and substitute an official control survey with control points  
17 being monumented and shown on control survey plats approved by the state. The  
18 commissioner may not issue more than one conveyance for each section within a  
19 township outside of an official rectangular survey grid. Land [NO PORTION OF  
20 LAND] to be conveyed may not be located more than two miles from an official  
21 survey control monument except that the commissioner may waive this requirement  
22 on a determination that a single purpose use does not justify the requirement if the  
23 existing status of the land is known with reasonable certainty. The lots and tracts in  
24 state subdivisions shall be monumented and the cadastral survey and plats for the  
25 subdivision shall be approved by the state. Where land is located within a  
26 municipality with planning, platting, and zoning powers, plats for state subdivisions  
27 shall comply with local ordinances and regulations in the same manner and to the same  
28 extent as plats for subdivisions by other landowners. State subdivisions shall be filed  
29 and recorded in the district recorder's office. The requirements of this section do not  
30 apply to land made available [THROUGH A CABIN PERMIT SYSTEM.] for material  
31 sales, for short-term leases, or for parcels adjoining a surveyed right-of-way. [OR FOR

1 LAND THAT HAS BEEN OPEN TO RANDOM STAKING UNDER THE REMOTE  
2 PARCEL PROGRAM OR HOMESTEAD PROGRAM IN THE PAST]; however, for  
3 short-term leases, the lessee shall [MUST] comply with local subdivision ordinances  
4 unless waived by the municipality under procedures specified by ordinance. In this  
5 subsection, "a single purpose use" includes a communication site, an aid to navigation,  
6 and a park site.

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

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

13 \* Sec. 15. AS 38.05.055, as amended by sec. 1, ch. 3, SLA 1996, is amended to read:

14 Sec. 38.05.055. AUCTION SALE PROCEDURES. Unless another method of  
15 sale is required under this chapter, [AS 38.07, OR] AS 38.08, or AS 38.09, the sale  
16 of state land shall be made at public auction to the highest qualified bidder as  
17 determined by the director. The director may accept bids and sell state land under this  
18 section at no less than 70 percent of the appraised fair market value of the land. To  
19 qualify to participate under this section in a public auction of state land that is other  
20 than commercial, industrial, or agricultural land, a bidder shall have been a resident  
21 of the state for at least one year immediately preceding the date of the auction and  
22 submit proof of that fact, as the commissioner requires by regulation. [A BIDDER  
23 MUST APPEAR IN PERSON AT THE AUCTION UNLESS MEDICAL REASONS,  
24 ATTENDANCE AT SCHOOL, OR MILITARY SERVICE OUTSIDE THE STATE  
25 PREVENT ATTENDANCE.] A bidder may be represented by an attorney or agent  
26 at the auction [IF THE LAND OFFERED FOR DISPOSAL IS COMMERCIAL,  
27 INDUSTRIAL, OR AGRICULTURAL LAND] An aggrieved bidder may appeal to  
28 the commissioner within five days after the sale for a review of the director's  
29 determination. The sale shall be conducted by the director and at the time of sale the  
30 successful bidder shall deposit an amount equal to five percent of the purchase price.  
31 The director shall immediately issue a receipt containing a description of the land or

1 property purchased, the price bid, and the amount deposited. The receipt shall be  
2 acknowledged in writing by the bidder.

3 • Sec. 16. AS 38.05.057(a) is amended to read:

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

23 • Sec. 17. AS 38.05.065(a) is amended to read:

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

31 • Sec. 18. AS 38.05.065(b) is amended to read:

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

9 • Sec. 19. AS 38.05.065 is amended by adding a new subsection to read:

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

14 (1) 9.5 percent, in contracts for the sale of land classified under  
15 AS 38.05.020(b)(6) for agricultural uses; or

16 (2) 13.5 percent, in other contracts for the sale of land.

17 • Sec. 20. AS 38.05.067(d) is amended to read:

18 (d) This section does not apply to the sale of state land under AS 38.05.057,  
19 AS 38.08, or [AS 38.04.020(g)(2) AND] AS 38.09.

20 • Sec. 21. AS 38.05.069(a) is amended to read:

21 (a) On a determination that the highest and best use of unoccupied land is for  
22 agricultural purposes and that it is in the best interests of the state to sell or lease the  
23 land, the commissioner shall grant to an Alaska [ALASKAN] resident owning and  
24 using or leasing and using land for agricultural purposes a first option at the auction  
25 to purchase or lease the unoccupied land situated adjacent to land presently held by the  
26 Alaska [ALASKAN] resident for the amount of the high bid received at public  
27 auction. If more than one Alaska [ALASKAN] resident qualifies for a first option  
28 under this section, eligibility for the first option shall be determined by lot and the  
29 option must be exercised on the conclusion of the public auction. A parcel of  
30 agricultural land sold under this section may not be less than 20 acres and a parcel of  
31 agricultural land that is acquired by exercise of the option granted in this subsection

1 may not exceed 320 acres. Agricultural land that is acquired under this section must  
2 be used for agricultural purposes as required by law.

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

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

7 \* Sec. 23. AS 38.05.075(a) is amended to read:

8 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, [38.05.079,]  
9 38.05.082, 38.05.083, 38.05.087, 38.05.102, 38.05.600, 38.05.810, and this section,  
10 leasing shall be made at public auction to the highest qualified bidder as determined  
11 by the commissioner. In the public notice of a lease to be offered at public auction,  
12 the commissioner shall specify a minimum acceptable bid and the lease compensation  
13 method. The lease compensation method shall be designed to maximize the return on  
14 the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).  
15 An aggrieved bidder may appeal to the commissioner within five days for a review of  
16 the determination. The leasing shall be conducted by the commissioner and the  
17 successful bidder shall deposit at the auction the first year's rental or other lease  
18 compensation as specified by the commissioner, or that portion of it that the  
19 commissioner requires in accordance with the bid. The commissioner shall require,  
20 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or  
21 appraisal costs reasonably incurred by another qualified bidder acting in accordance  
22 with the regulations of the commissioner or incurred by the department under  
23 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal  
24 costs is determined by the commissioner to be the highest qualified bidder under this  
25 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those  
26 costs or to the department if the department incurred the costs. All costs for survey  
27 and appraisal shall be approved in advance in writing by the commissioner. The  
28 commissioner shall immediately issue a receipt containing a description of the land or  
29 interest leased, the price bid, and the terms of the lease to the successful qualified  
30 bidder. If the receipt is not accepted in writing by the bidder under this subsection,  
31 the commissioner may offer the land for lease again under this subsection. A lease,

1 on a form approved by the attorney general, shall be signed by the successful bidder  
2 and by the commissioner within the period specified in the auction notice.

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

4 (b) The director may classify land as subject to leases for fisheries  
5 development. In an area or region of the state for which a land use plan has not been  
6 adopted under AS 38.04.065, the director may classify land for lease under this section  
7 after notice under AS 38.05.945. The director may [SHALL] publicly invite  
8 applications for lease of the selected areas. Each application shall be accompanied by  
9 an affidavit to the effect that the applicant presently intends to personally utilize the  
10 leased area for fishing purposes throughout the term of the lease. If only one  
11 application is received, the commissioner may issue a lease at the rental rate  
12 established under (c) of this section [THE FOLLOWING SEASON]. If two or more  
13 applications are received for the same shore area, the director may offer [SHALL  
14 AWARD] the lease to the most qualified applicant. In determining the qualifications  
15 of applicants, the director shall consider the length of time during which the applicant  
16 has been engaged in set netting, the proximity of the past fishing sites of the applicant  
17 to the land to be leased, the present ability of the applicant to utilize the location to  
18 its maximum potential, and other factors relevant to the equitable assignment of the  
19 disputed area. If the director cannot determine a preference between conflicting  
20 applicants for the same lease site on the basis of qualifications, the director shall select  
21 between the applicants by lot. An aggrieved applicant may appeal to the commissioner  
22 within 30 days for a review of the director's determination.

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

24 (c) A lease for set net fishing may be issued for any period not exceeding 10  
25 years. If the commissioner determines that the land is not being utilized for the  
26 purpose for which the lease is issued, the lease may be declared void. The director  
27 shall establish a [REASONABLE] rental rate for the lease. The rental rate may not  
28 exceed \$1,000 and shall be [.] equal to the greater of

29 (1) the administrative costs involved in processing the leasehold  
30 applications; or

31 (2) one percent of the year-end estimated monthly permit value for

1 that district as determined from the latest estimated monthly permit value report  
2 from the Commercial Fisheries Entry Commission.

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

4 (d) Subleasing and renewals of leases are governed by AS 38.05.095 and  
5 38.05.102. Notwithstanding (b) of this section, a lease held under this section on  
6 the effective date of this bill section may be renewed by the lessee if the lessee is  
7 not in default under the lease and is not in violation of the terms and conditions  
8 of the lease.

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

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

11 (a) The commissioner may offer to the public for lease at public auction under  
12 AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic farming or  
13 related hatchery operations. Before a final decision to issue or renew a lease under  
14 this section, the commissioner shall give notice and allow opportunity for comment in  
15 accordance with AS 38.05.945, and may hold a hearing to take testimony. Before a  
16 final decision to issue or renew a lease under this section, the commissioner shall  
17 consider all relevant comment or testimony submitted under this section, AS 38.05.945,  
18 or 38.05.946.

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

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

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

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

30 (f) The commissioner shall adopt regulations establishing criteria for the  
31 approval or denial of leases under this section and for limiting the number of sites for

1 which leases may be issued in an area in order to protect the environment and natural  
2 resources of the area. The regulations must provide for the consideration of upland  
3 management policies and whether the proposed use of a site is compatible with the  
4 traditional and existing uses of the area in which the site is located.

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

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

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

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

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

17 (c) If the lessee does not remove personal property, buildings, and fixtures as  
18 required within the time specified under (a) of this section, title to the personal  
19 property, buildings, and fixtures that remain automatically vests in the state unless the  
20 commissioner elects to remove and dispose of the remaining personal property,  
21 buildings, and fixtures of the lessee. The commissioner may assess upon the lessee  
22 the cost of removing and disposing of personal property, buildings, and fixtures  
23 remaining upon the land.

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

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

30 (f) Private residential improvements of a lessee that have become fixtures of  
31 the land and that are not removed by that lessee upon termination of the lease shall be

1 purchased by the subsequent purchaser of the land if the improvements were  
2 authorized in the former lease or by permit from the director and if they have a net  
3 value of more than \$10,000. The net value is the value of the improvements as  
4 determined by an appraisal approved by the commissioner, less all rents due the  
5 department, all costs of restoration under (d) of this section, and all department  
6 expenses estimated to be incurred in making the sale. After termination of the former  
7 lessee's lease, and at additional times as determined necessary by the commissioner,  
8 the value of the authorized residential fixtures shall be determined by an independent  
9 appraisal made at the cost of the former lessee. A notice or offer by the state to sell  
10 formerly leased land under this subsection must state (1) the appraised value of  
11 authorized residential fixtures remaining on the land that must be purchased, and (2)  
12 that that cost is included in the purchase price. Out of the proceeds of the sale, the  
13 department shall pay to the former lessee the appraised value of the residential  
14 improvements, less all rents due the department, all costs of restoration due the  
15 department under (d) of this section, and all department expenses incurred in making  
16 the sale.

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

19 \* Sec. 29. AS 38.05.131(a) is amended to read:

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

24 \* Sec. 30. AS 38.05.185(a) is amended to read:

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

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

12 \* Sec. 31. AS 38.05.190(a) is amended to read:

13 (a) The right to acquire exploration and mining rights under AS 38.05.185 -  
14 38.05.275 may be acquired or held only by

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

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

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

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

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

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

31 \* Sec. 32. AS 38.05.211(d) is repealed and reenacted to read:

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

17 \* Sec. 33. AS 38.05.255 is amended to read:

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

30 \* Sec. 34. AS 38.05.255 is amended by adding a new subsection to read:

31 (b) A lease issued under this section is exempt from the provisions of

1 AS 38.05.075 - 38.05.080. The commissioner, by regulation, shall establish  
2 appropriate leasing procedures and annual rent amounts for leases under this section.

3 \* Sec. 35. AS 38.05.265 is amended to read:

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

16 (1) the period prescribed by a deficiency notice from the commissioner;  
17 or

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

20 \* Sec. 36. AS 38.05 is amended by adding a new section to read:

21 ARTICLE 12A. REMOTE RECREATIONAL CABIN SITE SALES AND LEASES.

22 Sec. 38.05.600. REMOTE RECREATIONAL CABIN SITES. (a) The  
23 commissioner may provide for the sale or lease of state land for remote recreational  
24 cabin sites in areas of the state with dispersed populations if the land is classified for  
25 that purpose under the procedures required by AS 38.05.300 and 38.05.945. Sales  
26 under this section shall be at fair market value and the purchaser shall reimburse the  
27 state for the appraisal, survey, and platting costs for the recreational cabin site.

28 (b) The annual fee for a remote recreational cabin site lease shall be set by the  
29 commissioner so as to ensure that the state receives a fair return for the use granted  
30 by the lease for the term of the lease. The commissioner shall establish regulations  
31 that specify the application procedures for and the terms and conditions of a remote

1 recreational cabin site lease. A lease must be for a term of not more than five years,  
2 and may be renewed for one additional five-year period. At any time during the lease,  
3 the lessee may purchase the remote recreational cabin site by having the site appraised  
4 and surveyed in a manner acceptable to the department and by paying to the state the  
5 fair market value for the site. The lease may not be assigned by the original lessee  
6 during the term of the lease.

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

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

14 (a) Except as otherwise provided in AS 38.05.183(h), the (1) lease, sale, or  
15 other disposal of state land or resources may be made to a state or federal agency or  
16 political subdivision, (2) [THE] lease, sale, or disposal of coal deposits suitable for  
17 mining may be made to a utility owned and operated by a government agency or  
18 nonprofit cooperative association organized to participate under the Federal Rural  
19 Electrification Act for the purpose of generating electric power and energy or the  
20 production of process steam, or both, (3) [OR THE] sale or other disposal of state land  
21 may be made to a tax-exempt, nonprofit corporation, association, club, or society  
22 organized and operated exclusively for the management of a cemetery or a solid waste  
23 or other public facility, or (4) sale or other disposal of land within a state  
24 subdivision may be made to that subdivision's nonprofit, tax-exempt homeowners'  
25 association, for less than the appraised value as determined by the director and  
26 approved by the commissioner to be fair and proper and in the best interests of the  
27 public, with due consideration given to the nature of the public services or function  
28 rendered by the applicant [AGENCY, SUBDIVISION, TAX-EXEMPT, NONPROFIT  
29 CORPORATION, ASSOCIATION, CLUB, OR SOCIETY, OR UTILITY MAKING  
30 APPLICATION], and of the terms of the grant under which the land was acquired by  
31 the state. The commissioner shall ensure, by regulation, deed restriction, covenant,

1 or otherwise, that disposals of land under this subsection serve a public purpose  
2 and are in the public interest.

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

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

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

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

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

27 (2) zoning of land under applicable law;

28 (3) issuance of a

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

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

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

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

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

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

11 (6) [(7)] a decision under AS 38.05.132 - 38.05.134 regarding the sale,  
12 lease, or disposal of an interest in state land or resources.

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

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

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

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

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

23 (f) If only one application for a homesite parcel is received, the commissioner  
24 shall offer an entry permit for the parcel to the applicant provided the applicant is  
25 otherwise qualified. If more than one application is received for a parcel, the  
26 commissioner shall select by lottery the applicant who is entitled to receive the permit  
27 for the parcel. The lottery shall be conducted under regulations adopted by the  
28 commissioner that are to the maximum extent practicable consistent with the provisions  
29 of AS 38.05.057 and the regulations adopted under that section.

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

31 (g) The commissioner may limit the number of persons permitted to obtain

1 [STAKE] homestead entries within an area designated under (a) of this section by a  
2 lottery of qualified applicants. [THE COMMISSIONER MAY CONDUCT A  
3 LOTTERY HELD UNDER THIS SUBSECTION IN THE COMMUNITY THAT IS  
4 CLOSEST TO THE AREA DESIGNATED FOR HOMESTEAD ENTRY. THE  
5 COMMISSIONER MAY REQUIRE THAT EACH PARTICIPANT IN THE  
6 LOTTERY BE PRESENT UNLESS ATTENDANCE AT THE LOTTERY IS  
7 PREVENTED BY

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

10 (2) A MANDATORY, UNAVOIDABLE EMPLOYMENT  
11 COMMITMENT DETERMINED VALID BY THE COMMISSIONER BEFORE THE  
12 SALE.]

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

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

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

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

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

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

24 (5) ASSUME FULL RESPONSIBILITY FOR THE ACCURACY OF  
25 THE DESCRIPTION OF THE LAND FILED WITH THE COMMISSIONER UNDER  
26 AS 38.09.020(b)].

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

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

30 (1) either

31 (A) resides and lives on the homestead entry land for not less

1 than 25 months within five years after the issuance of the homestead entry  
 2 permit and reimburses the state for the survey and platting of the  
 3 homestead parcel;

4 (B) within five years pays the state the fair market value of  
 5 the homestead parcel at the time of patent and reimburses the state for the  
 6 survey and platting of the homestead parcel; or

7 (C) pays to the state the fair market value of the homestead  
 8 parcel under the terms of a contract under AS 38.05.065 to purchase the  
 9 parcel, entered into within five years of the issuance of the permit, and  
 10 reimburses the state for the survey and platting of the parcel; under this  
 11 subparagraph, the fair market value of the homestead parcel shall be  
 12 determined as of the date of the contract; 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, 38.05.207, 38.05.855,  
27 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. A disposal by the Department of Natural Resources of a homesite under  
13 AS 38.08 by lottery, on or after July 6, 1984, and before the effective date of this section, is  
14 valid and effective, notwithstanding the fact that the disposal was by lottery, if the disposal  
15 otherwise complied with the requirements of AS 38.08.

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

20 \* Sec. 53. REVISOR'S INSTRUCTION. The amendments to AS 38.05.082(b), made by  
21 sec. 24 of this Act, do not affect the amendments made to that subsection by sec. 3, ch. 27,  
22 SLA 1991, effective January 1, 1997. Unless amended or repealed by Act of the legislature  
23 after the effective date of this section, the amendments to AS 38.05.082(b), made by sec. 24  
24 of this Act, continue in effect after the amendments made by sec. 3, ch. 27, SLA 1991, take  
25 effect January 1, 1997.

26 \* Sec. 54. TRANSITIONAL PROVISIONS: REGULATIONS. (a) Notwithstanding  
27 sec. 55 of this Act, the Department of Natural Resources may proceed to adopt regulations  
28 necessary to implement the changes made by this Act. The regulations take effect under  
29 AS 44.62 (Administrative Procedure Act), but not before July 1, 1996.

30 (b) To the extent they are consistent with AS 38.08, regulations governing the  
31 selection of applicants for homesite parcels under AS 38.08 in effect on the effective date of

- 1 secs. 41 - 42 of this Act remain in effect notwithstanding the amendment to AS 38.08.040,
- 2 made by secs. 41 - 42 of this Act, until the regulations are amended, repealed, or superseded.
- 3 • Sec. 55. Except for sec. 54 of this Act, this Act takes effect July 1, 1996.
- 4 • Sec. 56. Section 54 of this Act takes effect immediately under AS 01.10.070(c).

## Sectional Analysis of CSSSHB 191(Fin)

Secs. 1-30, 33-34, and 36-54 affect the Division of Land. Secs. 30-35 affect the Division of Mining and Water Management. Sec. 29 affects the Division of Oil and Gas. Sec. 50 affects the Division of Parks and Outdoor Recreation.

<u>Sec</u>	<u>House Version</u>	<u>Blank CS version "U"</u>
1	clarifies 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 constitutes a limitation on future state disposals. (AS 38.04.010(b))	
2-3	merges 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. 49. (AS 38.04.020(a)-(b), plus repealers of (c), (f), (j), and (k))	technical change to eliminate the term "program", the reason for the change still the same as house version
4	rewrites 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))	amended to conform to HB 173 which passed last year
5	puts 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))	same as house version
6	makes 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. 43-44 of this bill. (AS 38.04.020(g))	same as house version
7	clarifies 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))	same as house version
8	updates a list of state land disposal programs by adding the homestead law and the remote recreational cabin site lease/sale program enacted by Sec. 36 of the bill. (AS 38.04.020(i))	same as house version

- |       |   |   |
|-------|---|---|
| 9     | corrects 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))  | same as house version   |
| 10    | deletes a cross-reference to an annual land demand study, repealed by this bill. (AS 38.04.021(b))  | same as house version   |
| 11    | allows 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)   | same as house version   |
| 12    | clarifies the legislature's policy that sales of public land to private individuals should be at fair market value unless specifically exempted, and removes a reference to remote cabin permits (repealed by Sec. 49 of this bill). (AS 38.04.035)   | same as house version   |
| 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 recreational cabin site leases, as enacted by Sec. 36 of the bill, would be exempt from this statute because they are short-term leases. The statute would not apply until the remote recreational cabin site was ready to sell.) (AS 38.04.045(b))  | technical changes to conform to SB 162  |
| 14    | allows discretion on where to hold land auctions and lotteries. (AS 38.05.050)  | same as house version   |
| 15    | deletes the personal-appearance requirement for land auctions, allowing bidders to be represented by an agent. (AS 38.05.055)   | conforms to SB 190 to require Alaska residency, although retains the allowance for representation by an agent |
| 16    | along with a repealer in Sec. 49, deletes 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))   | same as house version   |
| 17-18 | 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).) | same as house version   |

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| <p>19 replaces 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))</p> | <p>amended to conform with SB 162, allows for agricultural land to have a maximum interest rate of 9.5%</p>  |
| <p>20 corrects a 1984 error, restoring the original intent of the veterans' preference auction law. It clarifies that although that law does not apply to the lottery, homestead, or homestead programs, a veterans' preference auction must be held before restricted residential lots can be sold at auction to the general public. A combination of amendments in 1984 had made veterans' preference sales inapplicable to all subdivision sales. (AS 38.05.067(d))</p>   | <p>same as house version</p>   |
| <p>21 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))</p>  | <p>returns to mandatory preference right</p>   |
| <p>22 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))</p>  | <p>same as house version</p>   |
| <p>23 updates programs exempt from the general standard that state land leases must be offered at auction. It removes a reference to remote cabin permits (repealed by Sec. 49 of this bill), and substitutes a reference to remote cabin site recreational leases (enacted by Sec. 36 of this bill)</p>   | <p>same as house version</p>   |
| <p>24 eliminates 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))</p>  | <p>Removes reference to "auction", restores the original language requiring the director to attempt to determine who is the most qualified applicant. If one application is received the commissioner may issue a lease at the rental rate established in following section.</p> |
| <p>25 eliminates special provisions that prevent the state from obtaining fair market value rental for shore fishery leases. (AS 38.05.082(c))</p>   | <p>Establishes a rental rate based on 1% of the year-end estimated monthly permit value report for the district as determined from the monthly permit value report or the administrative costs, which ever is greater but not to exceed \$1000.</p>                              |
| <p>26 amends 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 specifies that the commissioner may renew existing leases under terms and conditions prescribed by the commissioner. (AS 38.05.082(d))</p>   | <p>additional clarification that the current valid lease holder may renew the lease</p>  |

- 27 rewrites 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)) same as house version
- 28 modernizes 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 sites, 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) same as house version
- 29 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. 49 of this bill. (AS 38.05.131(a)) same as house version
- 30 eliminates 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. 12, and Art. VIII, Sec. 16, of the Alaska Constitution. This amendment would eliminate a potential pitfall. (AS 38.05.185(a)) same as house version
- 31 amends 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)) same as house version

- 32 simplifies 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)) same as house version
- 33 authorizes 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) same as house version
- 34 new subsection to clarify 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)) same as house version
- 35 eliminates 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) same as house version
- 36 creates a remote recreational 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" programs (repealed in 1979 and 1993 respectively). (AS 38.05.600) same as house version
- 37 allows 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)) same as house version but also adds "or other public" facility, beyond cemetery or solid waste facility that may be disposed of to a tax-exempt, non-profit corporation, or other organization to operate for a public purpose

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|----|---|-----------------------|
| 38 | clarifies that the division may 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))  | same as house version |
| 39 | deletes references in the public notice law to special aquatic farmsite permit procedures repealed by Sec. 49 of the bill: mandatory public hearings and preliminary findings before issuing permits. (AS 38.05.945(a)(5)-(6))  | same as house version |
| 40 | raises 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))   | same as house version |
| 41 | adds a cross-reference to the lottery process used to select the winner of a homesite entry permit (see Sec. 42). 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))   | same as house version |
| 42 | adds 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))  | same as house version |
| 43 | deletes the authority to make applicants appear in person at a homestead lottery. (AS 38.09.010(g))   | same as house version |
| 44 | Raises 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 addition, combined with repealers in Sec. 49 of the bill, it would eliminate 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)) | same as house version |

- 45-46 along with repealers in Sec. 49 of the bill, reduces and simplifies the ways to receive title to a homestead parcel. (Currently there are three methods. A homesteader may 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. 45 eliminates the house-building requirement and the distinction between two-year and five-year purchase. Within five years the homesteader either "proves up" by living on the parcel for 25 months, or purchases the parcel at fair market value. (As with all state land sales, the purchaser may pay cash for the homestead, or enter into an installment contract under AS 38.05.065.) With either method, the homesteader must reimburse the state for survey and platting costs, and must meet agricultural clearing requirements if the land is classified agricultural. Sec. 46 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)) same as house version
- 47 along with repealers in Sec. 49 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 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, plus repealers of AS 38.09.050(d)-(e)) same as house version
- 48 transfers the homesite disclaimer language of AS 38.08.090 (to be repealed by Sec. 49 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. same as house version

- 49 Repealers affecting the land disposal bank (AS 38.04.020) and down payments at land lotteries (AS 38.05.057(g)) see Secs. 2 and 16. same as house version
- 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" (the Statehood Act's mineral leasing requirement) 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 eliminates the remote cabin permit program, which provided for 25-year leases for cabin sites.
- Repealing AS 38.05.855, AS 38.05.856, and AS 38.05.946(b) eliminates requirements associated with aquatic farmsite permits; see Secs. 28 and 39.
- AS 38.08.090 is made unnecessary by Sec. 48, 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. 44. 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. 45. 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. 47.
- 50 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) same as house version
- 51 adds a savings clause protecting homesite entry permits (and subsequent patents) granted by lottery after July 6, 1984. That was the effective date of an amendment that dropped a reference to the lottery statute, leaving no statutory guidance on how to issue homesite entry permits. See Sec. 42 same as house version
- 52 specifies 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. same as house version
- 53 ensures that changes made to AS 38.05.082 by Sec. 24 of the bill will continue in effect after 1997, when unrelated changes enacted in 1991 take effect. same as house version

54 allows the department to adopt regulations in advance of the bill's effective date, but may not take effect until July 1, 1995. Includes a savings clause for the existing homesite disposal regulations until they can be changed.

same as house version, amends to July 1, 1996

55-56 are effective date clauses

same as house version, Amends to July 1, 1996

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR LINCOLN

TO: CSSSHB 191(FIN)

- 1 Page 18, line 13, following "waste":
- 2       Insert "or other public"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSH B 191(FIN)

1 Page 2, lines 5 - 6:

2 Delete "The state [COMMISSIONER SHALL ESTABLISH A] land disposal program  
3 consists of"

4 Insert "State [THE COMMISSIONER SHALL ESTABLISH A] land disposals shall  
5 include [DISPOSAL]"

6 Page 2, line 9:

7 Delete "The state land disposal program [BANK] does"

8 Insert "State [THE] land disposals may [DISPOSAL BANK DOES]"

# Alaska State Legislature

REPRESENTATIVE  
GENE THERRIAULT  
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House District 33

## House Of Representatives

### MEMORANDUM

TO: Senator Loren Leman, Chairman  
Senate Resources Committee

FROM: Representative Gene Therriault 

DATE: January 19, 1996

SUBJECT: Scheduling of HB 191

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I respectfully request House Bill 191, "An Act relating to the management and disposal of state land and resources" be scheduled for a hearing in the Senate Resources Committee.

CS SSHB 191 (Fin) is a basic housekeeping bill intended to streamline DNR's land use and land disposal programs. CS SSHB 191 (FIN) revises the "remote cabin permit program" to a program that would allow for either the sale or lease of land for a remote cabin site. The permit program was never put into action because of the associated administrative costs with a minimal return to the state. The committee substitute also includes a section clarifying that the sale of state land does not obligate the state to provide additional services. HB 191 also makes some substantive changes to the Shore Fisheries program to allow a reasonable return to the state for the use of state land for set net sites. With the passage of this bill, DNR expects an increase in revenue to the state well over \$200,000 annually.

During the Senate Finance hearing on HB 191 last session, Senator Halford indicated he had some concerns with the sections of the bill in which there are changes of usage of the terms "shall" to "may". I have attached a sectional outlining those specific changes.

On May 4, 1995 CS SSHB 191(FIN) passed the House with no opposition.

The following information is attached:

1. CS SSHB 191 (FIN)
2. Sectional analysis
3. Sponsor statement
4. Shall vs May sectional

I appreciate your consideration of my request.

Attachments (4)

Sectional Analysis of CSSSHB 191(Fin)  
April 27, 1995

Secs. 1-30, 33-34, and 36-54 affect the Division of Land. Secs. 30-35 affect the Division of Mining and Water Management. Sec. 29 affects the Division of Oil and Gas. Sec. 50 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. 49. (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. 43-44 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 recreational cabin site lease/sale program enacted by Sec. 36 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 removes a reference to remote cabin permits (repealed by Sec. 49 of this 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 recreational cabin site leases, as enacted by Sec. 36 of the bill, would be exempt from this statute because they are short-term leases. The statute would not apply until the remote recreational cabin site was ready to sell.) (AS 38.04.045(b).)

Secs. 14-16 and 43 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. 49, 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. 43 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 corrects a 1984 error, restoring the original intent of the veterans' preference auction law. It clarifies that although that law does not apply to the lottery, homesite, or homestead programs, a veterans' preference auction must be held before restricted residential lots can be sold at auction to the general public. A combination of amendments in 1984 had made veterans' preference sales inapplicable to all subdivision sales. (AS 38.05.067(d).)

Sec. 21 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. 22 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).)

Sec. 23 updates programs exempt from the general standard that state land leases must be offered at auction. It removes a reference to remote cabin permits (repealed by Sec. 49 of this bill), and substitutes a reference to remote cabin site recreational leases (enacted by Sec. 36 of this bill).

Secs. 24-27 and 39, along with certain repealers in Sec. 49, 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. 24 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. 25 would eliminate special provisions that prevent the state from obtaining fair market value rental for shore fishery leases. (AS 38.05.082(c).)
- Sec. 26 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 specifies that the commissioner may renew existing leases under terms and conditions prescribed by the commissioner. (AS 38.05.082(d).)
- Sec. 27 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. 39 would delete references in the public notice law to special aquatic farmsite permit procedures repealed by Sec. 49 of the bill: mandatory public hearings and preliminary findings before issuing permits. (AS 38.05.945(a)(5)-(6).)

Sec. 28 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 sites, 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. 29 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. 49 of this bill. (AS 38.05.131(a).)

Sec. 30 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. 31 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. 32 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. 33 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. 34 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. 35 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. 36 would create a remote recreational 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" programs (repealed in 1979 and 1993 respectively). (AS 38.05.600.)

Sec. 37 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. 38 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. 39: See under Secs. 24-27.

Sec. 40 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. 41 would add a cross-reference to the lottery process used to select the winner of a homesite entry permit (see Sec. 42). 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. 42 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. 43: See under Sec. 14-16.

Sec. 44 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 addition, combined with repealers in Sec. 49 of the bill, it would eliminate 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(i).)

Secs. 45-46, along with repealers in Sec. 49 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. 45 eliminates the house-building requirement and the distinction between two-year and five-year purchase. Within five years the homesteader either "proves up" by living on the parcel for 25 months, or purchases the parcel at fair market value. (As with all state land sales, the purchaser may pay cash for the homestead, or enter into an installment contract under AS 38.05.065.) With either method, the homesteader must reimburse the state for survey and platting costs, and must meet agricultural clearing requirements if the land is classified agricultural. Sec. 46 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. 47, along with repealers in Sec. 49 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 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 remote restrictions.) (AS 38.09.105, plus repealers of AS 38.09.050(d)-(e).)

Sec. 48 transfers the homesite disclaimer language of AS 38.08.090 (to be repealed by Sec. 49 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. 49:

- 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" (the Statehood Act's mineral leasing requirement) 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 eliminates the remote cabin permit program, which provided for 25-year leases for cabin sites.
- Repealing AS 38.05.855, AS 38.05.856, and AS 38.05.946(b) eliminates requirements associated with aquatic farmsite permits; see Secs. 28 and 39.
- AS 38.08.090 is made unnecessary by Sec. 48, 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. 44. 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. 45. 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. 47.

Sec. 50 would authorize railroad, highway, and utility line rights-of-way within Chugach State Park necessitated by a Seward II relocation project at Bird Point (between Anchorage and Girdwood).

Sec. 51 would add a savings clause protecting homesite entry permits (and subsequent patents) granted by lottery after July 6, 1984. That was the effective date of an amendment that dropped a reference to the lottery statute, leaving no statutory guidance on how to issue homesite entry permits. See Sec. 42, which corrects the problem.

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. 24 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.

HB 191, Section 25

(c) A lease for set net fishing may be issued for any period not exceeding 10 years. If the commissioner determines that the land is not being utilized for the purpose for which the lease is issued, the lease may be declared void. The lease rate shall be determined by fishing district by charging XX% of the year end average from the latest Commercial Fisheries Entry Commission Estimated Monthly Permit Value report [THE DIRECTOR SHALL ESTABLISH A REASONABLE RENTAL FOR THE LEASE, EQUAL TO THE ADMINISTRATIVE COSTS INVOLVED IN PROCESSING THE LEASEHOLD APPLICATIONS.]

## SHORE FISHERY LEASES

District	Commercial Entry Commission Reported 1995 Permit Value	.5% of Value	1% of Value	Leases Issued	Total Revenue at .5%	Total Revenue at 1%
Alaska Peninsula	\$109,300	\$546	\$1,093	86	\$46,956	\$93,998
Bristol Bay	\$42,200	\$211	\$422	616	\$129,976	\$259,952
Cook Inlet	\$30,300	\$151	\$303	478	\$72,178	\$144,834
Kodiak	\$92,600	\$463	\$926	129	\$59,727	\$119,454
Prince William Sound	\$63,000	\$315	\$630	35	\$11,025	\$22,050
<i>Totals</i>				1,344	\$319,862	\$640,288

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COMMERCIAL FISHERIES ENTRY COMMISSION  
1995 ESTIMATED MONTHLY PERMIT VALUE REPORT

DIVISION OF LAND  
NORTH-CENTRAL REGION

This report contains value estimates for permit transactions in Alaska's limited fisheries. The estimated values listed in this report were obtained from data collected in the Commercial Fisheries Entry Commission's transfer survey. This evaluation is prepared on a monthly basis. Where sufficient data exist, estimates are based on the current month's value as well as the those for the preceding two months. Where insufficient data exist during a three month period, additional data from earlier months are included until a sufficient number of observations are obtained. For the year end average, transactions which occurred between January and December are considered. Questions regarding this report should be addressed to: Al Tingley, Commercial Fisheries Entry Commission, 8800 Glacier Hwy., #109, Juneau, AK 99801, or phone (907) 789-6160.

FISHERY		MONTH	ESTIMATED VALUE	RANGE	STD DEV	EARLIEST TRANSACTION	LATEST TRANSACTION
***** Herring Purse Seine Fisheries *****							
GDIA	Southeast	JAN	\$173,800	50000	20550	NOV93	JAN95
		FEB	\$173,800	50000	20550	NOV93	JAN95
		MAR	\$175,000	40000	17800	FEB94	MAR95
		APR	\$175,000	40000	17800	FEB94	MAR95
		MAY	\$175,000	40000	17800	FEB94	MAR95
		JUN	\$175,000	40000	17800	FEB94	MAR95
		JUL	\$175,000	40000	17800	FEB94	MAR95
		AUG	\$175,000	40000	17800	FEB94	MAR95
		SEP	\$175,000	40000	17800	FEB94	MAR95
		OCT	\$175,000	40000	17800	FEB94	MAR95
		NOV	\$175,000	40000	17800	FEB94	MAR95
		DEC	\$175,000	40000	17800	FEB94	MAR95
		ALL	\$175,000	40000	17800	FEB94	MAR95
GOIE	Prince William Sound	JAN	\$80,200	84000	34450	FEB93	JAN95
		FEB	\$80,200	84000	34450	FEB93	JAN95
		MAR	\$80,200	84000	34450	FEB93	JAN95
		APR	\$80,200	84000	34450	FEB93	JAN95
		MAY	\$65,400	38000	17250	FEB94	MAY95
		JUN	\$65,400	38000	17250	FEB94	MAY95
		JUL	\$65,400	38000	17250	FEB94	MAY95
		AUG	\$65,400	38000	17250	FEB94	MAY95
		SEP	\$65,400	38000	17250	FEB94	MAY95
		OCT	\$65,400	38000	17250	FEB94	MAY95
		NOV	\$62,700	38000	15850	MAR94	NOV95
		DEC	\$59,200	24800	12150	JAN95	DEC95
		ALL	\$59,200	24800	12150	JAN95	DEC95
GOIM	Cook Inlet	JAN	\$65,900	29000	12350	JUL94	JAN95
		FEB	\$61,200	10000	4300	NOV94	FEB95
		MAR	\$64,700	7500	2950	JAN95	MAR95
		APR	\$70,000	15900	6350	FEB95	APR95
		MAY	\$71,300	15900	6600	MAR95	APR95
		JUN	\$71,300	15900	6600	MAR95	APR95
		JUL	\$71,300	15900	6600	MAR95	APR95
		AUG	\$71,300	15900	6600	MAR95	APR95
		SEP	\$71,300	15900	6600	MAR95	APR95
		OCT	\$71,300	15900	6600	MAR95	APR95
		NOV	\$71,300	15900	6600	MAR95	APR95
		DEC	\$87,100	30500	13900	APR95	DEC95
		ALL	\$74,600	40000	14700	JAN95	DEC95
GOIK	Kodiak	JAN	\$88,000	25000	11200	APR94	DEC94
		FEB	\$75,000	15000	7050	MAY94	FEB95
		MAR	\$83,000	15000	6300	DEC94	MAR95
		APR	\$88,000	10000	4900	FEB95	APR95
		MAY	\$88,000	10000	4900	FEB95	APR95
		JUN	\$88,000	10000	4900	FEB95	APR95
		JUL	\$88,000	12000	5400	MAR95	JUL95
		AUG	\$88,000	12000	5400	MAR95	JUL95
		SEP	\$88,000	12000	5400	MAR95	JUL95
		OCT	\$88,000	12000	5400	MAR95	JUL95
		NOV	\$88,000	12000	5400	MAR95	JUL95
		DE	\$88,000	12000	4700	MAR95	DEC95
		ALL	\$88,000	12000	4450	FEB95	DEC95

Commercial Fisheries Entry Commission  
1995 Estimated Monthly Permit Value Report

FISHERY	MONTH	ESTIMATED VALUE	RANGE	STD DEV	EARLIEST TRANSACTION	LATEST TRANSACTION
803H Alaska Peninsula	JAN	\$329,800	70000	33250	JAN94	DEC94
	FEB	\$329,800	70000	33250	JAN94	DEC94
	MAR	\$316,300	44000	21000	JUN94	MAR95
	APR	\$316,300	44000	21000	JUN94	MAR95
	MAY	\$303,300	21000	10500	DEC94	MAY95
	JUN	\$304,200	21000	9400	MAR95	JUN95
	JUL	\$304,200	21000	9400	MAR95	JUN95
	AUG	\$304,200	21000	9400	MAR95	JUN95
	SEP	\$304,200	21000	9400	MAR95	JUN95
	OCT	\$304,200	21000	9400	MAR95	JUN95
	NOV	\$304,200	21000	9400	MAR95	JUN95
	DEC	\$302,500	10000	5000	MAY95	DEC95
	ALL	\$303,200	21000	8750	MAR95	DEC95
803T Bristol Bay	JAN	\$178,500	9000	2450	NOV94	JAN95
	FEB	\$180,900	25000	6150	DEC94	FEB95
	MAR	\$183,300	90000	17150	JAN95	MAR95
	APR	\$194,600	113000	23500	FEB95	APR95
	MAY	\$199,500	115000	23550	MAR95	MAY95
	JUN	\$207,000	140000	30250	APR95	JUN95
	JUL	\$207,400	85000	20050	MAY95	JUN95
	AUG	\$207,100	85000	22450	JUN95	JUN95
	SEP	\$206,500	85000	22000	JUN95	SEP95
	OCT	\$192,000	45000	20650	SEP95	OCT95
	NOV	\$186,200	47000	18400	SEP95	NOV95
	DEC	\$173,500	80000	18200	OCT95	DEC95
	ALL	\$193,000	125000	22900	JAN95	DEC95
***** Salmon Set Gillnet Fisheries *****						
804D Yakutat	JAN	\$42,500	20000	9500	MAR94	DEC94
	FEB	\$42,500	20000	9500	MAR94	DEC94
	MAR	\$42,500	20300	9550	MAR94	DEC94
	APR	\$42,000	20000	9100	APR94	APR95
	MAY	\$42,000	20000	9100	APR94	APR95
	JUN	\$49,500	20000	8250	APR95	JUN95
	JUL	\$49,500	20000	8250	APR95	JUN95
	AUG	\$50,000	20000	8150	JUN95	AUG95
	SEP	\$50,000	20000	8150	JUN95	AUG95
	OCT	\$50,000	20000	8150	JUN95	AUG95
	NOV	\$50,000	20000	8150	JUN95	AUG95
	DEC	\$50,000	20000	8150	JUN95	AUG95
	ALL	\$49,600	20000	7150	APR95	AUG95
804E Prince William Sound	JAN	\$75,000	70000	33150	FEB91	JUN94
	FEB	\$75,000	70000	33150	FEB91	JUN94
	MAR	\$75,000	70000	33150	FEB91	JUN94
	APR	\$75,000	70000	33150	FEB91	JUN94
	MAY	\$75,000	70000	33150	FEB91	JUN94
	JUN	\$63,800	50000	22850	JUN94	JUN95
	JUL	\$63,800	50000	22850	JUN94	JUN95
	AUG	\$63,000	50000	19850	JUN94	AUG95
	SEP	\$63,000	50000	19850	JUN94	AUG95
	OCT	\$63,000	50000	19850	JUN94	AUG95
	NOV	\$63,000	50000	19850	JUN94	AUG95
	DEC	\$63,000	50000	19850	JUN94	AUG95
	ALL	\$63,000	50000	19850	JUN94	AUG95
824H Cook Inlet	JAN	\$24,100	3500	1400	OCT94	JAN95
	FEB	\$24,000	2500	1200	DEC94	FEB95
	MAR	\$24,700	3000	800	JAN95	MAR95
	APR	\$27,000	10000	3300	FEB95	APR95
	MAY	\$29,100	7500	3400	MAR95	MAY95
	JUN	\$30,800	5500	4350	APR95	JUN95
	JUL	\$30,800	5500	3400	MAY95	JUN95
	AUG	\$28,900	7000	3100	JUN95	JUN95
	SEP	\$33,100	50500	17650	JUN95	SEP95
	OCT	\$33,100	50500	17650	JUN95	SEP95
	NOV	\$38,300	50500	19750	SEP95	NOV95
	DEC	\$31,400	9500	2500	NOV95	DEC95
	ALL	\$30,100	10500	3850	JAN95	DEC95

Commercial Fisheries Entry Commission  
1995 Estimated Monthly Permit Value Report

FISHERY	MONTH	ESTIMATED VALUE	RANGE	STD DEV	EARLIEST TRANSACTION	LATEST TRANSACTION
S04A Kodiak	JAN	\$90,000	53000	20450	MAY94	JAN95
	FEB	\$90,000	53000	20450	MAY94	JAN95
	MAR	\$90,000	53000	20450	MAY94	JAN95
	APR	\$88,800	53000	25950	JUN94	APR95
	MAY	\$101,400	100500	41100	DEC94	MAY95
	JUN	\$92,600	100500	45050	JAN95	JUN95
	JUL	\$92,600	100500	45050	JAN95	JUN95
	AUG	\$92,600	100500	45050	JAN95	JUN95
	SEP	\$92,600	100500	45050	JAN95	JUN95
	OCT	\$92,600	100500	45050	JAN95	JUN95
	NOV	\$92,600	100500	45050	JAN95	JUN95
	DEC	\$92,600	100500	45050	JAN95	JUN95
	ALL	\$92,600	100500	45050	JAN95	JUN95
S04M Alaska Peninsula	JAN	\$107,900	31500	26750	OCT93	MAY94
	FEB	\$107,900	31500	26750	OCT93	MAY94
	MAR	\$97,900	31500	22900	JAN94	MAR95
	APR	\$104,100	41500	29550	MAY94	APR95
	MAY	\$103,200	41500	17150	MAY94	MAY95
	JUN	\$111,100	32500	12250	APR95	JUN95
	JUL	\$112,100	32500	23100	MAY95	JUN95
	AUG	\$112,900	32500	13100	JUN95	AUG95
	SEP	\$112,900	32500	13100	JUN95	AUG95
	OCT	\$112,900	32500	13100	JUN95	AUG95
	NOV	\$112,900	32500	13100	JUN95	AUG95
	DEC	\$112,500	32500	23000	JUN95	DEC95
	ALL	\$109,200	40000	12150	MAR95	DEC95
S04Z Bristol Bay	JAN	\$37,200	10500	3250	NOV94	JAN95
	FEB	\$36,400	4400	1300	DEC94	FEB95
	MAR	\$37,600	7000	2450	JAN95	MAR95
	APR	\$39,700	10000	3200	FEB95	APR95
	MAY	\$42,300	15000	1850	MAR95	MAY95
	JUN	\$43,800	13000	4350	APR95	JUN95
	JUL	\$44,600	13000	6700	MAY95	JUN95
	AUG	\$44,200	13000	5250	JUN95	AUG95
	SEP	\$44,200	13000	5250	JUN95	AUG95
	OCT	\$44,700	13000	5300	JUN95	OCT95
	NOV	\$44,800	13000	5050	JUN95	NOV95
	DEC	\$44,800	13000	5050	JUN95	NOV95
	ALL	\$42,300	16000	4850	JAN95	NOV95
***** Salmon Gillnet Fisheries *****						
S04P Upper Yukon	JAN	\$10,000	5000	2150	MAY90	JAN93
	FEB	\$10,000	5000	2150	MAY90	JAN93
	MAR	\$10,000	5000	2150	MAY90	JAN93
	APR	\$10,000	5000	2150	MAY90	JAN93
	MAY	\$10,000	5000	2150	MAY90	JAN93
	JUN	\$10,000	5000	2150	MAY90	JAN93
	JUL	\$10,000	5000	2150	MAY90	JAN93
	AUG	\$10,000	5000	2150	MAY90	JAN93
	SEP	\$10,000	5000	2150	MAY90	JAN93
	OCT	\$10,000	5000	2150	MAY90	JAN93
	NOV	\$10,000	5000	2150	MAY90	JAN93
	DEC	\$10,000	5000	2150	MAY90	JAN93
	ALL	\$10,000	5000	2150	MAY90	JAN93
S04W KUSKOKUM	JAN	\$11,900	3000	1300	JUL94	JAN95
	FEB	\$11,100	2500	1300	NOV94	FEB95
	MAR	\$11,100	2500	1300	NOV94	FEB95
	APR	\$10,600	4500	2050	FEB95	APR95
	MAY	\$11,500	4500	1950	APR95	MAY95
	JUN	\$11,600	4500	1650	APR95	JUN95
	JUL	\$12,600	2000	800	MAY95	JUL95
	AUG	\$12,600	2000	800	MAY95	JUL95
	SEP	\$12,500	2000	2000	JUN95	SEP95
	OCT	\$12,000	4000	1400	JUN95	OCT95
	NOV	\$12,800	1000	2300	JUL95	NOV95
	DEC	\$13,000	3000	2450	SEP95	DEC95
	ALL	\$12,000	7000	1900	JAN95	DEC95

HB 191  
9-LSO766\O  
"Shall" vs "May"

Section 1: "Shall" is properly used to ensure that when a disposal occurs we consider the availability of timber, firewood and water in determining separation between residences.

Section 2: Not applicable

Section 3: Not applicable

Section 4: "Shall" is properly used requiring the commissioner to report to the legislature on the total acreage planned and classified for various disposals.

Section 5: "May" is properly used concerning possible appropriation requests for proposed disposals. If a funding request is submitted, it "shall" include complete details for all capital improvements for the entire project.

Section 6: Not applicable

Section 7: Not applicable

Section 8: Not applicable

Section 9: Not applicable

Section 10: Not applicable

Section 11: "Must" is used instead of "shall." Either word ensures that land disposal programs created by regulation must provide for competition and produce at least fair market value.

Section 12: "Shall" is used instead of "should" to make sure that sales of public land must be at least at fair market value.

Section 13: Not applicable

Section 14: This changes a "shall to a may." The state superior court has ruled that applicants do not need to be present to win. The change to "may" allows the department to conduct a land sale at any location instead of having to conduct the sale in the closest community to the disposal. This allows us to be more efficient

and is a significant cost savings.

Section 15: Not applicable

Section 16: Not applicable

Section 17: Not applicable

Section 18: Not applicable

Section 19: Either "may" or "shall" could be used when referring to the maximum interest rate.

Section 20: Not applicable

Section 21: "May" is the preferred term, rather than the existing "shall," when granting an agricultural preference. Presently the law makes it mandatory for us to offer a preference when it is being sold. This has lead to cases where the farm has failed because the owner did not have sufficient resources to develop and maintain the farm. The preference would be granted when the owner has demonstrated sufficient where-with-all to develop and maintain the additional agricultural land.

Section 22: Not applicable

Section 23: Not applicable

Section 24: We are proposing to substitute "may" for "shall" in two locations. The first is making it discretionary on publicly inviting applications for shore fish leasing. The discretion is needed because the department classifies land for tide land development for a variety of reasons - not just shore fishing. To make it mandatory to offer tide lands for shore fish leasing when the area might not be open to commercial fishing, or there is a better use is not logical.

The second case is that presently if two or more applications are received for the same shore area we must offer the parcel by public auction. The change to "may" would allow us to use other disposal methods, such as a lottery. We are often criticized that the mandatory auction provides an incentive to outside investors, rather than local residents.

Section 25: Not applicable

Section 26: "Shall" is used instead of "may" which will allow the department to negotiate new terms when a lease is renewed. If "shall" is used the department would have no discretion on terms and would have to renew the lease when requested by the current lease holder.

Section 27: This entire section has a mix of "may's" and "shall's." May is used when an action cannot be taken until some future decision is made.

(a) The department "may" offer to the public a aquatic farm site. However, before this can take place the department "shall" consider all relevant comment submitted during the public notice period.

(b) The department "may" deny an application for good cause, but "shall" provide written reasons for the denial.

(c) Not applicable

(d) Lease "may" be assigned. This is a discretionary act by the lease holder, not the state.

(e) The department "shall" require a performance bond. This should not be discretionary on either the applicant or the department.

(f) The department "shall" adopt regulations. Regulations will be needed to establish the criteria needed to run the program, establish criteria for limiting the number of sites and to establish criteria for considering customary and traditional uses.

Section 28: This section deals with removal of improvements state land when a lease is terminated. "Shall" is used consistently throughout to avoid any discretion on either the state or lease holder on how the improvements and/or contamination shall be dealt with.

Section 29: Not applicable

Section 30: Not applicable

Section 31: Not applicable

Section 32: This section establishes how rental rates for mining claims and mining leases are established. "Shall" is the proper term to use for establishing these fees.

Section 33: Not applicable

Section 34: This section requires the department to adopt regulations setting leasing procedures and annual rentals for mining development. This properly "should" not be a discretionary action.

Section 35: Not applicable

Section 36: This section establishes a new remote recreational cabin site disposal program. It has an appropriate mix of "shall's" and "may's." May is used throughout when there is a later step to be finished before a final action can take place. Shall is used when the final action is being taken such as issuing the lease or patent, and for some steps that should not be discretionary, such as making the applicant pay for the land survey and appraisal.

Section 37: Requires the department to ensure that disposals of land to non-profit corporations and homeowners' associations serve a public purpose. This properly is not a discretionary action

Section 38: Not applicable

Section 39: Not applicable

Section 40: Either "may" or "shall" can be used. The result is the same for establishing application fees for homesites.

Section 41: Not applicable

Section 42: Uses the term "shall" consistently when dealing with the disposal of homesites by the department.

Section 43: Not applicable

Section 44: Not applicable

Section 45: Not applicable

Section 46: Not applicable

Section 47: This section deals with eliminating sale restrictions on homesteads and remotes. It has a mix of "shall's" and "may's."

- (a) Either "may" or "shall" can be used when discussing including the sale restrictions. The result is the same in that the conditions will not be used.
- (b) "Shall" is properly used telling the department to amend contracts or patents to remove the conditions, provided the applicant pays the difference in value between fair market value and the value paid with the restrictions.

Sections 48 through 56: Not applicable



# SENATOR LOREN LEMAN

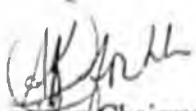
Northwest Anchorage

716 W 4th Ave, Ste 540, Anchorage AK 99501 258-8189

Session: State Capitol, Juneau AK 99801 465-2095

## MEMORANDUM

TO: Senator Druce Pearce  
Senate President

FROM: Senator Loren Lemman   
Senate Resources Committee Chairman

DATE: January 4, 1996

RE: Committee Referral for HB 191

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HB 191, Management of State Land and Resources, passed the House and was referred only to the Senate Finance Committee in 1995. As this bill deals with Title 38, I request an additional referral to Senate Resources. Thank you.