

**CS FOR HOUSE BILL NO. 77(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 2/13/13

Referred: Rules

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the Alaska Land Act, including certain authorizations, contracts,  
2 leases, permits, or other disposals of state land, resources, property, or interests; relating  
3 to authorization for the use of state land by general permit; relating to exchange of state  
4 land; relating to procedures for certain administrative appeals and requests for  
5 reconsideration to the commissioner of natural resources; relating to the Alaska Water  
6 Use Act; and providing for an effective date."

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

8 \* **Section 1.** AS 38.05.020 is amended by adding a new subsection to read:

9 (c) Notwithstanding any other provision of law, the commissioner may  
10 authorize an activity on state land by the issuance of a general permit if the  
11 commissioner finds that the activity is unlikely to result in significant and irreparable  
12 harm to state land or resources. This subsection does not apply to land designated  
13 under AS 16.20, AS 27.21, AS 41.17, or AS 41.21.

1 \* **Sec. 2.** AS 38.05.030(c) is amended to read:

2 (c) **The** [IN ADDITION TO THE REQUIREMENTS SPECIFIED IN  
3 AS 38.50.090, THE] agencies referred to in (b) of this section and other state agencies  
4 with authority to acquire or dispose of land shall give written notification of the fact of  
5 acquisition, lease, disposal, or exchange to the commissioner **not later than**  
6 [WITHIN] three months after the date that they make the acquisition, lease, disposal,  
7 or exchange.

8 \* **Sec. 3.** AS 38.05.035(e) is amended to read:

9 (e) Upon a written finding that the interests of the state will be best served, the  
10 director may, with the consent of the commissioner, approve contracts for the sale,  
11 lease, or other disposal of available land, resources, property, or interests in them. In  
12 approving a contract under this subsection, the director need only prepare a single  
13 written finding. In addition to the conditions and limitations imposed by law, the  
14 director may impose additional conditions or limitations in the contracts as the director  
15 determines, with the consent of the commissioner, will best serve the interests of the  
16 state. The preparation and issuance of the written finding by the director are subject to  
17 the following:

18 (1) with the consent of the commissioner and subject to the director's  
19 discretion, for a specific proposed disposal of available land, resources, or property, or  
20 of an interest in them, the director, in the written finding,

21 (A) shall establish the scope of the administrative review on  
22 which the director's determination is based, and the scope of the written  
23 finding supporting that determination; the scope of the administrative review  
24 and finding may address only reasonably foreseeable, significant effects of the  
25 uses proposed to be authorized by the disposal;

26 (B) may limit the scope of an administrative review and finding  
27 for a proposed disposal to

28 (i) applicable statutes and regulations;

29 (ii) the facts pertaining to the land, resources, or  
30 property, or interest in them, that the director finds are material to the  
31 determination and that are known to the director or knowledge of which

1 is made available to the director during the administrative review; and

2 (iii) issues that, based on the statutes and regulations  
3 referred to in (i) of this subparagraph, on the facts as described in (ii) of  
4 this subparagraph, and on the nature of the uses sought to be authorized  
5 by the disposal, the director finds are material to the determination of  
6 whether the proposed disposal will best serve the interests of the state;  
7 and

8 (C) may, if the project for which the proposed disposal is  
9 sought is a multiphased development, limit the scope of an administrative  
10 review and finding for the proposed disposal to the applicable statutes and  
11 regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that  
12 pertain solely to the disposal phase of the project when

13 (i) the only uses to be authorized by the proposed  
14 disposal are part of that phase;

15 (ii) the disposal is a disposal of oil and gas, or of gas  
16 only, and, before the next phase of the project may proceed, public  
17 notice and the opportunity to comment are provided under regulations  
18 adopted by the department;

19 (iii) the department's approval is required before the  
20 next phase of the project may proceed; and

21 (iv) the department describes its reasons for a decision  
22 to phase;

23 (2) the director shall discuss in the written finding prepared and issued  
24 under this subsection the reasons that each of the following was not material to the  
25 director's determination that the interests of the state will be best served:

26 (A) facts pertaining to the land, resources, or property, or an  
27 interest in them other than those that the director finds material under (1)(B)(ii)  
28 of this subsection; and

29 (B) issues based on the statutes and regulations referred to in  
30 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this  
31 subsection;

1 (3) a written finding for an oil and gas lease sale or gas only lease sale  
2 under AS 38.05.180 is subject to (g) of this section;

3 (4) a contract for the sale, lease, or other disposal of available land or  
4 an interest in land is not legally binding on the state until the commissioner approves  
5 the contract, but if the appraised value is not greater than \$50,000 in the case of the  
6 sale of land or an interest in land, or \$10,000 [\$5,000] in the case of the annual rental  
7 of land or interest in land, the director may execute the contract without the approval  
8 of the commissioner;

9 (5) public notice requirements relating to the sale, lease, or other  
10 disposal of available land or an interest in land for oil and gas, or for gas only,  
11 proposed to be scheduled in the five-year oil and gas leasing program under  
12 AS 38.05.180(b), except for a sale under (6)(F) of this subsection, are as follows:

13 (A) before a public hearing, if held, or in any case not less than  
14 180 days before the sale, lease, or other disposal of available land or an interest  
15 in land, the director shall make available to the public a preliminary written  
16 finding that states the scope of the review established under (1)(A) of this  
17 subsection and includes the applicable statutes and regulations, the material  
18 facts and issues in accordance with (1)(B) of this subsection, and information  
19 required by (g) of this section, upon which the determination that the sale,  
20 lease, or other disposal will serve the best interests of the state will be based;  
21 the director shall provide opportunity for public comment on the preliminary  
22 written finding for a period of not less than 60 days;

23 (B) after the public comment period for the preliminary written  
24 finding and not less than 90 days before the sale, lease, or other disposal of  
25 available land or an interest in land for oil and gas or for gas only, the director  
26 shall make available to the public a final written finding that states the scope of  
27 the review established under (1)(A) of this subsection and includes the  
28 applicable statutes and regulations, the material facts and issues in accordance  
29 with (1) of this subsection, and information required by (g) of this section,  
30 upon which the determination that the sale, lease, or other disposal will serve  
31 the best interests of the state is based;

1 (6) before a public hearing, if held, or in any case not less than 21 days  
 2 before the sale, lease, or other disposal of available land, property, resources, or  
 3 interests in them other than a sale, lease, or other disposal of available land or an  
 4 interest in land for oil and gas or for gas only under (5) of this subsection, the director  
 5 shall make available to the public a written finding that, in accordance with (1) of this  
 6 subsection, sets out the material facts and applicable statutes and regulations and any  
 7 other information required by statute or regulation to be considered upon which the  
 8 determination that the sale, lease, or other disposal will best serve the interests of the  
 9 state was based; **the director may make available to the public a preliminary**  
 10 **written finding and provide opportunity for public comment on the preliminary**  
 11 **written finding for a period of at least 30 days;** [HOWEVER,] a written finding is  
 12 not required before the approval of

13 (A) a contract for a negotiated sale authorized under  
 14 AS 38.05.115;

15 (B) a lease of land for a shore fishery site under AS 38.05.082;

16 (C) a permit or other authorization revocable by the  
 17 commissioner;

18 (D) a mineral claim located under AS 38.05.195;

19 (E) a mineral lease issued under AS 38.05.205;

20 (F) an exempt oil and gas lease sale or gas only lease sale under  
 21 AS 38.05.180(d) of acreage subject to a best interest finding issued within the  
 22 previous 10 years or a reoffer oil and gas lease sale or gas only lease sale under  
 23 AS 38.05.180(w) of acreage subject to a best interest finding issued within the  
 24 previous 10 years, unless the commissioner determines that substantial new  
 25 information has become available that justifies a supplement to the most recent  
 26 best interest finding for the exempt oil and gas lease sale or gas only lease sale  
 27 acreage and for the reoffer oil and gas lease sale or gas only lease sale acreage;  
 28 however, for each oil and gas lease sale or gas only lease sale described in this  
 29 subparagraph, the director shall call for comments from the public; the  
 30 director's call for public comments must provide opportunity for public  
 31 comment for a period of not less than 30 days; if the director determines that a

1 supplement to the most recent best interest finding for the acreage is required  
2 under this subparagraph,

3 (i) the director shall issue the supplement to the best  
4 interest finding not later than 90 days before the sale;

5 (ii) not later than 45 days before the sale, the director  
6 shall issue a notice describing the interests to be offered, the location  
7 and time of the sale, and the terms and conditions of the sale; and

8 (iii) the supplement has the status of a final written best  
9 interest finding for purposes of (i) and (l) of this section;

10 (G) a surface use lease under AS 38.05.255;

11 (H) a permit, right-of-way, or easement under AS 38.05.850;

12 (7) the director shall include in

13 (A) a preliminary written finding, if **issued** [REQUIRED], a  
14 summary of agency and public comments, if any, obtained as a result of  
15 contacts with other agencies concerning a proposed disposal or as a result of  
16 informal efforts undertaken by the department to solicit public response to a  
17 proposed disposal, and the department's preliminary responses to those  
18 comments; and

19 (B) the final written finding a summary of agency and public  
20 comments received and the department's responses to those comments.

21 \* **Sec. 4.** AS 38.05.035(i) is amended to read:

22 (i) A person who is eligible to file an administrative appeal or a request for  
23 reconsideration, as appropriate, under this subsection and who is **substantially and**  
24 **adversely affected** [AGGRIEVED] by the final written finding of the director entered  
25 under (e)(5) or (6) of this section may, **not later than** [WITHIN] 20 days after the  
26 issuance of the final written finding, file an administrative appeal or request  
27 reconsideration of the decision by the commissioner. A person is eligible to file an  
28 administrative appeal or a request for reconsideration if the person

29 (1) meaningfully participated in the process set out in this chapter for  
30 receipt of public comment by

31 (A) submitting written comment during the period for receipt

1 of public comment; or

2 (B) presenting oral testimony at a public hearing, if a public  
3 hearing was held; **or** [AND]

4 (2) is **the applicant** [AFFECTED BY THE FINAL WRITTEN  
5 FINDING].

6 \* **Sec. 5.** AS 38.05.035(j) is amended to read:

7 (j) An administrative appeal or a request for reconsideration submitted under  
8 (i) of this section must specify the written finding complained of and the specific basis  
9 upon which it is challenged. [THE COMMISSIONER SHALL GRANT OR DENY  
10 THE ADMINISTRATIVE APPEAL OR RECONSIDERATION REQUEST WITHIN  
11 30 DAYS AFTER ISSUANCE OF THE FINAL WRITTEN FINDING.] Failure of the  
12 commissioner to act on **a** [THE] request for reconsideration **not later than 30 days**  
13 **after issuance of the final written finding** [WITHIN THIS PERIOD] is a denial of  
14 the request for reconsideration and a final administrative decision for purposes of  
15 appeal to the superior court.

16 \* **Sec. 6.** AS 38.05.035(l) is amended to read:

17 (l) A person may appeal a final written finding issued under (e)(5) or (6) of  
18 this section to the superior court, but only if the person was eligible to request, and did  
19 request, an administrative appeal or reconsideration of that finding under (i) of this  
20 section. The person shall initiate the appeal **to the court not later than** [WITHIN] 30  
21 days from the date that the decision on administrative appeal or reconsideration is  
22 mailed or otherwise distributed, or the date the request for reconsideration is  
23 considered denied by the commissioner's failure to act on the request, whichever is  
24 earlier. The points on appeal **to the court** are limited to those presented to the  
25 commissioner in the person's administrative appeal or request for reconsideration.

26 \* **Sec. 7.** AS 38.05.065(a) is amended to read:

27 (a) **Unless the remainder of the purchase price is paid in full at the time of**  
28 **the sale, a** [THE] contract of sale for land **or property** sold [AT PUBLIC AUCTION  
29 OR BY SEALED BID] under **this chapter or former AS 38.05.078** [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 rate

1 provided in (i) of this section. Installment payments plus interest shall be set on the  
2 level-payment basis.

3 \* **Sec. 8.** AS 38.05.065(c) is amended to read:

4 (c) The director shall, for **a contract that provides for installment payments**  
5 [CONTRACTS] under (a) [, (b),] or (h) of this section, set out in the contract [FOR  
6 EACH SALE] the period for the payment of installments and the total purchase price  
7 plus interest. The director, with the consent of the commissioner, may also include in **a**  
8 **contract** [CONTRACTS] under this section conditions, limitations, and terms  
9 considered necessary and proper to protect the interest of the state. Violations of any  
10 provision of this chapter or the terms of the contract of sale subject the purchaser to  
11 appropriate administrative and legal action, including but not limited to specific  
12 performance, foreclosure, ejectment, or other legal remedies in accordance with  
13 applicable state law.

14 \* **Sec. 9.** AS 38.05.065(h) is amended to read:

15 (h) The commissioner, after consulting with the Board of Agriculture and  
16 Conservation (AS 03.09.010),

17 (1) shall provide that, notwithstanding (a) [AND (b)] of this section, in  
18 a contract for the sale of land classified under AS 38.05.020(b)(6) for agricultural  
19 uses, the interest rate to be charged on installment payments may not exceed 9.5  
20 percent; and

21 (2) may declare a moratorium of up to five years on payments on land  
22 sold under this section for land classified under AS 38.05.020(b)(6) for agricultural  
23 uses if

24 (A) the commissioner determines that the moratorium is in the  
25 best interest of the state;

26 (B) the commissioner certifies and the contract purchaser  
27 agrees to perform farm development, crop production, and harvesting, not  
28 including land clearing or related activity, requiring the expenditure of  
29 amounts equivalent to the payments that would otherwise be made during the  
30 moratorium;

31 (C) the sale of the agricultural land takes place after July 1,



1 1979; and

2 (D) the contract purchaser is in compliance with the  
3 development plan specified in the purchase contract at the time the purchaser  
4 applies for a moratorium under this paragraph and remains in compliance with  
5 the development plan during the moratorium; for the payments subject to the  
6 moratorium declared under this paragraph, interest payments are subject to the  
7 moratorium but interest continues to accrue during the moratorium.

8 **\* Sec. 10.** AS 38.05.070 is amended by adding new subsections to read:

9 (f) A lease may be extended once for a period up to two years, if the director  
10 determines it to be in the best interests of the state and the extension is necessary to  
11 prolong the lease while the department considers

12 (1) a lessee preference application under AS 38.05.102;

13 (2) an application to renew the lease under (e) of this section; or

14 (3) an application to issue a new lease on the same site that, because it  
15 substantially changes the purpose or operation of an existing lease, requires a new  
16 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease  
17 is changed.

18 (g) An extension issued under (f) of this section is not subject to  
19 AS 38.05.035(e). The director shall provide public notice of the decision to extend the  
20 lease.

21 **\* Sec. 11.** AS 38.05.075(a) is amended to read:

22 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.082,  
23 38.05.083, 38.05.087, 38.05.102, 38.05.565, 38.05.600, 38.05.810, and this section,  
24 when competitive interest has been demonstrated or the commissioner determines that  
25 it is in the state's best interests, leasing shall be made at public auction or by sealed  
26 bid, at the discretion of the director, to the highest qualified bidder as determined by  
27 the commissioner. A bidder may be represented by an attorney or agent at a public  
28 auction. In the public notice of a lease to be offered at public auction or by sealed bid,  
29 the commissioner shall specify a minimum acceptable bid and the lease compensation  
30 method. The lease compensation method shall be designed to maximize the return on  
31 the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).

1 **A substantially and adversely affected** [AN AGGRIEVED] bidder may appeal **or**  
 2 **request reconsideration under AS 44.37.011; however, the appeal or request must**  
 3 **be made not later than** [TO THE COMMISSIONER WITHIN] five days **after**  
 4 **issuance of the determination of the highest qualified bidder** for a review of the  
 5 determination. The leasing shall be conducted by the commissioner, and the successful  
 6 bidder shall deposit at the public auction or with the sealed bid the first year's rental or  
 7 other lease compensation as specified by the commissioner, or that portion of it that  
 8 the commissioner requires in accordance with the bid. The commissioner shall require,  
 9 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or  
 10 appraisal costs reasonably incurred by another qualified bidder acting in accordance  
 11 with the regulations of the commissioner or incurred by the department under  
 12 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal  
 13 costs is determined by the commissioner to be the highest qualified bidder under this  
 14 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those  
 15 costs or to the department if the department incurred the costs. All costs for survey and  
 16 appraisal shall be approved in advance in writing by the commissioner. The  
 17 commissioner shall immediately issue a receipt containing a description of the land or  
 18 interest leased, the price bid, and the terms of the lease to the successful qualified  
 19 bidder. If the receipt is not accepted in writing by the bidder under this subsection, the  
 20 commissioner may offer the land for lease again under this subsection. A lease, on a  
 21 form approved by the attorney general, shall be signed by the successful bidder and by  
 22 the commissioner.

23 \* **Sec. 12.** AS 38.05.075(e) is amended to read:

24 (e) The commissioner may require prequalification of bidders for a lease to be  
 25 issued under AS 38.05.070. If the commissioner determines to require  
 26 prequalification, the procedures established by this section and the notice including  
 27 prequalification requirements required to be given under AS 38.05.945 shall be  
 28 completed **not later than** [WITHIN] 75 days **after** [OF] the receipt of the first lease  
 29 application unless the commissioner grants additional time for the completion of the  
 30 procedures. **During** [WITHIN] the 75-day period or the additional time granted by the  
 31 commissioner, the commissioner shall complete

- 1 (1) classification under AS 38.05.300;
- 2 (2) the procedures required by AS 38.05.035(e);
- 3 (3) any other action required by law for the disposal of the lease to a
- 4 bidder except survey, appraisal, and the auction or sealed bid.

5 \* **Sec. 13.** AS 38.05.075(h) is amended to read:

6 (h) A person **substantially and adversely affected** [AGGRIEVED] by a

7 decision of the commissioner under this section may appeal **or request**

8 **reconsideration under AS 44.37.011; however, the appeal or request for**

9 **reconsideration must be made not later than** [TO THE COMMISSIONER

10 WITHIN] five days **after** [OF] the prequalification decision. [THE DECISION OF

11 THE COMMISSIONER UNDER THIS SUBSECTION MAY BE APPEALED TO

12 THE SUPERIOR COURT.]

13 \* **Sec. 14.** AS 38.05.082(b) is amended to read:

14 (b) The director may classify land as subject to leases for fisheries

15 development and publicly invite applications for lease of the selected areas. Each

16 application shall be accompanied by an affidavit to the effect that the applicant

17 presently intends to personally utilize the leased area for fishing purposes the

18 following season. If two or more applications are received for the same shore area, the

19 director shall award the lease to the most qualified applicant. In determining the

20 qualifications of applicants, the director shall consider the length of time during which

21 the applicant has been engaged in set netting, the proximity of the past fishing sites of

22 the applicant to the land to be leased, the present ability of the applicant to utilize the

23 location to its maximum potential, and other factors relevant to the equitable

24 assignment of the disputed area. If the director cannot determine a preference between

25 conflicting applicants for the same lease site on the basis of qualifications, the director

26 shall select between the applicants by lot. **A substantially and adversely affected**

27 [AN AGGRIEVED] applicant may appeal to the commissioner **under AS 44.37.011**

28 **not later than 20** [WITHIN 30] days **after issuance of the determination** for a

29 review of the director's determination.

30 \* **Sec. 15.** AS 38.05.083(a) is amended to read:

31 (a) The commissioner may offer to the public for lease at public auction or by

1 sealed bid under AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic  
 2 farming or related hatchery operations. Before a final decision to issue [OR RENEW]  
 3 a lease under this section, the commissioner shall give notice and allow opportunity  
 4 for comment in accordance with AS 38.05.945 and may hold a hearing to take  
 5 testimony. Before a final decision to issue [OR RENEW] a lease under this section,  
 6 the commissioner shall consider all relevant comment or testimony submitted under  
 7 this section, AS 38.05.945, or 38.05.946.

8 \* **Sec. 16.** AS 38.05.083 is amended by adding new subsections to read:

9 (g) The director may renew a lease issued under this section before its  
 10 expiration if the lease is in good standing and the director determines the lease renewal  
 11 to be in the best interests of the state. A renewal issued under this subsection is not  
 12 subject to AS 38.05.035(e). A lease may be renewed only once for a term not longer  
 13 than 10 years. The director shall provide notice of the decision to renew the lease.

14 (h) The director may extend the term of a lease issued under this section if the  
 15 lease is in good standing and the lease extension is determined to be in the best  
 16 interests of the state. A lease may be only extended once before its expiration for an  
 17 additional period of not more than two years. A lease extension may only be issued if  
 18 the director determines the extension is necessary while the department considers

19 (1) an application to renew the lease under (g) of this section; or

20 (2) an application to issue a new lease on the same site that, because it  
 21 substantially changes the purpose or operation of an existing lease, requires a new  
 22 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease  
 23 is changed.

24 (i) An extension issued under (h) of this section is not subject to  
 25 AS 38.05.035(e). The director shall provide public notice of the decision to extend the  
 26 lease.

27 \* **Sec. 17.** AS 38.05.185(a) is amended to read:

28 (a) The acquisition and continuance of rights in and to deposits on state land  
 29 of minerals, which on January 3, 1959, were subject to location under the mining laws  
 30 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in  
 31 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to

1 mineral deposits owned by any other person or government. The director, with the  
 2 approval of the commissioner, shall determine that land from which mineral deposits  
 3 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that  
 4 land that shall be closed to location under AS 38.05.185 - 38.05.275. State land may  
 5 not be closed to location under AS 38.05.185 - 38.05.275 except as provided in  
 6 AS 38.05.300 and unless the commissioner makes a finding that mining would be  
 7 incompatible with significant surface uses on the state land. State land may not be  
 8 restricted to mining under lease unless the commissioner determines that potential use  
 9 conflicts on the state land require that mining be allowed only under written leases  
 10 issued under AS 38.05.205 or the commissioner has determined that the land was  
 11 mineral in character at the time of state selection. The determinations required under  
 12 this subsection shall be made in compliance with land classification orders and land  
 13 use plans developed under AS 38.05.300. **A preliminary written decision under this**  
 14 **subsection may be made available to the public and provide opportunity for**  
 15 **public comment on the preliminary written decision for a period of at least 30**  
 16 **days.**

17 \* **Sec. 18.** AS 38.05.300(a) is amended to read:

18 (a) The commissioner shall classify for surface use land in areas considered  
 19 necessary and proper. This section does not prevent reclassification of land where the  
 20 public interest warrants reclassification, nor does it preclude multiple purpose use of  
 21 land whenever different uses are compatible. **The commissioner may make available**  
 22 **to the public a preliminary written classification decision and provide**  
 23 **opportunity for public comment on the preliminary written decision for a period**  
 24 **of at least 30 days.** If the area involved contains more than 640 contiguous acres, state  
 25 land, water, or land and water area may not, except by act of the state legislature, (1)  
 26 be closed to multiple purpose use, or (2) be otherwise classified by the commissioner  
 27 so that mining, mineral entry or location, mineral prospecting, or mineral leasing is  
 28 precluded or is designated an incompatible use, except when the classification is  
 29 necessary for a land disposal or exchange or is for the development of utility or  
 30 transportation corridors or projects or similar projects or infrastructure, or except as  
 31 allowed under (c) of this section.

1 \* **Sec. 19.** AS 38.05.945(a) is amended to read:

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

4 (1) **a preliminary decision, or final decision if a preliminary**  
5 **decision is not issued, regarding the** classification or reclassification of state land  
6 under AS 38.05.300 **or a mineral order or leasehold location order regarding**  
7 [AND] the **availability** [CLOSING] of land to mineral leasing or entry under  
8 AS 38.05.185;

9 (2) **a preliminary decision, or final decision if a preliminary**  
10 **decision is not issued, regarding the** zoning of land under applicable law;

11 (3) issuance of a

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

15 (B) written finding for the sale, lease, or disposal of an interest  
16 in state land or resources under AS 38.05.035(e)(6), except

17 **(i) if a preliminary written finding is issued under**  
18 **AS 38.05.035(e)(6); or**

19 **(ii)** a lease sale described in AS 38.05.035(e)(6)(F) for  
20 which the director must provide opportunity for public comment under  
21 the provisions of that subparagraph;

22 **(C) preliminary written finding that the director issued**  
23 **under AS 38.05.035(e)(6);**

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

26 (5) a preliminary finding under AS 38.05.035(e) concerning sites for  
27 aquatic farms and related hatcheries;

28 (6) a decision under AS 38.05.132 - 38.05.134 regarding the sale,  
29 lease, or disposal of an interest in state land or resources.

30 \* **Sec. 20.** AS 38.05.965(21) is amended to read:

31 (21) "state land" or "land" means all land, including **shoreland**

1 [SHORE], **tideland** [TIDE], and submerged land, or resources belonging to or  
 2 acquired by the state;

3 \* **Sec. 21.** AS 38.05.965 is amended by adding a new paragraph to read:

4 (26) "public auction" includes a public oral outcry auction and a public  
 5 online auction.

6 \* **Sec. 22.** AS 38.50.010 is amended to read:

7 **Sec. 38.50.010. Authorization for exchange of state land.** Subject to the  
 8 requirements of this chapter, the director [, WITH THE CONCURRENCE OF THE  
 9 COMMISSIONER,] is authorized to **exchange** [DISPOSE OF] state land or interest in  
 10 land [BY EXCHANGING IT] for land, interest in land, or other consideration **when it**  
 11 **is in the best interest of the state, including either or both the land estate or**  
 12 **mineral estate. Land or an interest in land must be of approximately equal value;**  
 13 **however, the director may accept cash from, or pay cash to, any other party to an**  
 14 **exchange in order to equalize the value of the property or other consideration**  
 15 **conveyed and received by the state. If the director determines that the property**  
 16 **to be exchanged is not of approximately equal value or if the value cannot be**  
 17 **ascertained with reasonable certainty, the director may enter into an exchange**  
 18 **with a finding that the value of the property to be received, together with the**  
 19 **value of other public benefits, equals or exceeds the value of the property that the**  
 20 **state will relinquish. Exchange procedures must comply with applicable statutes**  
 21 **and regulations and follow the decision and review procedures under**  
 22 **AS 38.05.035(e). The director may include in any patent or the written decision**  
 23 **stipulations necessary to promote or protect the public interest. If a land**  
 24 **exchange exceeds \$5,000,000 in the value of state land, or if the exchange is other**  
 25 **than of an approximately equal value, the director shall forward the proposed**  
 26 **exchange to the legislature for review under AS 38.50.140 not later than 10 days**  
 27 **from the convening of the next legislative session. The notice provisions of**  
 28 **AS 38.05.945 must be followed.** [EXCHANGES SHALL BE FOR THE PURPOSE  
 29 OF CONSOLIDATING STATE LAND HOLDINGS, CREATING LAND  
 30 OWNERSHIP AND USE PATTERNS WHICH WILL PERMIT MORE EFFECTIVE  
 31 ADMINISTRATION OF THE STATE PUBLIC DOMAIN, FACILITATING THE

1 OBJECTIVES OF STATE PROGRAMS, OR OTHER PUBLIC PURPOSES.]

2 \* **Sec. 23.** AS 38.50.030(b) is amended to read:

3 (b) The director may negotiate an exchange involving more than one party [;  
4 HOWEVER, IN ORDER TO ASCERTAIN WHETHER THE EQUAL VALUE  
5 REQUIREMENTS OF THIS CHAPTER HAVE BEEN MET, THE DIRECTOR  
6 SHALL CONSIDER ONLY THE LAND AND OTHER CONSIDERATION WHICH  
7 THE STATE WOULD CONVEY AND RECEIVE IF THE EXCHANGE WERE  
8 EXECUTED].

9 \* **Sec. 24.** AS 38.50.050 is amended to read:

10 **Sec. 38.50.050. Conveyance of mineral rights.** Subject to the requirements of  
11 this chapter, the director is authorized to exchange mineral rights in state land to the  
12 extent that the conveyance is authorized by the state constitution and applicable  
13 federal law. [THE DIRECTOR MAY NOT EXCHANGE OR RECEIVE THE  
14 SURFACE ESTATE OF LAND OR THE MINERAL RIGHTS IN IT, ONE  
15 WITHOUT THE OTHER, UNLESS THE SEPARATION OF ESTATE IS  
16 NECESSITATED BY A PRIOR SEPARATION OF OWNERSHIP OR BY  
17 RESTRICTIONS IN APPLICABLE LAW, OR THE DIRECTOR OTHERWISE  
18 FINDS THAT THE CONVEYANCE OR RECEIPT OF THE SURFACE OR  
19 MINERAL ESTATES, ONE WITHOUT THE OTHER, IS NECESSARY TO  
20 ACHIEVE A SIGNIFICANT PUBLIC PURPOSE.]

21 \* **Sec. 25.** AS 38.50.070 is amended to read:

22 **Sec. 38.50.070. Valid existing rights.** Conveyances made by the state under  
23 this chapter are subject to valid existing rights, including [, BUT NOT LIMITED TO,]  
24 contracts, permits, leases, rights-of-way, and easements. Unless jurisdiction is waived,  
25 the appropriate state agency shall continue to administer valid existing rights, **and** [AS  
26 LONG AS] any revenues derived from the **existing** rights **continue to accrue to the**  
27 **state until state land has been conveyed under AS 38.50.150** [ARE DISTRIBUTED  
28 AS PROVIDED IN THE EXCHANGE AGREEMENT].

29 \* **Sec. 26.** AS 38.50.140 is amended to read:

30 **Sec. 38.50.140. Legislative review. Not later than** [WITHIN] 10 days **from**  
31 [OF] the convening of a regular legislative session, the governor shall transmit to the



1 president of the senate and the speaker of the house of representatives any proposal for  
2 a land exchange required to be submitted to the legislature for approval under  
3 **AS 38.50.010** [AS 38.50.020(a)] that is scheduled to occur before the next legislative  
4 session. If exigent circumstances seriously affecting state interests so require, the  
5 governor may submit the proposed exchange to the legislature at some other time. A  
6 finding of exigent circumstances shall be carefully documented in the letter of  
7 transmittal. The director is authorized to conclude a proposed exchange agreement  
8 upon approval by the legislature of the proposed exchange agreement. A decision by  
9 the legislature to disapprove a proposed exchange shall be accompanied by a  
10 recommendation to the governor with respect to future actions which the director  
11 should take concerning the exchange.

12 \* **Sec. 27.** AS 38.50.170(3) is amended to read:

13 (3) "state land" means all land including **shoreland** [SHORE],  
14 **tideland** [TIDE], and submerged land or unsevered resources belonging to or acquired  
15 by the state excluding interests in land severed or constructively severed from the  
16 land.

17 \* **Sec. 28.** AS 40.15.305(e) is amended to read:

18 (e) A recorded plat may not be altered or replatted except on petition of the  
19 state, a municipality, a public utility, or the owner of a majority of the land affected by  
20 the proposed alteration or replat. The petition shall be filed with the commissioner and  
21 shall be accompanied by a copy of the existing plat showing the proposed alteration or  
22 replat. The provisions of AS 29.40.130 and 29.40.140(a) apply to an alteration or  
23 replat submitted under this subsection. The provisions of (d) of this section do not  
24 apply to an alteration or replat petition, but the commissioner shall state in writing  
25 reasons for disapproval of the petition. **Alteration of a platted boundary is exempt**  
26 **from this subsection if all owners approve and no public easement or right-of-**  
27 **way is affected. A plat of the alteration remains subject to all other provisions of**  
28 **this section.**

29 \* **Sec. 29.** AS 44.37.011(a) is amended to read:

30 (a) This section applies to administrative appeals or **requests** [PETITIONS]  
31 for reconsideration of a decision in an administrative appeal to the commissioner of

1 natural resources, except for those administrative appeals or **requests for**  
 2 **reconsideration** [PETITIONS] done under AS 38.35, [OR] AS 43.82, **or a different**  
 3 **procedure set out in AS 27.21 or its applicable regulations.** If a conflict occurs  
 4 between this section and other state law existing at the time of **original** enactment of  
 5 this section, the provisions of this section control.

6 \* **Sec. 30.** AS 44.37.011(b) is amended to read:

7 (b) If a person is **an applicant, or substantially and adversely affected**  
 8 [AGGRIEVED] by a decision of the Department of Natural Resources not made by  
 9 the commissioner and is otherwise eligible to seek the commissioner's review of the  
 10 decision, the person may appeal to the commissioner. The person may not file a  
 11 **request** [PETITION] for reconsideration of the commissioner's decision on the  
 12 appeal. The commissioner's decision on the administrative appeal is a final  
 13 administrative order for purposes of filing an appeal of the administrative decision to  
 14 the court.

15 \* **Sec. 31.** AS 44.37.011(c) is amended to read:

16 (c) If a person is **substantially and adversely affected** [AGGRIEVED] by a  
 17 decision of the department made by the commissioner and is otherwise eligible to seek  
 18 the commissioner's review of the decision, the person may not appeal that decision to  
 19 the commissioner; however, the person may **request** [PETITION THE  
 20 COMMISSIONER FOR] reconsideration of the commissioner's decision. The  
 21 commissioner's decision made upon reconsideration or the commissioner's failure to  
 22 act on the **request** [PETITION] for reconsideration is a final administrative order for  
 23 purposes of filing an appeal of the administrative decision to the court.

24 \* **Sec. 32.** AS 44.37.011(d) is amended to read:

25 (d) If a person has a right to **appeal or request** [PETITION FOR]  
 26 reconsideration under [AS 44.62.540 OR] this section, the person has [A TOTAL OF]  
 27 20 **calendar** days **after the date of issuance of a final department decision** [,  
 28 INCLUDING THE TIME AVAILABLE UNDER AS 44.62.540,] in which to file **an**  
 29 **appeal or a request** [PETITION] for reconsideration with the commissioner.

30 \* **Sec. 33.** AS 44.37.011 is amended by adding new subsections to read:

31 (f) In this section, in order for a person to be adversely affected, a final

1 decision made by the department must create or impose an adverse and direct effect or  
2 detriment on the person or the interests of that person.

3 (g) An appeal or request for reconsideration must include a statement that  
4 explains how the person is substantially and adversely affected by the department  
5 decision. The statement must

6 (1) specifically describe the substantial and adverse effect on the  
7 person that is a direct result of the decision; and

8 (2) explain how the decision caused the substantial and adverse effect  
9 on the person.

10 (h) If the department gives public notice and allows a public comment period  
11 of at least 30 days on a proposed action, the department may restrict eligibility to  
12 appeal or request reconsideration to persons who have provided timely comment on  
13 the proposed action by including notice of the restriction as part of its public notice  
14 announcing the opportunity to comment.

15 (i) The commissioner may reject an appeal or request for reconsideration for  
16 failure to meet the requirements of (f) - (h) of this section.

17 \* **Sec. 34.** AS 46.15.035(a) is amended to read:

18 (a) **A significant amount of water, as determined by the department by**  
19 **regulation,** [WATER] may not be removed from the hydrologic unit from which it  
20 was appropriated to another hydrologic unit, inside or outside the state, without being  
21 returned to the hydrologic unit from which it was appropriated nor may **a significant**  
22 **amount of** water be appropriated for removal from the hydrologic unit from which the  
23 appropriation is sought to another hydrologic unit, inside or outside the state, without  
24 the water being returned to the hydrologic unit from which it is to be appropriated,  
25 unless the commissioner

26 (1) finds that the water to be removed or appropriated for removal is  
27 surplus to needs within the hydrologic unit from which the water is to be removed or  
28 appropriated for removal, including fishing, mining, timber, oil and gas, agriculture,  
29 domestic water supply, and other needs as determined by the commissioner;

30 (2) finds that the application for removal or appropriation for removal  
31 meets the requirements of AS 46.15.080; and

1 (3) assesses a water conservation fee under (b) of this section.

2 \* **Sec. 35.** AS 46.15.133(a) is amended to read:

3 (a) If the commissioner proposes a sale of water or receives an application for  
4 appropriation or removal, the commissioner shall prepare a notice containing the  
5 location and extent of the proposed sale, appropriation, or removal, the name and  
6 address of the applicant, if applicable, and other information the commissioner  
7 considers pertinent. The notice shall state that, **not later than** [WITHIN] 15 days  
8 **after** [OF] publication or service of notice, persons may file with the director written  
9 objections [,] stating the name and address of the objector [,] and any facts tending to  
10 show that rights of the objector or the public interest **as described in AS 46.15.080(b)**  
11 would be adversely affected by the proposed sale, appropriation, or removal.

12 \* **Sec. 36.** AS 46.15.133(b) is amended to read:

13 (b) The commissioner shall publish the notice in one issue of a newspaper of  
14 general distribution in the area of the state in which the water is to be appropriated,  
15 removed, or sold. The commissioner shall also have notice served personally or by  
16 [CERTIFIED] mail upon an appropriator of water or applicant for or holder of a  
17 permit who, according to the records of the division of lands, may be affected by the  
18 proposed sale, appropriation, or removal and may serve notice upon any governmental  
19 agency, political subdivision, or person; notice shall also be served upon the  
20 Department of Fish and Game and the Department of Environmental Conservation.  
21 An applicant for an appropriation or removal shall pay the commissioner's costs in  
22 providing publication and notice under this subsection. The commissioner may require  
23 as a condition of a sale of water under AS 46.15.037, that a purchaser of water  
24 reimburse the department for the costs associated with providing notice of the  
25 proposed sale.

26 \* **Sec. 37.** AS 46.15.133(c) is amended to read:

27 (c) **Not later than** [WITHIN] 15 days of publication or service of notice, an  
28 interested person may file an objection. The commissioner may hold hearings upon  
29 giving due notice and shall grant, deny, or condition the proposed sale or application  
30 for appropriation or removal in whole or in part within 30 days of receipt of the last  
31 objection or, if the commissioner elects to hold hearings, within 180 days of receipt of

1 the last objection. Notice of the order or decision shall be served personally or mailed  
2 to any person who has filed an objection.

3 \* **Sec. 38.** AS 46.15.133(d) is amended to read:

4 (d) If no objection is filed, the commissioner may proceed to make a **final**  
5 determination upon the application for appropriation or removal or the proposal for  
6 sale.

7 \* **Sec. 39.** AS 46.15.133(e) is amended to read:

8 (e) A person **adversely affected** [AGGRIEVED] by the action of the  
9 commissioner or by the failure of the commissioner to grant, deny, or condition a  
10 proposed sale or an application for appropriation or removal in accordance with (c) of  
11 this section may appeal to the superior court. **In this subsection, to be adversely**  
12 **affected, a person must be directly affected by a decision made by the department**  
13 **either by a physical or financial detriment to the person's interests resulting from**  
14 **the decision.**

15 \* **Sec. 40.** AS 46.15.145(a) is amended to read:

16 (a) The state, an agency or a political subdivision of the state, **or** an agency of  
17 the United States [OR A PERSON] may apply to the commissioner to reserve  
18 sufficient water to maintain a specified instream flow or level of water at a specified  
19 point on a stream or body of water, or in a specified part of a stream, throughout a year  
20 or for specified times, for

21 (1) protection of fish and wildlife habitat, migration, and propagation;

22 (2) recreation and park purposes;

23 (3) navigation and transportation purposes; and

24 (4) sanitary and water quality purposes.

25 \* **Sec. 41.** AS 46.15.145(f) is amended to read:

26 (f) **The** [AT LEAST ONCE EACH 10 YEARS THE] commissioner **may**  
27 [SHALL] review **a** [EACH] reservation under this section to determine whether the  
28 purpose described in (a) of this section for which the certificate reserving water was  
29 issued and the findings described in (c) of this section still apply to the reservation. If  
30 the commissioner determines that the purpose, or part or all of the findings, no longer  
31 apply to the reservation, the commissioner may revoke or modify the certificate

1 reserving the water after notice, hearing when appropriate, and a written determination  
2 that the revocation or modification is in the best interests of the state.

3 \* **Sec. 42.** AS 46.15.155(a) is amended to read:

4 (a) Notwithstanding any contrary provision of this chapter, the commissioner  
5 may authorize the temporary use of a significant amount of water, as determined by  
6 the department by regulation, for a period of time not to exceed five consecutive years  
7 in each authorization, if the water applied for has not been appropriated in  
8 accordance with this chapter. The commissioner may issue one or more new  
9 temporary water use authorizations for the same project.

10 \* **Sec. 43.** AS 38.05.065(b); AS 38.50.020, 38.50.040, 38.50.080, 38.50.090, 38.50.100,  
11 38.50.110, 38.50.120, 38.50.130; and AS 46.15.145(e) are repealed.

12 \* **Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to  
13 read:

14 TRANSITION: TRANSFER OF CERTAIN PENDING APPLICATIONS FOR  
15 RESERVED WATER. Within one year after the effective date of sec. 40 of this Act, at the  
16 request of an applicant whose application is pending on the effective date of this Act and who  
17 is no longer authorized to reserve water under AS 46.15.145(a), as amended by sec. 40 of this  
18 Act, the Department of Natural Resources shall transfer the pending application to an entity  
19 identified by the applicant that is authorized to reserve water under AS 46.15.145(a), as  
20 amended by sec. 40 of this Act. The entity receiving the application shall notify the  
21 Department of Natural Resources within two years after receiving the application as to  
22 whether the entity intends to pursue the reservation of water as requested in the application. If,  
23 within two years, the Department of Natural Resources does not receive notice that the entity  
24 intends to pursue the same or a smaller reservation or if the entity notifies the Department of  
25 Natural Resources that the entity will not pursue the reservation in the application, the  
26 Department of Natural Resources shall consider the application void and refund the  
27 application fee to the original applicant. If the entity receiving the application continues to  
28 pursue the reservation of water as requested in the application, the Department of Natural  
29 Resources shall consider the application, and, if a certificate of reservation is issued, the  
30 certificate will carry the priority date of the original application.

31 \* **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2           TRANSITION: REGULATIONS. The Department of Natural Resources may  
3 immediately adopt regulations necessary to implement the changes made by this Act. The  
4 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1,  
5 2013.

6       \* **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to  
7 read:

8           REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the  
9 heading of AS 44.37.011 from "Additional procedures for administrative appeals and  
10 petitions for reconsideration to the commissioner of natural resources" to "Procedures for  
11 administrative appeals and requests for reconsideration to the commissioner of natural  
12 resources."

13       \* **Sec. 47.** Section 45 of this Act takes effect immediately under AS 01.10.070(c).

14       \* **Sec. 48.** Except as provided in sec. 47 of this Act, this Act takes effect July 1, 2013.