

Article 1. Administration.

Chapter 05. Alaska Land Act.

Sec. 38.05.005. Division of lands.

The commissioner shall control and supervise the division of lands created and established under the Department of Natural Resources. The director has administrative powers and other delegated duties, as prescribed by law or regulation.

Sec. 38.05.010. Appointment of director.

The commissioner shall appoint a director. The director is the executive officer of the division of lands.

Sec. 38.05.015. Director serves at pleasure of commissioner.

The director serves at the pleasure of the commissioner.

Sec. 38.05.020. Authority and duties of the commissioner.

(a) The commissioner shall supervise the administration of the division of lands.

(b) The commissioner may

(1) establish reasonable procedures and adopt reasonable regulations necessary to carry out this chapter and, whenever necessary, issue directives or orders to the director to carry out specific functions and duties; regulations adopted by the commissioner shall be adopted under [AS 44.62](#) (Administrative Procedure Act); orders by the commissioner classifying land, issued after January 3, 1959, are not required to be adopted under [AS 44.62](#) (Administrative Procedure Act);

(2) enter into agreements considered necessary to carry out the purposes of this chapter, including agreements with federal and state agencies;

(3) review any order or action of the director;

(4) exercise the powers and do the acts necessary to carry out the provisions and objectives of this chapter;

(5) notwithstanding the provisions of any other section of this chapter, grant an extension of the time within which payments due on

any exploration license, lease, or sale of state land, minerals, or materials may be made, including payment of rental and royalties, on a finding that compliance with the requirements is or was prevented by reason of war, riots, or acts of God;

(6) classify tracts for agricultural uses;

(7) after consulting with the Board of Agriculture and Conservation (AS 03.09.010), waive, postpone, or otherwise modify the development requirements of a contract for the sale of agricultural land if

(A) the land is inaccessible by road; or

(B) transportation, marketing, and development costs render the required development uneconomic;

(8) reconvey or relinquish land or an interest in land to the federal government if

(A) the land is described in an amended application for an allotment under 43 U.S.C. 1617; and

(B) the reconveyance or relinquishment is

(i) for the purposes provided in 43 U.S.C. 1617; and

(ii) in the best interests of the state;

(9) lead and coordinate all matters relating to the state's review and authorization of resource development projects;

(10) enter into commercial agreements with a duration of not more than two years for project services related to a North Slope natural gas project;

(11) in consultation with the commissioner of revenue, participate in the negotiation of agreements that include balancing, marketing, disposition of natural gas, and offtake and contracts and development of terms for inclusion in those proposed agreements and contracts associated with a North Slope natural gas project; an agreement or contract negotiated under this paragraph to which the state is a party is not effective unless the legislature authorizes the governor to execute the agreement or contract;

(12) enter into confidentiality agreements to maintain the confidentiality of information related to contract negotiations and contract implementation associated with a North Slope natural gas project; information under those confidentiality agreements is not subject to AS 40.25.100 - 40.25.295 (Alaska Public Records Act), except that

(A) the terms of a proposed contract that the commissioner presents to the legislature for the purpose of obtaining authorization for the governor to execute are not confidential and must be made available to the public at least 90 days before the proposed effective date for the terms; and

(B) the commissioner may share confidential information obtained under this paragraph with members of the legislature, their agents, and contractors on request under confidentiality agreements, either in committees held in executive session or individually;

(13) consult with the Alaska Gasline Development Corporation in the development of agreements or contracts under (10) or (11) of this subsection for project services related to a gas treatment plant, pipeline, liquefaction facility, marine terminal, or marine transportation services necessary to transport natural gas to market;

(14) in consultation with the commissioner of revenue, take custody of gas delivered to the state under [AS 43.55.014\(b\)](#) and manage the project services and disposition and sale of that gas;

(15) exercise the powers and do the acts necessary to carry out the provisions and objectives of [AS 43.90](#) that relate to this chapter.

Sec. 38.05.023. Terms in an agreement or contract related to a North Slope natural gas project.

(a) An agreement or contract to which the state or an entity of the state is a party that is negotiated under [AS 38.05.020\(b\)\(11\)](#) must include a requirement that the state or an entity of the state shall have access to data developed under the agreement or contract in which the state or an entity of the state has directly participated financially. Access by the state or an entity of the state to the data must be on the same or substantially similar terms applicable to any other party in a North Slope natural gas project.

(b) A proposed agreement or contract associated with a North Slope natural gas project may not include a provision that changes the property tax on property that was previously taxable under [AS 43.56](#).

(c) A proposed agreement or contract associated with a North Slope natural gas project must provide the means for allocating infrastructure costs between the state and other parties in the project. The allocation must take into consideration the extent to which infrastructure is used by the project and used by the public and the difference between the normal expected or actual life-cycle costs for the infrastructure as used by the project and the expected or actual life-cycle costs of the same infrastructure if subject only to general public use. The proposed agreement or contract may not require the state to pay infrastructure costs that are directly related to the project and not designed for general public use in a proportionate amount that is greater than the state's share of participation in the project.

(d) An agreement or contract to which the state or an entity of the state is a party that is negotiated under [AS 38.05.020\(b\)\(11\)](#) must include principles based on commercially reasonable terms for delivering natural gas to public utilities in the state when the demand for natural gas by the utilities exceeds the amount of the state's royalty natural gas and natural gas delivered to the state as payment of tax that is available in a North Slope natural gas project.

Sec. 38.05.025. Continuing regulations, agreements, etc.

All rules, regulations, procedures, funds, contracts, and agreements established or entered into by the Department of Lands before May 2, 1959, under the authority of ch. 126, SLA 1953, as amended, and ch. 184, SLA 1957, are continued, and are subject to amendment by the commissioner except where inconsistent with this chapter.

Sec. 38.05.027. Cooperative resource management or development agreements.

(a) Consistent with the authority of the commissioner under law, the commissioner, after determining that the agreement is in the best interests of the public and the state, may enter into cooperative resource management or development agreements with the federal government, a state agency, a village or municipality, or a person. Specific guidelines to protect the state and public interest shall be established, if necessary, by the commissioner before entering into an agreement under this section.

(b) A summary of agreements entered into under this section shall be submitted to the legislature within five days of the beginning of each regular session.

Sec. 38.05.030. Exceptions.

(a) [Repealed, § 88 ch 152 SLA 1984.]

(b) The provisions of this chapter do not apply to any power, duty or authority now or in the future granted to the Department of Transportation and Public Facilities in the name of the state, to acquire, use, lease, dispose of, or exchange real property, or any interest in real property. Land assigned by the division of lands to the Department of Transportation and Public Facilities shall be returned to the management of the division of lands when it is no longer needed for the purposes assigned.

(c) The agencies referred to in (b) of this section and other state agencies with authority to acquire or dispose of land shall give written notification of the fact of acquisition, lease, disposal, or exchange to the commissioner within three months after the date that they make the acquisition, lease, disposal, or exchange.

(d) Except for land that is required to be returned to the department under (b) of this section, the Department of Transportation and Public Facilities may dispose of real property acquired by it under AS

02.15.070, AS 19.05.040(1) and (2), 19.05.080 – 19.05.120, AS 35.05.040(1) and (2), and AS 35.20.010 – 35.20.050. Land conveyed under this section to a municipality for less than fair market value shall be credited against the municipality's entitlement under AS 29.65.

(e) [Repealed, § 20 ch 182 SLA 1978.]

(f) Land owned by the Board of Regents of the University of Alaska is not subject to this chapter.

(g) This chapter does not authorize the commissioner or any employee of the department to acquire title to real property through the use of lease-purchase agreements or lease-financing agreements in which the department is the lessor. For purposes of this section, “lease-purchase agreement” and “lease-financing agreement” have the meanings given those terms in AS 36.30.990.

Sec. 38.05.035. Powers and duties of the director.

(a) The director shall

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) requests for information or applications by public agencies for land that is being considered for use for a public purpose;

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

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

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

(12) on request, furnish records, files, and other information related to the administration of AS 38.05.180 to the Department of Revenue for use in forecasting state revenue under or administering AS 43.55, whether or not those records, files, and other information are required to be kept confidential under (8) of this subsection; in the case of records, files, or other information required to be kept confidential under (8) of this subsection, the Department of Revenue shall maintain the confidentiality that the Department of Natural Resources is required to extend to records, files, and other information under (8) of this subsection;

(13) when reasonably possible, give priority to and expedite the processing of an application for a lease or assignment of a lease of state land for development and operation of a gas storage facility, for a right-of-way to a gas storage facility, for a change to the allocation of production within a unit, and for a permit necessary for the operation of a gas storage facility; in this paragraph, "gas storage facility" has the meaning given in AS 31.05.032;

(14) prepare and submit to the senate secretary and chief clerk of the house of representatives on or before the first day of each regular session of the legislature an annual report in electronic form concerning site lease applications submitted under AS 38.05.083; in preparing and submitting the report, the director shall

(A) include in the report

(i) a list of all applications pending with the department, including applications for a new lease and applications for renewal, amendment, and assignment of a lease, and the length of time each application has been pending with the department;

(ii) for an application that has not been granted, the reason the application has not been granted; and

(iii) the number of leases that the director elected not to renew under AS 38.05.070;

(B) notify the legislature that the report is available.

(b) The director may

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

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

(A) with the express approval of the commissioner; and

(B) if the application for the preference right is filed with the director within three years from

(i) the occurrence of the error or omission;

(ii) the date of acquisition by the state of the land;

or

(iii) the date of a court decision or settlement nullifying a disposal of state land;

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

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

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

(6) after consulting with the Board of Agriculture and Conservation (AS 03.09.010), dispose of an interest in land limited to use for agricultural purposes by lottery;

(7) convey to an adjoining landowner for its fair market value a

remnant of land that the director considers unmanageable or a parcel of land created by a highway right-of-way alignment or realignment, or a parcel created by the vacation of a state-owned right-of-way if

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

(B) the parcel

(i) does not exceed the minimum lot size under an applicable zoning code; or

(ii) is smaller than 20 acres and is completely enclosed by property owned by the adjacent landowner; and

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

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

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

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

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

(d) A parcel of land described in (b)(7) of this section must be sold at its fair market value as determined by the director on the basis of an appraisal completed as provided in AS 38.05.840. Nothing in this subsection prevents the sale of land under AS 38.05.055 or 38.05.057 to a person not qualifying as an adjoining landowner if the adjoining landowner declines to purchase the land.

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

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

(A) shall establish the scope of the administrative review on

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

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

(i) applicable statutes and regulations;

(ii) the facts pertaining to the land, resources, or property, or interest in them, that the director finds are material to the determination and that are known to the director or knowledge of which is made available to the director during the administrative review; and

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

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

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

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

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

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

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

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

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

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

(4) a contract for the sale, lease, or other disposal of available land or an interest in land is not legally binding on the state until

land or an interest in land is not legally binding on the state until the commissioner approves the contract, but if the appraised value is not greater than \$50,000 in the case of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner;

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

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

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

(6) before a public hearing, if held, or in any case not less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them other than a sale, lease, or other disposal of available land or an interest in land for oil and gas or for gas only under (5) of this subsection, the director shall make available to the public a written finding that, in accordance with (1) of this subsection, sets out the material facts and applicable statutes and regulations and any other information required by statute or regulation to be considered upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based; however, a written finding is not required before the approval of

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

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

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

(D) a mineral claim located under AS 38.05.195;

(E) a mineral lease issued under AS 38.05.205;

(F) an exempt oil and gas lease sale or gas only lease sale

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

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

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

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

(G) a surface use lease under AS 38.05.255;

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

(7) the director shall include in

(A) a preliminary written finding, if required, a summary of agency and public comments, if any, obtained as a result of contacts with other agencies concerning a proposed disposal or as a result of informal efforts undertaken by the department to solicit public response to a proposed disposal, and the department's preliminary responses to those comments; and

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

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

(g) Notwithstanding (e)(1)(A) and (B) of this section, when the

(g) Notwithstanding (e)(1)(A) and (B) of this section, when the director prepares a written finding required under (e) of this section for an oil and gas lease sale or a gas only lease sale scheduled under AS 38.05.180, the director shall consider and discuss

(1) in a preliminary or final written finding facts that are known to the director at the time of preparation of the finding and that are

(A) material to issues that were raised during the period allowed for receipt of public comment, whether or not material to a matter set out in (B) of this paragraph, and within the scope of the administrative review established by the director under (e)(1) of this section; or

(B) material to the following matters:

(i) property descriptions and locations;

(ii) the petroleum potential of the sale area, in general terms;

(iii) fish and wildlife species and their habitats in the area;

(iv) the current and projected uses in the area, including uses and value of fish and wildlife;

(v) the governmental powers to regulate the exploration, development, production, and transportation of oil and gas or of gas only;

(vi) the reasonably foreseeable cumulative effects of exploration, development, production, and transportation for oil and gas or for gas only on the sale area, including effects on subsistence uses, fish and wildlife habitat and populations and their uses, and historic and cultural resources;

(vii) lease stipulations and mitigation measures, including any measures to prevent and mitigate releases of oil and hazardous substances, to be included in the leases, and a discussion of the protections offered by these measures;

(viii) the method or methods most likely to be used to transport oil or gas from the lease sale area, and the advantages, disadvantages, and relative risks of each;

(ix) the reasonably foreseeable fiscal effects of the lease sale and the subsequent activity on the state and affected municipalities and communities, including the explicit and implicit subsidies associated with the lease sale, if any;

(x) the reasonably foreseeable effects of exploration, development, production, and transportation involving oil and gas or gas only on municipalities and communities within or adjacent to the lease sale area; and

(xi) the bidding method or methods adopted by the commissioner under AS 38.05.180; and

(2) the basis for the director's preliminary or final finding, as applicable, that, on balance, leasing the area would be in the state's best interest.

(b) In preparing a written finding under (e)(1) of this section, the

(n) In preparing a written finding under (e)(1) of this section, the director may not be required to speculate about possible future effects subject to future permitting that cannot reasonably be determined until the project or proposed use for which a written best interest finding is required is more specifically defined, including speculation about

(1) the exact location and size of an ultimate use and related facilities;

(2) except as otherwise provided in AS 38.05.073 for land suitable for recreational facilities development leasing, the economic feasibility of ultimate development; and

(3) future environmental or other laws that may apply at the time of any future development.

(i) A person who is eligible to file an administrative appeal or a request for reconsideration, as appropriate, under this subsection and who is aggrieved by the final written finding of the director entered under (e)(5) or (6) of this section may, within 20 days after the issuance of the final written finding, file an administrative appeal or request reconsideration of the decision by the commissioner. A person is eligible to file an administrative appeal or a request for reconsideration if the person

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

(A) submitting written comment during the period for receipt of public comment; or

(B) presenting oral testimony at a public hearing, if a public hearing was held; and

(2) is affected by the final written finding.

(j) An administrative appeal or a request for reconsideration submitted under (i) of this section must specify the written finding complained of and the specific basis upon which it is challenged. The commissioner shall grant or deny the administrative appeal or reconsideration request within 30 days after issuance of the final written finding. Failure of the commissioner to act on the request for reconsideration within this period is a denial of the request for reconsideration and a final administrative decision for purposes of appeal to the superior court.

(k) If an administrative appeal or a request for reconsideration is granted, the commissioner may order the director to issue a new final written finding as may be required under the circumstances.

(l) A person may appeal a final written finding issued under (e)(5) or (6) of this section to the superior court, but only if the person was eligible to request, and did request, an administrative appeal or reconsideration of that finding under (i) of this section. The person shall initiate the appeal within 30 days from the date that the decision on administrative appeal or reconsideration is mailed or otherwise distributed, or the date the request for reconsideration is considered denied by the commissioner's failure to act on the request, whichever is earlier. The points on appeal are limited to those presented to the commissioner in the person's administrative appeal or request for reconsideration.

(m) For purposes of appeal under (l) of this section, the burden is

upon the party seeking review to establish the invalidity of the finding.

(n) The director may not deny an application for a lease or assignment of a lease of state land for the development and operation of a gas storage facility solely because the gas storage facility would be used exclusively or primarily to store gas owned by the owner or operator of the gas storage facility. In this subsection, "gas storage facility" has the meaning given in [AS 31.05.032](#).

(o) The director may approve exploration or development for all or part of an area previously approved for oil and gas or gas only leasing under (e) of this section. An approval applies to exploration or development commencing during a period for up to 10 years, as specified by the director in the approval. When authorizing exploration or development under this subsection, the department shall provide public notice and the opportunity to comment using the methods described in [AS 38.05.945](#)(b) and (c). The approval authorizes a lessee to begin exploration or development during the period specified in the approval, subject to the lessee receiving other authorizations required from the department or other state, local, or federal agencies. Once a lessee begins exploration or development on a lease or group of leases, the approval for exploration under this subsection or the approval for development under this subsection remains valid for the term of the lease. This subsection does not relieve lessees of any statutory, regulatory, or lease obligations, including any obligations to submit for approval plans of operation, of exploration, or of development.

(p) Where there is a valid municipal entitlement selection on state land under [AS 29.65.010](#) – 29.65.030 that has a state-issued land lease that has been issued competitively under [AS 38.05.070](#) and before the decision to approve the municipal entitlement land selection, the director shall grant a preference right to purchase without further competitive bid of up to five acres of the state land to an individual who has erected a building approved by a lease on the state land and used the land for bona fide business purposes for 10 or more years under a state lease, if the business produced not less than 25 percent of the total income of the applicant for the 10 years preceding the application to purchase the land. An application for a preference right under this section must be filed with the director within 120 days after notice to the lessee of the municipal entitlement land selection. If the director grants the preference right, the director shall sell the land at a price determined by the director to represent the current fair market value of the unimproved land determined by an appraisal under [AS 38.05.840](#) and a survey, both at the cost of the applicant. If the director determines that the purchase of the land would interfere with public use by residents of the area, the director may condition the purchase to mitigate the adverse effects on the public in the written finding under (e) of this section or may reject the application if those effects cannot be avoided or mitigated. If the preference right application is approved, the amount of land within the overall municipal entitlement under [AS 29.65.010](#) – 29.65.030 shall be reduced by the amount of land covered under this section; however, subject to appropriation, the revenue from the purchase of the parcel will be given to the municipality if the municipal entitlement land selection is approved.

(q) In (f) and (p) of this section,

(1) "building" means a permanent type of structure not less than 500 square feet in size with solid walls, foundation, and roof;

(2) "business purposes" means a purpose consistent with the classification of the land at the time the land was entered.

Sec. 38.05.036. Audit of royalty and net profit payments and costs.

(a) The department may conduct audits regarding royalty and net profits under oil and gas contracts, agreements, or leases under this chapter and regarding costs related to exploration licenses entered into under AS 38.05.131 – 38.05.134 and exploration incentive credits under this chapter. For purposes of an audit under this section,

(1) the department may examine the books, papers, records, or memoranda of a person regarding matters related to the audit; and

(2) the records and premises where a business is conducted shall be open at all reasonable times for inspection by the department.

(b) The Department of Revenue may obtain from the department information relating to royalty and net profits payments and to exploration incentive credits under this chapter, whether or not that information is confidential. The Department of Revenue may use the information in carrying out its functions and responsibilities under AS 43, and shall hold that information confidential to the extent required by an agreement with the department or by AS 38.05.035(a)(8) or AS 43.05.230.

(c) The department may obtain from the Department of Revenue all information obtained under AS 43 relating to royalty and net profits and to exploration incentive credits. The department may use the information for purposes of carrying out its responsibilities and functions under this chapter. Information made available to the department that was obtained under AS 43 is confidential and subject to the provisions of AS 43.05.230.

(d) [Repealed, § 8 ch 92 SLA 2003.]

(e) [Repealed, § 8 ch 92 SLA 2003.]

(f) Except as otherwise provided in this section or in connection with official investigations or proceedings of the department, it is unlawful for a current or former officer, employee, or agent of the state to divulge information obtained by the department as a result of an audit under this section that is required by an agreement with the department or by AS 38.05.035(a)(8) to be kept confidential.

(g) Nothing in this section prohibits the publication of statistics in a manner that maintains the confidentiality of information to the extent required by an agreement with the department or by AS 38.05.035(a)(8).

(h) A person who knowingly violates (f) of this section commits the crime of misuse of confidential information under AS 11.56.860. In this subsection, "knowingly" has the meaning given in AS 11.81.900.

(i) In the course of carrying out its responsibilities under this section, the department may subpoena any person to appear and produce books, records, papers, or memoranda bearing upon matters relating to an audit under this section and to give testimony or answer interrogatories under oath regarding those matters. The department may administer oaths to persons who are so subpoenaed. A subpoena issued

under this section may compel attendance of a witness or production of a document or thing, located inside or outside the state, to the maximum extent permitted by law. The authority to issue a subpoena under this section may not be delegated by the commissioner.

(j) A subpoena may be served by the commissioner of public safety or a peace officer designated by the commissioner of public safety, by a person designated by the department, or as otherwise provided by law. A subpoena may also be served by registered or certified mail for delivery restricted only to the person subpoenaed. The return delivery receipt must be addressed so that the receipt is returned to the department.

(k) If a person who is subpoenaed neglects or refuses to obey the subpoena issued as provided in this section, the department may report the fact to the superior court or the appropriate court of another jurisdiction, and may seek an order from the court compelling obedience to the subpoena. The court, to the maximum extent permitted by law, may compel obedience to the subpoena to the same extent as witnesses may be compelled to obey the subpoenas of the court.

(l) The department may conduct audits under this section concurrently with Department of Revenue audits or investigations under [AS 43](#).

Sec. 38.05.037. Zoning regulations in the unorganized borough.

(a) In areas of the state outside first, second, or third class boroughs where there is no municipality with a zoning power, the division of lands shall exercise the zoning power by adopting zoning regulations.

(b) The division of lands may exercise its zoning power

(1) within federal land in the unorganized borough only at the times and in the areas it is requested to do so by the Secretary of the Interior to facilitate sales of federal land within the unorganized borough under P.L. 88-608, 78 Stat. 988;

(2) [Repealed, § 44 ch 24 SLA 2003.]

(c) Any zoning done by the division of lands under (b) of this section is final unless disapproved by concurrent resolution at the next regular session of the legislature.

Sec. 38.05.040. Director shall be bonded. [Repealed, § 38 ch 91 SLA 1997.]

Article 2. Sale of Land.

Sec. 38.05.045. Generally.

All land owned in fee by the state or to which the state may become entitled, excepting tide, submerged, or shoreland, and timber or grazing land, may be sold as provided in [AS 38.05.045](#) – 38.05.069 and [AS 38.08](#). However, this section does not prevent the disposition of land as provided in [AS 38.05.300](#), 38.05.321, 38.05.810 – 38.05.870, 38.05.920, 38.05.945 and 38.05.946.

Sec. 38.05.047. Classification and sale of state land in municipalities. [Repealed, § 45 ch 113 SLA 1981. For current law see [AS 38.04.020.](#)]

Sec. 38.05.050. Disposal of land for private ownership. The commissioner shall determine the land to be disposed of for private use. The commissioner shall determine the time and place of disposal. A public auction sale, a sale by sealed bid, a lottery sale, or a disposal of land for homesites may be held in a community that is near the land to be sold or disposed of.

Sec. 38.05.055. Auction sale or sealed bid procedures. Unless another method of sale is required under this chapter, [AS 38.08](#), or [AS 38.09](#), the sale of state land shall be made at public auction or by sealed bid, at the discretion of the director, to the highest qualified bidder as determined by the director. The director may accept bids and sell state land under this section at not less than 70 percent of the appraised fair market value of the land. To qualify to participate under this section in a public auction or sale by sealed bid of state land that is other than commercial, industrial, or agricultural land, a bidder shall have been a resident of the state for at least one year immediately preceding the date of the sale and submit proof of that fact, as the commissioner requires by regulation. A bidder may be represented by an attorney or agent at a public auction. An aggrieved bidder may appeal to the commissioner within five days after the sale for a review of the director's determination. The sale shall be conducted by the director, and, at the time of sale, the successful bidder shall deposit an amount equal to five percent of the purchase price. The director shall immediately issue a receipt containing a description of the land or property purchased, the price bid, and the amount deposited. The receipt shall be acknowledged in writing by the bidder.

Sec. 38.05.057. Disposal of land by lottery.

(a) The commissioner may dispose of land, including land limited to use for agricultural purposes, by lottery. The purchase price of land sold by lottery shall be the fair market value of the land as determined by the commissioner. The commissioner may sell land by lottery for less than the fair market value of the land on a determination that scarcity of land for private use in the area of the land to be sold has resulted in unrealistic land values. The lottery shall be conducted in public by the commissioner. A purchaser selected by lot shall deposit an amount equal to five percent of the purchase price within 30 days after receiving notification of the selection.

(b) To qualify to participate in a lottery under (a) of this section, an applicant shall

(1) at the time of application have attained the age of 18;

(2) have been a resident of the state for not less than one year

immediately preceding the date of application and submit proof of that fact as required by regulation;

(3) not have purchased land at a sale by lottery in the state within eight years immediately preceding the sale date and certify that fact in the application.

(c) The commissioner, after consulting with the Board of Agriculture and Conservation (AS 03.09.010), may adopt regulations under the Administrative Procedure Act (AS 44.62) that specify qualifications for lottery participants different from those specified in (b) of this section if

(1) an interest in land limited to agricultural purposes is to be sold under (a) of this section;

(2) the sale is a part of a program to develop agricultural land as a renewable resource of the state; and

(3) the regulations include residency, skill, experience, and financial requirements necessary to qualify persons who are competent and financially able to develop the land as a successful agricultural enterprise.

(d) To apply for participation in a lottery under this section an applicant shall

(1) be qualified under the applicable provisions of this section and certify that fact in the application; and

(2) pay a nonrefundable application fee of not more than \$25 for each application.

(e) The director shall accept applications to purchase particular parcels under the following procedures and conditions:

(1) the application period may not be less than 45 days;

(2) no application may be accepted less than 15 days before each lottery;

(3) notice of the application period and the date of the lottery shall be given in accordance with AS 38.05.945; and

(4) the application shall be made on a form provided by the department.

(f) If only one application for a parcel is received, the commissioner shall offer the parcel to the applicant who applied for the parcel if the applicant is qualified to participate in the lottery. If more than one application is received for a parcel, the commissioner shall select the applicant who is entitled to receive a conveyance of the land by lottery. If the commissioner does not receive an application for a parcel of state land or if a purchaser fails to sign a lease agreement or contract of sale, the parcel shall be offered to the first eligible person to apply for the parcel. If the parcel was designated as a homesite and offered to the public under former AS 38.05.047(f), the parcel shall be disposed of under the terms required by AS 38.08.

(g) [Repealed, § 38 ch 91 SLA 1997.]

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

lottery procedures.

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

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

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

(j) The commissioner may require a participant in a lottery under this section for the sale of land that is part of an agricultural development project under former [AS 44.33.475](#) to submit a single application for that land. Immediately following the drawing of an applicant's name in the lottery, the applicant shall be given an opportunity to select for purchase one parcel of the land that is offered in the lottery. The names of alternate applicants shall be drawn after all parcels have been selected. If the applicant who originally selected a parcel unequivocally rejects the offer to purchase the parcel or fails to sign the contract of sale within the period of time specified by the commissioner, the parcel shall be offered for sale to alternate applicants in the order in which their names were drawn.

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

Sec. 38.05.059. Sale of agricultural land.

The commissioner, after consulting with the Board of Agriculture and Conservation ([AS 03.09.010](#)), may provide for the sale of land classified under [AS 38.05.020](#)(b)(6) for agricultural uses in parcels or tracts described by aliquot parts. The parcels or tracts are subject to state subdivision requirements and municipal ordinances. Money from a sale of agricultural land shall be separately accounted for and may be appropriated to the agricultural revolving loan fund ([AS 03.10.040](#)).

Sec. 38.05.060. Rejection of bids.

Before the signing of the formal conveyance by the director, the commissioner may reject all bids when the best interests of the state justify this action. Land offered at public sale but not sold may be made available at private sale for not less than its appraised value.

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

Sec. 38.05.065. Terms of contract of sale.

(a) The contract of sale for land sold at public auction or by sealed bid under [AS 38.05.055](#) shall require the remainder of the purchase price to be paid in monthly, quarterly, or annual installments over a period of not more than 20 years, with interest at the rate provided in

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

(b) The contract of sale for land sold under [AS 38.05.057](#) or under former [AS 38.05.078](#) shall require the remainder of the purchase price to be paid in monthly, quarterly, or annual installments over a period of not more than 20 years. Installment payments plus interest shall be set on the level-payment basis. The interest rate to be charged on installment payments is the rate provided in (i) of this section.

(c) The director shall, for contracts under (a), (b), or (h) of this section, set out in the contract for each sale the period for the payment of installments and the total purchase price plus interest. The director, with the consent of the commissioner, may also include in contracts under this section conditions, limitations, and terms

considered necessary and proper to protect the interest of the state. Violations of any provision of this chapter or the terms of the contract of sale subject the purchaser to appropriate administrative and legal action, including but not limited to specific performance, foreclosure, ejectment, or other legal remedies in accordance with applicable state law.

(d) If a contract for a sale of state land has been breached, the director may issue a decision to foreclose and terminate the contract at any time 31 days after delivering by certified mail a written notice of the breach to the address of record of the purchaser. A breach caused by the failure to make payments required by the contract may be cured within 30 days after the notice of the breach has been received by the purchaser by payment of the sum in default together with the larger of a fee of \$50 or five percent of the sum in default. If there are material facts in dispute between the state and the purchaser, the purchaser may submit a written request for a public hearing for the review of the facts within 30 days after the notice of the breach has been received.

(e) On a determination that there has been a breach of the contract based on the administrative record and the evidence presented at a hearing, the director shall issue a decision foreclosing the interest of the purchaser and terminating the contract. The obligation to make payments under the contract continues through the date of the decision to foreclose by the director.

(f) The director shall deliver the decision to foreclose and terminate personally to the purchaser or send it certified mail, return receipt requested, to the address of record of the purchaser. If the breach is a failure to make payments required by the contract, the decision shall include a notice to the purchaser that if within 30 days the purchaser pays to the state the full amount of the unpaid contract price, including all accrued interest, and any fees assessed under (d) of this section, the department shall issue to the purchaser a deed to the land. If full payment is not made within 30 days or the breach is for other than failure to make payment, the decision forecloses and terminates all legal and equitable rights the purchaser has in the land.

(g) The purchaser may appeal the director's decision to the commissioner within 30 days. The final decision by the department is reviewable under [AS 44.62.560](#).

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

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

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

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

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

(C) the sale of the agricultural land takes place after July 1, 1979; and

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

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

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

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

Sec. 38.05.066. Preference to persons for fishery purposes.

[Repealed, § 34 ch 94 SLA 1980.]

Sec. 38.05.067. Preference for veterans for unoccupied residential land.

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

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

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

(d) This section does not apply to the sale of state land under AS

(e) In this section, "veteran" means a person with 90 days or more of active service in the armed forces of the United States who has been honorably discharged or a person with 90 days or more of service in the Alaska Territorial Guard.

Sec. 38.05.068. Forest Service permittees' sales preference.

(a) Before offering to the public any land which is subject to a valid existing United States Forest Service permit in effect on the day before that land is tentatively approved for patent to the state, or which is subject to a lease issued under AS 38.05.087, the director shall offer the land for sale to the permittee or a successor in title, if the permittee or a successor in title of the permittee can be found.

(b) When not in conflict with this section, the provisions of AS 38.05.045 – 38.05.069 apply to sales under this section.

(c) If the permit described in (a) of this section is for a recreational cabin, recreational residence, nonrecreational residence, or a residence of a community nature and the land is used for noncommercial residential or recreational purposes, the purchase price offered to a permittee or the successor of a permittee shall be an amount determined by the commissioner which is equal to the state money required to be spent in order to sell the land plus the cost of survey or resurvey, if the survey or resurvey is made by the department or a contractor of the department.

(d) If the permit described in (a) of this section is for a use other than a use listed in (c) of this section, the purchase price offered to a permittee or the successor of a permittee shall be not less than the appraised fair market value of the land.

Sec. 38.05.069. Preference to persons for agricultural purposes.

(a) After consulting with the Board of Agriculture and Conservation (AS 03.09.010), on a determination that the highest and best use of unoccupied land is for agricultural purposes and that it is in the best interests of the state to sell or lease the land, the commissioner shall grant to an Alaska resident owning and using or leasing and using land for agricultural purposes a first option to purchase or lease the unoccupied land situated adjacent to land presently held by the Alaska resident for the amount of the high bid received at public auction or by sealed bid. If more than one Alaska resident qualifies for a first option under this section, eligibility for the first option shall be determined by lot, and the option must be exercised on the conclusion of the public auction or opening of sealed bids. A parcel of agricultural land sold under this section may not be less than 20 acres, and a parcel of agricultural land that is acquired by exercise of the option granted in this subsection may not exceed 320 acres. Agricultural land that is acquired under this section must be used for agricultural purposes as required by law.

(b) [Repealed, § 88 ch 152 SLA 1984.]

(c) Under this section,

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

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

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

(e) Nothing in (c) of this section affects the disposal of minerals under AS 38.05.135 – 38.05.183.

(f) In this section,

(1) “adjacent” means that a tract of land has one common boundary point with presently held land or is separated from the presently held land only by a physical barrier such as a road or stream;

(2) “agricultural purposes” includes farming, ranching, grazing, and storage or control of agricultural crops or livestock.

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

Sec. 38.05.070. Generally.

(a) Land, including tide, submerged, or shoreland, to which the state holds title or to which it may become entitled, may be leased, except for the extraction of natural resources, in the manner provided in AS 38.05.070 – 38.05.105.

(b) The director, with the approval of the commissioner, shall determine the land to be leased and the limitations, conditions, and terms of the lease. The director shall preserve reasonable and traditional access to state land and water. If the appraised value of the transaction is \$10,000 a year or less, the director may negotiate a lease for a period not to exceed 10 years, and on the limitations, conditions, and terms that the director considers are in the best interests of the state. A lease negotiated under this subsection is not eligible for a preference under AS 38.05.102.

(c) A lease may be issued for a period up to 55 years, if the commissioner determines it to be in the best interests of the state. The commissioner shall consider the useful life of any improvements proposed and approved under AS 38.05.075 in determining the term of the lease. If the commissioner determines that the land or a part of it which is the subject of a grazing lease is not being used for the purpose issued, the lease may be declared void.

(d) If, after notice under AS 38.05.945 soliciting interest for a competitive auction, the department determines that only one potential bidder has expressed interest in bidding, the director may cancel the competitive auction and negotiate a lease and its conditions and terms that the director determines to be in the best interests of the state.

(e) The director may renew a lease issued under this section, AS 38.05.075, 38.05.083, or 38.05.810 upon its expiration if the lease is in good standing and the lease renewal is determined to be in the best interests of the state. A renewal issued under this subsection is not subject to AS 38.05.035(e). A lease under this section, AS 38.05.075, 38.05.083, or 38.05.810 may be renewed only once for a term not longer

than the initial term of the lease. The director shall provide notice of the lease renewal decision.

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

(1) a lessee preference application under AS 38.05.102;

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

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

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

Sec. 38.05.073. Recreational facilities development leasing.

(a) To identify land suitable for recreational facilities development leasing, the commissioner shall make the identification through a regional land use plan or a site-specific land use plan adopted under AS 38.04.065. The identification of land for leasing under this section shall be consistent with any existing regional recreational management plan. The commissioner may request proposals from potential lessees under this section if consistent with an adopted land use plan that expressly allows the specific type of development under consideration. Consistent with AS 38.04.065, the development of a land use plan used to identify land suitable for recreational facilities development leasing must consider the supply of recreational opportunities and alternatives, economic and social factors, and fish, wildlife, and other resources affected by the specific type and location of recreational facilities development under consideration.

(b) AS 38.05.070(a), 38.05.085(c), 38.05.090, and 38.05.103 apply to leasing under this section. The other provisions of AS 38.05.070 – 38.05.105 do not apply to leasing under this section.

(c) If the commissioner identifies land for recreational facilities development leasing under (a) of this section, at least 30 days before the commissioner decides to solicit proposals from potential lessees, the commissioner shall provide public notice of the location and the specific type of recreational facilities development being considered and request comments. The notice shall be provided to (1) a municipality if the land is entirely or partially within the boundaries of the municipality; (2) a regional corporation organized under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) if the boundaries of the corporation established by 43 U.S.C. 1606(a) encompass part or all of the land and the land encompassed by the corporation's boundaries is entirely or partially outside the municipality; (3) a village corporation organized under 43 U.S.C. 1601 if all or part of the land is within 40 miles of the village for which the corporation was established and the land is located entirely or partially outside a municipality; (4) other persons affected by the

specific recreational facility development; and (5) persons who have specifically requested to be notified. Public notice identifying the location and the specific type of recreational facilities development under consideration must also be published at least twice in a newspaper of general circulation in the state and in a local newspaper in general circulation in the region where the land is located. The comments received under this subsection become part of the public record for the consideration of the commissioner.

(d) If the commissioner decides to solicit proposals, the commissioner shall prepare a written request for proposals that includes

(1) the specific type of recreational facilities development for which the land may be leased;

(2) the form of compensation that the commissioner intends to require for the lease under (1) of this subsection;

(3) the selection criteria that the commissioner will use to determine the eligibility of a developer, including the developer's financial backing and capability, experience in the proposed undertaking, ability to meet bonding or insurance requirements, and ability to comply with resource and environmental analysis requirements; and

(4) the criteria that the commissioner will use to determine the suitability of proposals.

(e) After preparing a request for proposals under (d) of this section, the commissioner may issue the request to solicit proposals from persons who are interested in leasing the land for recreational facilities development. The request for proposals must be advertised at least three times in a newspaper of general circulation in the state and in a local newspaper in general circulation in the region where the land is located. The proposals submitted to the commissioner must include the specific facts on which the potential lessee bases its ability to develop the land, including its ability to comply with the items identified in (d)(1) – (4) of this section.

(f) After soliciting proposals under (e) of this section, if the commissioner determines that only one potential lessee is acceptable, the commissioner may begin negotiations with the potential lessee to develop the terms and conditions for the lease.

(g) After soliciting proposals under (e) of this section, if the commissioner determines that two or more potential lessees are acceptable, the commissioner may select the potential lessee who submits the highest bid during a public auction or by sealed bids, whichever method the commissioner chooses. The minimum bid must equal the amount established by the commissioner plus the administrative fee established under (k) of this section. The commissioner shall also require the potential lessee to make an earnest money deposit under AS 38.05.860(b). After the commissioner selects a potential lessee, the commissioner may begin negotiations with the potential lessee to develop the terms and conditions for the lease.

(h) After developing proposed lease terms and conditions with a potential lessee under (f), (g), or (j) of this section, the commissioner may issue a preliminary decision under AS 38.05.035(e) that leasing the land to the potential lessee on the proposed terms and conditions serves the best interests of the state. During preparation

of the preliminary decision, the commissioner shall consult with affected state agencies regarding issues within the agencies' areas of responsibility and expertise. The commissioner shall give public notice of the preliminary decision under AS 38.05.945 and request comments from the public and state agencies. A public hearing shall be held in the region where the land proposed for lease is located if the commissioner determines there is sufficient local interest. The preliminary decision must include

(1) a statement of the specific type of recreational facilities development for which the land will be leased;

(2) an analysis of alternative sites;

(3) a statement of the terms and conditions to be required in the proposed lease agreement;

(4) a statement of the compensation that the state may require under the proposed lease agreement;

(5) a statement of the potential economic, social, and environmental effects of the proposed development, including the effect on water quality and the traditional and recreational uses of the land;

(6) a statement of the long-term commitments of fish, wildlife, and other natural resources that would be involved in the proposed development;

(7) a statement of alternatives to the commitments identified under (6) of this subsection and alternatives or measures that may reduce or eliminate the effects identified under (5) of this subsection;

(8) an identification of any studies, including economic feasibility studies, or plans to be required by the commissioner; and

(9) for a large project, a preliminary assessment of the project's economic feasibility based on available information.

(i) After reviewing the comments received under (h) of this section, the commissioner shall make a final determination whether the proposed lease will serve the best interests of the state. If the commissioner determines that the proposed lease will serve the best interests of the state, the commissioner shall offer the lease to the proposed lessee subject to the terms, conditions, and study requirements the commissioner determines to be necessary. If a study or plan is required, the potential lessee may be required to provide and pay for the study or plan. For a large project where the commissioner has determined under (h) of this section that there may be significant economic, social, or environmental effects or long-term commitments of fish, wildlife, or other natural resources, the commissioner shall require the potential lessee to prepare and submit a comprehensive economic feasibility study to be completed no later than 18 months after the execution of the lease. State agencies with pertinent expertise or responsibilities shall be involved in the review of required plans and studies. If the plan or study involves fish, game, or customary and traditional use of natural resources, the Department of Fish and Game shall review the methodology and scope of the plan or study. If the Department of Fish and Game determines that the methodology and scope are appropriate for the plan or study, the methodology and scope may be used for the plan or study.

(j) If a potential lessee who was selected under (g) of this section declines the lease offer made under (i) of this section, the commissioner may begin negotiations with the potential lessee who provided the next highest bid under (g) of this section to develop under (g) of this section the terms and conditions for a lease.

(k) The commissioner shall require the potential lessee awarded the right to negotiate a lease under (f), (g), or (j) of this section to pay a nonrefundable administrative fee of at least \$250.

(l) The commissioner shall reject all proposals or bids for a lease when it is in the best interest of the state.

(m) The compensation to be paid to the state for a lease issued under this section may include, in the discretion of the commissioner,

(1) a percentage of the annual gross receipts as reported to the United States Internal Revenue Service;

(2) a guaranteed annual minimum rent or a percentage of gross receipts, whichever is greater;

(3) the fair market rental value;

(4) a fixed annual rent that is not less than the fair market rental value of the land;

(5) a fee for each user;

(6) other compensation acceptable to the commissioner; or

(7) a combination of the above.

(n) The annual compensation paid to the state for a recreational facilities development lease shall be reevaluated and adjusted at five-year intervals. The annual compensation for each five-year period after the initial five years of the lease shall be calculated by the same method used to establish the compensation for the initial five-year period.

(o) Before a lease is issued under this section, the land to be covered by the lease shall be surveyed. The survey must be adequate to describe the land to be covered by the lease.

(p) Before entering into a lease under this section, the commissioner shall require the lessee to post a performance bond or provide other security acceptable to the commissioner to cover the costs to the department of one or more of the following, as determined by the commissioner:

(1) completing the development, including site planning, under the terms and conditions of the lease;

(2) maintaining the development under the terms and conditions of the lease;

(3) restoring the lease site if the lease is abandoned or terminated.

(q) The term of the lease may not exceed 55 years. At the expiration of the lease, the commissioner may offer the lessee a right of first

of the lease, the commissioner may offer the lessee a right of first refusal on a new lease under this section for the same land if the commissioner determines that leasing the land for an additional term serves the best interests of the state.

(r) The lessee's violation of a provision of this section or of a term or provision of a lease issued under this section subjects the lessee to appropriate legal action and penalties, including a forfeiture of the lease.

(s) [Repealed, § 28 ch 90 SLA 1991.]

(t) In this section, "recreational facilities development" includes the development of lodges, resorts, and other tourism and recreation-related facilities.

Sec. 38.05.075. Leasing procedures.

(a) Except as provided in [AS 38.05.035](#), 38.05.070, 38.05.073, 38.05.082, 38.05.083, 38.05.087, 38.05.102, 38.05.565, 38.05.600, 38.05.810, and this section, when competitive interest has been demonstrated or the commissioner determines that it is in the state's best interests, leasing shall be made at public auction or by sealed bid, at the discretion of the director, to the highest qualified bidder as determined by the commissioner. A bidder may be represented by an attorney or agent at a public auction. In the public notice of a lease to be offered at public auction or by sealed bid, the commissioner shall specify a minimum acceptable bid and the lease compensation method. The lease compensation method shall be designed to maximize the return on the lease to the state and shall be a form of compensation set out in [AS 38.05.073\(m\)](#). An aggrieved bidder may appeal to the commissioner within five days for a review of the determination. The leasing shall be conducted by the commissioner, and the successful bidder shall deposit at the public auction or with the sealed bid the first year's rental or other lease compensation as specified by the commissioner, or that portion of it that the commissioner requires in accordance with the bid. The commissioner shall require, under [AS 38.05.860](#), qualified bidders to deposit a sum equal to any survey or appraisal costs reasonably incurred by another qualified bidder acting in accordance with the regulations of the commissioner or incurred by the department under [AS 38.04.045](#) and [AS 38.05.840](#). If a bidder making a deposit of survey or appraisal costs is determined by the commissioner to be the highest qualified bidder under this subsection, the deposit shall be paid to the unsuccessful bidder who incurred those costs or to the department if the department incurred the costs. All costs for survey and appraisal shall be approved in advance in writing by the commissioner. The commissioner shall immediately issue a receipt containing a description of the land or interest leased, the price bid, and the terms of the lease to the successful qualified bidder. If the receipt is not accepted in writing by the bidder under this subsection, the commissioner may offer the land for lease again under this subsection. A lease, on a form approved by the attorney general, shall be signed by the successful bidder and by the commissioner.

(b) When a valid existing federal grazing lease is cancelled to allow state selection of the area under lease, the lessee of the land has the preference right to lease the land without competitive bidding for a term equal to that originally granted in the cancelled federal lease and upon terms as favorable to the lessee as those contained in the cancelled federal lease.

(c) The owner or lessee of land that fronts on shoreland, tideland, or submerged land of the state may be granted a preference right to a lease for the shoreland, tideland, or submerged land without competitive bidding if the director determines that

(1) the lease of the shoreland, tideland, or submerged land is necessary to facilitate water transportation of goods, services, or resources to or from the owned or leased upland or for another water-dependent purpose;

(2) the proposed use of the shoreland, tideland, or submerged land is compatible with the classification of the land and with any applicable land use plan adopted under [AS 38.04.065](#); and

(3) issuance of the lease to the shoreland, tideland, or submerged land will not interfere with prior existing rights to the leased land.

(d) If the commissioner issues a lease under (c) of this section, the right of access to the shoreland, tideland, or submerged land shall be nonexclusive in the lessee unless the commissioner grants the lessee the exclusive right to use the shoreland, tideland, or submerged land.

(e) The commissioner may require prequalification of bidders for a lease to be issued under [AS 38.05.070](#). If the commissioner determines to require prequalification, the procedures established by this section and the notice including prequalification requirements required to be given under [AS 38.05.945](#) shall be completed within 75 days of the receipt of the first lease application unless the commissioner grants additional time for the completion of the procedures. Within the 75-day period or the additional time granted by the commissioner, the commissioner shall complete

(1) classification under [AS 38.05.300](#);

(2) the procedures required by [AS 38.05.035\(e\)](#);

(3) any other action required by law for the disposal of the lease to a bidder except survey, appraisal, and the auction or sealed bid.

(f) If, after completion of the procedures required by (e) of this section, the commissioner determines that there is only one qualified bidder, the commissioner may issue a lease without competitive bidding at the approved, appraised market value of the land determined under [AS 38.05.840](#) or by another form of lease compensation specified by the commissioner from among those set out in [AS 38.05.073\(m\)](#) and designed to maximize the return on the lease to the state. The commissioner may establish terms and conditions for entry to the land pending survey and appraisal of the land. The commissioner shall issue the lease as soon as is practicable following the survey and appraisal of the land subject to the provisions of [AS 38.05.035\(e\)](#).

(g) Notice of an auction or sealed bid required under this section shall be made by certified mail to all prequalified bidders.

(h) A person aggrieved by a decision of the commissioner under this section may appeal to the commissioner within five days of the prequalification decision. The decision of the commissioner under this subsection may be appealed to the superior court.

Sec. 38.05.076. Leases for pipeline purposes. [Repealed, § 31 ch 3 FSSLA 1973.]

Secs. 38.05.077 and 38.05.078. Classification, disposal, and sale of remote parcels. [Repealed, § 7 ch 103 SLA 1983. For current law see AS 38.09.]

Sec. 38.05.079. Remote cabin permit. [Repealed, § 38 ch 91 SLA 1997.]

Sec. 38.05.080. Rejection of bids.

Before the director signs the lease, the commissioner may reject all bids for leases when the best interest of the state justifies this action.

Sec. 38.05.082. Leases for shore fisheries development; account.

(a) The director, with the approval of the commissioner, may lease tide and submerged land for fisheries development. Fisheries

development includes the utilization of shore gill nets or set nets for the taking of fish. Every lease issued under this section shall reserve to the public a right-of-way for access to navigable waters and other tide and submerged land.

(b) The director may classify land as subject to leases for fisheries development and publicly invite applications for lease of the selected areas. Each application shall be accompanied by an affidavit to the effect that the applicant presently intends to personally utilize the leased area for fishing purposes the following season. If two or more applications are received for the same shore area, the director shall award the lease to the most qualified applicant. In determining the qualifications of applicants, the director shall consider the length of time during which the applicant has been engaged in set netting, the proximity of the past fishing sites of the applicant to the land to be leased, the present ability of the applicant to utilize the location to its maximum potential, and other factors relevant to the equitable assignment of the disputed area. If the director cannot determine a preference between conflicting applicants for the same lease site on the basis of qualifications, the director shall select between the applicants by lot. An aggrieved applicant may appeal to the commissioner within 30 days for a review of the director's determination.

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

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

(e) The lease of submerged land conveys no interest in the water above the land or in the fish in the water.

(f) The shore fisheries development lease program account is established in the state treasury. The rents, fees, and other proceeds

established in the state treasury. The rents, fees, and other proceeds received by the department in connection with the issuance of shore fisheries development leases under this section shall be deposited into the account. The legislature may appropriate money deposited into the account for the operation of the shore fisheries development lease program by the department or for any other public purpose.

Sec. 38.05.083. Aquatic farming and hatchery site leases.

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

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

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

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

(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.

(g) The commissioner may, under AS 38.05.070(e) – (g), renew or extend a lease issued under this section.

(h) Nothing in this section prohibits a lessee under this section using a site for aquatic farming and related hatchery operations from also using that site for a tourism enterprise or educational purpose relating to aquatic farming or related hatchery operations.

(i) Notwithstanding AS 38.05.035 and 38.05.850, if a site leased under this section is actively used for aquatic farming or related hatchery operations, the commissioner may not charge a lessee, sublessee, or other person assigned all or a part of the lease a fee for using or allowing the use of the site, or passage across the site, for a tourism enterprise or educational purpose relating to aquatic farming or related hatchery operations.

Sec. 38.05.085. Term of lease.

(a) [Repealed, § 37 ch 2 FSSLA 1992.]

(b) [Repealed, § 37 ch 2 FSSLA 1992.]

(c) The lessee shall make advance payments of the annual rent or other form of lease compensation specified by the commissioner or that portion of it the commissioner may require.

(d) A preference right lessee of grazing or forest land may follow the payment schedule established in the cancelled federal lease or grazing permit if the lessee so desires.

(e) Notice of all actions by the department affecting the rights of a lease or lessee shall be given to the lessee.

(f) A violation of a provision of this chapter or of a term or provision of a lease subjects the lessee to appropriate legal action, including, but not limited to, a forfeiture of the lease.

(g) [Repealed, § 37 ch 2 FSSLA 1992.]

Sec. 38.05.087. Forest Service permittees' leasing preference.

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

(b) When not in conflict with this section, the provisions of AS 38.05.070 – 38.05.105 apply to leases under this section.

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 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, and below-ground tanks, 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

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 costs upon the lessee.

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

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

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

Sec. 38.05.095. Subleases.

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

(b) A nonprofit organization that is exempted from paying rent on state land under [AS 38.05.810](#) may not sublease or assign the land or a portion of it on which it has a lease.

Sec. 38.05.096. Exemption from rental payments on land leased for

certain liquefied natural gas storage facilities.

(a) A person leasing state land for a liquefied natural gas storage facility other than a gas storage facility subject to AS 38.05.180(u) may request an exemption from lease payments as provided in this section. The exemption is applicable for the periods described in (b) of this section.

(b) The exemption is available for the calendar year in which the liquefied natural gas storage facility commences commercial operation and for each of the nine calendar years immediately following the first year of commercial operation. However, an exemption is not applicable for the calendar year after the facility ceases commercial operation or for any subsequent calendar year.

(c) The lessee shall provide the director with any information the director requests to determine whether the lessee qualifies for the exemption.

(d) Information related to state land leased for a liquefied natural gas storage facility qualifying for the exemption in this section is public information and may be furnished to the Regulatory Commission of Alaska. On request, the director shall provide the name of each person using state land leased for a liquefied natural gas storage facility, the years for which an exemption was granted, and the amount of the exemption.

(e) A person receiving an exemption for a payment under this section that contracts to store liquefied natural gas for a utility regulated under AS 42.05 shall reduce the storage price to reflect the value of the exemption.

(f) In this section,

(1) "ceases commercial operation" and "commences commercial operation" have the meanings given in AS 31.05.032;

(2) "liquefied natural gas storage facility" has the meaning given in AS 42.05.990.

Sec. 38.05.097. Exemption from rental payments on land leased by nonprofit organizations.

(a) A nonprofit organization using state land leased by it under AS 38.05.070 – 38.05.105 and 38.05.810 for a youth encampment or similar recreational purpose is exempt from lease rental payments on that land. The nonprofit organization shall meet all other terms and conditions of the lease specified under AS 38.05.070 – 38.05.105 and 38.05.810.

(b) A nonprofit organization which satisfies the requirements of this section that is using land under a lease in effect before July 1, 1978 may convert its lease to a new lease with terms exempting it from the payment of rent by submitting a written request to the director.

(c) In this section, "nonprofit organization" means nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific, or educational purposes or for the promotion of social welfare and which have received an exemption from the payment of federal income tax.

Sec. 38.05.098. Senior citizens exemption.

(a) The real property occupied as a permanent place of abode by a resident 65 years of age or over and leased by that resident from the state in accordance with AS 38.05.070 – 38.05.105 is exempt from the payment of annual lease rent. Only one exemption may be granted for the same property, and, if two or more persons are eligible for an exemption for the same property the parties shall decide between or among themselves which shall receive the benefit of the exemption. An exemption may not be granted for a portion of the leased real property which is used for a purpose other than as the permanent place of abode of the leaseholder.

(b) An exemption may not be granted under this section unless a written application for the exemption on a form provided for by the commissioner is submitted. The leaseholder must submit the application not later than 60 days before the anniversary date of the lease, and shall file a separate application for each lease year for which the exemption is sought. If an application is submitted within the required time and is approved by the commissioner, the commissioner shall allow a rental exemption for the lease year commencing on the anniversary date. The commissioner may at any time require proof of the right to an exemption claimed under this section.

Sec. 38.05.100. Renewal of lease. [Repealed, § 15 ch 257 SLA 1976.]

Sec. 38.05.102. Lessee preference.

If land within a leasehold created under AS 38.05.070 – 38.05.105 is offered for sale or long-term lease at the termination of the existing leasehold, the director may, upon a finding that it is in the best interest of the state, allow the holder in good standing of that leasehold to purchase or lease the land for its appraised fair market value at the time of the sale or long-term lease.

Sec. 38.05.103. Rights of holder of security interest.

(a) If there is a breach or default of a term of a lease or of the provisions of this chapter relating to a lease, the division shall provide written notice of the breach or default by personal service or by registered or certified mail to the lessee and to any holder of record having a security interest in the leased property. The notice shall also make demand upon the lessee to cure or remedy the breach or default within 60 days from the date of receipt of the notice and demand. If a lessee fails to cure or remedy the breach or default

within 60 days, or within the additional time which the division may allow for good cause, the state may, subject to (b) of this section, exercise any right which it may have at law or as set out in the lease.

(b) If a lessee fails to cure or remedy a breach or default within the time allowed in (a) of this section, a holder of a security interest who has received notice under (a) of this section may cure or remedy the breach or default if the breach or default can be cured by the

payment of money or, if this cannot be done, by performing or undertaking in writing to perform the terms, covenants, restrictions and conditions of the lease capable of performance by the holder. The holder shall act within 60 days from the date of receipt of notice under (a) of this section, or within an additional period as the director may allow for good cause.

Sec. 38.05.105. Periodic rent adjustments.

(a) Each lease shall stipulate that at five-year intervals as specified in the lease the annual rent payment or other form of lease compensation specified by the commissioner is subject to adjustment. Changes or adjustments shall be based primarily on changes in the lease's fair market value. However, if the commissioner determines that single-family residential development is the best use of the land, the reappraisal period may be lengthened or the readjustment waived in accordance with regulations adopted by the department. Before a waiver of rent adjustment is issued, the land shall have a current reappraisal. A waiver is valid only if single-family residential development actually occurs. The regulations adopted under this section shall ensure that the state receives a fair return from the land.

(b) [Repealed, § 37 ch 2 FSSLA 1992.]

(c) Changes or adjustments of annual rent on land under lease and used for single-family residential purposes in an area zoned for commercial or other nonresidential uses shall be based on an adjusted fair market value determined by reference to the actual use of the property and not by reference to the other uses permissible under the zoning ordinance.

Sec. 38.05.107. Compensation relating to easements or rights-of-way across state leases. [Repealed, § 1 ch 203 SLA 1975.]

Article 4. Disposal of Timber.

Sec. 38.05.110. Sale of timber; timber receipts account.

(a) The commissioner shall provide for cruises of timber on state land and shall assess the supply of and current markets for timber on privately owned land in close proximity to state land to determine

(1) the timber that should be offered for sale; and

(2) the terms of sale of the timber.

(b) The timber receipts account is established in the state treasury. The revenue from the sale of timber from state land shall be deposited in the timber receipts account. Subject to appropriation, the commissioner shall provide 25 percent of the revenue from a sale of timber under this section to forestry programs operated by the department in the municipality, reserve, or community in which the timber was harvested or, if the timber was not harvested in a municipality, reserve, or community, the municipality, reserve, or community closest to the area where the timber was harvested. The legislature may also appropriate money deposited into the timber receipts account for implementation of the state timber disposal program by the department or for any other public purpose.

(c) If a sale of timber may be offered under multiple provisions of AS 38.05.110 – 38.05.123, the commissioner shall determine the applicable

provisions under which to offer the timber.

Sec. 38.05.112. Forest land use plans.

(a) The department may not authorize the harvest of timber, except for harvests of 10 acres or less or timber salvaged from land cleared for a nonforest use, until a site-specific forest land use plan has been adopted. A forest land use plan is required whether or not a regional or area land use plan under AS 38.04.065(a) or a forest management plan under AS 41.17.230 has been adopted. The requirements of AS 38.04.065(b) shall apply to a land use plan adopted under this section only if a regional or area land use plan under AS 38.04.065(a) or a forest management plan under AS 41.17.230 has not been adopted.

(b) In adopting a forest land use plan, the commissioner shall consider the best available data, including information provided by other agencies.

(c) In adopting a forest land use plan on lands not covered by a forest management plan under AS 41.17.230, the commissioner shall consider non-timber uses and resources within the sale area.

Sec. 38.05.113. Five-year sale schedule.

(a) Every two years, the department shall prepare a five-year schedule of timber sales planned on all land managed by the department. The timber sale schedule must provide a time line that identifies timber sales, their volumes, and their locations and must contain sufficient information to provide the public and the forest products industry with a basis to comment on proposed sale offerings.

(b) Except as provided in (c) of this section, a proposed sale may not be held unless it has been included in one of the two five-year schedules immediately preceding the sale.

(c) Sales of 160 acres or less and emergency sales are exempt from the requirements of this section.

(d) [Repealed, § 16 ch 153 SLA 2003.]

Sec. 38.05.115. Limitations and conditions of sale.

(a) The commissioner shall determine the timber to be sold and the limitations, conditions, and terms of sale. The limitations, conditions, and terms shall include the utilization, development, and maintenance of the sustained yield principle, subject to preference among other beneficial uses. The commissioner may negotiate sales of timber without advertisement and on the limitations, conditions, and terms that are considered to be in the best interests of the state. Within a one-year period, the commissioner may not negotiate a sale without advertisement to the same purchaser of more than 500 M.B.M. or equivalent other measure of timber.

(b) Negotiated sales not exceeding 50 M.B.M. or the equivalent other

measure of timber are exempt from the provisions of [AS 34.15.150](#).

(c) The limitations of this section are not applicable to timber that becomes state property under the provisions of [AS 45.50.210](#) – 45.50.235.

Sec. 38.05.117. Salvage sales.

Notwithstanding the provisions of [AS 38.05.113](#), the commissioner, after making a written finding that the disposal will serve the best interests of the state, may offer for salvage sale timber stands that will lose substantial economic value because of insect or disease epidemics or fire, if not salvaged within two years. Timber on land to be cleared for conversion to nonforest uses also may be offered as a salvage sale.

Sec. 38.05.118. Negotiated sales.

(a) Notwithstanding [AS 38.05.115](#) and 38.05.120, and upon a finding that the sale is in the best interest of the state, the commissioner may negotiate a sale of timber to a local manufacturer of wood products or a user of wood fiber at appraised value. The period of a contract for a sale of timber negotiated under this section may not exceed 25 years. The contract shall provide that the appraised value of timber remaining to be harvested under the provisions of the contract shall be redetermined at least once every five years.

(b) Notice of intent to negotiate a contract authorized by (a) of this section shall be given in accordance with [AS 38.05.945](#).

(c) [Repealed, § 4 ch 42 SLA 2016.]

Sec. 38.05.120. Disposal procedure.

Timber shall be sold either by sealed bids or public auction, depending on which method is determined by the commissioner to be in the best interests of the state, to the highest qualified bidder as determined by the commissioner. An aggrieved bidder may appeal to the commissioner within five days after the sale for a review of the determination. The sale shall be conducted by the commissioner, and, at the time of sale, the successful bidder shall deposit the amount specified in the terms of sale. The means by which the amount of deposit is determined shall be prescribed by appropriate regulation. The commissioner shall immediately issue a receipt containing a description of the timber purchased, the price bid, and the terms of sale. The receipt shall be accepted in writing by the bidder. A contract of sale, on a form approved by the attorney general, shall be signed by the purchaser, and the contract shall be signed by the commissioner on behalf of the state. The commissioner may impose conditions, limitations, and terms considered necessary and proper to protect the interests of the state. Violation of any provision of this chapter or the terms of the contract of sale subjects the purchaser to appropriate legal action.

Sec. 38.05.123. Negotiated timber sales for local manufacture of wood products.

(a) Notwithstanding the provisions of [AS 38.05.115](#) and 38.05.120, and upon a finding that the sale is in the best interest of the state, the commissioner may negotiate a sale of timber for use in the local manufacture of high value-added wood products. A timber sale contract entered into under this section may provide for a harvest of up to 10,000,000 board feet of timber each year, consistent with sustained yield principles, and may be for a term of up to 10 years. Initial stumpage rates for a contract under this section shall be determined by negotiation but may not be less than the base price for the area as established under regulations adopted by the commissioner. A contract under this section must provide that stumpage rates shall be redetermined by negotiation at least once every three years during the term of the contract, to reflect changes in market conditions; the redetermined rates may not be less than the base price for the area as established under regulations adopted by the commissioner. The commissioner shall by regulation set a maximum number of contracts, but not less than two, per region of the state that may be negotiated each year under this section.

(b) Notice of intent to negotiate a contract under this section shall be given in accordance with [AS 38.05.945](#).

(c) The commissioner may negotiate a sale of timber under this section if the prospective purchaser agrees to use to the maximum extent

commercially practicable the timber subject to the sale for the local manufacture of high value-added wood products. The commissioner shall determine the maximum amount of the timber being sold that is commercially practicable to use for those purposes and make the use of that percentage of the timber for those purposes a term of the contract. In evaluating proposals, the commissioner shall take into account the proposed manufacture of other value-added wood products to be produced under a negotiated contract.

(d) Before a sale may be negotiated under this section,

(1) the area of the sale must be designated for forestry purposes or other purposes that permit forestry uses by a valid existing area plan adopted under [AS 38.04](#); and

(2) the requirements of [AS 38.05.112](#) and 38.05.113 must be met.

(e) In making the best interest finding required by [AS 38.05.035\(e\)](#) and this section, the commissioner shall consider, in addition to other factors,

(1) the direct economic benefit from the local manufacture of high value-added wood products as a result of the sale;

(2) the direct economic benefit from other local processing of the timber to be undertaken by the purchaser as a result of the sale, including the manufacture of other value-added wood products in addition to high value-added wood products;

(3) the likelihood of commercial success of the locally

manufactured high value-added wood products and other value-added wood products;

(4) the extent to which the sale is likely to result in the creation and maintenance of a stable local job base;

(5) the existence of adequate protection measures to ensure the sustainability of fish and wildlife habitat and populations and continuation of other uses of the area subject to the negotiated sale;

(6) the stumpage return to the state; and

(7) any other reasonably foreseeable benefits to the state and local economies from the sale.

(f) As part of the timber sale negotiations authorized by this section, the commissioner may require a prospective purchaser negotiating a timber sale contract to submit financial and technical data that demonstrates that the requirements of this section have been or will be met. Upon the prospective purchaser's request, the commissioner shall keep data provided by the purchaser confidential in accordance with the requirements of AS 38.05.035(a)(8).

(g) If the commissioner determines that additional analysis is necessary in order to complete the best interest finding for a sale under this section, the commissioner may require the prospective purchaser to retain and pay for the services of a contractor to assist the commissioner in evaluating the proposed negotiated sale and financial and technical data relating to the proposed sale. The contractor shall be selected by the prospective purchaser from a list of consultants in forestry and timber economics provided by the commissioner. If the commissioner requires a prospective purchaser to retain the services of a contractor under this subsection, the commissioner shall determine the scope of the work to be performed by the contractor.

(h) Under this section, a performance review shall be completed not more than five years after a timber sale contract is entered into by the department to ensure that the purchaser is performing in accordance with the terms of the contract. If the commissioner determines that the purchaser is not performing in accordance with the contract, the commissioner may terminate the contract.

(i) A timber sale negotiated under this section does not affect other timber harvest programs under AS 38.05.110 – 38.05.120.

(j) In this section,

(1) "high value-added wood product" means interior finish paneling, trim molding, flooring, doors, windows, cabinet stock, furniture, musical instruments or parts of instruments, toys, tools and implements, ready-to-assemble building kits, veneer, plywood, finger-jointed lumber, faced house logs, dissolving pulp, engineered wood products, paneled wood products, kiln-dried lumber, and other similar finished wood products as determined by the commissioner to have received processing beyond sawing and planing that adds high value to the wood product;

(2) "other value-added wood product" means round house logs, chips, green lumber, flitches, cants, rough planks, and other similar wood products as determined by the commissioner.

Article 5. Reservation of Rights to Alaska.

Sec. 38.05.125. Reservation.

(a) Each contract for the sale, lease, or grant of state land, and each deed to state land, properties, or interest in state land, made under AS 38.05.045 – 38.05.120, 38.05.321, 38.05.810 – 38.05.825, AS 38.08, or AS 38.50 except as provided in AS 38.50.050 is subject to the following reservations: “The party of the first part, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said land above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said land, or any part or parts thereof, at any and all times for the purpose of opening, developing, drilling, and working mines or wells on these or other land and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said land or any part thereof for the foregoing purposes and to occupy as much of said land as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.”

(b) The provisions of (a) of this section do not apply to a quitclaim of land or a transfer of an interest in land made under AS 38.05.035(b) (9).

(c) Notwithstanding (a) of this section, the transfer of ownership and management of University of Alaska trust land from the Department of Natural Resources to the Board of Regents of the University of Alaska under ch. 22, SLA 1983 includes the mineral estate of the state in the land.

Sec. 38.05.126. Navigable and public water.

(a) The people of the state have a constitutional right to free access to and use of the navigable or public water of the state.

(b) The state has full power and control of all of the navigable or public water of the state, both meandered and unmeandered, and the state holds and controls all navigable or public water in trust for the

use of the people of the state.

(c) Ownership of land bordering navigable or public water does not grant an exclusive right to the use of the water and a right of title to the land below the ordinary high water mark is subject to the rights of the people of the state to use and have access to the water for recreational purposes or other public purposes for which the water is used or capable of being used consistent with the public trust.

(d) This section may not be construed to affect or abridge valid existing rights or create a right or privilege of the public to cross or enter private land.

Sec. 38.05.127. Access to navigable or public water.

(a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the commissioner shall,

(1) determine if the body of water or waterway is navigable water, public water, or neither;

(2) upon finding that the body of water or waterway is navigable or public water, provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) The department shall adopt regulations implementing this section.

(c) Nothing in this section affects valid existing rights or limits in any way the constitutional right of the public to use and have free access to the navigable or public waters of the state.

(d) Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.65 or former AS 29.18, if the commissioner determines the action is consistent with the public interest.

(e) The establishment of easements or rights-of-way for oil and gas, gas only, and mineral leases under (a) of this section need not be made until the leases are ready to be developed.

(f) Rights-of-way or easements to waterways established under (a)(2) of this section shall be established approximately once each mile unless the commissioner makes a written finding that regulating or limiting access is necessary for other beneficial uses or public purposes.

(g) The commissioner may exchange land under AS 38.50 to create access to public water of the state.

Sec. 38.05.128. Obstructions to navigable water.

(a) A person may not obstruct or interfere with the free passage or

use by a person of any navigable water unless the obstruction or interference is

(1) authorized by law or regulation or by a permit issued by a state agency;

(2) exempt under 33 U.S.C. 1344(f) (Clean Water Act);

(3) caused by the normal operation of freight barging that is otherwise consistent with law; or

(4) authorized by the commissioner after reasonable public notice.

(b) An unauthorized obstruction or interference is a public nuisance and is subject to abatement. The cost of abatement shall be borne by the violator and is in addition to any penalty imposed by the court.

(c) This section may not be construed to affect or abridge valid existing rights.

(d) Free passage or use of any navigable water includes the right to use land below the ordinary high water mark to the extent reasonably necessary to use the navigable water consistent with the public trust.

(e) Free passage or use of any navigable water includes the right to enter adjacent land above the ordinary high water mark as necessary to portage around obstacles or obstructions to travel on the water, provided

(1) entry is made without injury or damage to the land;

(2) entry is made in the least obtrusive manner possible;

(3) there is no reasonable alternative available to avoid the use of the adjacent land above the ordinary high water mark; and

(4) the navigable water is reentered immediately below the obstacle or obstruction at the nearest point where it is safe to do so.

(f) A violation of (a) of this section is a class B misdemeanor.

Sec. 38.05.130. Damages and posting of bond.

Rights may not be exercised by the state, its lessees, successors, or assigns under the reservation as set out in [AS 38.05.125](#) until the state, its lessees, successors, or assigns make provision to pay the owner of the land full payment for all damages sustained by the owner, by reason of entering upon the land. If the owner for any cause refuses or neglects to settle the damages, the state, its lessees, successors, assigns, or an applicant for a lease or contract from the state for the purpose of prospecting for valuable minerals, or option, contract, or lease for mining coal or lease for extracting geothermal resources, petroleum, or natural gas, may enter upon the land in the exercise of the reserved rights after posting a surety bond determined by the director, after notice and an opportunity to be heard, to be sufficient as to form, amount, and security to secure to the owner payment for damages, and may institute legal proceedings in a court where the land is located, as may be necessary to determine the damages which the owner may suffer.

Article 6. Oil and Gas Exploration Licenses; Leases.

Sec. 38.05.131. Applicability; determination; regulations.

(a) Unless specifically provided otherwise in AS 38.05.132 – 38.05.134, the provisions of AS 38.05.005 – 38.05.037, 38.05.140(f), 38.05.180, 38.05.182 – 38.05.184, and 38.05.920 – 38.05.990 apply to the issuance of exploration licenses and leases for oil and gas, or for gas only, as appropriate, under AS 38.05.132 – 38.05.134.

(b) The provisions of AS 38.05.131 – 38.05.134 do not apply to land

- (1) north of the Umiat baseline; and

(2) in the vicinity of Cook Inlet that is within the area bounded by

(A) the north boundary of Township 17 North, Seward Meridian;

(B) the Seward Meridian;

(C) the south boundary of Township 7 South, Seward Meridian;

and

(D) the west boundary of Range 19 West, Seward Meridian.

(c) The commissioner shall make preliminary written determinations of the state land that may be subject to the provisions of AS 38.05.132. The determinations shall be given public notice using the methods described in AS 38.05.945(b). After completion of the comment period and evaluation of the comments received, the commissioner shall issue a written determination of the state land that is subject to the provisions of AS 38.05.132.

(d) The commissioner may adopt regulations necessary to implement AS 38.05.131 – 38.05.134.

(e) The commissioner may not issue exploration licenses to a licensee so that, at any one time, the licensee holds exploration licenses on more than 2,000,000 acres.

Sec. 38.05.132. Exploration license for oil and gas or gas only.

(a) To encourage exploration for oil and gas on state land, the commissioner may issue exploration licenses. The commissioner may limit the exploration licenses under AS 38.05.132 – 38.05.134 to exploration for and recovery of gas only. The commissioner may not issue an exploration license on land that is held under an existing coal lease entered into under AS 38.05.150 that has an active permit for exploration or mining unless the licensee under this subsection is also the lessee under AS 38.05.150 of that land.

(b) An exploration license issued under this section gives the licensee

(1) the exclusive right to explore, for a term not to exceed 10 years, on unleased state land described in the exploration license for deposits of oil and gas, or for deposits of gas only, as appropriate.

unless the exploration license is terminated under (d)(1) of this section or the land is earlier relinquished, removed, or deleted under (d)(2) of this section; and

(2) unless the exploration license is terminated under (d)(1) of this section, the option to convert the exploration license for all or part of the state land, except the land that is deleted or removed from the land described in the exploration license under (d)(2) of this section, into an oil and gas lease, or a gas lease only, as appropriate, upon fulfillment of the work commitments contained in the exploration license.

(c) An exploration license awarded under this section

(1) is not subject to the acreage limitations imposed by AS 38.05.140(c) or 38.05.180(m);

(2) may cover, subject to the maximum acreage limitation on exploration licenses by one licensee under AS 38.05.131(e), an area of not less than 10,000 acres and not more than 500,000 acres, that must be reasonably compact and contiguous;

(3) must be conditioned upon an obligation to perform a specified work commitment, in total for the term of the license, expressed in dollars of direct exploration expenditures; the specified work commitment

(A) may include a provision that adjusts the total amount of work commitment, expressed in dollars of direct exploration expenditures, to account for inflation;

(B) must include a requirement that the licensee complete at least 25 percent of the licensee's total specified work commitment by the fourth anniversary of the effective date of the issuance of the exploration license;

(4) must be conditioned upon the posting of a bond or other security acceptable to the commissioner, in favor of the state and subject to the following requirements:

(A) the bond or other security must be renewed annually;

(B) the annual bond or other security shall be calculated as the entire work commitment expressed in dollars, less the cumulative direct exploration expenditures of the licensee as of the last day of the most recent project year, divided by the number of years remaining in the term of the exploration license;

(5) is subject to an annual review and revocation if the commissioner determines that the licensee has failed to provide or maintain in effect the bond or other security required by (4) of this subsection;

(6) must be conditioned upon the licensee's payment to the state of a nonrefundable exploration license fee of \$1 for each acre of land or fraction of each acre that is subject to the exploration license; and

(7) must be conditioned upon an agreement that exploration expenditures are subject to audit by the commissioner.

(d) If, on the fourth anniversary of the effective date of the issuance of the exploration license awarded under this section.

(1) the licensee has not completed at least 25 percent of the licensee's total specified work commitment, as measured by the licensee's direct exploration expenditures, the exploration license terminates;

(2) the licensee has completed at least 25 percent but has not completed at least 50 percent of the licensee's total specified work commitment, as measured by the licensee's direct exploration expenditure, the commissioner shall remove or delete or shall require the licensee to relinquish a portion of the area within the exploration license; relinquishment, removal, or deletion of an area from the state land described in the exploration license terminates the licensee's rights under AS 38.05.131 – 38.05.134 in the area that is relinquished, removed, or deleted; a relinquishment, removal, or deletion of a portion of the area described in the exploration license must be in areas that are reasonably compact and contiguous; the areas relinquished from the state land described in the exploration license must be areas identified by the licensee but, if the licensee fails to identify sufficient area, the commissioner may identify any additional acreage required to be removed or deleted from the area under license to meet the requirements of this subsection; within the area described in the exploration license issued under (a) – (c) of this section,

(A) 25 percent must be relinquished, removed, or deleted not later than the fourth anniversary of the effective date of the issuance of the exploration license;

(B) an additional 10 percent of the acreage remaining after relinquishment, removal, or deletion of acreage required by (A) of this paragraph and by previous relinquishments, removals, or deletions under this paragraph must be removed or deleted on each of the succeeding anniversaries of the effective date of the issuance of the exploration license;

(C) the cumulative total of the acreage relinquished, removed, or deleted under (A) and (B) of this paragraph may not be required to exceed 50 percent of the area awarded within the original exploration license area.

(e) If, immediately before the beginning of the period for annual renewal of the bond or other security under (c)(4)(A) of this section, the licensee fails to provide or maintain in effect the bond or other security required by (c) of this section for the period covered by the annual renewal and the commissioner revokes the exploration license, the bond or other security then in effect for the licensee's obligations under the exploration license is forfeited to the state.

(f) In this section,

(1) "direct exploration expenditure" means cash expenses undertaken in performance of a specified work commitment under the provisions of AS 38.05.131 – 38.05.134 and necessarily incurred by the licensee in the permitting, mobilization, conducting, demobilization, and evaluation of geophysical and geological surveys, or the drilling, logging, coring, testing, and evaluation of oil and gas or gas only wells; the term

(A) includes direct labor costs, including the cost of benefits, for employees directly associated with the work commitment programs, the cost of renting or leasing equipment from parties not affiliated with the licensee, the reasonable costs of maintaining and operating equipment, payments to consultants and independent contractors not affiliated with the licensee, and costs of materials

contractors not affiliated with the licensee, and costs of materials and supplies;

(B) does not include noncash expenses such as depreciation and reserves, interest or other costs of borrowed funds, return on investment, overhead, insurance or bond premiums, or any other expense that is unreasonable or that the licensee has not incurred to satisfy the licensee's work commitment;

(2) "work commitment" includes the drilling of one or more exploration wells or the gathering of data from activities described in (1) of this subsection, or both.

Sec. 38.05.133. License procedures.

(a) The procedures in this section apply to the issuance of an exploration license under [AS 38.05.132](#).

(b) The licensing process is initiated by the commissioner preparing, or a prospective licensee submitting to the commissioner, a proposal that identifies a specific area to be subject to the exploration license, proposes specific minimum work commitments, and states the minimum qualifications for a licensee as established by regulations adopted by the commissioner. A prospective licensee may initiate a proposal only in response to a call for proposals by the commissioner or during a period specified in regulations adopted by the commissioner. The regulations must provide for at least one period for that purpose during each calendar year.

(c) If the commissioner initiates the licensing process under (b) of this section, the commissioner shall publish notice of the commissioner's proposal in order to solicit comments and competing proposals.

(d) Within 30 days after receipt of a proposal from a prospective licensee under (b) of this section, the commissioner shall either reject it in a written decision or give public notice of the intent to evaluate the acceptability of the proposal. The commissioner shall solicit comments on a proposal for which public notice is given under this subsection, and shall request competing proposals.

(e) The commissioner may make a written request to a prospective licensee for additional information on the prospective licensee's proposal. The commissioner shall keep confidential information described in [AS 38.05.035\(a\)\(8\)](#) that is voluntarily provided if the prospective licensee has made a written request that the information remain confidential.

(f) After considering proposals not rejected under (d) of this section and public comment on those proposals, the commissioner shall issue a written finding addressing all matters set out in [AS 38.05.035\(e\)](#) and (g), except for [AS 38.05.035\(g\)\(1\)\(B\)\(xi\)](#). If the finding concludes that the state's best interests would be served by issuing an exploration license, the finding must (1) describe the limitations, stipulations, conditions, or changes from the initiating proposal or competing proposals that are required to make the issuance of the exploration license conform to the best interests of the state, and (2) if only one proposal was submitted, identify the prospective licensee whom the commissioner finds should be issued the exploration license

whom the commissioner finds should be issued the exploration license. The commissioner shall attach to the finding a copy of the exploration license to be issued and the form of lease that will be used for any portion of the exploration license area subsequently converted to a lease under AS 38.05.134.

(g) If only one prospective licensee submits a proposal and the finding under (f) of this section concludes that an exploration license should be issued to that prospective licensee, the prospective licensee has 30 days after issuance of the finding within which to accept or reject the issuance of the exploration license, as limited or conditioned by the terms contained in the finding. The exploration license to be issued and the form of lease that will be used must be attached to that finding. The prospective licensee must accept or reject the issuance of the exploration license in writing.

(h) If competing proposals are submitted, and the commissioner's finding under (f) of this section concludes that an exploration license should be issued, the commissioner shall issue a request for competitive sealed bids, under procedures adopted by the commissioner by regulation, to determine which prospective licensee should be issued the exploration license. The finding provided to the prospective licensees and the public under (f) of this section must contain notice that (1) the commissioner intends to request competitive sealed bids, (2) a prospective licensee who intends to participate in the bidding must notify the commissioner in writing by the date specified in the notice, and (3) a prospective licensee's notice of intent to participate in the bidding constitutes acceptance of issuance of the exploration license, as limited or conditioned by the terms contained in the finding and by the exploration license to be issued and the form of lease to be used that have been attached to that finding, if the prospective licensee is the successful bidder. The successful bidder is the prospective licensee who submits the highest bid in terms of the minimum work commitment dollar amount.

Sec. 38.05.134. Conversion to lease.

If the licensee requests and the commissioner determines that the work commitment obligation set out in an exploration license issued under AS 38.05.132 has been met, the commissioner shall convert to one or more leases all or part, as the licensee may indicate, of the area described in the exploration license that remains after the relinquishments, removals, or deletions required by AS 38.05.132(d)(2). A lease issued under this section

(1) is subject to the acreage limitations imposed by AS 38.05.140(c);

(2) is subject to AS 38.05.180(j) - (m), (o) - (u), and (x) - (z);

(3) must be conditioned upon a royalty in amount or value of not less than 12.5 percent of production, except that the lessee who, proceeding under AS 38.05.131 - 38.05.134, under a lease issued in the Cook Inlet sedimentary basin who is the first to file with the commissioner a nonconfidential sworn statement claiming to be the first to have drilled a well discovering oil or gas in a previously undiscovered oil or gas pool and who is certified by the commissioner within one year of completion of that discovery well to have drilled a well in that pool that is capable of producing in paying quantities shall pay a royalty of five percent on all production of oil or gas

shall pay a royalty of five percent on all production of oil or gas from that pool attributable to that lease for a period of 10 years following the date of discovery of that pool, and thereafter the royalty payable on all production of oil or gas from the pool attributable to that lease shall be determined and payable as specified in the lease; the payment of the five percent royalty under this paragraph is authorized only to a holder of a lease who meets the requirements of AS 38.05.180(f)(4);

(4) must include an annual rent of \$3 per acre or fraction of an acre initially paid to the state at inception of the lease and payable annually after that until the income to the state from royalty under that lease exceeds the rental income to the state under that lease for that year; and

(5) is subject to other conditions and obligations that are specified in the lease.

Article 7. Leasing of Mineral Land and Large-Scale Mine Legislative Approval.

Sec. 38.05.135. Leasing generally; royalty and net profit share payments and interest.

(a) Except as otherwise provided, valuable mineral deposits in land belonging to the state shall be open to exploration, development, and the extraction of minerals. All land, together with tide, submerged, or shoreland, to which the state holds title to or to which the state may become entitled, may be obtained by permit or lease for the purpose of exploration, development, and the extraction of minerals. Except as specifically limited by AS 38.05.131 – 38.05.181, land may be withheld from lease application on a first-come, first-served basis, and offered only on a competitive bid basis when determined by the commissioner to be in the best interests of the state.

(b) When mineral land is to be leased, in addition to any other notice given, notice must also be given as provided in AS 38.05.945.

(c) Payment of a royalty or a net profit share payment to the state under a lease issued under AS 38.05.135 – 38.05.181 becomes due on the date and in the manner specified in the lease or in a regulation adopted by the commissioner.

(d) If a royalty or net profit share payment to which the state is entitled under AS 38.05.135 – 38.05.181 is not paid or is underpaid when it becomes due under (c) of this section, the unpaid amount of the royalty or net profit share payment bears interest in a calendar quarter at the rate of five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District as of the first day of that calendar quarter, or at the annual rate of 11 percent, whichever is greater, compounded quarterly as of the last day of that quarter.

(e) If a royalty or net profit share payment to which the state is entitled under AS 38.05.135 – 38.05.181 is overpaid, interest at the rate and compounded in the manner provided in (d) of this section shall be allowed and paid on the overpayment. The interest allowance is subject to the following:

(1) if the state grants a credit against future payments for the overpayment, the state shall pay interest on the overpayment

overpayment, the state shall pay interest on the overpayment
(A) from the date that is the later of the date the
overpayment was

(i) due; or

(ii) received;

(B) to the date that is the earlier of the date

(i) of notice to the lessee of the credit; or

(ii) on which the lessee actually takes the credit;

(2) if the state refunds the overpayment, the state shall pay
interest on the overpayment

(A) from the date that is the later of the date the
overpayment was

(i) due; or

(ii) received;

(B) to the date the state issues the refund.

(f) The issuance by the state and acceptance by a lessee of a credit
or refund of an overpayment under (e) of this section does not affect
any right of the state or lessee to claim an adjustment and interest on
the overpayment.

(g) [Repealed, § 1 ch 37 SLA 2001.]

Sec. 38.05.137. Leasing agreements.

The commissioner is authorized to enter into cooperative mineral
leasing agreements with the United States regarding land which is the
subject of a title dispute between federal and state authorities. Any
such lease need not conform to the provisions of state law applicable
to state leases issued under the authority of this chapter.

Sec. 38.05.140. Limitations.

(a) A person may not take or hold coal leases or permits during the
life of coal leases on state land exceeding an aggregate of 92,160
acres, except that a person may apply for coal leases or permits for
acreage in addition to 92,160 acres, not exceeding a total of 5,120
additional acres of state land. The additional area applied for shall
be in multiples of 40 acres, and the application shall contain a
statement that the granting of a lease for additional land is necessary
for the person to carry on business economically and is in the public
interest. On the filing of the application, except as provided by AS
38.05.180(ff)(3) or 38.05.180(gg), the coal deposits in the land
covered by the application shall be temporarily set aside and withdrawn
from all other forms of disposal provided under AS 38.05.135 –
38.05.181.

(b) The commissioner shall, after posting notice of the pending
Application in the local land office, conduct public hearings on the

application for additional acreage. After public hearings, to the extent the commissioner finds to be in the public interest and necessary for the applicant in order to carry on business economically, the commissioner may, under regulations adopted by the commissioner, permit the person to take or hold coal leases or permits for an additional aggregate acreage of not more than 5,120 acres.

(c) A person may not take or hold at one time phosphate leases on state land exceeding in the aggregate 10,240 acres. A person may not take or hold sodium leases or permits during the life of sodium leases on state land exceeding in the aggregate acreage 5,120 acres, except that the commissioner may, where it is necessary in order to secure the economic mining of sodium compounds, permit a person to take or hold sodium leases or permits for up to 15,360 acres. A person may not take or hold at any one time oil or gas leases exceeding in the aggregate 500,000 acres granted on tide and submerged land, including leases held both as lessee and under option or operating agreement from others. A person may not take or hold at any one time oil or gas leases exceeding in the aggregate 750,000 acres on all land other than tide and submerged land, of which not more than 500,000 acres may be located north of the Umiat baseline, including leases held both as lessee and under option or operating agreement from others. Where more than a single person holds an interest in an oil or gas lease, each person shall be charged only with that percentage of the total acreage that corresponds to its percentage share of the total beneficial interest in the lease.

(d) The commissioner, for the purpose of encouraging the greatest ultimate recovery of coal, oil shale, phosphate, sodium, potassium, sulphur, and geothermal resources and in the interest of conservation of natural resources, after public hearing, or, when the state's title to land beneath navigable waters has been legally challenged by the United States and litigation initiated, may waive, suspend, refund, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion of a leasehold segregated for royalty purposes, whenever the commissioner determines that it is necessary to do so in order to promote development, or that the lease cannot be successfully operated under its terms. If the commissioner, in the interest of conservation, directs or assents to the suspension of operations and production under a lease granted, the payment of acreage rental or of minimum royalty prescribed by the lease may be suspended during the period of suspension of operations and production. The term of the lease shall be extended by adding the period of suspension to the lease.

(e) The provisions of (d) of this section that apply to waiver, suspension, refund, or reduction of rental or minimum royalty apply to rental or minimum royalty paid before or after June 19, 1970, on any lease covering land beneath navigable waters which, according to the records of the division of lands, is in effect on June 19, 1970.

(f) The submerged and shoreland lying north of 57 degrees, 30 minutes, North latitude and east of 159 degrees, 49 minutes, West longitude within the Bristol Bay drainage are designated as the Bristol Bay Fisheries Reserve. Within the Bristol Bay Fisheries Reserve, a surface entry permit to develop an oil or gas lease or an exploration license under [AS 38.05.131](#) - 38.05.134 may not be issued on state owned or controlled land until the legislature by appropriate resolution specifically finds that the entry will not constitute danger to the fishery.

Sec. 38.05.142. Legislative approval required for certain large-scale mines.

(a) In addition to permits and authorizations otherwise required by law, a final authorization must be obtained from the legislature for a large-scale metallic sulfide mining operation located within the watershed of the Bristol Bay Fisheries Reserve designated in AS 38.05.140(f). This authorization shall take the form of a duly enacted law finding that the proposed large-scale metallic sulfide mining operation will not constitute danger to the fishery within the Bristol Bay Fisheries Reserve.

(b) The commissioner may adopt regulations under AS 44.62 to implement this section.

(c) In this section, "large-scale metallic sulfide mining operation" means a specific mining proposal to extract metals, including gold and copper, from sulfide-bearing rock and that would directly disturb 640 or more acres of land.

Sec. 38.05.145. Leasing procedure.

(a) Deposits of coal, phosphates, oil shale, sodium, potassium, oil, gas, geothermal resources and state land containing these deposits are subject to disposition under regulations, recommended by the director and adopted by the commissioner, and the provisions of AS 38.05.145 – 38.05.181. In applying the acreage limitations the commissioner may apply the rule of approximation. The uses of the rule of approximation made before March 31, 1960, by the commissioner are ratified.

(b) [Repealed, § 6 ch 155 SLA 1978.]

Sec. 38.05.150. Coal.

(a) The commissioner may, and upon the petition of a qualified applicant, shall divide coal land or the deposits of coal owned by the state into leasing tracts of 40 acres each, or multiples of 40 acres, and in the form which will permit the economical mining of the coal in the tract.

(b) Thereafter the commissioner may, upon the request of a qualified applicant or otherwise, from time to time, offer the land or deposits of coal for leasing. Each lease shall be awarded to a qualified applicant by competitive bidding or by the method prescribed by regulation.

(c) Where prospecting or exploration work is necessary to determine the existence or workability of coal deposits in an unclaimed and undeveloped area, the commissioner may issue to qualified applicants prospecting permits for a term of three years, covering not more than 5,120 acres with each permit. The commissioner shall grant a two-year extension of the initial three-year term of the permit if the permittee has conducted reasonable diligent prospecting or exploration activities

has conducted reasonably diligent prospecting or exploration activities in the area covered by the permit, has not been able to determine the existence and workability of coal deposits in the area, and wishes to continue prospecting or exploring in the area. The commissioner may grant up to three two-year extensions of the initial three-year term of the permit. At any time during the period of the permit, the permittee is entitled to a lease after submitting a mining plan satisfactory to the commissioner for that portion of the land in the permit as is shown to the satisfaction of the commissioner to contain coal in commercial quantities or to be needed for mining, reclamation, or processing the coal.

(d) For the privilege of mining or extracting the coal in the land covered by the lease, the lessee

(1) shall pay to the state the royalties specified in the lease; the royalties shall be fixed before offering the lease, and shall be effective for a period of not more than 20 years; the royalties shall be not less than five cents a ton of 2,000 pounds; the royalty payment is subject to the exploration incentive credit authorized by AS 27.30;

(2) shall also pay an annual rental, payable at the date of the lease and annually thereafter, on the land or coal deposits covered by the lease, at a rate fixed by the commissioner before offering the lease; the annual rental shall be effective for a period of not more than 20 years; the annual rental shall be not less than 25 cents an acre for the first year of the lease, not less than 50 cents an acre for the second year, third year, fourth year and fifth year, and not less than \$1 an acre for each year thereafter during the continuance of the lease; the rental for each year shall be credited against the royalties as they accrue for that year; each lease shall provide that the annual rental payment is subject to adjustment at intervals of no more than 20 years and adjustments shall be based on the current rates for properties similarly situated.

(e) Each lease shall be for an indeterminate period upon condition of diligent development and continued operation of the mine, except when operation is interrupted by strikes, the elements, or casualties not attributed to the lessee.

(f) Notwithstanding AS 38.05.132(a), 38.05.180(ff), or 38.05.180(gg), a lease entered into under this section gives the lessee the right to vent or remove methane and other gas held in association with the coal in the land covered by the lease to ensure safe coal mining operations.

Sec. 38.05.152. Sodium.

(a) The commissioner may grant a prospecting permit to a qualified applicant. The permit gives the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium in land belonging to the state for a period of not exceeding two years. The area included in a prospecting permit may not exceed 2,560 acres of land in reasonably compact form. Upon showing to the satisfaction of the commissioner that valuable deposits of sodium minerals have been discovered by the permittee within the area covered by the permit, and that the land is chiefly valuable for these deposits, the permittee is entitled to a lease for all or a part of the land embraced in the prospecting permit at a royalty of not less than two percent of the quantity or gross value of the output of sodium

compounds and other related products at the point of shipment to market. The commissioner may lease land known to contain valuable deposits of sodium compounds that is not covered by permits or leases through advertisement, competitive bidding, or other methods prescribed by regulation. The area covered by a lease may not exceed 2,560 acres.

(b) Each lease shall be conditioned upon the same royalty payment specified in (a) of this section and the payment in advance of a rental of 25 cents an acre for the first calendar year or fraction of it, 50 cents an acre for the second calendar year, third calendar year, fourth calendar year, and fifth calendar year, and \$1 an acre a year thereafter during the continuance of the lease. The rental for any one year shall be credited against royalties accruing for that year.

(c) A lease shall be for a period of 20 years with preferential right in the lessee to renew for successive periods of 10 years upon terms and conditions prescribed by the commissioner.

Sec. 38.05.154. Sulphur.

(a) Under regulations adopted by the commissioner, the commissioner shall grant a prospecting permit for sulphur to a qualified applicant. The permit gives the applicant the exclusive right to prospect for sulphur, in land belonging to the state, for a period not exceeding two years. The area included in a permit may not exceed 2,560 acres of land in reasonably compact form. Upon showing to the satisfaction of the commissioner that valuable deposits of sulphur have been discovered by the permittee within the area covered by the permit, and that the land is chiefly valuable for these deposits, the permittee is entitled to a lease for all or a part of the land embraced in the prospecting permit, at a royalty of five percent of the quantity or gross value of the output of sulphur at the point of shipment to market. The commissioner may lease land known to contain valuable deposits of sulphur that is not covered by permits or leases through advertisement, competitive bidding, or other methods prescribed by regulation. The area covered by the lease may not exceed 2,560 acres.

(b) Each lease shall be conditioned upon the payment by the lessee of the royalty fixed in the lease and the payment in advance of a rental of 50 cents an acre a year. The rental for any one year shall be credited against the royalties accruing for that year.

Sec. 38.05.155. Phosphates.

(a) The commissioner may lease to qualified applicants land belonging to the state which contains deposits of phosphates and associated and related minerals, when it is in the public interest to do so. The commissioner may lease land through advertisement, competitive bidding, or other methods prescribed by regulation. The land shall be leased in units reasonably compact in form and not exceeding 2,560 acres in each unit.

(b) Each lease shall be conditioned upon the payment to the state of the royalties specified in the lease. The commissioner shall fix the royalties in advance of offering the lease. The royalties shall be not less than five percent of the gross value, at the point of shipment to

market, of the output of phosphates or phosphate rock, and associated or related minerals. Each lease shall provide for the payment of a rental payable at the date of the lease and annually thereafter. The rental shall be not less than 25 cents an acre for the first year, 50 cents an acre for the second year and third year, and \$1 an acre for each year thereafter. The rental paid for any year shall be credited against the royalties for that year. Each lease shall be for a term of 20 years and so long thereafter as the lessee complies with the terms and conditions of the lease.

Sec. 38.05.157. Potassium.

(a) Under regulations adopted by the commissioner, the commissioner may grant a prospecting permit to a qualified applicant. The permit gives the applicant the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium, in land belonging to the state, for a period not exceeding two years. The area included in a permit may not exceed 2,560 acres of land in reasonably compact form. Upon showing to the satisfaction of the commissioner that valuable deposits of potassium compounds have been discovered by the permittee within the area covered by the permit, and that the land is chiefly valuable for these deposits, the permittee is entitled to a lease for all or a part of the land embraced in the prospecting permit, at a royalty of not less than two percent of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market. The commissioner may lease land known to contain valuable deposits of potassium compounds that is not covered by permits or leases through advertisement, competitive bidding, or other methods prescribed by regulation. The area covered by the lease may not exceed 2,560 acres.

(b) Each lease shall be conditioned upon payment by the lessee of a royalty of not less than two percent of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market, and the payment in advance of a rental of 25 cents an acre for the first calendar year or fraction of it, 50 cents an acre for the second calendar year, third calendar year, fourth calendar year, and fifth calendar year, and \$1 an acre a year thereafter during the continuance of the lease. The rental for any one year shall be credited against royalties accruing for that year.

(c) Each lease shall be for a term of 20 years and so long thereafter as the lessee complies with the terms and conditions of the lease.

Sec. 38.05.160. Oil shale.

(a) The commissioner may lease to a qualified person deposits of oil shale belonging to the state and the surface of as much of the land containing these deposits, or land adjacent to it, as may be required for the extraction and reduction of the lease minerals. The lease may not exceed 5,120 acres of land, and the terms of the lease shall be limited to the extraction of minerals from the oil shale so leased. The lease may be for indeterminate periods upon the conditions imposed by the commissioner.

(b) For the privilege of mining, extracting, and disposing of the oil or other minerals covered by the lease, the lessee shall pay to the state the royalties specified in the lease and an annual rental at the rate of 50 cents an acre for the land included in the lease. The rental paid for any one year shall be credited against the royalties accruing for that year. For the purpose of encouraging the production of petroleum products from shales, the commissioner may waive the payment of royalty and rental during the first five years of the lease.

Sec. 38.05.165. [Renumbered as AS 38.05.152.]

Sec. 38.05.170. [Renumbered as AS 38.05.154.]

Sec. 38.05.175. [Renumbered as AS 38.05.157.]

Sec. 38.05.177. **Nonconventional gas leases.**

(a) The provisions of this section apply to nonconventional gas.

(b) [Repealed, § 58 ch 49 SLA 2004.]

(c) [Repealed, § 58 ch 49 SLA 2004.]

(d) A lease

(1) shall be automatically extended if and for so long thereafter as gas is produced in paying quantities from the lease and the lessee continues to meet all requirements of the lease; a lease issued under this section covering land on which there is a well capable of producing gas in paying quantities does not expire because the lessee fails to produce gas unless the lessee is allowed reasonable time to place the well on a producing status; if drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, including such operations as redrilling, sidetracking, or other means necessary to reach the originally proposed bottom hole location, the lease is extended for one year and for so long thereafter as gas is produced in paying quantities; a gas lease issued under this section that is subject to termination by reason of cessation of production does not terminate if, within 90 days after production ceases or a longer period determined at the discretion of the director, reworking or drilling operations are commenced on the land under lease and are thereafter conducted with reasonable diligence during the period of nonproduction; on application by the lessee, the director may extend the lease issued under this section for a period of not more than 10 years if the gas produced from the lease is to be used by the lessee solely for its mining operations;

(2) issued under former (c) of this section before January 1, 2004, may be extended at the discretion of the director; a lease may be extended under this paragraph upon application by the lessee; the director may once extend the lease for a period of not more than three years; in exercising discretion to extend a lease under this paragraph, the director may not extend the lease unless the director considers

(A) the extent of the shallow natural gas exploration activity already conducted on the lease and on adjacent areas;

(B) the probability that further shallow natural gas exploration activity will occur on the lease and will lead to shallow natural gas development and production; and

(C) whether extension of the lease's primary term will accelerate the eventual production of shallow natural gas from the lease.

- (e) [Repealed, § 58 ch 49 SLA 2004.]
- (f) [Repealed, § 58 ch 49 SLA 2004.]
- (g) [Repealed, § 58 ch 49 SLA 2004.]
- (h) [Repealed, § 58 ch 49 SLA 2004.]
- (i) [Repealed, § 58 ch 49 SLA 2004.]
- (j) [Repealed, § 58 ch 49 SLA 2004.]
- (k) [Repealed, § 58 ch 49 SLA 2004.]

(l) A lessee holding a lease modified under AS 38.05.180(n)(2)(A) may exercise the rights authorized by this section and the lease. The rights granted by the lease must be exercised in a manner that does not unreasonably interfere with eventual development of other mineral deposits on the land leased. However, in a lease entered into under AS 38.05.150 for land that is already subject to a lease covered under this section, coal may not be mined or extracted by the coal lessee from the coal lease without prior agreement with the lessee holding the lease covered under this section.

- (m) [Repealed, § 58 ch 49 SLA 2004.]
- (n) [Repealed, § 58 ch 49 SLA 2004.]
- (o) [Repealed, § 58 ch 49 SLA 2004.]

Sec. 38.05.180. Oil and gas and gas only leasing.

(a) The legislature finds that

(1) the people of Alaska have an interest in the development of the state's oil and gas resources to

(A) maximize the economic and physical recovery of the resources;

(B) maximize competition among parties seeking to explore and develop the resources;

(C) maximize use of Alaska's human resources in the development of the resources;

(2) it is in the best interests of the state

(A) to encourage an assessment of its oil and gas resources and to allow the maximum flexibility in the methods of issuing leases to

(i) recognize the many varied geographical regions of the state and the different costs of exploring for oil and gas in these regions;

(ii) minimize the adverse impact of exploration, development, production, and transportation activity; and

(B) to offer acreage for oil and gas leases or for gas only leases, specifically including

(i) state acreage that has been the subject of a best interest finding at annual areawide lease sales; and

(ii) land in areas that, under (d) of this section, may be leased without having been included in the leasing program prepared and submitted under (b) of this section.

(b) The commissioner shall annually prepare and, before February 1 of each calendar year notify the legislature of a five-year program of proposed oil and gas lease sales and proposed gas only lease sales,

specifying as practicable the location of tracts to be offered for leasing during the calendar year of the notification and the following four calendar years. The commissioner may, at any time, notify the legislature of revisions, including additions, to the program. Notification to each legislator, by electronic message or other written means, constitutes notification to the legislature under this subsection.

(c) Except as provided in (d) and (w) of this section, an oil and gas lease sale or gas only lease sale may not be held unless it was included in the proposed leasing programs submitted to the legislature during the two calendar years preceding the year in which the sale is held. A lease sale, whether for oil and gas or for gas only, may not be held before the date it is scheduled in the proposed oil and gas leasing program.

(d) The commissioner

(1) may annually offer leases for oil and gas or leases for gas only of the acreage described in AS 38.05.035(e)(6)(F);

(2) may issue leases in an area that has not been included in a leasing program prepared, in accordance with (b) of this section, if the land to be leased

(A) was previously subject to a valid state oil and gas lease, a valid state gas lease, or a valid federal oil and gas lease;

(B) is contiguous to land already under state, federal, or private lease and the commissioner makes a written finding, after hearing, that leasing of the land would result in a substantial probability of early evaluation and development of the land to be leased;

(C) is adjacent to land owned or controlled by another party on which a discovery of commercial quantities of oil or gas has been made, and the commissioner finds, after hearing, that there is a reasonable probability that the land to be leased contains oil or gas in communication with the oil or gas discovered on the land of the other party;

(D) is adjacent to land included in the federal five-year Outer Continental Shelf leasing program under 43 U.S.C. 1344, and the commissioner makes a written finding, after hearing, that coordinated or simultaneous leasing with the federal government is in the public interest; or

(E) is the subject of an exploration license issued under AS 38.05.131 - 38.05.134; however, if the license issued was for exploration for and recovery of gas only, then the lease issued under this subsection shall be limited to exploration for and recovery of gas only.

(e) The commissioner shall annually prepare and notify the legislature of the availability of a report containing the following:

(1) the schedule of all lease sales held during the preceding calendar year, the bidding method or methods utilized, and an analysis of the results of the bidding;

(2) if determined, a description of the bidding methods to be used for all lease sales to be held during the current and next two succeeding calendar years;

(3) the reasons a particular bidding method has been selected.

(f) Except as provided by AS 38.05.131 – 38.05.134, the commissioner may issue oil and gas leases or leases for gas only on state land to the highest responsible qualified bidder as follows:

(1) the commissioner shall issue an oil and gas lease or a gas only lease, as appropriate, to the successful bidder determined by competitive bidding under regulations adopted by the commissioner; bidding may be by sealed bid or according to any other bidding procedure the commissioner determines is in the best interests of the state;

(2) whenever, under any of the leasing methods listed in this subsection, a royalty share is reserved to the state, it shall be delivered in pipeline quality and free of all lease or unit expenses, including but not limited to separation, cleaning, dehydration, gathering, salt water disposal, and preparation for transportation off the lease or unit area;

(3) following a pre-sale analysis, the commissioner may choose at least one of the following leasing methods:

(A) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease;

(B) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease and a fixed share of the net profit derived from the lease of not less than 30 percent reserved to the state;

(C) a fixed cash bonus with a royalty share reserved to the state as the bid variable but no less than 12.5 percent in amount or value of the production removed or sold from the lease;

(D) a fixed cash bonus with the share of the net profit derived from the lease reserved to the state as the bid variable;

(E) a fixed cash bonus with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease with the share of the net profit derived from the lease reserved to the state as the bid variable;

(F) a cash bonus bid with a fixed royalty share reserved to the state based on a sliding scale according to the volume of production or other factor but in no event less than 12.5 percent in amount or value of the production removed or sold from the lease;

(G) a fixed cash bonus with a royalty share reserved to the state based on a sliding scale according to the volume of production or other factor as the bid variable but not less than 12.5 percent in amount or value of the production removed or sold from the lease;

(4) notwithstanding a requirement in the leasing method chosen of a minimum fixed royalty share, on and after March 3, 1997, the lessee under a lease issued in the Cook Inlet sedimentary basin who is the first to file with the commissioner a nonconfidential sworn statement claiming to be the first to have drilled a well discovering oil or gas

in a previously undiscovered oil or gas pool and who is certified by the commissioner within one year of completion of that discovery well to have drilled a well in that pool that is capable of producing in paying quantities shall pay a royalty of five percent on all production of oil or gas from that pool attributable to that lease for a period of 10 years following the date of discovery of that pool, and thereafter the royalty payable on all production of oil or gas from the pool attributable to that lease shall be determined and payable as specified in the lease; for purposes of this paragraph, the reduced royalty authorized by this paragraph is subject to the following:

(A) only one reduction of royalty authorized by this paragraph may be allowed on each lease that qualifies for reduction of royalty under this paragraph;

(B) if, under this paragraph, application is made for a royalty reduction for a lease that was entered into before March 3, 1997, the commissioner may approve the application only if, on that date, the lease was a nonproducing lease that was not committed to a unit approved by the commissioner under (m) of this section, that is not part of a unit under (p) or (q) of this section, and that has not been made part of a unit under AS 31.05;

(C) if application for a royalty reduction is made under this paragraph for a lease on which a discovery royalty was claimed or may be claimed under the discovery royalty provisions of former AS 38.05.180(a) in effect before May 6, 1969, the commissioner shall disallow the application under this paragraph unless the applicant waives the right to claim the right to a reduced royalty under the discovery royalty provisions of former AS 38.05.180(a) in effect before May 6, 1969; and

(D) the commissioner shall adopt regulations setting out the standards, criteria, and definitions of terms that apply to implement the filing of applications for, and the review and certification of, discovery certifications under this paragraph;

(5) notwithstanding and in lieu of a requirement in the leasing method chosen of a minimum fixed royalty share, or the royalty provision of a lease, for leases unitized as described in (p) of this section, leases subject to an agreement described in (s) or (t) of this section, or interests unitized under AS 31.05, the lessee of all or part of an oil or gas field identified in this section that has been granted approval of a written plan submitted to the Alaska Oil and Gas Conservation Commission under AS 31.05.030(i) shall, subject to (dd) of this section, pay a royalty of five percent on the first 25,000,000 barrels of oil and the first 35,000,000,000 cubic feet of gas produced for sale from that field that occurs in the 10 years following the date on which the production for sale commences; the fields eligible for royalty reduction under this paragraph, all of which are located within the Cook Inlet sedimentary basin, were discovered before January 1, 1988, and have been undeveloped or shut in from at least January 1, 1988, through December 31, 1997, are

(A) Falls Creek;

(B) Nicolai Creek;

(C) North Fork;

(D) Point Starichkof;

(E) Redoubt Shoal; and

(F) West Foreland;

(6) notwithstanding and in lieu of a requirement in the leasing method chosen of a minimum fixed royalty share, or the royalty provision of a lease, for leases unitized as described in (p) of this section, leases subject to an agreement described in (s) or (t) of this section, or interests unitized under AS 31.05, the lessee of all or part of an oil field located offshore in Cook Inlet on which an oil production platform specified in (A), (C), or (E) of this paragraph operates, or the lessee of all or part of the field located offshore in Cook Inlet and described in (G) of this paragraph,

(A) shall pay a royalty of five percent on oil produced from the platform if oil production that equaled or exceeded a volume of 1,200 barrels a day declines to less than that amount for a period of at least one calendar quarter, as certified by the Alaska Oil and Gas Conservation Commission, for as long as the volume of oil produced from the platform remains less than 1,200 barrels a day; the provisions of this subparagraph apply to

(i) Dolly;

(ii) Grayling;

(iii) King Salmon;

(iv) Steelhead; and

(v) Monopod;

(B) shall pay a royalty calculated under this subparagraph if the volume of oil produced from the platform that was certified by the Alaska Oil and Gas Conservation Commission under (A) of this paragraph later increases to 1,200 or more barrels a day and remains at 1,200 or more barrels a day for a period of at least one calendar quarter; until the royalty rate determined under this subparagraph applies, the royalty continues to be calculated under (A) of this paragraph; on and after the first day of the month following the month the increased production exceeds the period specified in this subparagraph, the royalty payable under this subparagraph is

(i) for production of at least 1,200 barrels a day but not more than 1,300 barrels a day – seven percent;

(ii) for production of more than 1,300 barrels a day but not more than 1,400 barrels a day – 8.5 percent;

(iii) for production of more than 1,400 barrels a day but not more than 1,500 barrels a day – 10 percent; and

(iv) for production of more than 1,500 barrels a day – 12.5 percent;

(C) shall pay a royalty of five percent on oil produced from the platform if oil production that equaled or exceeded a volume of 975 barrels a day declines to less than that amount for a period of at least one calendar quarter, as certified by the Alaska Oil and Gas Conservation Commission, for as long as the volume of oil produced from the platform remains less than 975 barrels a day; the provisions of this subparagraph apply to

(i) Baker;

(ii) Dillon;

(iii) XT0.A; and

(iv) XT0.C;

(D) shall pay a royalty calculated under this subparagraph if the volume of oil produced from the platform that was certified by the Alaska Oil and Gas Conservation Commission under (C) of this paragraph later increases to 975 or more barrels a day and remains at 975 or more barrels a day for a period of at least one calendar quarter; until the royalty rate determined under this subparagraph applies, the royalty continues to be calculated under (C) of this paragraph; on and after the first day of the month following the month the increased production exceeds the period specified in this subparagraph, the royalty payable under this subparagraph is

(i) for production of at least 975 barrels a day but not more than 1,100 barrels a day – seven percent;

(ii) for production of more than 1,100 barrels a day but not more than 1,200 barrels a day – 8.5 percent;

(iii) for production of more than 1,200 barrels a day but not more than 1,350 barrels a day – 10 percent; and

(iv) for production of more than 1,350 barrels a day – 12.5 percent;

(E) shall pay a royalty of five percent on oil produced from the platform if oil production that equaled or exceeded a volume of 750 barrels a day declines to less than that amount for a period of at least one calendar quarter, as certified by the Alaska Oil and Gas Conservation Commission, for as long as the volume of oil produced from the platform remains less than 750 barrels a day; the provisions of this subparagraph apply to

(i) Granite Point;

(ii) Anna; and

(iii) Bruce;

(F) shall pay a royalty calculated under this subparagraph if the volume of oil produced from the platform that was certified by the Alaska Oil and Gas Conservation Commission under (E) of this paragraph later increases to 750 or more barrels a day and remains at 750 or more barrels a day for a period of at least one calendar quarter; until the royalty rate determined under this subparagraph applies, the royalty continues to be calculated under (E) of this paragraph; on and after the first day of the month following the month the increased production exceeds the period specified in this subparagraph, the royalty payable under this subparagraph is

(i) for production of at least 750 barrels a day but not more than 850 barrels a day – seven percent;

(ii) for production of more than 850 barrels a day but not more than 1,000 barrels a day – 8.5 percent;

(iii) for production of more than 1,000 barrels a day but not more than 1,200 barrels a day – 10 percent; and

(iv) for production of more than 1,200 barrels a day – 12.5 percent;

(G) shall pay a royalty of five percent on oil produced from the field if oil production that equaled or exceeded a volume of 750 barrels a day declines to less than that amount for a period of at least one calendar quarter, as certified by the Alaska Oil and Gas Conservation Commission, for as long as the volume of oil produced from the field remains less than 750 barrels a day; the provisions of this subparagraph apply to the West McArthur River field;

(H) shall pay a royalty calculated under this subparagraph if the volume of oil produced from the field that was certified by the Alaska Oil and Gas Conservation Commission under (G) of this paragraph later increases to 750 or more barrels a day and remains at 750 or more barrels a day for a period of at least one calendar quarter; until the royalty rate determined under this subparagraph applies, the royalty continues to be calculated under (G) of this paragraph; on and after the first day of the month following the month the increased production exceeds the period specified in this subparagraph, the royalty payable under this subparagraph is

(i) for production of at least 750 barrels a day but not more than 850 barrels a day – seven percent;

(ii) for production of more than 850 barrels a day but not more than 1,000 barrels a day – 8.5 percent;

(iii) for production of more than 1,000 barrels a day but not more than 1,200 barrels a day – 10 percent; and

(iv) for production of more than 1,200 barrels a day – 12.5 percent; and

(I) may obtain the benefits of the royalty adjustments set out in (A) – (H) of this paragraph only if the commissioner determines that the reduction in production from the platform or the field is

(i) based on the average daily production during the calendar quarter based on reservoir conditions; and

(ii) not the result of short-term production declines due to mechanical or other choke-back factors, temporary shutdowns or decreased production due to environmental or facility constraints, or market conditions.

(g) The share of the net profit derived from a lease reserved to the state under (f) of this section is royalty sale proceeds for the purposes of the Alaska permanent fund under [AS 37.13.010](#).

(h) The commissioner may include terms in any lease imposing a minimum work commitment on the lessee. Except as provided in (m) of this section, these terms must be made public before the sale, and may include appropriate penalty provisions to take effect in the event the lessee does not fulfill the minimum work commitment. If it is demonstrated that a lease has been proven unproductive by actions of adjacent lease holders, the commissioner may set aside a work commitment. The commissioner may waive for a period not to exceed one two-year period any term of a minimum work commitment if the commissioner makes a written finding either that conditions preventing drilling or exploration were beyond the lessee's reasonable ability to

foresee or control or that the lessee has demonstrated through good faith efforts an intent and ability to drill or develop the lease during the term of the waiver.

(i) [Repealed, § 33 ch 4 4SSLA 2016.]

(j) The commissioner

(1) may provide for modification of royalty on individual leases, leases unitized as described in (p) of this section, leases subject to an agreement described in (s) or (t) of this section, or interests unitized under AS 31.05

(A) to allow for production from an oil or gas field or pool if

(i) the oil or gas field or pool has been sufficiently delineated to the satisfaction of the commissioner;

(ii) the field or pool has not previously produced oil or gas for sale; and

(iii) oil or gas production from the field or pool would not otherwise be economically feasible;

(B) to prolong the economic life of an oil or gas field or pool as per barrel or barrel equivalent costs increase or as the price of oil or gas decreases, and the increase or decrease is sufficient to make future production no longer economically feasible; or

(C) to reestablish production of shut-in oil or gas that would not otherwise be economically feasible;

(2) may not grant a royalty modification unless the lessee or lessees requesting the change make a clear and convincing showing that a modification of royalty meets the requirements of this subsection and is in the best interests of the state;

(3) shall provide for an increase or decrease or other modification of the state's royalty share by a sliding scale royalty or other mechanism that shall be based on a change in the price of oil or gas and may also be based on other relevant factors such as a change in production rate, projected ultimate recovery, development costs, and operating costs;

(4) may not grant a royalty reduction for a field or pool

(A) under (1)(A) of this subsection if the royalty modification for the field or pool would establish a royalty rate of less than five percent in amount or value of the production removed or sold from a lease or leases covering the field or pool;

(B) under (1)(B) or (1)(C) of this subsection if the royalty modification for the field or pool would establish a royalty rate of less than three percent in amount or value of the production removed or sold from a lease or leases covering the field or pool;

(5) may not grant a royalty reduction under this subsection without including an explicit condition that the royalty reduction is not assignable without the prior written approval, which may not be unreasonably withheld, by the commissioner; the commissioner shall, in the preliminary and final findings and determinations, set out the conditions under which the royalty reduction may be assigned;

(6) shall require the lessee or lessees to submit, with the application for the royalty reduction, financial and technical data that demonstrate that the requirements of this subsection are met; the commissioner

(A) may require disclosure of only the financial and technical data related to development, production, and transportation of oil and gas or gas only from the field or pool that are reasonably available to the applicant; and

(B) shall keep the data confidential under [AS 38.05.035\(a\)](#) (8) at the request of the lessee or lessees making application for the royalty reduction; the confidential data may be disclosed by the commissioner to legislators and to the legislative auditor and as directed by the chair or vice-chair of the Legislative Budget and Audit Committee to the director of the division of legislative finance, the permanent employees of their respective divisions who are responsible for evaluating a royalty reduction, and to agents or contractors of the legislative auditor or the legislative finance director who are engaged under contract to evaluate the royalty reduction, if they sign an appropriate confidentiality agreement;

(7) may

(A) require the lessee or lessees making application for the royalty reduction under (1)(A) of this subsection to pay for the services of an independent contractor, selected by the lessee or lessees from a list of qualified consultants compiled by the commissioner, to evaluate hydrocarbon development, production, transportation, and economics and to assist the commissioner in evaluating the application and financial and technical data; if, under this subparagraph, the commissioner requires payment for the services of an independent contractor, the total cost of the services to be paid for by the lessee or lessees may not exceed \$150,000 for each application, and the commissioner shall determine the relevant scope of the work to be performed by the contractor; selection of an independent contractor under this subparagraph is not subject to [AS 36.30](#);

(B) with the mutual consent of the lessee or lessees making application for the royalty reduction under (1)(B) or (1)(C) of this subsection, request payment for the services of an independent contractor, selected from a list of qualified consultants to evaluate hydrocarbon development, production, transportation, and economics by the commissioner to assist the commissioner in evaluating the application and financial and technical data; if, under this subparagraph, the commissioner requires payment for the services of an independent contractor, the total cost of the services that may be paid for by the lessee or lessees may not exceed \$150,000 for each application, and the commissioner shall determine the relevant scope of the work to be performed by the contractor; selection of an independent contractor under this subparagraph is not subject to [AS 36.30](#);

(8) shall make and publish a preliminary findings and determination on the royalty reduction application, give reasonable public notice of the preliminary findings and determination, and invite public comment on the preliminary findings and determination during a 30-day period for receipt of public comment;

(9) shall offer to appear before the Legislative Budget and Audit Committee, on a day that is not earlier than 10 days and not later than 20 days after giving public notice under (8) of this subsection, to provide the committee a review of the commissioner's preliminary

provide the committee a review of the commissioner's preliminary findings and determination on the royalty reduction application and administrative process; if the Legislative Budget and Audit Committee accepts the commissioner's offer, the committee shall give notice of the committee's meeting to all members of the legislature;

(10) shall make copies of the preliminary findings and determination available to

(A) the presiding officer of each house of the legislature;

(B) the chairs of the legislature's standing committees on resources; and

(C) the chairs of the legislature's special committees on oil and gas, if any;

(11) shall, within 30 days after the close of the public comment period under (8) of this subsection,

(A) prepare a summary of the public response to the commissioner's preliminary findings and determination;

(B) make a final findings and determination; the commissioner's final findings and determination prepared under this subparagraph regarding a royalty reduction is final and not appealable to the court;

(C) transmit a copy of the final findings and determination to the lessee;

(D) with the applicant's consent, amend the applicant's lease or unitization agreement consistent with the commissioner's final decision; and

(E) make copies of the final findings and determination available to each person who submitted comment under (8) of this subsection and who has filed a request for the copies;

(12) is not limited by the provisions of [AS 38.05.134\(3\)](#) or (f) of this section in the commissioner's determination under this subsection.

(k) The commissioner shall define all terms and adopt all regulations necessary for a reasonable understanding and evaluation of a particular bidding method before the public announcement of the terms of proposed sale employing that method.

(l) Subject to the provisions of [AS 31.05](#), the commissioner has discretion to enter into an agreement whereby, with the consent of the lessee, the state's royalty share of production of oil and gas or gas only may be stored or retained in storage by the lessee, or the commissioner may enter into an agreement with one or more of the affected field lease holders to trade current royalty production from a field for a like amount, kind, and quality of future production, on the condition that the state receives back its stored or traded royalty share during the first half of the estimated field life or no later than 15 years after start of production, whichever is sooner.

(m) An oil and gas lease or a gas only lease must cover a reasonably compact area not exceeding 5,760 acres, and may be for a maximum period of 10 years, except that the commissioner may issue a lease for a period not less than five years upon a finding that it is in the best

period not less than five years upon a finding that it is in the best interests of the state. An oil and gas lease or gas only lease shall be extended beyond its primary term if, at the end of the primary term, oil or gas is produced in paying quantities from the lease and for so long thereafter as oil or gas is produced in paying quantities from the lease or if the lease is committed to a unit approved by the commissioner. If a lease is not automatically extended under this subsection, the commissioner may approve a one-time extension of the primary term of an oil and gas lease or gas only lease upon written application by the lessee if the commissioner finds that the extension is in the best interest of the state. A person requesting a one-time extension shall send the request to the commissioner at least 180 days before the expiration date of the primary term of the lease. The length of the primary term of the lease combined with the term of the one-time extension may not exceed a total of 10 years. The commissioner shall consider the funds expended by the lessee to explore and develop the lease, the types of work completed by or on behalf of a lessee, and any other relevant information in deciding whether to extend the lease. Notwithstanding the provisions of (h) of this section, the commissioner may condition a lease extension on posting of a performance bond by the lessee, meeting a minimum work commitment, or both. The work commitment, if required, must be expressed in terms of money to be spent or type and amount of work to be performed. A lease issued under this section covering land on which there is a well capable of producing oil or gas in paying quantities does not expire because the lessee fails to produce oil or gas unless the lessee is allowed reasonable time to place the well on a producing status. Upon extension, if oil or gas is produced in paying quantities from the lease or the lease is committed to a unit approved by the commissioner, the commissioner may increase lease rentals so long as the increased rental rate does not exceed 150 percent of the rate for the preceding year. If the commissioner grants a one-time lease extension, upon extension, the rental for the last three years of a lease extension shall increase to \$250 an acre for each year, except that, at the commissioner's discretion, the rental may be less than \$250 an acre if the commissioner determines that a lessee has exercised reasonable diligence to explore and develop the lease during the primary term. If drilling, including operations such as redrilling, sidetracking, or using other means necessary to reach the originally proposed bottom hole location, has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, the lease continues in effect until 90 days after drilling has ceased and for so long thereafter as oil or gas is produced in paying quantities. An oil and gas lease or a gas only lease issued under this section that is subject to termination by reason of cessation of production does not terminate if, within 60 days after production ceases, reworking or drilling operations are commenced on the land under lease and are thereafter conducted with reasonable diligence during the period of nonproduction.

(n) The commissioner may establish by regulation that after a well has been plugged and abandoned, the rental rate that was in effect during the year of abandonment is maintained for the remainder of the term. Rental is payable in advance and continues until income to the state from royalty or net profit share exceeds rental income to the state for that year. Except as provided in (m) and (w) of this section,

(1) an oil and gas or gas only lease must provide for payment to the state of rental on the following basis:

(A) for the first year, \$1.00 an acre;

(B) for the second year, \$1.50 an acre;

(B) for the second year, \$1.50 an acre;

(C) for the third year, \$2.00 an acre;

(D) for the fourth year, \$2.50 an acre;

(E) for the fifth and following years, \$3.00 an acre;

(2) if the lessee under a gas only lease demonstrates to the commissioner that the potential resources underlying the lease are reasonably estimated to be only nonconventional gas,

(A) the rental payment is \$1.00 an acre until the lease expires or paying quantities of conventional oil or gas are discovered underlying the lease; and

(B) if the nonconventional gas produced will not be in direct competition with gas on which a royalty at a rate of at least 12.5 percent is payable, then the royalty share payable to the state on all production of gas from the pool attributable to that lease shall be 6.25 percent based on production delivered in pipeline quality and free of all lease expenses, including separation, cleaning, dehydration, gathering, salt water disposal, and preparation for transportation off the lease.

(o) Upon timely application as provided by regulation, the state may issue to the holder of a federal or private lease, a state shoreland lease covering land within the exterior boundaries of the federal or private lease which has been excluded on the basis of navigability or which is later administratively or judicially determined to be shoreland. The term of such a state shoreland lease shall be the same as the term of the federal or private lease.

(p) To conserve the natural resources of all or a part of an oil or gas pool, field, or like area, the lessees and their representatives may unite with each other, or jointly or separately with others, in collectively adopting or operating under a cooperative or a unit plan of development or operation of the pool, field, or like area, or a part of it, when determined and certified by the commissioner to be necessary or advisable in the public interest. The commissioner may, with the consent of the holders of leases involved, establish, change, or revoke drilling, producing, and royalty requirements of the leases and adopt regulations with reference to the leases, with like consent on the part of the lessees, in connection with the institution and operation of a cooperative or unit plan as the commissioner determines necessary or proper to secure the proper protection of the public interest. The commissioner may not reduce royalty on leases in connection with a cooperative or unit plan except as provided in (j) of this section. The commissioner may require a lease issued under this section to contain a provision requiring the lessee to operate under a reasonable cooperative or unit plan, and may prescribe a plan under which the lessee must operate. The plan must adequately protect all parties in interest, including the state.

(q) A plan authorized by (p) of this section, which includes land owned by the state, may contain a provision vesting the commissioner, or a person, committee, or state agency, with authority to modify from time to time the rate of prospecting and development and the quantity and rate of production under the plan. All leases operated under a plan approved or prescribed by the commissioner are excepted in determining holdings or control under AS 38.05.140. The provisions of this section concerning cooperative or unit plans are in addition to

this section concerning cooperative or unit plans are in addition to and do not affect [AS 31.05](#).

(r) Producing acreage on a known geologic structure of a producing oil or gas field is excluded from chargeability as against the acreage limitation provisions of [AS 38.05.140](#).

(s) When separate tracts cannot be individually developed and operated in conformity with an established well-spacing or development program, a lease, or a portion of a lease, may be pooled with other land, whether or not owned by the state, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest. Operations or production under the agreement are considered as operations or production as to each lease committed to the agreement. The commissioner may not reduce royalty on leases in connection with a communitization or drilling agreement except as provided in (j) of this section.

(t) The commissioner may prescribe conditions and approve, on conditions, drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, when, in the discretion of the commissioner, the conservation of natural resources or the public convenience or necessity requires it or the interests of the state are best served. All leases operated under approved drilling or development contracts and interests under them, are excepted in determining holding or control under [AS 38.05.140](#). The commissioner may not reduce royalty on a lease or leases that are subject to a drilling or development contract except as provided in (j) of this section.

(u) To avoid waste or to promote conservation of natural resources, the commissioner may authorize the subsurface storage of oil or gas, whether or not produced from state land, in land leased or subject to lease under this section. This authorization may provide for the payment of a storage fee or rental on the stored oil or gas, or, instead of the fee or rental, for a royalty other than that prescribed in the lease when the stored oil or gas is produced in conjunction with oil or gas not previously produced. A lease on which storage is so authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities. Notwithstanding the authorization for payments under this subsection, when requested by a lessee, the commissioner shall exempt a gas storage facility that qualifies for a tax credit under [AS 43.20.046](#) from any payment described in this subsection for the periods described in this subsection. The exemption is available for the calendar year in which the facility commences commercial operation and for each of the nine calendar years immediately following the first year of commercial operation; however, an exemption is not applicable for the calendar year after the facility ceases commercial operation or for any subsequent calendar year. The lessee shall provide the commissioner with any information the commissioner requests to determine if the exemption applies. The information related to state land leased for a gas storage facility under this subsection is public information and may be furnished to the Regulatory Commission of Alaska. On request, the commissioner shall provide the name of each person using state land leased for a gas storage facility under this chapter, the years for which an exemption was granted, and the amount of the exemption. Gas withdrawn from a gas storage facility regulated under [AS 43.05](#) is considered to be non-native gas and is not

under AS 42.05 is considered to be non-native gas and is not considered to be produced and subject to royalty until all non-native gas injected into the gas storage facility has been withdrawn from the gas storage facility. A person receiving an exemption for a payment under this section that contracts to store gas for a utility regulated under AS 42.05 shall reduce the storage price to reflect the value of the exemption. In this subsection, "ceases commercial operation," "commences commercial operation," "gas storage facility," and "non-native gas" have the meanings given in AS 31.05.032.

(v) [Repealed, § 36 ch 94 SLA 1980.]

(w) Notwithstanding any other provisions of this section, land that was subject to a best interest finding issued within the previous 10 years may be, at the discretion of the commissioner, immediately offered for lease, under regulations adopted by the commissioner, upon terms appearing most advantageous to the state; however, noncompetitive leasing is prohibited. The commissioner shall establish a royalty determined to be in the public interest but not less than 12 1/2 percent. A lease must provide for payment to the state of rental but need not adhere to the rental schedule in (n) of this section nor to the 5,760-acres-per-lease limitation in (m) of this section. The lease term may not exceed 10 years, except as provided in (o) of this section.

(x) A lessee conducting or permitting any exploration for, or development or production of, oil or gas on state land shall provide the commissioner access to all noninterpretive data obtained from that lease and shall provide copies of that data, as the commissioner may request. The confidentiality provisions of AS 38.05.035 apply to the information obtained under this subsection.

(y) A noncompetitive lease existing at October 10, 1978, shall be extended for a period of two years and so long thereafter as oil and gas is produced in paying quantities. A noncompetitive lease extended under this subsection is subject to the regulations in force at the expiration of the initial five-year term of the lease. No extension may be granted, however, unless within a period of 90 days before the expiration date an application for extension is filed by the record title holder or an assignee whose assignment has been filed for approval, or an operator whose operating agreement has been filed for approval.

(z) No leases may be issued under this section without the inclusion of the following language "The landowners' royalty share of the unit production allocated to each separately owned tract shall be regarded as royalty to be distributed to and among, or the proceeds of it paid to, the landowners, free and clear of all unit expense and free of any lien for it." Leases issued in violation of this subsection shall, for all purposes, be construed as containing the language required by this subsection.

(aa) Within 90 days after the written request of a lessee of a lease issued under this section or of a lessee of federal land from which the state is entitled under applicable federal law to receive a share of the royalty on gas production, the commissioner shall enter into an agreement with the lessee to use or accept, as the value of the state's royalty share of gas production, the price for the gas established in the contract between the lessee and a gas or electric utility sold by the lessee under the contract or the transfer price between the lessee and a gas or electric utility for a transfer by the lessee under an order establishing the transfer price.

order establishing the transfer price

(1) but only if the primary function of the utility with which the lessee has entered into the contract or transfer is to provide, either directly or by selling at wholesale to another utility, gas or electricity to the general public, including residential consumers, within the utilities' service areas, and the utility with which the lessee has entered into

(A) the contract is not an affiliated interest, as that term is defined in AS 42.05.990, with the lessee or with a subsequent purchaser of more than 10 percent of the utility's gas or electricity; or

(B) the transfer is an affiliated interest, as that term is defined in AS 42.05.990, and the transfer price between the lessee and the utility is established by an order of the Regulatory Commission of Alaska; and

(2) unless the commissioner makes a written finding, based on clear and convincing evidence, that

(A) the contract price or transfer price is unreasonably low;

(B) the prospective reduction in royalty receipts would not be balanced by increased benefits to in-state gas and electric consumers;

(C) the lessee and the utility are related in management, ownership, or other aspect and, in the case of a transfer price, that relationship is not regulated under AS 42.05; and

(D) the contract price or transfer price is not in the best interest of the state.

(bb) In (aa) and (ee) of this section,

(1) "gas or electric utility" includes an electric cooperative organized under AS 10.25, a municipal utility, and a gas or electric utility regulated under AS 42.05; if the contract gas is transmitted to consumers through a pipeline and the gas utility either owns the pipeline or is related in ownership to the owner of the pipeline, then the gas utility qualifies as a "gas or electric utility" within the meaning of this paragraph only if it is bound or agrees to be bound by the covenants set out in AS 38.35.120 or 38.35.121, as applicable;

(2) "manufacturer of agricultural chemicals" means a person that is a business entity primarily engaging in the manufacturing of nitrogenous and phosphatic based fertilizers, mixed fertilizers, pesticides, and similar chemicals for agricultural purposes;

(3) "price for the gas established in the contract" includes tax reimbursement amounts, deliverability and other charges, and other forms of consideration paid by the gas or electric utility or by the manufacturer of agricultural chemicals, as appropriate, under the contract;

(4) "state's royalty share of gas production"

(A) includes payments on federal leases made to the state under 30 U.S.C. 191;

(B) does not include the state's royalty share of gas production from land patented to the state under

(i) P.L. 84-830, 70 Stat. 709 (Alaska Mental Health

Enabling Act);

(ii) 38 Stat. 1214 (Act of March 4, 1915); or

(iii) 43 U.S.C. 1635 in settlement of the claims of the state under 38 Stat. 1214.

(cc) The provisions of (aa), (ee), and (jj) of this section do not prohibit the commissioner from accepting any payment on a federal lease tendered by the federal agency responsible for determination and transmittal of the payment to the state under 30 U.S.C. 191 or otherwise due the state as the state's royalty share of gas production or the state's royalty share of oil production irrespective of the state's acceptance of an amount that is different than the amount due under the lease for purposes of determining royalty share on oil and gas production under that subsection.

(dd) A lessee is eligible for the royalty in (f)(5) of this section only if production of oil or gas for sale begins from the eligible field before January 1, 2004. However, if the state or an agency of the state is a party to a suit, other than a suit brought by the lessee or agent of the lessee, and if the suit challenges (f)(5) of this section or AS 31.05.030(i) or an act under (f)(5) of this section or AS 31.05.030(i), the January 1, 2004, deadline is extended by the number of days the state or agency of the state is a party to the suit, including any appeals.

(ee) For a contract that is entered into on or after September 9, 2003, within 90 days after the written request of a lessee of a lease issued under this section or of a lessee of federal land from which the state is entitled under applicable federal law to receive a share of the royalty on gas production, in order to establish the value of the state's royalty share of gas production sold by the lessee under the contract, the commissioner may enter into an agreement with the lessee to use or accept as a price for the gas an amount that is not less than the price established in the contract between the lessee and a manufacturer of agricultural chemicals, not to exceed the amount that would otherwise be due under the lease. The commissioner may enter into the agreement if it is in the best interest of the state

(1) only if the primary function of the manufacturer is to engage in the production of a value-added product, and the manufacturer with which the lessee has entered into the contract is not affiliated with the lessee or with a subsequent purchaser of more than 10 percent of the manufacturer's value-added product; for purposes of this paragraph, the parties to a contract or purchase are affiliated if, in the judgment of the commissioner, one of the parties to the contract or purchase exercises substantial influence over the policies and actions of the other as evidenced by relationship based on common ownership or family interest or by action taken in concert without regard to whether that influence is based upon stockholdings, stockholders, officers, or directors;

(2) unless the commissioner makes a written finding, based on clear and convincing evidence, that

(A) the contract price is unreasonably low; or

(B) the prospective reduction in royalty receipts would not be balanced by employment opportunities or other tangible benefits to the state.

(ff) The provisions of this section that authorize oil and gas leases also apply to authorize the commissioner to issue leases for the production of gas only, subject to the following:

(1) in authorizing and managing leases under this subsection, the terms "oil and gas" or "oil or gas" as they are used in this chapter may be read and applied as appropriate as referring to gas only;

(2) when a lease is authorized as a gas only lease, the lease does not give the lessee the right to produce oil; if a well drilling for gas under a gas only lease authorized by this subsection penetrates a formation capable of producing oil, the owner or operator

(A) shall notify the department and the Alaska Oil and Gas Conservation Commission; and

(B) may not conduct further operations in the drilled well until the facility complies with all applicable laws and regulations relating to oil and gas exploration and production; however, this subparagraph does not prevent the owner or operator from conducting activities that may be required by the Alaska Oil and Gas Conservation Commission to plug, plug-back, or abandon a well;

(3) the provisions of this subsection do not apply to authorize a lease for the recovery of nonconventional gas on land that is held under an existing coal lease entered into under AS 38.05.150 that has an active permit for exploration or mining unless the lessee under this subsection is also the lessee under AS 38.05.150 of that land.

(gg) For an activity or operation related to the extraction of coal bed methane,

(1) for which the department by regulation requires submission and approval of a plan of operations before activities or operations may be undertaken, the director shall, as a condition for determining a bond requested under AS 38.05.130, after notice and an opportunity to be heard, review the plan of operations to determine if use of the owner's land is reasonably necessary to extract the coal bed methane; a bond determined under AS 38.05.130 and this paragraph may, at the discretion of the director, be imposed against a statewide bond that has been posted by the person initiating the request for determination of the bond if the statewide bond remains in effect, and an additional bond is not required;

(2) before approving operations for the development of coal bed methane under AS 38.05.134, 38.05.177, or this section, the director shall ensure that the approval is conditioned upon reasonable and appropriate

(A) setbacks governing the placement by the operator of compressor stations; setbacks approved under this subparagraph must be determined with reference to the population density and general character of the parcels surrounding the proposed compressor station site; and

(B) measures to mitigate the noise of compressors, engines, and other noise generating equipment operated by the operator on the lease or license; measures approved under this subparagraph must be determined with reference to the population density and general character of the parcels surrounding the proposed compressor, engine, or other noise-generating equipment.

(hh) Notwithstanding (j) of this section, the commissioner may propose modification to a lease from which a lessee has committed gas from that

lease to a North Slope natural gas project. A modification may be made under this subsection only after the commissioner makes the written determination under subsection (ii) of this section that the lease may be modified. If a modification is made, the modification shall be in effect during the initial project term that has acquired the major permits required for the work plan and budget considered by the commissioner in the written determination under subsection (ii) of this section. A modification under this subsection may

(1) relate to switching between taking the state's royalty gas in value and in kind to ensure that the lessee, the state, or another person shall bear proportionate costs for treatment, transportation, and liquefaction to the state's royalty gas or gas delivered to the state under AS 43.55.014, and the state's actions do not unreasonably interfere with the long-term marketing of natural gas by the lessee, the state, or another person;

(2) provide a method for establishing a fair market value for each component of the state's royalty gas and appropriate adjustments to reflect fair market deductions for reasonable costs for treatment, transportation, and liquefaction for the state's royalty gas from the North Slope to the destination market; in this paragraph, "reasonable costs for treatment, transportation, and liquefaction" may not be greater than actual costs;

(3) modify net profit shares for oil and gas and sliding scale royalty rates for gas by establishing fixed royalty rates that yield a value to the state that the commissioner determines to be not less than the value the state would have received under the terms of the lease before a modification under this subsection.

(ii) Before making a modification to a lease under (hh) of this section, the commissioner shall make a written determination that the lease may be modified. The determination by the commissioner must be based on a clear and convincing showing by the lessee that

(1) the modification

(A) is in the best interests of the state; and

(B) will materially improve the likelihood of a successful North Slope natural gas project;

(2) a North Slope natural gas project has sufficient

(A) financial commitment for a work plan and budget necessary to support major permits and regulatory filings required by state and federal agencies; and

(B) commitment of gas by lessees;

(3) the lease will produce hydrocarbons that will be transported on a North Slope natural gas project during the initial project term; and

(4) the lessee or an affiliate of the lessee has offered to purchase, dispose of, or market the state's royalty gas taken in kind and gas delivered to the state under AS 43.55.014 on the same or substantially similar terms as the lessee or an affiliate of the lessee sells, disposes of, or markets the lessee's gas.

(jj) Upon written request of a lessee of a lease issued under this section or of a lessee of federal land from which the state is entitled to receive a share of the royalty on oil production, the commissioner

may enter into an agreement with the lessee to accept, as a value for the state's royalty share of oil production sold to an in-state refiner, an amount that is not less than the price established in a contract between the lessee and the in-state refiner but not exceeding the amount that would otherwise be due under the lease. This subsection applies to a contract entered into after December 31, 2014. The commissioner shall respond to a request received under this subsection within 90 days after the receipt of the request by the department. The commissioner may enter into an agreement under this subsection if

(1) the commissioner issues a written finding that

(A) the agreement is in the best interest of the state;

(B) the parties to the contract between the lessee and the in-state refiner are not affiliated under (2) of this subsection; and

(C) based on clear and convincing evidence,

(i) the contract price is not unreasonably low; and

(ii) the prospective reduction in royalty receipts will be balanced by employment opportunities or other tangible benefits to the state; and

(2) the primary function of the in-state refiner's contracting with the lessee is to engage in the manufacture of refined petroleum products in the state, and the in-state refiner is not affiliated with the lessee or with a subsequent purchaser of more than 10 percent of the in-state refiner's product; the parties to a contract or purchase are affiliated if, in the judgment of the commissioner, one of the parties to the contract or purchase exercises substantial influence over the policies and actions of the other as evidenced by a relationship based on common ownership or family interest or by action taken in concert whether or not that influence is based on stockholdings, stockholders, officers, or directors.

(kk) In (cc) and (jj) of this section,

(1) "in-state refiner" means a person engaged in the manufacture of refined petroleum products in the state;

(2) "price established in a contract between the lessee and the in-state refiner" includes tax reimbursement amounts, deliverability and other charges, and other forms of consideration paid by the in-state refiner, as appropriate, under the contract;

(3) "state's royalty share of oil production" includes payments on federal leases made to the state under 30 U.S.C. 191.

(ll) For a contract that is entered into on or after July 1, 2017, within 90 days after the written request of a lessee of a lease issued under this section, in order to establish the value of the state's royalty share of gas production sold by the lessee under the contract, the commissioner may enter into an agreement with the lessee to use or accept as a price for the gas an amount that is not less than the price established in the contract between the lessee and an in-state processing facility whose primary function is the manufacturing and sale of urea, ammonia, or gas-to-liquid products to third parties in arm's length transactions, not to exceed the amount that would otherwise be due under the lease. The commissioner may enter into an agreement under this subsection if

(1) the commissioner makes a written finding that

(A) it is in the best interest of the state; and

(B) based on clear and convincing evidence, the contract price is not unreasonably low;

(2) the primary function of the in-state processing facility is to engage in the production of urea, ammonia, or gas-to-liquid products, and the lessee is not affiliated either with an owner of the in-state processing facility or with a subsequent purchaser of more than 10 percent of the urea, ammonia, or gas-to-liquid products produced by the processing facility; for purposes of this paragraph, the parties are affiliated if, in the judgment of the commissioner, one of the parties exercises substantial influence over the policies and actions of the other as evidenced by a relationship based on common ownership or family interest or by action taken in concert without regard to whether that influence is based on stockholdings, stockholders, officers, or directors; in this paragraph, "gas-to-liquid product" means a liquid produced by a processing facility that combines, breaks up, or rearranges atoms present in natural gas, but does not include liquefied natural gas; and

(3) the agreement requires, to the maximum extent permitted by law, the lessee to

(A) hire qualified residents from throughout the state for management, engineering, construction, operation, maintenance, and other positions;

(B) establish hiring facilities in the state or use existing hiring facilities in the state; and

(C) use, as far as practicable, the job centers and associated services operated by the Department of Labor and Workforce Development and an Internet-based labor exchange system operated by the state.

Sec. 38.05.181. Geothermal resources.

(a) The commissioner may, under regulations adopted by the commissioner, grant prospecting permits and leases to a qualified person to explore for, develop, or use geothermal resources. When title to the surface parcel is held by a person other than the state, that person shall have a preferential right to a geothermal prospecting permit or lease for the area underlying the surface parcel. The surface owner must exercise the preference right within 30 days after receiving notice of the application for a permit, or by agreeing to meet the terms of a bid within 60 days after receiving notice of the acceptance of the bid for a lease.

(b) The commissioner may designate a geothermal area or portion of it a competitive geothermal area. A designation as a competitive geothermal area must be on the basis of substantial geologic indications of geothermal resources or on the basis of competitive interest in geothermal resources of the area.

(c) On state land that has not been declared a competitive geothermal area or withdrawn from geothermal prospecting, the commissioner may issue a prospecting permit to the first qualified applicant. The permit conveys an exclusive right, for a period of two years, to prospect for geothermal resources on state land included under the permit. The

commissioner has discretion to renew the permit for an additional one-year term. A holder of a prospecting permit has the right, upon the showing of a discovery of geothermal resources in commercial quantities and the submission of a development plan acceptable to the commissioner, to convert the permit to a noncompetitive lease at a royalty rate under (g) of this section. The conversion privilege must be exercised not later than 30 days after the expiration of the permit. If the land included within the permit is designated a competitive geothermal area during the permit term, the permittee must apply for a noncompetitive lease within 30 days after notification of the designation or forfeit the conversion privileges and the exclusive right to prospect.

(d) On state land that is designated a competitive geothermal area and is not subject to an existing prospecting permit, the commissioner may issue geothermal leases to the highest bidder by competitive bidding procedures established by regulations adopted by the commissioner. At the discretion of the commissioner, competitive lease sales may be by oral or sealed bid, on the basis of a cash bonus, profit share, or royalty share.

(e) Prospecting permits and geothermal leases granted under this section must, except in the case of parcels subject to a preference right under (b) of this section, be issued for at least 40 acres but not more than 2,560 acres. A person may not own, or hold an interest in, geothermal leases covering more than 51,200 acres. However, geothermal leases in commercial production, individually or under a unit operation or well spacing or pooling arrangement, do not count against the acreage limitation. All prospecting permits and geothermal leases are subject to an annual rental, payable in advance, of \$3 per acre. The rental for a year shall be credited against royalties accruing for that year.

(f) A geothermal lease shall be issued for a primary term of 10 years and may be renewed for an additional term of five years if the lessee is actively engaged in drilling operations. A geothermal lease is valid for the duration of commercial production. Beginning 20 years after the initiation of commercial production and at 10-year intervals thereafter, the commissioner may renegotiate the rentals and royalties due on a geothermal lease.

(g) Each geothermal lease shall be conditioned upon payment by the lessee of a royalty of 1.75 percent of the gross revenues derived from the production, sale, or use of geothermal resources under the lease during the first 10 years immediately following the date the geothermal resource first generates gross income and 3.5 percent of the gross revenues derived from the production, sale, or use of geothermal resources under the lease after that first 10-year period. Royalties may be taken in kind rather than in value if the commissioner determines that taking in kind would be in the best interest of the state.

(h) Regulations adopted by the commissioner to implement this section shall be adopted in accordance with the Administrative Procedure Act ([AS 44.62](#)).

(a) Any royalty provided for in AS 38.05.135 – 38.05.181 may be taken in kind rather than in money if the commissioner determines that the taking in kind would be in the best interest of the state. However, royalties on oil and gas shall be taken in kind unless the commissioner determines that the taking in money would be in the best interest of the state.

(b) The commissioner shall submit a determination to take royalty in money to the legislature at the first opportunity during a current session or, if the legislature is not in session, at the next regular session. The legislature, within 60 days or by the adjournment of the session, whichever comes sooner, may revoke the determination by concurrent resolution.

Sec. 38.05.183. Sale of royalty.

(a) The sale, exchange, or other disposal of a mineral obtained by the state as a royalty under AS 38.05.182, the sale, exchange, or other disposal in whole or in part of a right to receive future mineral production under a state lease under this chapter, or the sale, exchange, or other disposal of gas delivered to the state under AS 43.55.014(b) shall be by competitive bid and the sale, exchange, or other disposal made to the highest responsible bidder, except that competitive bidding is not required when the commissioner, after prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board under AS 38.06.050, determines that the best interest of the state does not require it or that no competition exists.

(b) When competitive bids are required, the commissioner, after prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board, may reject all bids on a determination that because of the amount of the bids, the lack of responsibility on the part of the bidders, or for reasons consistent with the criteria set out in AS 38.06.070, the acceptance of the bids would not be in the best interest of the state.

(c) If the commissioner determines that a sale, exchange, or other disposal of a mineral obtained by the state as a royalty under AS 38.05.182, of a right to receive future mineral production under a state lease under this chapter, or of gas delivered to the state under AS 43.55.014(b) shall be made otherwise than by competitive bid, and the Alaska Royalty Oil and Gas Development Advisory Board has been notified in writing of that determination, the commissioner shall make public in writing the specific findings and conclusions on which that determination is based.

(d) Oil or gas taken in kind by the state as its royalty share or gas delivered to the state under AS 43.55.014(b) may not be sold or otherwise disposed of for export from the state until the commissioner determines that the oil or gas is surplus to the present and projected intrastate domestic and industrial needs. The commissioner shall make public, in writing, the specific findings and reasons on which the determination is based.

(e) When a sale, exchange, or other disposal of oil or gas taken in kind by the state as its royalty share, or a sale, exchange, or other disposal in whole or in part of a right to receive future royalty oil or gas, under a state lease under this chapter is made other than by

competitive bid, or when a sale, exchange, or other disposal of gas delivered to the state under AS 43.55.014(b) is made other than by competitive bid, the sale, exchange, or other disposal shall be awarded by the commissioner to the prospective buyer whose proposal offers the maximum benefits to citizens of the state. The commissioner shall consider

(1) the cash value offered;

(2) the projected effects of the sale, exchange, or other disposal on the economy of the state;

(3) the projected benefits of refining or processing the oil or gas in the state;

(4) the ability of the prospective buyer to provide refined products or by-products for distribution and sale in the state with price or supply benefits to the citizens of the state; and

(5) the criteria listed in AS 38.06.070(a).

(f) The commissioner may not enter into a contract for the sale of royalty oil unless the contract provides that any material amendment to the contract that appreciably reduces the consideration received by the state requires prior approval of the legislature.

(g) AS 38.05.035(e) does not apply to a sale, exchange, or other disposal of oil or gas under this section.

(h) Upon legislative approval, the commissioner may enter into a contract to sell royalty gas taken in kind by the state to a gas or electric utility at a negotiated price for the gas if the commissioner, after considering the consumer benefits, other benefits, and detriments of the sale, makes a written finding that the sale is in the best interest of the state. In this subsection,

(1) "gas or electric utility" has the meaning given in AS 38.05.180(bb);

(2) "royalty gas taken in kind by the state" does not include royalty gas taken in kind by the state from gas production on land patented to the state under

(A) P.L. 84-830, 70 Stat. 709 (Alaska Mental Health Enabling Act);

(B) 38 Stat. 1214 (Act of March 4, 1915); or

(C) 43 U.S.C. 1635 in settlement of the claims of the state under 38 Stat. 1214.

Sec. 38.05.184. Limitation on oil and gas leases in Kachemak Bay.

(a) The legislature finds that Kachemak Bay is an area of extraordinary abundance and diversity of marine life that has provided, and will continue to provide in the future, a basis for one of the state's most important commercial fisheries; that recent information discloses that even minute quantities of oil released into the marine environment may be harmful to the larval forms of crabs and other marine life and that the existence of gyral currents within the bay may increase the likelihood of oil coming into contact with these valuable

commercial fish and shellfish species; and that therefore oil and gas development in the bay, at this time, presents an undue hazard to this valuable state renewable resource.

(b) No additional oil or gas leases may be issued by the department or any other state agency for the exploration for or the development or production of oil and gas on state-owned land and waters seaward of the mean higher high water line, beginning at Anchor Point; then around the perimeter of Kachemak Bay, to Point Pogibshi; then west to the three mile limit of state land and waters; then north to a point three miles west of Anchor Point; then east to the mean higher high water line of Anchor Point, the point of beginning.

(c) [Repealed, § 61 ch 50 SLA 1989.]

(d) [Repealed, § 61 ch 50 SLA 1989.]

(e) [Repealed, § 61 ch 50 SLA 1989.]

(f) [Repealed, § 61 ch 50 SLA 1989.]

(g) [Repealed, § 61 ch 50 SLA 1989.]

Article 8. Mining Rights.

Sec. 38.05.185. Generally.

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

(b) The failure on the part of a mining lessee or a locator to comply strictly with AS 38.05.185 – 38.05.275 and regulations adopted under those sections does not invalidate the rights of a mining lessee or a locator if it appears to the satisfaction of the commissioner that the mining lessee or the locator complied as nearly as possible under the circumstances of the case, and that no conflicting rights are asserted by any other person.

(c) Unless otherwise provided, the usages and interpretations applicable to the mining laws of the United States as supplemented by state law apply to AS 38.05.185 – 38.05.275.

Sec. 38.05.190. Qualifications.

(a) Except as provided in (b) of this section, exploration and mining rights under AS 38.05.185 – 38.05.275 may be acquired or held only by

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

(2) legal guardians, conservators, or trustees of citizens of the United States under 18 years of age or citizens of the United States that are incapacitated adults under AS 13.26 on behalf of the citizens;

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

(4) aliens at least 18 years of age if the laws of their country grant like privileges to citizens of the United States;

(5) corporations, limited liability companies, or other entities that are organized under the laws of the United States or of any state or territory of the United States and qualified to do business in this state;

(6) trusts that are registered in this state under AS 13.36 and for which at least one trustee is a person described in (1) – (5) of this subsection; or

(7) associations of persons described in (1) – (6) of this subsection.

(b) An unqualified person who acquires an interest in exploration or mining rights by conveyance or operation of law, or a person who was qualified under (a) of this section at the time of location or acquisition of exploration or mining rights and later becomes unqualified, may either become qualified or transfer the interest to a qualified person within 90 days from the date the department sends written notice under (c) of this section. If the unqualified person does not cure the defect or transfer the interest to a qualified person, the department may declare the interest void under (d) of this section.

(c) If the department learns that an unqualified person has acquired an interest in exploration or mining rights through conveyance or operation of law, the department shall send written notice to the owner by certified mail, return receipt requested, to the most recent address on file with the department, stating that the interest will be void if the unqualified person does not cure the defect or transfer the interest within 90 days. The department may send an additional copy of the notice by regular mail.

(d) The department may declare void the exploration or mining interest of a person who fails to comply with (b) of this section but may not declare the interest void if the person becomes qualified under (e) of this section.

(e) An unqualified person may cure a defect in qualification, before or after receiving notice under (c) of this section, by becoming qualified or transferring the person's interest to a qualified person. A person may not cure a defect in qualification for an exploration or mining interest that has been declared void under (d) of this section.

(f) If an unqualified person fails to cure a defect in qualification within 90 days after the department sends written notice under (c) of

this section, the department may declare the exploration or mining interest void and the affected land becomes open to location. A third party may not locate on the affected land or file a judicial action to declare the exploration or mining interest invalid within those 90 days.

(g) In this section, "qualified to do business in this state" means holding a certificate issued by the commissioner of commerce, community, and economic development necessary to conduct business in the state.

Sec. 38.05.195. Mining claims.

(a) Rights to deposits of minerals subject to AS 38.05.185 – 38.05.275 in or on state land that is open to claim staking may be acquired by discovery, location, and recording as prescribed in AS 38.05.185 – 38.05.275. The locator has the exclusive right of possession and extraction of the minerals subject to AS 38.05.185 – 38.05.275 lying within the boundaries of the claim.

(b) The locator may locate a claim using one of the following methods:

(1) a locator may locate a claim based on the ground location of a quarter section or quarter-quarter section of a township on a rectangular survey system approved by the commissioner; a claim established in this manner may be known as a meridian, township, range, section, and claim system location, or MTRSC location; a locator using the MTRSC system to locate a claim shall in good faith mark the corners of a location as closely as practical to the existing quarter section or quarter-quarter section of the rectangular survey system approved by the commissioner; the corners marked on the ground of a claim established in accordance with this paragraph and regulations of the commissioner control in the event of a conflict over boundaries for the quarter section or quarter-quarter section on the protracted or actual survey approved by the commissioner; a valid MTRSC location establishes rights to deposits of minerals in or on all state land within the quarter section or quarter-quarter section that is open to claim staking at the time of location; or

(2) a locator may locate a claim based on the staking of a ground location in which the claim may not exceed 1,320 feet in its longest dimension; the boundaries of a claim based on staking and located after January 1, 1985, shall run in the four cardinal directions unless the claim is a fractional claim or the commissioner determines that staking in compliance with this paragraph is impractical because of local topography or because of the location of other claims; a claim established in this manner may be known as a non-MTRSC location.

(c) A location's corners shall be distinctly marked on the ground in the manner prescribed by the commissioner, and a notice of location shall be attached to a monument at the claim's northeast corner in the manner and containing the information required by the commissioner. Within 45 days after the date of attaching the notice of location on the monument, the locator shall record a certificate of location in the recording district where the claim is located. The certificate of location must contain the information required by the commissioner.

(d) Locations may be amended in the manner and with the effect prescribed in AS 38.05.200.

Sec. 38.05.200. Changes in locations and amended notices.

Notices may be amended at any time and monuments changed to correspond with the amended location but a change may not be made that interferes with the rights of others. Whenever monuments are changed or an error is made in the notice or in the certificate of location, an amended certificate of location shall be recorded in the same manner and with the same effect as the original certificate.

Sec. 38.05.205. Mining leasing.

(a) Prior discovery, location, and recording shall initiate prior rights to mineral deposits subject to AS 38.05.185 – 38.05.275 in or on state land, other than submerged land, which is open to mining leasing. Locations shall be made and certificates of location recorded in accordance with AS 38.05.195. If the located land is available only for leasing, the director shall publish in a paper of general circulation in the area of the location, notice of the recording of the location and notice that a mineral lease will be issued. The notice may be combined with notices of locations either in the same general area or statewide. Unless a conflicting location exists, no later than two weeks after publication of the notice, an application form for a mining lease shall be mailed to the locator by the director. A lease application shall be filed with the director by the locator within 90 days after receipt of the form. If the located land is not available for leasing, notice shall be given the locator by the director and the locator's prior rights shall terminate. A mining lessee has the

exclusive rights of possession and extraction of all minerals subject to AS 38.05.185 – 38.05.275 lying within the boundaries of the lease or location. Mining leases may be issued for one location or for a group of contiguous locations held in common. Minerals may not be mined and marketed or used until a lease is issued, except for limited amounts necessary for sampling or testing.

(b) [Repealed, § 10 ch 101 SLA 1989.]

(c) A mining lease shall be for any period up to 55 years, and is renewable if requirements for the lease remain satisfied. Annual rental and production royalties shall be paid as required under AS 38.05.211 and 38.05.212. A valid mining claim located and held under AS 38.05.195 may be converted to a lease at any time upon application by the owner, and issuance by the commissioner. Rights granted by a mining lease may not be exercised until the lease has been filed for record in the recording district where the land is located.

Sec. 38.05.207. Production license. [Repealed, § 19 ch 56 SLA 1997.]

Sec. 38.05.210. Annual labor.

(a) Labor shall be performed or improvements made annually on or for the benefit or development of each mining claim, leasehold location, and mining lease on state land, except that, where adjacent claims, leasehold locations, or mining leases are held in common, including

adjacent federal or private mineral interests held in common, the expenditure may be made on or for the benefit of any one claim, leasehold location, mining lease, or mineral interest. The commissioner shall establish the date of the commencement of the year during which the labor or improvements are to be performed. Labor shall be performed at the following annual rates: (1) \$100 for each claim, leasehold location, or lease if the claim, leasehold location, or lease is a quarter-quarter section MTRSC claim, leasehold location, or lease; (2) \$400 for each quarter section MTRSC claim, leasehold location, or lease; and (3) \$100 for each partial or whole 40 acres of each mining claim, leasehold location, or lease not established using the MTRSC system. If more work is performed than is required by this section to be performed in any one year, the excess value may be applied against labor required to be done during the subsequent year or years, for as many as four years. For not more than five consecutive years, instead of performing annual labor, the holder of a claim, leasehold location, or mining lease may make a cash payment to the state equal to the value of the labor required by this subsection.

(b) During the year in which annual labor is required or within 90 days after the close of that year, the owner of the mining claim, leasehold location, or mining lease, or some other person having knowledge of the facts, shall record with the recorder of the district in which the claim, leasehold location, or mining lease is located a signed statement of annual labor. The individual who signs the statement shall certify that, to the best of the individual's knowledge, the information contained in the statement is true and correct. The statement must include the following information:

(1) the assessment work year for which the statement is being recorded;

(2) the name of and land administration number assigned by the department for each mining claim, leasehold location, or mining lease benefited by the labor;

(3) each meridian, township, range, and section in which a mining claim, leasehold location, or mining lease is located;

(4) the recording district in which the mining claim, leasehold location, or mining lease is located;

(5) the total amount of work required for the assessment work year for a mining claim, leasehold location, or mining lease described in the statement;

(6) a description of the labor performed during the assessment work year;

(7) the value of

(A) the labor performed during the assessment work year;

(B) any excess labor value from a previous year applied against the labor required; or

(C) any cash payment to the state applied toward the value of the annual labor required under (a) of this section;

(8) the name and mailing address of an owner designated to receive notices regarding a mining claim, leasehold location, or mining lease.

(c) The statement of annual labor required in (b) of this section, whether recorded before or after the effective date of this Act, may be corrected or amended before the 90-day period under (g) of this section has passed or in accordance with AS 38.05.265(b). A corrected or amended statement of annual labor shall be recorded in the same manner as the original statement. Additional labor claimed in a corrected or amended statement may not be applied against labor required to be done during a subsequent year.

(d) [Repealed, § 10 ch 101 SLA 1989.]

(e) A single statement of annual labor may be recorded for labor performed on or for the benefit of more than one mining claim, leasehold location, or mining lease.

(f) A statement of annual labor, timely recorded, is prima facie evidence of the performance of the labor.

(g) The department may not declare a mining claim or leasehold location invalid based on a deficiency in a statement of annual labor until 90 days after the date the department sends written notice regarding a deficiency in the statement to the owner of the mining claim or leasehold location by certified mail, return receipt requested, to the most recent address on file with the department. The department may send an additional copy of the notice by regular mail.

(h) If a person fails to correct a deficient statement of annual labor within 90 days after notice is sent under (g) of this section, the department may declare the mining claim or leasehold location invalid and the affected land becomes open to location. A third party may not locate on the affected land or file a judicial action to declare the mining claim or leasehold location invalid within those 90 days.

(i) The department may not declare a mining claim, leasehold location, or mining lease invalid based on a deficiency in a statement of annual labor, and a third party may not file a judicial action seeking invalidation as the result of a deficiency in a statement of annual labor, later than five years after the date the deficient statement of annual labor is recorded.

(j) The failure of one of several co-owners to contribute the proportion of the expenditures required for annual labor from the co-owner shall be treated in accordance with AS 38.05.215 – 38.05.235.

Sec. 38.05.211. Annual rental.

(a) The holder of each mining claim, leasehold location, prospecting site, and mining lease, including a mining lease under AS 38.05.250, shall pay, in advance, rental for the right to continue to hold the mining claim, leasehold location, prospecting site, and mining lease, including a mining lease under AS 38.05.250. Rental is due and payable as follows:

(1) the rental amount for a prospecting site is fixed at \$200 for the two-year term of the site;

(2) annual rental for a mining claim, leasehold location, or mining lease shall be based on the number of years since a mining claim, a leasehold location, or a mining lease's predecessor claim or leasehold location was first located: the annual rental amounts for a

leasehold location was first located, the annual rental amount for a mining claim, leasehold location, or mining lease are as follows:

Rental Amount for Each Mining Claim or Leasehold Location Including Number of Years Since First Located	Rental Amount Per Quarter-Quarter Section MTRSC
0 - 5	\$.50
6 - 10	\$ 1.00
11 - or more	\$ 2.50

(3) the annual rental in any year for each quarter section claim, leasehold location, or lease based on the MTRSC system is four times the rental amount for a quarter-quarter section mining claim, leasehold location, or lease in that year.

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

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

(d) The rental amount established under this section shall be revised by the commissioner as provided in this section based on changes in the Consumer Price Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average) compiled by the Bureau of Labor Statistics, United States Department of Labor, as revised, rebased, or replaced by that bureau. The reference base index is the index for January - June 1989, as revised or rebased by that bureau. The rental amount shall be increased or decreased, as appropriate, by an amount equal to the change in the index described in this subsection rounded to the nearest whole \$5 unit. The commissioner shall calculate the change in the rental amount each 10 years and, if the rental amount must be revised, shall adopt a regulation establishing the revised rental amount. A revised rental amount applies to a rental payment if the regulation establishing the revised rental amount took effect at least 90 days before the date the rental payment is due.

(e) The locator of a new claim or leasehold location in accordance with the MTRSC system or the locator of a non-MTRSC location claim or leasehold location who amends the claim or leasehold location in accordance with the MTRSC system is entitled to a reduced rental under this section for the rental year following establishment of the new location or amendment of a non-MTRSC location. The reduced annual rental is 50 percent of the annual rental that would otherwise be due in the following rental year.

Sec. 38.05.212. Production royalty.

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

claim, leasehold location, or mining lease during each calendar year, or each fiscal year if the miner does not file the mining license tax on a calendar year basis.

(b) The production royalty

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

(2) is subject to the exploration incentive credit authorized by AS 27.30.

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

Sec. 38.05.215. Notice to co-owners to contribute to cost of annual labor or improvements and forfeiture for failure to contribute.

If one of several co-owners fails to contribute the proportion of the expenditures required for annual labor from the co-owner, the co-owners who have performed the labor or made the improvements may, at the expiration of the annual labor year, give the delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days. If at the expiration of 90 days after the service of the notice in writing, or 90 days after the completion of the publication the delinquent fails or refuses to contribute the required proportion of the expenditures, the interest of the delinquent co-owner in the claim is forfeited to the co-owners who have made the expenditures.

Sec. 38.05.220. Recording the notice to contribute and affidavits.

(a) Within 120 days after personal service, or within 120 days after the completion of publication of the notice provided for in AS 38.05.215, the co-owner who claims the forfeiture shall record in the office of the recorder of the recording district in which the claim is located a copy of the notice with the following affidavits attached:

(1) an affidavit of the person serving the notice giving the time, place, and manner of service and by whom and upon whom the service was made or, if service was made by publication in a newspaper, an affidavit of the editor, publisher, printer, or foreman of the newspaper giving the name of the newspaper, the place where, and the time during which the notice was published and the number of insertions;

(2) an affidavit of the co-owner who claims the forfeiture stating that neither the delinquent co-owner nor any person acting for the delinquent co-owner has paid or tendered to the affiant the delinquent's proportion of the expenditures for annual labor or improvements.

(b) The record of the notice and affidavits or a certified copy of it is prima facie evidence of the facts contained in it.

Sec. 38.05.225. Lienholder may perform the annual labor.

A person who holds a claim to or lien upon an unpatented mining claim under a certificate of sale, mortgage, attachment, levy, judgment, or other lien may, when necessary for the protection of the lien or claim, go upon the mining claim and perform or cause to be performed the annual labor required by law to prevent forfeiture. Before performing

the labor the claimant or lien holder shall mail a written notice of intent to perform the annual labor on the claim to the owner of the claim at the last known address of the owner of the claim.

Sec. 38.05.230. Lien for performance of annual labor.

(a) The person performing or causing to be performed annual labor upon an unpatented mining claim as provided in AS 38.05.225 shall have a lien upon the claim for the assessment work, including the reasonable cost of transportation to and from the claim incurred in doing the work. The lien is enforced either as in other suits for the foreclosure of liens upon real property or as supplemental accruing costs in an action, if any, then pending in which the claim has been levied upon by attachment, execution, or other court process.

(b) A person claiming a lien under this section shall, within 90 days after the completion of the annual labor for which the lien is claimed, record in the office of the recorder of the recording district in which the property on which the lien is claimed is situated a notice of claim of lien, verified by the oath of the person claiming the lien or that of some other person having knowledge of the facts, and stating the name of the owner or reputed owner of the property, the amount of the claim, the time of the performance of the annual labor for which the lien is claimed, the nature of the labor done or improvements made, and the amount of the claim, including costs of transportation, after deducting all just credits and offsets.

(c) An independent suit or action brought to enforce a lien under this section shall be commenced within six months after the recording of the notice of claim of lien.

Sec. 38.05.235. Lien for annual labor is independent of other liens.

The lien given for the performance of annual labor by AS 38.05.230, if the work is done in good faith and necessarily for the protection either of possession under a certificate of sale or of an attachment, levy, mortgage, judgment, or other lien, remains in effect notwithstanding the contemporaneous or subsequent vacation, dissolution, or setting aside of, or redemption from, the certificate of sale, attachment, levy, mortgage, judgment, or other lien.

Sec. 38.05.240. Labor defined for AS 38.05.210 – 38.05.235.
In AS 38.05.210 – 38.05.235, “labor” includes work performed or improvements made in good faith on or for the benefit of a mining claim, leasehold location, or mining lease that is directly related to

exploring for, developing, or producing minerals, including

(1) excavating, tunneling, drilling, or clearing land;

(2) constructing or maintaining roads, trails, or landing strips;

(3) extracting or producing ore;

(4) performing a metallurgical analysis, an environmental study, or an economic feasibility study, or conducting engineering or permitting activity;

(5) constructing settling ponds, water supplies, or other utilities;

(6) providing worker housing;

(7) performing reclamation activities under a reclamation plan approved under AS 27.19.030;

(8) transporting workers and equipment in the state to or from a mining site; the claimed value of transportation under this paragraph may not exceed 50 percent of the total value of labor in a statement of annual labor recorded under AS 38.05.210(b) for the assessment work year;

(9) conducting a geological, geochemical, geophysical, or airborne survey by a qualified expert and verified by a report filed in the recording district office in which the claim, leasehold location, or mining lease is located that sets out

(A) the location of the survey in relation to the boundaries of the claim, leasehold location, or mining lease;

(B) the nature, extent, and cost of the survey; and

(C) the name, address, and professional background of the person conducting the work; the commissioner, by regulation, shall define the nature of acceptable survey work and the qualifications of a person competent to perform the work; an airborne survey conducted under this paragraph shall be nonrepetitive of any previous survey on the same claim, leasehold location, or mining lease.

Sec. 38.05.242. Definitions for AS 38.05.210 – 38.05.240.

In AS 38.05.210 – 38.05.240,

(1) “airborne survey” means a survey from the air for mineral deposits by the proper application of magnetometers, electromagnetic input systems, infrared detectors, side-looking radar, vertical and panoramic cameras, and other devices as they relate to the search for and discovery of mineral deposits;

(2) “geochemical surveys” means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

or mineral deposits;

(3) "geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(4) "geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuances in geological formations;

(5) "MTRSC system" means the system described in AS 38.05.195(b) (1) based on the ground location of a complete quarter section or quarter-quarter section of a township on a rectangular survey system;

(6) "qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

Sec. 38.05.245. Prospecting sites.

(a) Before the discovery of valuable minerals, an exclusive right to prospect by geophysical, geochemical, and similar methods may be acquired by establishing a prospecting site in accordance with the MTRSC system and regulations prescribed by the commissioner. A certificate of location shall be recorded in the recording district where the prospecting site is located within 45 days after posting the notice of location. The locator of a prospecting site has the exclusive right to stake mining claims or leasehold locations within the boundaries of the site. In this subsection, "MTRSC system" means the system described in AS 38.05.195(b)(1) based on the ground location of a complete quarter section or quarter-quarter section of a township.

(b) A prospecting site location may not include within its exterior boundaries, nor shall its boundaries be coincident with more than one boundary of any mining claim, mining leasehold location, or land under a mining lease, unless the locator of the prospecting site is also the owner, optionee, or lessee of said mining property. If such mining property or area is so included or bounded, the prospecting site is void.

(c) A prospecting site remains in effect for two years after the notice of location is attached to a monument at the northeast corner of the site if the one-time rental payment is made within 45 days of location and the work requirements are met. The two-year term begins on the date the notice of location is attached to the monument and may not be extended. During each year, work of a type compatible with the purpose of this section and acceptable to the director shall be done. The minimum expenditure for the work shall be established by the commissioner uniformly for all prospecting sites. Where adjacent prospecting sites are held in common, the expenditure may be made on any one or more locations. If a prospecting site expires, neither the locator nor a successor in interest of the locator may again hold the same prospecting site or any portion of it, as a prospecting site, for a period of one year following the date of expiration or abandonment.

Sec. 38.05.250. Prospecting permits and leases on tide and submerged land.

(a) The exclusive right to prospect for deposits of minerals subject to AS 38.05.185 – 38.05.275 in or on tide and submerged state land may be granted by a permit issued by the director. A permit shall be granted to the first qualified applicant. A permit may not include an area larger than 2,560 acres, subject to the rule of approximation. Land subject to a prospecting permit shall be as compact in form as possible taking into consideration the area involved. The term of the permit shall be 10 years. Prospecting permits shall be conditioned upon payment of rental against which credit shall be given for useful expenditures on land covered by the permit or group of contiguous permits under common ownership or assignment. Excess expenditures may be applied against rentals due for the following four years. The rental shall be \$3 per acre for the first two-year period of the permit, payable on the second anniversary of the permit and \$3 per acre for each following year, payable annually on the anniversary date of the permit. Minerals from land under a prospecting permit may not be mined and marketed or used, except for limited amounts necessary for sampling or testing. A person may not take or hold prospecting permits for minerals on state land under this section exceeding in the aggregate 300,000 acres. A person may not take or hold leases for minerals on state land under this section exceeding in the aggregate 100,000 acres.

(b) A noncompetitive lease shall be granted to a holder of a prospecting permit for so much of the land subject to the permit as is shown to the satisfaction of the director to contain workable mineral deposits. Submerged land containing known deposits of minerals subject to AS 38.05.185 – 38.05.275 may, in the discretion of the director, be offered by competitive bid. The land shall be leased to the qualified person offering the highest amount of cash bonus.

(c) Each submerged land mining lease shall be for a period of up to 20 years and for so long as there is production in paying quantities from the leased area. A submerged land mining lease may be renewed for a period of up to 20 years at the discretion of the director if the director determines that the renewal is in the best interests of the state.

(d) The commissioner may, on the request of the lessee, assent to the suspension of operation and production under a lease whenever in the judgment of the commissioner the suspension is necessary to promote development of the lease or the lease cannot be successfully operated under its terms. The payment of acreage rental may be suspended during the period of suspension of operation and production. The suspension of the lease shall extend the term of the lease by adding the period of suspension to the lease. The commissioner may extend the term of a nonproducing lease on an application by the lessee accompanied by a showing that the lessee is reasonably close to attaining production and that, despite diligent good faith efforts by the lessee, the lessee is not able to produce due to force majeure, depressed market conditions, or other situations beyond the reasonable control of the lessee. A suspension or extension granted under this subsection may not exceed two years.

Sec. 38.05.252. Extralateral rights under shore, tide, and submerged land.

(a) Extralateral rights under shoreland, tideland, and submerged land are confirmed and granted to an owner of a lode mining claim located before January 3, 1959, under the mining laws of the United States.

(b) In this section, "extralateral rights" means rights given to an owner of a mining claim under 30 U.S.C. 26 to follow, and mine, any vein or lode the apex of which lies within the boundaries of the location of the surface of the mining claim, notwithstanding that the course of the vein or lode on its dip or downward direction may so far depart from the perpendicular as to extend beyond the planes which would be formed by the vertical extension downwards of the sidelines of the location.

Sec. 38.05.255. Surface use of land or water.

(a) Surface uses of land or water included within a mining property by the owners, lessees, or operators shall be limited to those necessary for the prospecting for, extraction of, or basic processing of minerals and shall be subject to reasonable concurrent uses. Leases for millsites, tailings disposal, and other mine related facilities may be issued by the director. The leases shall be conditioned upon payment of a reasonable annual rent for the lease and restricted to uses approved by the director. Timber from land open to mining without lease, except timberland, may be used by a mining claimant or prospecting site locator for the mining or development of the location or adjacent claims under common ownership. On other land, timber may be acquired as provided in this chapter. Use of water shall be made in accordance with [AS 46.15](#).

(b) A lease issued under this section is exempt from the provisions of [AS 38.05.075](#) – 38.05.080.

Sec. 38.05.260. Water rights where claim includes both banks of a stream. [Repealed, § 2 ch 50 SLA 1966. For current law see [AS 46.15](#).]

Sec. 38.05.265. Abandonment.

(a) Failure to perform the labor or make improvements or make a payment in lieu of labor under [AS 38.05.210\(a\)](#), timely record a certificate of location or statement of annual labor, timely pay any required annual rental, or timely pay any required production royalty under [AS 38.05.212](#) constitutes abandonment of all rights acquired under the mining claim, leasehold location, or prospecting site involved, and the claim, leasehold location, or prospecting site is subject to relocation by others, unless the failure constituting the abandonment is cured under (b) of this section. A locator or claimant of an abandoned location or a successor in interest may not relocate the claim, leasehold location, or prospecting site until one year after abandonment. The locator of an abandoned prospecting site may locate a claim or leasehold location on that site at any time. If an annual rental or a royalty payment is deficient but is otherwise timely paid, abandonment does not result if full payment is made within

(1) the period prescribed by a deficiency notice from the department; or

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

(b) Unless another person has located a mining claim or leasehold location that includes all or part of the mining claim or leasehold location abandoned under (a) of this section or the area is closed to mineral location under [AS 38.05.185](#) – 38.05.275, a person may cure the failure to record or pay rents or royalties that constituted the abandonment and cure the abandonment by

(1) properly recording a certificate of location or a statement of annual labor, paying any required annual rental, and paying any required production royalty; and

(2) paying a penalty equal to the annual rent for the mining claim or leasehold location that was abandoned under (a) of this section.

Sec. 38.05.270. Transfers.

Evidence of a sale, lease, or other transfer of mining property or interest in mining property shall be recorded.

Sec. 38.05.275. Recognition of locations.

(a) Mining locations made on state land, including shoreland, tideland, or submerged land, or state selected land, under [AS 38.05.185](#) – 38.05.275 or in the manner described in [AS 27.10](#), acquire for the locator mining rights under [AS 38.05.185](#) – 38.05.275, subject to existing claims and to any denial of or restriction in the tentative approval of state selection or patent of the land to the state. If shoreland, tideland, or submerged land is included in a mining location or within the projected boundaries of a mining location made in accordance with this section, the locator shall record a certificate of location under [AS 38.05.195](#). The certificate of location must identify

the position of the mining location in the system of rectangular or protracted surveys. If the mining location is made in the manner described in [AS 27.10](#), the commissioner may require that the locator amend the mining location to conform with [AS 38.05.185](#) – 38.05.275 and thereafter to comply with the requirements of [AS 38.05.185](#) – 38.05.275. A mining location on state selected land located within an active unpatented federal mining claim may be located only by or with the written and recorded permission of the holder of the unpatented federal mining claim.

(b) In this section, “state selected land”

(1) means land for which the state has filed a selection application with the United States under Sec. 6 of the Alaska Statehood Act, as amended, regardless of the validity or effect of the application, if the selection described in the application has not been rejected or relinquished;

(2) does not include land described in (1) of this subsection for which a regional corporation organized under 43 U.S.C. 1606(a), as amended, a village corporation organized under 43 U.S.C. 1607(a), as

amended, a Native group corporation that qualifies for a land conveyance under 43 U.S.C. 1613(h)(2), as amended, or a Native urban corporation that qualifies for a land conveyance under 43 U.S.C. 1613(h)(3), as amended, has filed a valid selection application with the United States under 43 U.S.C. 1601 – 1641, as amended, if the selection of the corporation or group has not been rejected or relinquished.

(c) Subsection (b) of this section may not be construed to limit the director in the exercise of authority granted by [AS 38.05.035\(a\)\(11\)](#).

Sec. 38.05.280. [Renumbered as [AS 38.05.242.](#)]

Article 9. Multiple Use of State Land.

Sec. 38.05.285. Multiple use.

Disposal and use of state land shall conform to the constitution of the State of Alaska and the principles of multiple purpose use consistent with the public interest.

Article 10. Land Selection.

Sec. 38.05.290. Selection practice.

(a) The selection of grant, lieu and indemnity land shall conform to this chapter and the policy, orders and regulations adopted by the commissioner. The commissioner shall give preference of selection to the land which will provide the maximum benefits to the people of the state.

(b) Consistent with the best interests of the state, in the selection of general grant land it is the policy of the state to make available the maximum land area from which municipalities may fulfill land entitlements under [AS 29.65](#) or former [AS 29.18.201](#) – 29.18.213.

Article 11. Parks and Recreation Areas.

Sec. 38.05.295. Parks and recreation areas.

The commissioner shall establish a policy and adopt regulations by which parks and recreation areas, including public scenic overlooks and cultural sites, shall be developed and managed in a manner that will best serve the interests of the people of the state. The commissioner may classify public land as parks, scenic overlooks, cultural sites, and recreation areas as long as the general intent of this chapter is maintained.

Article 12. Classification of Land.

Sec. 38.05.300. Classification of land.

(a) The commissioner shall classify for surface use land in areas considered necessary and proper. This section does not prevent

reclassification of land where the public interest warrants reclassification, nor does it preclude multiple purpose use of land whenever different uses are compatible. If the area involved contains more than 640 contiguous acres, state land, water, or land and water area may not, except by act of the state legislature, (1) be closed to multiple purpose use, or (2) be otherwise classified by the commissioner so that mining, mineral entry or location, mineral prospecting, or mineral leasing is precluded or is designated an incompatible use, except when the classification is necessary for a land disposal or exchange or is for the development of utility or transportation corridors or projects or similar projects or infrastructure, or except as allowed under (c) of this section.

(b) [Repealed, § 35 ch 126 SLA 1994.]

(c) Notwithstanding (a)(2) of this section, if the commissioner considers it necessary and proper, the commissioner may provide by order for an interim classification that precludes, or designates as an incompatible use, mining, mineral entry or location, mineral prospecting, or mineral leasing. Within 10 days after the convening of each regular legislative session, the commissioner shall transmit to the legislature for consideration all the interim classification orders issued under this subsection during the preceding calendar year. Unless the legislature approves by law an interim classification contained in an order transmitted under this subsection, that order expires on the 90th day of that legislative session or upon adjournment of that session, whichever occurs first. Approval by the legislature of an interim classification satisfies the requirement of (a) of this section for an act of the state legislature.

Sec. 38.05.301. [Renumbered as [AS 38.05.830.](#)]

Sec. 38.05.305. Notice and review. [Repealed, § 45 ch 113 SLA 1981. For current law see [AS 38.05.945.](#)]

Sec. 38.05.310. [Renumbered as [AS 38.05.840.](#)]

Sec. 38.05.315. [Renumbered as [AS 38.05.810.](#)]

Sec. 38.05.320. [Renumbered as [AS 38.05.820.](#)]

Sec. 38.05.321. Restriction on sale, lease, or other disposal of agricultural land.

(a) The department shall include in a document that conveys state land classified as agricultural land

(1) a perpetual covenant for the benefit of all Alaska residents and running with the land that restricts or limits the use of the land for agricultural purposes; and

(2) one of the following, as appropriate:

(A) a perpetual covenant for the benefit of all Alaska residents and running with the land permitting the owner of land that had been obtained under homestead entry to subdivide and convey the land in parcels of not less than 40 acres each; or

(B) a perpetual covenant for the benefit of all Alaska residents and running with the land permitting the owner of land that had been obtained by purchase to subdivide and convey not more than four parcels of the land of not less than 40 acres each, subject to the restriction that a subdivided parcel may not be further subdivided.

(b) Subject to (a) of this section, state land classified as

agricultural land that has been selected by a municipality under former AS 29.18.190 – 29.18.200 or former AS 29.18.205(e) may be approved by the director for patent under AS 29.65.050(c). Agricultural land approved for patent to a municipality shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.65.010 – 29.65.030 or former AS 29.18.201 – 29.18.203.

(c) The provisions of this section do not apply to

(1) state land classified as agricultural land that has been selected by a municipality under the provisions of former AS 29.18.190 – 29.18.200 if the selection is an approved selection before April 1, 1978 and is otherwise valid under AS 29.65.050(b) or former AS 29.18.205(b); or

(2) a quitclaim of the interest of the state to the federal government under AS 38.05.035(b)(9).

(d) For state land classified as agricultural land that is conveyed under (a) of this section,

(1) the commissioner may require the landowner to cooperate with the appropriate soil and water conservation district under AS 41.10 in the development and implementation of soil conservation plans as authorized by AS 41.10.110(6);

(2) as a condition of the conveyance, the commissioner may not require preparation and implementation of a schedule of planned agricultural development or a farm development plan specified in a land purchase contract unless the commissioner permits modification of a plan in cases of economic hardship or other extenuating circumstances;

(3) the commissioner may not

(A) limit the right of the landowner to use the land and improvements for purposes that are incidental to and not inconsistent with the primary use of the land for agricultural purposes;

(B) except as provided by (i) of this section, limit the right of a landowner to construct housing for the landowner and farm laborers, to construct improvements for animals, or to construct improvements that are reasonably required for or related to agricultural use on the original parcel and on additional subdivided parcels, not to exceed the limits and restrictions set by (a)(2) of this section; and

(C) limit the right of the landowner to subdivide and convey the land if the resulting parcels are not in violation of the limits and restrictions set out in (a)(2) of this section.

(e) A landowner may subdivide land classified for agricultural use and for which the landowner obtained a patent under a homestead entry permit issued under AS 38.09 so long as the resulting parcels are not in violation of the minimum parcel size set out in (a) of this section. A landowner may subdivide other land classified for agricultural use as authorized under (d)(3)(C) of this section. If the subdivision involves land classified for agricultural use and for which the landowner obtained a patent under a homestead entry permit issued under AS 38.09, or if the subdivision of land authorized under (d)(3)(C) of this section results only in parcels of 640 acres or more, the landowner may subdivide without payment as required by this subsection. If subdivision of land authorized by (d)(3)(C) of this section would result in one or more parcels of less than 640 acres, the landowner may

subdivide only if the landowner first tenders payment to the department for the right to construct housing in each subdivided parcel of less than 640 acres. Payments collected under this subsection shall be separately accounted for and may be appropriated to the agricultural revolving loan fund ([AS 03.10.040](#)). For purposes of this subsection, the value of the right to construct housing in a subdivided parcel

(1) is \$4,000 for the parcel, subject to adjustment under (h) of this section; or

(2) shall be determined by an appraisal made by an appraiser under contract to the landowner owning the parcel, and the appraisal must include the value, determined as of the date of subdivision, of the right to construct housing by the landowner under (d)(3) of this section.

(f) Notwithstanding (e) of this section, the landowner is not required to pay an amount due under (e) of this section until the subdivided parcel is conveyed by the owner to a person not a member of the person's immediate family. The department has a lien on the parcel as security for payment of the amount due. For purposes of this subsection, "immediate family" means

(1) the spouse of the person; or

(2) a parent, child, including a stepchild and an adopted child, or sibling of the person if the parent, child, or sibling resides with the person, is financially dependent on the person, or shares a substantial financial interest with the person.

(g) A perpetual covenant described in (a) of this section may be enforced only by a civil action brought by the state, a municipality, or a resident. If a municipality or a resident brings an action under this subsection, the municipality or resident shall also serve a copy of the summons and complaint on the state in the manner prescribed by the Alaska Rules of Civil Procedure for service on the state. An action may be maintained under this subsection only if

(1) commenced within six years after the cause of action has accrued; and

(2) the plaintiff has first notified in writing the appropriate soil and water conservation district under [AS 41.10](#) of the violation of the covenant at least 90 days before the civil action is filed.

(h) The value of the right to construct housing determined under (e) of this section shall be adjusted to correspond with the change in the consumer price index for all urban consumers for the Anchorage Metropolitan Area compiled by the Bureau of Labor Statistics, United States Department of Labor. The base year for the computation shall be the calendar year in which the process of conveyance of state land authorized by (a) of this section is initiated under this section.

(i) The authority given in (d)(3)(B) of this section to construct housing and the payment required under (e) of this section for the right to construct housing do not permit the landowner the right to construct condominiums under [AS 34.07](#) or other common interest ownership communities under [AS 34.08](#).

(j) In this section, "agricultural purposes" means

(1) the production, for commercial or personal use, of useful plants and animals;

- (2) the construction of
- (A) housing for landowners and farm laborers;
 - (B) improvements for animals; or
 - (C) improvements that are reasonably required for or related to agricultural use;
- (3) the use of gravel reasonably required or related to agricultural production on the parcel conveyed; and
- (4) removal and disposition of timber in order to bring agricultural land into use.

- Sec. 38.05.323. [Renumbered as [AS 38.05.821.](#)]
Sec. 38.05.325. Homestead entry. [Repealed, § 45 ch 85 SLA 1979. For current law see [AS 38.09.](#)]
Sec. 38.05.330. [Renumbered as [AS 38.05.850.](#)]
Sec. 38.05.335. [Renumbered as [AS 38.05.860.](#)]
Sec. 38.05.340. [Renumbered as [AS 38.05.920.](#)]
Sec. 38.05.345. [Renumbered as [AS 38.05.945.](#)]
Sec. 38.05.346. [Renumbered as [AS 38.05.946.](#)]
Sec. 38.05.347. Transfer of state land to cities. [Repealed, § 6 ch 218 SLA 1976; § 15 ch 257 SLA 1976.]
Sec. 38.05.348. [Renumbered as [AS 38.05.870.](#)]
Sec. 38.05.349. [Renumbered as [AS 38.05.872.](#)]
Sec. 38.05.350. [Renumbered as [AS 38.05.910.](#)]
Sec. 38.05.351. [Renumbered as [AS 38.05.930.](#)]
Sec. 38.05.355. [Renumbered as [AS 38.05.950.](#)]
Sec. 38.05.360. Waste or injury to land. [Repealed, § 21 ch 166 SLA 1978. For current law see [AS 11.46.](#)]
Sec. 38.05.362. Agricultural land classification. [Repealed, § 88 ch 152 SLA 1984.]
Sec. 38.05.365. [Renumbered as [AS 38.05.965.](#)]
Sec. 38.05.370. [Renumbered as [AS 38.05.990.](#)]

Article 13. State Control of Certain Land.

Sec. 38.05.500. **Electorate determinations.**

The people of the State of Alaska determine that:

(1) the intent of the framers of the Constitution of the United States was to guarantee to each of the states sovereignty over all matters within its boundaries except for those powers specifically granted to the United States as agent of the states;

(2) the attempted imposition upon the State of Alaska by the Congress of the United States of a requirement in the Statehood Act that the State of Alaska and its people “disclaim all right and title to any land or other property not granted or confirmed to the state or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States,” as a condition precedent to acceptance of Alaska into the Union, was an act beyond the power of the Congress of the United States and is thus void;

(3) the purported right of ownership and control of the public land in the State of Alaska by the United States is without foundation and violates the clear intent of the Constitution of the United States; and

(4) the exercise of that dominion and control of the public land in the State of Alaska by the United States works a severe, continuous and debilitating hardship upon the people of the State of Alaska.

Sec. 38.05.501. Management.

(a) The Department of Natural Resources shall manage the land which is the subject of AS 38.05.500 – 38.05.505. The department will use the provisions of this chapter for the management of the land except to the extent that the provisions of AS 38.05.500 – 38.05.505 provide to the contrary.

(b) The department shall manage the land in an orderly and beneficial manner.

(c) The department may adopt regulations for the management of the land. No regulation which imposes a limitation upon the people of the state is effective until approved by the legislature.

(d) The department may sell, lease, exchange, or encumber the land when specifically authorized to do so by law and under the terms and conditions established by the law.

Sec. 38.05.502. Property of the people.

Subject to valid existing rights of applicants for land, upon February 21, 1983, all land in the state and all minerals not previously appropriated are the exclusive property of the people of the state and the state holds title to the land and minerals in trust for the people of the state.

Sec. 38.05.503. Treaties and compacts.

Land in the state which has been administered by the United States under international treaties and interstate compacts will continue to be administered by the state in conformity with those treaties and compacts.

Sec. 38.05.504. Proceeds to the general fund.

The proceeds of sales, fees, rents, royalties or other receipts from the land paid to the state under the provisions of AS 38.05.500 – 38.05.505 shall be deposited in the general fund, and the legislature may provide for payments in lieu of taxes to local governments.

Sec. 38.05.505. Exclusive enforcement.

(a) The state has exclusive jurisdiction to enforce the provisions of AS 38.05.500 – 38.05.505.

(b) An individual may institute a civil action to recover damages for injury or loss sustained as the result of a violation of the provisions of AS 38.05.500 – 38.05.505 or for the failure of the state to enforce its trust responsibilities to the people of the state.

Article 14. Material Sales.

Sec. 38.05.550. Disposal of materials.

(a) All materials owned by the state may be sold or conveyed as provided in AS 38.05.550 – 38.05.565.

(b) Materials may only be sold or removed from sources or sites designated by the department. The department shall issue a decision under AS 38.05.035(e) that the sale and extraction of materials from that location is in the best interests of the state at the time each source or site is designated. The department shall give notice, in accordance with AS 38.05.945, of the department's decision to designate a source or site for the sale and extraction of materials. After decision and notice, the department may sell materials continuously, without further finding or notice, from that designated source or site under this section until the source or site is closed by the department.

(c) Each sale of materials must be made through a materials sales contract on a form that has been approved by the attorney general. At the time of each sale, the department shall determine

(1) the location of the source or site from which materials are to be removed;

(2) the method of disposal as provided in AS 38.05.555 – 38.05.565; and

(3) the limitations, conditions, and terms of sale, which shall address the utilization, development, and maintenance of the source of the materials.

(d) The commissioner shall provide for valuation of materials in or upon state land. Materials sold or conveyed under AS 38.05.550 – 38.05.565 may, at the director's discretion, be sold at

(1) representative regional sales prices periodically determined by the commissioner for each type of material and for defined geographic regions, under procedures established by regulation; public notice under AS 38.05.945 must be made whenever the commissioner revises the representative regional sales prices;

(2) fair market value determined by appraisal completed and approved within two years of the date of sale; or

(3) a price less than appraised value, determined under AS 38.05.810(a).

Sec. 38.05.555. Negotiated sales and personal use of materials.

(a) Notwithstanding any other provision of AS 38.05.550 – 38.05.565, the director may negotiate the sale of any amount of materials from a source or site designated under AS 38.05.550(b). The period of a contract for a sale of materials negotiated under this section may not exceed five years.

(b) Sales of materials under this section must be made at a representative regional sales price set by the commissioner under AS 38.05.550(d)(1) unless

(1) the director determines that it is in the best interests of the state to sell the materials at fair market value determined by an appraisal provided by the department;

(2) the applicant, at its own cost, elects to provide an appraisal, acceptable to the department, determining the fair market value of the materials to be sold; or

(3) the sale is to a state or federal agency or political subdivision under AS 38.05.810(a) and the material to be extracted and removed is used for public purposes; sales under this paragraph may be at a price less than appraised value as determined by the director.

(c) Subsequent sales of similar materials from the same source or site may be made by the department at the price established by an appraisal provided under (b) of this section.

(d) Individual negotiated contracts for the sale of materials authorized by (a) of this section are not subject to AS 38.05.035(e) or 38.05.945.

(e) Materials from a source or site designated under AS 38.05.550(b) may be extracted and removed for personal use without cost up to a limit of two cubic yards a person within a one-calendar-year period. Extraction and removal of materials under this subsection must be approved by the department before extraction operations.

(f) Notwithstanding (a) – (e) of this section, for the purpose of creating incentives for the development of peat as a source of heat or power, the director may negotiate the sale of peat to individuals, organized or unorganized communities, tribal governments, or private profit or nonprofit organizations. Under this subsection, the director may provide

(1) for personal use by an individual, not more than 200 cubic yards of peat a year at no cost;

(2) for commercial use, not more than 30,000 cubic yards of peat during a single 10-year period at no cost; or

(3) for commercial use requiring more than 30,000 cubic yards of peat, the amount required by the user during a 10-year period beginning when the user uses more than 30,000 yards of peat at the price of

(A) 20 percent of the representative regional sales price determined by the director under AS 38.05.550(d)(1); or

(B) 20 percent of the fair market value determined by an appraisal completed under AS 38.05.550(d)(2), if the applicant provides the appraisal at the applicant's expense and the appraisal is approved by the commissioner.

Sec. 38.05.560. Competitive sales of materials.

(a) The department shall offer materials from a source or site designated under AS 38.05.550(b) for competitive sale if the department determines that

(1) the sale would result in an exclusive use by the purchaser of a designated source or site;

(2) materials available at a designated source or site are insufficient to supply all anticipated buyers;

(3) the size of the designated source or site is too small to accommodate the extraction operations of all anticipated buyers; or

(4) it is in the best interests of the state.

(b) Notice of a competitive sale of materials from a source or site designated under AS 38.05.550(b) shall be given under AS 38.05.945(a) (4) and shall

(1) describe the location of the designated source or site, and the type and quantity of the materials to be sold;

(2) solicit potential bidders to register with the department to participate in the proposed sale; only persons registered to bid at a proposed sale of materials may bid; and

(3) include the minimum bid for materials to be sold.

(c) A notice of competitive sale required under (b) of this section may be combined with a notice required under AS 38.05.550.

(d) If, after notice under (b) of this section, only one potential bidder has registered to bid at a proposed competitive sale, the competitive sale may be cancelled and the materials sold by negotiation under AS 38.05.555.

(e) Materials sold under this section may be sold either by sealed bid or by public outcry or online auction, in the discretion of the department, to the highest qualified bidder as determined by the department. An aggrieved bidder may appeal to the commissioner under AS 44.37.011 within five days after the sale for a review of the determination. The sale shall be conducted by the director or the director's designee, and, at the time of sale, the successful bidder shall deposit the amount specified in the terms of sale. The means by which the amount of deposit is determined shall be prescribed by regulation. The director shall immediately issue a receipt containing a description of the materials purchased, the price bid, and the terms of sale. The receipt shall be accepted in writing by the bidder. A contract of sale, on a form approved by the attorney general, shall be signed by the purchaser, and the contract shall be signed by the director on behalf of the state. The director may impose conditions, limitations, and terms considered necessary and proper to protect the interests of the state.

Sec. 38.05.562. Violations.

Violation of any provision of AS 38.05.550 – 38.05.565 or the terms of the contract of sale subjects the purchaser to appropriate legal action.

Sec. 38.05.565. Sale or disposal of materials for special purposes.

(a) The department may negotiate the sale or otherwise dispose of materials from sources or sites other than those designated under AS 38.05.550(b) to

(1) municipalities, other state and federal agencies, or other entities under AS 38.05.872; sales under this paragraph may be at less than fair market value, and materials may be disposed of free of charge if the director determines that the disposal is in the public interest;

(2) a licensed public utility or a licensed common carrier under AS 38.05.810(e); sales under this paragraph shall be at representative regional sales prices determined under AS 38.05.550(d)(1); or

(3) a holder of a permit, land lease, or right-of-way issued by the department, if the materials to be extracted and removed during the construction, use, or maintenance of a facility authorized by a permit, land lease, or right-of-way, are necessary and incidental to the primary purpose of the permit, land lease, or right-of-way, and the materials are put to beneficial use in a way that alters the character, usefulness, or availability of the materials in their native forms; the department may authorize the sale of materials under terms of the permit, land lease, or right-of-way; sales of materials under this paragraph must be at

(A) the representative regional sales price established under AS 38.05.550(d)(1) unless the sale is to a state or federal agency, political subdivision, or other entity under AS 38.05.810(a); or

(B) a price less than appraised value as determined by the director if the sale is to a state or federal agency, political subdivision, or other entity under AS 38.05.810(a) and the materials to be extracted and removed are used for public purposes.

(b) If materials are moved within and not removed from the boundaries of a permit, land lease, or right-of-way issued by the department without altering the character, usefulness, or availability of the

materials in their native forms, the applicant may not be required to purchase the materials.

(c) In this section, “land lease”

(1) means a lease issued under AS 38.05.070 – 38.05.105;

(2) does not include a lease issued under AS 38.05.131 – 38.05.275.

Article 15. Remote Recreational Cabin Site Sales and Leases.

Sec. 38.05.600. Remote recreational cabin sites.

(a) The commissioner may provide for the sale or lease of state land

(a) The commissioner may provide for the sale or lease of state land for remote recreational cabin sites. Sales under this section shall be at fair market value determined as of the time of entry, and the purchaser shall reimburse the state for the appraisal, survey, and platting costs for the recreational cabin site.

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

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

Article 16. Miscellaneous Provisions.

Sec. 38.05.800. Reconstitution and administration of mental health land trust. [Repealed, § 39 ch 5 FSSLA 1994.]

Sec. 38.05.801. Management of mental health trust land.

(a) Mental health trust land shall be managed consistent with the trust principles imposed on the state by the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956).

(b) Subject to (a) of this section, the department
(1) shall manage mental health trust land under those provisions of law applicable to other state land;

(2) may exchange other state land for mental health trust land under the procedures set out in [AS 38.50](#); and

(3) may correct errors or omissions in the legal descriptions of mental health trust land.

(c) The commissioner shall adopt regulations under [AS 44.62](#) (Administrative Procedure Act) to implement this section. The regulations adopted under this subsection must, at a minimum, address

(1) maintenance of the trust land base;

(2) management for the benefit of the trust;

(3) management for long-term sustained yield of products from the land; and

(4) management for multiple use of trust land.

Sec. 38.05.810. Public and charitable use.

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

(b) Notwithstanding AS 38.05.070 – 38.05.080 and 38.05.095, the director, upon application filed by an applicant eligible under (b) – (d) of this section, may, by negotiation and without competitive bid in the manner prescribed in (b) – (d) of this section, lease state land for a term of not more than 55 years. Before leasing, the director shall prepare a land use plan and a land classification to ensure that the proposed use is compatible with area utilization. Before the land may be leased under (b) – (d) of this section, it must be shown to the satisfaction of the director that the land is to be used for an established or definitely proposed project, and that the eligible applicant has the financial ability to carry out the project. The commissioner may establish limitations on the acreage that may be leased under (b) – (d) of this section to an applicant.

(c) Eligible applicants under (b) – (d) of this section are limited to nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific, or educational purposes, or for the promotion of social welfare, if the project for which the land is desired conforms to those objectives and not commercial development. No lease of land may be granted under this section for a project closed to the use and enjoyment of the general public. In every case the applicant shall submit evidence that it is exempt from payment of federal income tax. As a condition of and in consideration of the rights acquired under a lease granted under (b) – (d) of this section, each eligible organization and its parent or subsidiary organizations shall (1) maintain and preserve books, accounts, and records that the director prescribes by regulation as necessary and appropriate; and (2) accord at all reasonable times to the state and its authorized agents and auditors the right of access to those books, accounts and records for the purpose of inspecting, examining and copying them. Any information provided the state in the course of an audit becomes a matter of public record.

(d) The director may lease the land to an eligible applicant at a reasonable annual rental, taking into consideration the purposes for which the land is to be used and the financial resources of the

which the land is to be used and the financial resources of the applicant. The rental may not be less than one percent of the fair market value on land acquired primarily for development, or less than five percent of the fair market value on acquired land. Rent may not be charged for state land leased for a youth encampment. For the purposes of this subsection, "youth encampment" shall be defined by the commissioner by regulation. Renewal leases may be issued at the discretion of the director upon the expiration of a primary or renewal term. Each lease shall contain a provision for its termination as to all or part of the land upon a finding by the director that the land or a part of it has not been used by the lessee for the purpose specified in the lease for a period of two years. No lease may be assigned or subleased except with the consent of the director, and in any case may only be transferred to an applicant eligible under (b) - (d) of this section. A lessee may not change the use specified in the lease to another or additional use except with the consent of the director. If, at any time after the land is leased, the lessee attempts to assign the lease or transfer control over the land to another, or if the land is devoted to a use other than that for which the land was leased without the consent of the director, the lease automatically terminates.

(e) The lease, sale, or other disposal of state land at appraised fair market value may be negotiated with a licensed public utility or a licensed common carrier by the director with the approval of the commissioner if the utility or carrier reasonably requires the land for the conduct of its business under its license. Notwithstanding AS 38.05.550 - 38.05.565, the sale of materials necessary for construction, use, or maintenance of property leased, sold, or disposed of under this section may be negotiated by the director. A lease with a licensed public utility that is an electric utility entered into under this subsection may not include, as part of the rent or other fee that is negotiated or charged, an amount that is based on or determined by a percentage of gross revenue for renewable energy produced by the electric utility.

(f) The commissioner shall lease state land for telephone or electric transmission and distribution lines for less than the appraised value of the land if the lessee is a nonprofit cooperative association organized under AS 10.25. The commissioner may lease state land that is not located within the boundary of a municipality for the disposal of garbage, refuse, trash, or other waste material for less than the appraised value of the land if the lessee is a licensed public utility authorized to collect and dispose of garbage, refuse, trash, or other waste material outside the boundaries of a municipality. Before determining the annual rental, the commissioner shall consider the nature of the public service rendered by the nonprofit cooperative association or licensed public utility and the terms of the grant under which the land was acquired by the state. A nonprofit cooperative association may not construct improvements other than transmission or distribution lines and substations on land leased under this subsection. A licensed public utility may not construct permanent improvements on land leased under this subsection that are not related to the purpose of the lease.

(g) The commissioner shall retain a reversionary interest on each sale or other disposal granted under (a) or (e) of this section. The commissioner may waive the reversionary interest on a written determination that the waiver is in the public interest.

(h) The commissioner may issue permits to the Alaska Aerospace Corporation for purposes of down range space vehicle or payload

corporation for purposes of down range space vehicle or payload overflight, booster retrieval, and recovery. The commissioner may, if it is in the best interests of the state, lease land to the Alaska Aerospace Corporation for other space-related purposes for, or at less than the appraised market value.

(i) Subject to AS 38.05.820, the commissioner may lease undeveloped state land, including tideland, to a port authority established under AS 29.35.600 – 29.35.730, if the state land is within the physical boundaries of the authority and is needed by the authority for purposes provided in AS 29.35.600 – 29.35.730. The commissioner may lease developed state land, including tideland, to a port authority established under AS 29.35.600 – 29.35.730 only if, (1) the developed state land is within the physical boundaries of the authority; (2) the developed state land is needed by the authority for purposes provided in AS 29.35.600 – 29.35.730; and (3) the legislature approves the lease. A lease of state land under this subsection may be for less than the appraised market value.

Sec. 38.05.820. Occupied tide and submerged land.

(a) It is the policy of the state to allow preference rights for the acquisition of tide and submerged land occupied or developed for municipal business, residential or other beneficial purposes on or before the date of admission of Alaska into the Union. Nothing in this section vests the right in a person to acquire the land until a conveyance from the state is delivered to the grantee.

(b) Home rule cities and cities of the first class incorporated on or before April 1, 1964, may apply, in the manner prescribed by the director, and in accordance with such regulations as the director may adopt, for a conveyance to them of all land seaward of the home rule cities and cities of the first class which is between the mean high tide line in, or forming the boundary of, the home rule cities and cities of the first class, and a line to be shown on a plat made a part of the application which shall be the pierhead line established under the Act of September 7, 1957, or the harbor line established under the Act of March 3, 1899, or if no pierhead line or harbor line is established then a line subject to approval by the director, with the concurrence of the commissioner, which shall be seaward of all tide and submerged land occupied or suitable for occupation and development without unreasonable interference with navigation. The director shall convey that tide and submerged land to home rule cities and cities of the first class. Applications by preference right claimants filed with the director before June 30, 1964, shall continue to be processed to a final determination and conveyance, if any, by the director, if such preference right claimants are entitled to a conveyance from the director under the laws existing previous to July 22, 1964.

(1) Each home rule city and city of the first class granted a conveyance shall prepare an official subdivision plat of the area conveyed showing all structures and improvements and the boundaries of each tract occupied or developed, together with the name of the owner or claimant. The subdivisional plat shall include within the boundaries of each tract occupied or developed such surrounding tide and submerged land as is reasonably necessary in the opinion of the governing body of the home rule cities and cities of the first class for the use and enjoyment of the structures and improvements by the owner or claimant, but shall not include tide or submerged land which if granted to the occupant would unjustly deprive an occupant of

it granted to the occupant would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it.

(2) An occupant of land included in the conveyance to home rule cities and cities of the first class, who occupied or developed the land on and before September 7, 1957, has a class I preference right to the land from the home rule cities and cities of the first class upon the execution of a waiver to the state and the home rule cities and cities of the first class of all rights the occupant may have acquired under Public Law 85-303 (71 Stat. 623).

(3) An occupant of land included in the conveyance to home rule cities and cities of the first class, who has a class II preference right by reason of the conveyance to home rule cities and cities of the first class, and is unwilling to waive the right has a preference right to the land which it is mandatory for the home rule cities and cities of the first class to expeditiously honor upon application from the occupant after the Secretary of the Army has submitted to the Secretary of the Interior and the governor of the state maps showing the pierhead line established by the Corps of Engineers with respect to the tract so granted.

(4) An occupant of land included in the conveyance to home rule cities and cities of the first class, who occupied or developed the land after September 7, 1957, and before January 3, 1959, and who continued to occupy it on January 3, 1959, has a class III preference right to the land from the home rule cities and cities of the first class.

(5) In making a conveyance to an occupant, the home rule cities and cities of the first class shall include as a part of the tract conveyed and in addition to the occupied or developed land, such additional tide and submerged land as is reasonably necessary in the opinion of the governing body of the home rule cities and cities of the first class for the occupant's use and enjoyment of the occupied or developed land, but the conveyance shall not include any area which would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it or which, if developed, will interfere with navigation.

(6) Each home rule city and city of the first class receiving conveyances shall by ordinance provide for reasonable regulations governing the filing and processing of applications, publication of notices, and the adjudication of disputes between claimants by the governing body of the home rule cities and cities of the first class. A party aggrieved by its determination may appeal to the superior court.

(7) When no preference right has been granted to purchase or lease tideland, the home rule cities and cities of the first class may sell or lease the tideland conveyed to them, and may impose terms or conditions for the sale or lease. Such terms and conditions shall include such reservation of rights-of-way as are necessary to provide reasonable access to public waters.

(c) An occupant of tide or submerged land which is not seaward of a municipal corporation, who occupied or developed it on and prior to September 7, 1957, has a class I preference right to the land from the state. However, if the land is seaward of a surveyed townsite, the occupant shall execute a waiver to the state of all rights which the occupant may have acquired under Public Law 85-303 (71 Stat. 623)

occupant may have acquired under Public Law 85-505 (71 Stat. 623), before the preference right may be exercised.

(1) A person who has a class II preference right in the disposition of land by the state not provided for under (b)(3) of this section, and who is unwilling to waive that right, has a preference right to the land which it is mandatory for the director to expeditiously honor upon application from the occupant after the Secretary of the Army has submitted to the Secretary of the Interior and the governor of the state maps showing the pierhead line established by the Corps of Engineers with respect to the tract so granted.

(2) An occupant of tide or submerged land which is not seaward of a municipal corporation, who occupied or developed it after September 7, 1957, and before January 3, 1959, and who continued to occupy it on January 3, 1959, has a class III preference right to the land from the state.

(3) The preference right granted an occupant in (c) of this section is lost unless the occupant of tide or submerged land not seaward of a home rule or first class city makes application to the director to exercise the preference right by July 1, 1967.

(4) Each occupant shall furnish at the cost of the occupant a plat showing the exterior boundaries of the tide and submerged land covered by the application, in form and with proof of accuracy as set out in regulations of the director, and shall show the location and nature of all fill material, buildings, structures and improvements, which form the basis of the application and which are situated upon the tract applied for. The applicant may include within the boundaries of the tract applied for such surrounding tide and submerged land as is reasonably necessary in the opinion of the applicant for the use and enjoyment of the structures and improvements by the occupant, but may not include any tide or submerged land which if granted to the occupant would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it.

(5) In making a conveyance to an occupant, the director shall include as a part of the tract conveyed, and in addition to the occupied or developed land, such additional tide and submerged land as is reasonably necessary in the opinion of the director for the occupant's use and enjoyment of the occupied or developed land, but the conveyance shall not include any area which would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it or which, if developed, will interfere with navigation.

(6) The director shall by regulation provide for reasonable procedures governing the filing and processing of applications, the publication of notices and the adjudication of disputes between claimants. A party aggrieved by an adjudication may appeal to the superior court.

(7) The holder of a valid Corps of Engineers permit issued before November 15, 1959, may be given a preference to a lease or permit by the state if justified in accordance with the policy of this chapter and if in the best interests of the state. This preference is subordinate to all other preferences recognized under this chapter.

(d) For the purposes of this section, unless the context otherwise requires,

(1) "class I preference right" means the right of an occupant to

(1) "class I preference right" means the right of an occupant to acquire tide and submerged land for a consideration not exceeding the costs of surveying, transferring, and conveying the title to it;

(2) "class II preference right" means the right to acquire tide or submerged land as defined in Public Law 85-303 (71 Stat. 623) for a consideration not exceeding the costs of surveying, transferring, and conveying the title to it;

(3) "class III preference right" means the right of an occupant to acquire tide and submerged land for a consideration not exceeding the cost of appraisal, administration, and transfer plus the appraised fair market value, exclusive of value accruing from improvements or development, such as fill material, buildings, or structures, by the occupant or predecessor in interest of the occupant or reflecting, equities of the occupant;

(4) "home rule cities and cities of the first class" do not include a borough;

(5) "occupant" means a person or the successor in interest of a person, who actually occupied for business, residential, or other beneficial purpose, tideland, or tide and submerged land contiguous to tideland, in the state, on and before January 3, 1959, with substantial permanent improvements; the holder of a permit or clearance in respect to interference of navigation, or of a special use permit from a government agency does not qualify as an "occupant" unless entry on the land had, through exercise of reasonable diligence, resulted in occupancy and substantial permanent improvements; no person is an occupant by reason of having (A) placed a fish trap in position for operation or upon the tide or submerged land for storage, (B) placed a set net or piling for a set net, or any other device or facility for taking fish, (C) placed pilings or dolphins for log storage or other moorage, (D) placed floats or vessels upon the tide or submerged land, (E) placed telephone, power or other transmission facilities, roads, trails or other improvements not requiring exclusive use or possession of tide or submerged land, or (F) claimed the land by virtue of some form of constructive occupancy; where land is occupied by a person other than the owner of the improvements on it, the owner of the improvements is, for the purposes of this section, the occupant of the land;

(6) "occupied or developed" means the use, occupancy, and control of tide or submerged land by the establishment on it of substantial permanent improvements other than those uses, facilities, and improvements not qualifying a person to be an occupant;

(7) "person" means a person, firm, corporation, cooperative association, partnership, or other entity legally capable of owning land or an interest in land;

(8) "preference right," subject to the classification of preference right established in this section, means the right of an occupant to acquire, by lease, purchase, or otherwise, at the election of the occupant, except as otherwise limited or prescribed in this chapter, a tract of tideland, or tide and submerged land contiguous to tideland, occupied or developed by the occupant on and before January 3, 1959.

Sec. 38.05.821. Tideland seaward of public recreational sites.

(a) Notwithstanding any other provision of law, a home rule or general law municipality that accepts by conveyance or other disposition from the state a public recreation area facility developed under the terms of P.L. 84-507, 70 Stat. 130, upon application, shall receive by conveyance from the director all land owned by the state seaward of the public recreation area facility that is between the mean high tide line and the mean low tide line. The director may adopt necessary regulations providing for the conveyance of land under this section.

(b) Interests obtained by lease for shore fisheries development, sale, permit, or lease for mineral exploration, development, or extraction, or for any other purpose, before August 13, 1974, are affected by this section only on the date of their expiration or termination.

Sec. 38.05.825. Conveyance of tide and submerged land to municipalities.

(a) Unless the commissioner finds that the public interest in retaining state ownership of the land clearly outweighs the municipality's interest in obtaining the land, the commissioner shall convey to a municipality tide or submerged land requested by the municipality that is occupied or suitable for occupation and development if the

(1) land is within or contiguous to the boundaries of the municipality;

(2) use of the land would not unreasonably interfere with navigation or public access;

(3) municipality has applied to the commissioner for conveyance of the land under this section;

(4) land is not subject to a shore fisheries lease under AS 38.05.082, or, if the land is subject to a shore fisheries lease, the commissioner determines it is in the best interests of the state to convey the land;

(5) land is classified for waterfront development or for another use that is consistent or compatible with the use proposed by the municipality, or the proposed use of the land is consistent or compatible with a land use plan adopted by the municipality or the department; and

(6) land

(A) is required for the accomplishment of a public or private development approved by the municipality;

(B) is the subject of a lease from the state to the municipality; or

(C) has been approved for lease to the municipality.

(b) The commissioner may not convey land under this section that has been designated by statute unless the commissioner determines that the proposed use is consistent or compatible with the purpose of the

statutory designation. Land designated as a state game refuge, game sanctuary, or critical habitat area may not be conveyed unless the commissioner of fish and game also determines that the proposed use is consistent or compatible with the purpose of the designation. If land designated by statute is conveyed, uses of the land after conveyance are restricted to those uses determined by the commissioner of natural resources to be consistent or compatible with the purpose of the designation.

(c) Upon receipt of an application, the commissioner shall determine whether the requested conveyance meets the requirements of this section and issue a written decision regarding that determination. Upon a determination that the requirements have been met, the commissioner shall approve the conveyance of the land to the municipality. After conveyance to the municipality is approved, the municipality has management authority of the land and may lease the land, but may not sell it. The cost of the survey and all subdivision or other platting required for conveyance shall be borne by the municipality.

(d) A conveyance under this section may contain only those restrictions required by law, including [AS 38.05.127](#) and (b) of this section, or required to support a finding that the conveyance is in the best interest of the state. Land conveyed is subject to the public trust doctrine that may be enforced by the state in a court of competent jurisdiction. The municipality shall be required to ensure that reasonable access to public waters and tidelands is provided. The municipality may not lease land conveyed under this section for shore fisheries, but after conveyance, the land may be leased by the state for shore fisheries under [AS 38.05.082](#) if the commissioner determines that the lease is compatible with the municipality's use of the land. Title to land conveyed under this section that is retained by the municipality reverts to the state upon the dissolution of the municipality.

(e) This section does not enlarge or diminish the general grant land entitlement of a municipality under [AS 29.65](#), nor is a conveyance under this section counted against the municipality's general grant land entitlement.

Sec. 38.05.830. Land disposal in the unorganized borough.

Before a sale, lease under [AS 38.05.070](#) – 38.05.105, or other disposal of state land in the unorganized borough, the commissioner shall consider the effect that the sale, lease, or other disposal may be expected to have on the density of the population in the vicinity of the land, and potential for conflicts with the traditional uses of the land that could result from the sale, lease, or disposal. If necessary, the commissioner shall develop a plan to resolve or mitigate the conflicts in a manner consistent with the public interest and the provisions of this chapter.

Sec. 38.05.840. Appraisal.

(a) Land may not be sold or leased, or a renewal lease issued, except in the case of an oil or gas or mineral lease, unless it has been

appraised within two years before the date fixed for the sale or lease. When land is offered at public sale but is not sold and is available at private sale, a reappraisal is not required unless the director considers that a change in value of the land may have occurred. A grazing lease may be granted to a lessee of federal grazing land without prior appraisal if the federal lease was cancelled to allow the state to select the land under lease. Land may not be sold or leased for less than the approved, appraised market value, except as provided in AS 38.05.055, 38.05.057, 38.05.075 – 38.05.085, 38.05.097, 38.05.810, and 38.05.820.

(b) Appraisals required by this section may be made by employees of the department who are qualified to determine the value of land under standards set by the commissioner.

Sec. 38.05.850. Permits.

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

(b) The fee charged for a right-of-way approved under (a) of this section shall be waived by the commissioner if the right-of-way is for a transmission or distribution line established by a nonprofit cooperative association organized under AS 10.25 for the purpose of supplying electric energy and power, or telephone service, to its members, and the waiver is considered by the commissioner to be in the best interests of the state.

(c) If the director determines, by evaluation of the nature and duration of the intended use, that an easement or right-of-way issued under this section will not be functionally revocable, the director shall provide public notice before issuing the easement or right-of-way.

Secs. 38.05.855 , 38.05.856. Identification of sites for aquatic farms and hatcheries; tideland and land use permits for aquatic

farming. [Repealed, § 38 ch 91 SLA 1997.]

Sec. 38.05.860. Deposits.

(a) The commissioner may require an applicant seeking the sale, lease, or other disposal of land or an interest in land, other than under an oil and gas lease, gas only lease, or mineral lease, to deposit an amount covering the estimated cost of an appraisal, survey, and other costs necessary to offer the land or interest in land, including advertising. All deposited funds not expended shall be refunded to the applicant. If the land or interest in land is awarded to a person other than the applicant making the deposit, the person awarded the land shall pay the total actual cost incurred by the department in making the disposal, and the deposit shall be returned to the original applicant. In lieu of requiring the deposit under this subsection, the commissioner may enter into an agreement with an applicant seeking land or an interest in land requiring the applicant to reimburse the department for costs incurred in the disposal if the applicant is awarded the land or interest in land.

(b) Except as provided in (c) of this section, if a competitive sale or lease of state land, minerals, timber, or materials is to be made by sealed bid, the director may require each bidder to submit an earnest money deposit with each bid. If the sale or lease is by public auction, the director may require each person desiring to bid to make an earnest money deposit before bidding. The earnest money deposit of the highest qualified bidder shall be applied toward the sale or lease price. If the successful bidder defaults in the payment of the amount bid, the deposit shall be forfeited to the state. All other earnest money deposits shall be returned unless the commissioner decides to award the contract to the second highest qualified bidder upon default by the highest bidder rather than call for new bids, in which case the commissioner may retain the deposit of the second highest qualified bidder until final disposition of the land is made. A successful bidder for a mineral lease who can prove to the satisfaction of the commissioner within 45 days after notification of the lease award that there is a reasonable doubt as to the ability of the state to grant a valid lease to the land may withdraw the amount bid and have the earnest money deposit returned.

(c) The commissioner shall require each bidder for the competitive leasing of land for oil and gas, or for gas only, to submit with each bid a deposit of money equal to 20 percent of the bonus.

Sec. 38.05.870. Grants of land after natural disaster.

(a) The director may make grants of state land to persons and municipal corporations to replace land which is rendered unusable by a natural disaster for the purposes for which it was used before the natural disaster. The director shall designate state land which is available to replace land rendered unusable.

(b) Only a person who is the owner of land rendered unusable that was used or leased before the natural disaster for private residential, business, or commercial purposes is eligible for a grant of state land. A person who incurred a binding obligation to purchase land before the natural disaster shall be considered the owner of the land for the purposes of this section.

(c) An application for a grant of state land shall be filed with the

director, and shall contain

- (1) the name and address of the applicant;
- (2) a legal description of the land rendered unusable;
- (3) proof of ownership of the land; and
- (4) a statement of the purpose for which the land was used before the natural disaster rendered it unusable.

(d) The director shall, within 30 days of receipt of the application, approve or disapprove the application. The director's determination of eligibility for a grant of state land is final. Upon approval of the application or as soon thereafter as possible, the director shall specify the land which shall be granted to an eligible applicant. In making the designation the director shall consider the value, size and use of the land rendered unusable as a result of the natural disaster, and shall as nearly as possible grant land of equal size, or value or of equal utility.

(e) The applicant shall pay costs, not to exceed the administrative cost of transferring the property and the cost of surveying the land. In addition, the state may require a quitclaim deed to the unusable land in exchange for the grant of state land.

(f) In this section "natural disaster" means a flood, drought, fire, storm, earthquake, or other catastrophe which, in the determination of the governor, is or threatens to be of sufficient severity to warrant state assistance to persons and municipal corporations to alleviate damage, suffering, and hardship caused by the catastrophe.

Sec. 38.05.872. Disposition of state land and resources for flood control projects.

(a) The department may make conveyances of title or other interests in state land, provide for exchange of land, or make other arrangements with respect to state land, as necessary to meet federally established requirements of flood control projects authorized inside the state by the United States.

(b) The commissioner may convey materials at less than fair market value to municipalities, other state and federal agencies, or other entities, and make other arrangements for land and materials as mitigation of a flooding area where excess material deposition significantly contributes to the flooding, consistent with a site-specific flood mitigation plan approved by the commissioner and determined to be in the best interests of the public.

Sec. 38.05.874. Public access fund created.

(a) The public access fund is established as a special account in the general fund and funds may be deposited into the special account and withdrawn from it as provided in this section. The fund consists of money contributed to it by individuals and corporations and interest derived from those contributions. The fund shall be invested by the commissioner of revenue. The Department of Revenue may be reimbursed

for actual administrative costs incurred under this subsection by appropriation from the public access fund.

(b) Except as provided in (a) of this section, the commissioner shall administer the fund. The commissioner, after public hearings and in concurrence with the commissioner of fish and game, may use money in the fund to develop recreational access, including the purchase and lease of land, easements, and rights-of-way to enhance public access to recreational areas.

(c) The title to rights of public access to recreational areas obtained by the commissioner vests in the state. The commissioner shall include in the instrument transferring title to the state a clause requiring that the land be used for public access. If the land ceases to be available for public access, the state shall either

(1) pay to the fund the assessed value of the land at that time; or

(2) if the land was purchased with funds derived under 16 U.S.C. 777 – 777k (Sport Fish Restoration Act), as amended, reimburse the sport fish restoration program.

(d) The legislature may appropriate to the fund. The interest earned on funds appropriated to the public access fund by the legislature shall be deposited in the general fund. The commissioner of administration shall separately account for the interest deposited in the general fund under this subsection. The annual estimated balance in the account may be appropriated by the legislature to the public access fund.

Sec. 38.05.875. Administration of land acquired under former AS 34.10.

The department may sell, lease, or administer all real property to which the state obtained title under former AS 34.10 in the same manner as it is authorized to sell, lease, or administer other state land. Proceeds derived from the sales, leases, or administration shall be remitted to the Department of Revenue and deposited into the general fund of the state.

Sec. 38.05.880. Departmental review.

The department is not required to determine whether an owner of a mining claim, leasehold location, or mining lease is in compliance with this chapter or the regulations adopted under this chapter.

Article 17. General Provisions.

Sec. 38.05.910. Policy.

It is the policy of the state to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

Sec. 38.05.920. Assignment.

(a) Except as provided in (b) of this section, all contracts of purchase or lease of land or interest in land may be, on the affirmative approval of the director, assigned or subleased in whole or in part in writing by the contract holder or lessee, and the assignee or sublessee is subject to the provisions of laws and regulations applicable to the contract or lease.

(b) A nonprofit organization that is exempted from paying rent on state land under AS 38.05.097 may not assign or sublease the land or a portion of it on which it has a lease.

Sec. 38.05.930. Bona fide purchasers.

The right, title, or interest of a bona fide purchaser of any lease, interest in a lease, or option to acquire a lease or an interest in it, acquired after the effective date of issuance of the lease and held by a qualified person, association, or corporation in conformity with this chapter may not be canceled or forfeited or otherwise adversely affected by reason of the fact that the holding of the person, association, or corporation from which the lease, interest, or option was acquired, or of a predecessor in title, including the original lessee of the state, may have been canceled or forfeited, or may be or have been subject to cancellation or forfeiture. If, in any proceeding for cancellation or forfeiture, an underlying lease, interest, or option is canceled or forfeited to the state and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation or forfeiture, the underlying lease, interest, or option shall be sold by the director to the highest responsible qualified bidder by competitive bidding under general competitive leasing regulations subject to all outstanding valid interests therein and valid options pertaining thereto. Likewise if, in any such proceeding, less than the whole interest in a lease, interest, or option is canceled or forfeited to the state, the partial interests so canceled or forfeited shall be sold by the director to the highest responsible qualified bidder under general competitive leasing regulations.

Sec. 38.05.940. Land purchase price discount for veterans.

(a) An eligible veteran is entitled to a discount of 25 percent on the purchase price of state land sold under this title and classified under AS 38.05.005 – 38.05.270 for a use other than commercial or industrial use.

(b) To be eligible for a discount under this section, a veteran shall submit proof, as required by regulation, that the veteran

(1) is 18 years of age or older on the date of sale;

(2) has been a state resident for a period of not less than one year immediately preceding the date of sale; and

(3) has served

(A) in the Alaska Territorial Guard for at least 90 days, unless the service was shortened due to a service connected disability; or

(B) on active duty in the U.S. Armed Forces at least 90 days, unless tenure was shortened due to a service connected disability or due to receiving an early separation upon return from a tour of duty overseas, and has received an honorable discharge or a general discharge under honorable conditions.

(c) A veteran is entitled to only one discount under this section during the veteran's lifetime.

(d) A discount under this section may be applied only to the acquisition of surface rights to state land. A discount under this section may not be applied to survey costs, road development costs, utility assessments, or other costs that the commissioner determines are reimbursable to the state.

(e) A discount under this section may not be used toward the purchase of land offered at a restricted sale under AS 38.05.067.

Sec. 38.05.945. Notice.

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

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

(2) zoning of land under applicable law;

(3) issuance of a

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

(B) written finding for the sale, lease, or disposal of an interest in state land or resources under AS 38.05.035(e)(6), except a lease sale described in AS 38.05.035(e)(6)(F) for which the director must provide opportunity for public comment under the provisions of that subparagraph;

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

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

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

(7) an exchange of state land under AS 38.50.

(b) When notice is required to be given under this section,

(1) the notice must contain sufficient information in commonly understood terms to inform the public of the nature of the action and the opportunity of the public to comment on it;

(2) if the notice is of a preliminary written finding described in (a)(3)(A) of this section, the department shall give notice at the beginning of the public comment period for the preliminary written finding, notifying the public of the right to submit comments; the department shall give notice by

(A) posting notice on the Alaska Online Public Notice System for at least 30 consecutive days;

(B) publication of a notice in display advertising form describing the proposed action and referencing the online notice required in (A) of this paragraph in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action, if available, at least once a week for two consecutive weeks;

(C) public service announcements on the electronic media serving the area to be affected by the proposed action; and

(D) one or more of the following methods:

(i) publication of a legal notice in newspapers of statewide circulation or in newspapers of general circulation in the vicinity of the proposed action, if available, at least once a week for two consecutive weeks;

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

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

(iv) another method calculated to reach affected parties;

(3) if the notice is of an action described in (a) of this section, other than notice of an action under (a)(3)(A) of this section, the department shall give notice at least 30 days before the action by posting notice on the Alaska Online Public Notice System for at least 30 consecutive days and by one or more of the following methods:

(A) publication of a notice in display advertising form describing the proposed action and referencing the online notice required in this paragraph in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action, if available, at least once a week for two consecutive weeks;

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

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

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

(E) another method calculated to reach affected persons.

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

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

(2) to a regional corporation if the boundaries of the corporation as established by 43 U.S.C. 1606(a) (sec. 7(a), Alaska Native Claims Settlement Act) encompass the land and the land is outside a municipality;

(3) to a village corporation organized under 43 U.S.C. 1607(a) (sec. 8(a), Alaska Native Claims Settlement Act) if the land is within 25 miles of the village for which the corporation was established and the land is located outside a municipality;

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

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

(d) Notice at least 30 days before action under (a)(5) of this section shall be given to appropriate regional fish and game councils established under [AS 16.05.260](#).

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

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

(g) [Repealed, § 19 ch 56 SLA 1997.]

(h) Failure to give notice under this section to a community council, a coordinating body established by community council, or an organization listed in (c)(5) of this section does not constitute a legal basis for invalidation or delay of the action.

Sec. 38.05.946. Hearings.

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

(b) [Repealed, § 38 ch 91 SLA 1997.]

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

Sec. 38.05.965. Definitions.

In this chapter, unless the context otherwise requires,

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

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

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

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

(5) "director" means the director of the division of lands of the Department of Natural Resources;

(6) "geothermal resources" means the natural heat of the earth at temperatures greater than 120 degrees Celsius, measured at the point where the highest-temperature resources encountered enter or contact a well or other resource extraction device, and includes

(A) the energy, including pressure, in whatever form present in, resulting from, created by, or that may be extracted from that natural heat;

(B) the material medium, including the geothermal fluid naturally present, as well as substances artificially introduced to serve as a heat transfer medium; and

(C) all dissolved or entrained minerals and gases that may be obtained from the material medium, but excluding hydrocarbon substances and helium;

(7) "grazing land" means land chiefly valuable for grazing purposes;

(8) "industrial and commercial land" means land chiefly valuable for industrial trade, manufacturing, or business use;

(9) "initial project term" means the duration sufficient to support an investment decision by the sponsors of a North Slope natural gas project to permit realization of a competitive economic return, to enable necessary financing, and to support agreements for the sale of hydrocarbons transported on a North Slope natural gas project;

hydrocarbons transported on a North Slope natural gas project;

(10) "lieu and indemnity land" means land which the state is entitled to select under the provisions of the Act of March 4, 1915, 38 Stat. 1214 (48 U.S.C. 353), as amended, or a similar statute to compensate for land in place of surveyed rectangulars, which have been lost to the state by reason of deficient sections, prior rights, claims, withdrawals, reservations, and other appropriations;

(11) "materials"

(A) means all common variety rock and minerals of any quality, that are saleable and not subject to location under state or federal mining laws;

(B) includes aggregate, riprap, railroad ballast, road ballast, road metal, peat, silt, loam, sand, gravel, stone, pumice, and common clay;

(12) "mineral land" means land prospectively valuable for mineral deposits;

(13) "multiple use" has the meaning given in [AS 38.04.910](#);

(14) "navigable water" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction that is navigable in fact in any season, whether in a frozen or liquid state, and for any useful public purpose, including water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes;

(15) "nonconventional gas" means coal bed methane, gas contained in shales, or gas hydrates;

(16) "North Slope natural gas project" means a project to produce or transport natural gas from state oil and gas and gas only leases that include land north of 68 degrees North latitude for transport in a gaseous state from the North Slope;

(17) "park and recreation land" means land chiefly valuable for public park and recreation use;

(18) "preference right forest lease" means a lease granted to a lessee whose United States Forest Service term special use permit was cancelled to allow the land under permit to be selected by the state;

(19) "preference right grazing lease" means a grazing lease granted to a lessee whose federal grazing lease was cancelled to allow the land under lease to be selected by the state;

(20) "project services" means services provided by a gas treatment plant, pipeline, liquefaction facility, or marine terminal, marine transportation services, or other services necessary to transport natural gas to market;

(21) "public water" means navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility. habitat for fish and wildlife in which

for public use and delivery, including for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest;

(22) "rule of approximation" is the rule which is applied in determining whether or not a lease complies with the area limits set forth in this chapter and regulations adopted under it and in keeping the boundaries of leased land coincidental with legal subdivisions; under the rule, if the area covered by a lease in excess of the permitted maximum is smaller than the area of any deficiency that would result by eliminating from the lease the smallest legal subdivision covered by the lease or application for lease, the excess area will be permitted to remain in the lease; if the excess area is greater than the deficient area would be, then the smallest legal subdivision will be eliminated from the lease;

(23) "shoreland" means land belonging to the state which is covered by nontidal water that is navigable under the laws of the United States up to ordinary high water mark as modified by accretion, erosion, or reliction;

(24) "state land" or "land" means all land, including shoreland, tideland, and submerged land, or resources belonging to or acquired by the state;

(25) "submerged land" means land covered by tidal water between the line of mean low water and seaward to a distance of three geographical miles or further as may hereafter be properly claimed by the state;

(26) "tideland" means land that is periodically covered by tidal water between the elevation of mean high water and mean low water;

(27) "timber land" means state land chiefly valuable for timber and other forest products;

(28) "university land"

(A) means

(i) all sections 33 reserved to the university under the Act of March 4, 1915, 38 Stat. 1214, as amended;

(ii) all land granted to or reserved for the benefit of the university that retains its designation as university land;

(iii) all other land owned in fee by the University of Alaska including land transferred in fee to the Board of Regents of the University of Alaska to replace land formerly designated as university land;

(B) does not include former university land that has been conveyed to the department under the settlement approved by the legislature in ch. 22, SLA 1983.

Sec. 38.05.990. Short title.

This chapter may be cited as the Alaska Land Act.

