

SENATE BILL NO. 211

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Introduced: 3/7/14

Referred: Transportation

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing for the Department of Transportation and Public Facilities to hold**
2 **the surface estate of certain state land; relating to the transfer of certain state land and**
3 **materials; relating to the lease, sale, or disposal by the Department of Transportation**
4 **and Public Facilities of rights-of-way, property interests, or improvements; relating to**
5 **the grant of certain easements over submerged state land to the federal government;**
6 **relating to the conveyance of land for right-of-way purposes from the Alaska Railroad**
7 **Corporation to the Department of Transportation and Public Facilities; and providing**
8 **for an effective date."**

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

10 * **Section 1.** AS 02.15 is amended by adding a new section to article 2 to read:

11 **Sec. 02.15.065. Surface estate of state airport land.** The department has
12 primary authority to manage the surface estate of land and property interests acquired

1 or held by the state for an airport, airport access road, or airport-related operations,
2 including land conveyed by the federal government under sec. 35 of the Alaska
3 Omnibus Act of 1959 (P.L. 86-70, 73 Stat. 141). In the exercise of that authority, the
4 department may require terms and conditions that are applicable to a proposed use of
5 the surface estate that may be authorized by the Department of Natural Resources in
6 the administration of the state program for the conservation and development of
7 natural resources.

8 * **Sec. 2.** AS 02.15.070(b) is repealed and reenacted to read:

9 (b) If the department determines that land, property interests, or improvements
10 are no longer necessary, the department shall notify the commissioner of natural
11 resources of the determination and may

12 (1) transfer the land, property interests, or improvements to the
13 Department of Natural Resources, if requested by the commissioner of natural
14 resources; or

15 (2) dispose of the land, property interests, or improvements by sale,
16 lease, vacation, or exchange, according to terms, standards, and conditions established
17 by the commissioner.

18 * **Sec. 3.** AS 02.15.070 is amended by adding a new subsection to read:

19 (c) If the department determines that a part of the state public domain is
20 reasonably necessary for an airport or as a source of materials for the construction or
21 maintenance of an airport, the department shall file with the Department of Natural
22 Resources a written determination and preliminary property plan identifying the
23 portion of or interest in the public domain land that the department reasonably needs,
24 subject to the following:

25 (1) the department shall provide public notice of the intended transfer
26 by posting the written determination and preliminary property plan on the Alaska
27 Online Public Notice System (AS 44.62.175);

28 (2) within four months after the filing, the Department of Natural
29 Resources shall transfer title to the surface estate to the department, subject to valid
30 existing rights; the transfer of land or materials under this subsection is not a disposal
31 of state land, and the transfer is presumed to be in the public interest;

1 (3) a transfer under this subsection vests control of the surface estate in
 2 the department, including the right to extract or use sand, gravel, rock, timber, or other
 3 construction materials, and the right to tunnel, ditch, contour, excavate, or otherwise
 4 develop or use the land for transportation, utility, and related purposes;

5 (4) within two years after the completion of construction or of the
 6 opening of a materials site, the department shall prepare and record a record of survey
 7 of the property received by the department.

8 * **Sec. 4.** AS 19.05.070(b) is repealed and reenacted to read:

9 (b) If the department determines that land, property interests, or improvements
 10 are no longer necessary, the department shall notify the commissioner of natural
 11 resources of the determination and may

12 (1) transfer the land, property interests, or improvements to the
 13 Department of Natural Resources, if requested by the commissioner of natural
 14 resources; or

15 (2) dispose of the land, property interests, or improvements by sale,
 16 lease, vacation, or exchange, according to terms, standards, and conditions established
 17 by the commissioner.

18 * **Sec. 5.** AS 19.05.080 is amended by adding a new subsection to read:

19 (b) If the department determines that a part of the state public domain is
 20 reasonably necessary for the right-of-way of a highway or as a source of materials for
 21 the construction or maintenance of a highway, the department shall file with the
 22 Department of Natural Resources a written determination and preliminary right-of-
 23 way plan identifying the portion of or interest in the public domain land that the
 24 department reasonably needs, subject to the following:

25 (1) the department shall provide public notice of the intended transfer
 26 by posting the written determination and preliminary right-of-way plan on the Alaska
 27 Online Public Notice System (AS 44.62.175);

28 (2) within four months after the filing, the Department of Natural
 29 Resources shall transfer title to the surface estate to the department, subject to valid
 30 existing rights; the transfer of land or materials under this subsection is not a disposal
 31 of state land, and the transfer is presumed to be in the public interest;

1 (3) a transfer under this subsection vests control of the surface estate in
 2 the department, including the right to extract or use sand gravel, rock, timber, or other
 3 construction materials, and the right to tunnel, ditch, contour, excavate, or otherwise
 4 develop or use the land for transportation, utility, and related purposes;

5 (4) within two years after the completion of construction or the
 6 opening of a materials site, the department shall prepare and record a record of survey
 7 of the property received by the department.

8 * **Sec. 6.** AS 19.05 is amended by adding a new section to article 2 to read:

9 **Sec. 19.05.124. Surface estate of state highway land.** The department has
 10 primary authority to manage the surface estate of land and property interests acquired
 11 or held by the state for the state highway system, including land conveyed by the
 12 federal government under sec. 21 of the Alaska Omnibus Act of 1959 (P.L. 86-70, 73
 13 Stat. 141), maintenance yards, materials sites, and other land and property interests
 14 necessary for the operation of the state highway system. In the exercise of that
 15 authority, the department may require terms and conditions that are applicable to a
 16 proposed use of the surface estate that may be authorized by the Department of
 17 Natural Resources in the administration of the state program for the conservation and
 18 development of natural resources.

19 * **Sec. 7.** AS 35.10.120 is amended to read:

20 **Sec. 35.10.120. Lease or sale of [MARINE OR] harbor facilities.** The
 21 department may lease for a period up to 50 years or may sell for a nominal sum to **a**
 22 **municipality** [AN INCORPORATED CITY, PUBLIC UTILITY DISTRICT,] or
 23 other incorporated area [MARINE OR] harbor facilities constructed or rebuilt with
 24 territorial funds or state funds or with territorial or state and federal matching funds.
 25 The intent of this section is to allow **a municipality** [CITIES, PUBLIC UTILITY
 26 DISTRICTS, AND OTHER INCORPORATED AREAS] to lease or purchase **a**
 27 [MARINE OR] harbor **facility** [FACILITIES] so that **the municipality** [THEY] may
 28 enforce municipal ordinances on **the harbor facility** [THEM] and legally assess fees
 29 to meet maintenance costs.

30 * **Sec. 8.** AS 35.20.010 is amended by adding a new subsection to read:

31 (b) If the department determines that a part of the state public domain is

1 reasonably necessary for a public building or public facility or as a source of materials
 2 for the construction or maintenance of a building or facility, the department shall file
 3 with the Department of Natural Resources a written determination and preliminary site
 4 plan showing the portion of or interest in the public domain land that the department
 5 reasonably needs, subject to the following:

6 (1) the department shall provide public notice of the intended transfer
 7 by posting the written determination and preliminary site plan on the Alaska Online
 8 Public Notice System (AS 44.62.175);

9 (2) within four months after the filing, the Department of Natural
 10 Resources shall transfer title to the surface estate to the department, subject to valid
 11 existing rights; the transfer of land or materials under this subsection is not a disposal
 12 of state land, and the transfer is presumed to be in the public interest;

13 (3) a transfer under this subsection vests control of the surface estate in
 14 the department, including the right to extract or use sand, gravel, rock, timber, or other
 15 construction materials, and the right to tunnel, ditch, contour, excavate, or otherwise
 16 develop or use the land for a public building or public facility;

17 (4) within two years after the completion of construction or the
 18 opening of a materials site, the department shall prepare and record a record of survey
 19 of the property received by the department.

20 * **Sec. 9.** AS 35.20 is amended by adding a new section to read:

21 **Sec. 35.20.015. Surface estate of public facility land.** The department has
 22 primary authority to manage the surface estate of land and property interests acquired
 23 or held by the state for public buildings and public facilities owned or controlled by
 24 the department. In the exercise of that authority, the department may require terms and
 25 conditions that are applicable to a proposed use of the surface estate that may be
 26 authorized by the Department of Natural Resources in the administration of the state
 27 program for the conservation and development of natural resources.

28 * **Sec. 10.** AS 35.20.070 is repealed and reenacted to read:

29 **Sec. 35.20.070. Leasing and disposing of land and property interests.** If the
 30 department determines that land, property interests, or improvements are no longer
 31 necessary, the department shall notify the commissioner of natural resources of the

1 determination and may

2 (1) transfer the land, property interests, or improvements to the
3 Department of Natural Resources, if requested by the commissioner of natural
4 resources; or

5 (2) dispose of the land, property interests, or improvements by sale,
6 lease, vacation, or exchange, according to terms, standards, and conditions established
7 by the commissioner.

8 * **Sec. 11.** AS 38.05.030(b) is amended to read:

9 (b) The provisions of this chapter do not apply to a [ANY] power, duty, or
10 authority now or in the future granted to the Department of Transportation and Public
11 Facilities in the name of the state, to acquire, use, lease, dispose of, or exchange real
12 property, or any interest in real property or to a transfer of land under
13 AS 02.15.070(c), AS 19.05.080(b), or AS 35.20.010(b). Land transferred
14 [ASSIGNED] by the division of lands to the Department of Transportation and Public
15 Facilities may [SHALL] be returned to [THE MANAGEMENT OF] the division of
16 lands when the land [IT] is no longer needed for the purposes transferred
17 [ASSIGNED].

18 * **Sec. 12.** AS 38.05.030(d) is amended to read:

19 (d) The [EXCEPT FOR LAND THAT IS REQUIRED TO BE RETURNED
20 TO THE DEPARTMENT UNDER (b) OF THIS SECTION, THE] Department of
21 Transportation and Public Facilities may dispose of real property acquired [BY IT]
22 under AS 02.15.065, 02.15.070, AS 19.05.040(1), (2), and (9), 19.05.080 - 19.05.124,
23 AS 35.05.040(1), (2), and (6) [AS 02.15.070, AS 19.05.040(1) AND (2), 19.05.080 -
24 19.05.120, AS 35.05.040(1) AND (2)], and AS 35.20.010 - 35.20.050. Land conveyed
25 under this section to a municipality for less than fair market value shall be credited
26 against the municipality's entitlement under AS 29.65.

27 * **Sec. 13.** AS 38.05.030 is amended by adding a new subsection to read:

28 (h) Notwithstanding the provisions in AS 38.05.550 - 38.05.565, extraction
29 and use of materials from sources and sites owned by the state is not a disposal of
30 materials when used for the construction or maintenance of an airport, highway, or
31 public facility owned by the state. The department may not collect payments, set time

1 limitations, or otherwise restrict the Department of Transportation and Public
2 Facilities from access to a source of materials and a site owned by the state.

3 * **Sec. 14.** AS 42.40.285 is amended to read:

4 **Sec. 42.40.285. Legislative approval required.** Unless the legislature
5 approves the action by law, the corporation may not

6 (1) exchange, donate, sell, or otherwise convey its entire interest in
7 land **to an entity other than the Department of Transportation and Public**
8 **Facilities for state right-of-way purposes;**

9 (2) issue bonds;

10 (3) extend railroad lines; this paragraph does not apply to a spur,
11 industrial, team, switching, or side track;

12 (4) lease land for a period in excess of 95 years unless the corporation
13 reserves the right to terminate the lease if the land is needed for railroad purposes;

14 (5) apply for or accept a grant of federal land within a municipality;
15 before approving an action under this paragraph, the legislature must determine that
16 the federal land is required for essential railroad purposes; this paragraph does not
17 apply to the application for or acceptance of a grant of federal land associated with

18 (A) the Anchorage-Wasilla line change project on Elmendorf
19 Air Force Base and Fort Richardson;

20 (B) the Fairbanks intermodal rail yard expansion project;

21 (C) a conveyance of rail properties of the Alaska Railroad
22 under the original Alaska Railroad Transfer Act of 1982 as set out in Title VI,
23 P.L. 97-468; in this subparagraph, "rail properties of the Alaska Railroad" has
24 the meaning given in 45 U.S.C. 1202(10).

25 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **TRANSFER OF CERTAIN MAINTENANCE STATIONS.** The Department of
28 Natural Resources shall transfer the surface estate to the access roads, camps, and airstrips at
29 Franklin Bluffs and Happy Valley on the James Dalton Highway to the Department of
30 Transportation and Public Facilities. The transfer of those properties to the Department of
31 Transportation and Public Facilities does not affect or otherwise alter current licenses and

1 permits issued by the Department of Natural Resources for use of those properties. Within 60
2 days after the effective date of this Act, the Department of Transportation and Public
3 Facilities shall notify a person holding a license or permit of the administrative transfer of
4 those properties. Not later than January 1, 2015, the Department of Transportation and Public
5 Facilities shall accept and begin to process permit and license applications through its rural
6 airport permitting program for an activity currently authorized by permit or license by the
7 Department of Natural Resources and normally permitted through rural airport permitting
8 authorities. Other valid permits or licenses issued by the Department of Natural Resources
9 continue according to the terms of the permit or license.

10 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 GRANT OF CERTAIN EASEMENTS OVER SUBMERGED STATE LAND TO
13 IMPLEMENT A RECIPROCAL EXCHANGE. Notwithstanding a provision of state law to
14 the contrary, the easements over submerged land identified on the map numbered 92337 and
15 dated June 15, 2005, and that are part of the reciprocal exchange of rights-of-way and
16 easements enacted into federal law under 119 Stat. 1177 are granted to the United States
17 Forest Service. The easements identified in this section and granted to the United States
18 Forest Service may have a term of years for a period of more than 55 years if the
19 commissioner of natural resources determines the length of the term to be in the best interest
20 of the state.

21 * **Sec. 17.** This Act takes effect immediately under AS 01.10.070(c).