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Bullard  
4/22/22

**CS FOR HOUSE BILL NO. 120(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:  
Referred:

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

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to access roads; relating to state land; relating to contracts for the sale  
2 of state land; relating to the authority of the Department of Education and Early  
3 Development to dispose of state land; relating to the authority of the Department of  
4 Transportation and Public Facilities to dispose of state land; relating to the authority of  
5 the Department of Natural Resources over certain state land; relating to the state land  
6 disposal income fund; relating to the leasing and sale of state land; relating to covenants  
7 and restrictions on agricultural land; relating to the Alaska Native Vietnam veteran  
8 land exchange; and providing for an effective date."

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

10 \* **Section 1.** AS 14.07.030(a) is amended to read:

11 (a) The department may

12 (1) establish, maintain, govern, operate, discontinue, and combine area,

1 regional, and special schools;

2 (2) enter into contractual agreements with the Bureau of Indian Affairs  
3 or with a school district to share boarding costs of secondary school students;

4 (3) provide for citizenship night schools when and where expedient;

5 (4) provide for the sale or other disposition of abandoned or obsolete  
6 buildings and other state-owned school property;

7 (5) prescribe a classification for items of expense of school districts;

8 (6) acquire and transfer personal property, acquire real property, and  
9 transfer an interest in real property according to terms, standards, and conditions  
10 established by the commissioner [TO FEDERAL AGENCIES, STATE AGENCIES,  
11 OR TO POLITICAL SUBDIVISIONS];

12 (7) enter into contractual agreements with school districts to provide  
13 more efficient or economical education services; reasonable fees may be charged by  
14 the department to cover the costs of providing services under an agreement, including  
15 costs for professional services, reproduction or printing, and mailing and distribution  
16 of educational materials;

17 (8) provide for the issuance of elementary and secondary diplomas to  
18 persons not in school who have completed the equivalent of an 8th or 12th grade  
19 education, respectively, in accordance with standards established by the department;

20 (9) apply for, accept, and spend endowments, grants, and other private  
21 money available to the state for educational purposes in accordance with AS 37.07  
22 (Executive Budget Act);

23 (10) set student tuition and fees for educational and extracurricular  
24 programs and services provided and schools operated by the department under the  
25 provisions of (1) of this section and AS 14.07.020(a)(9), (11), and (12);

26 (11) charge fees to cover the costs of care and handling with respect to  
27 the acquisition, warehousing, distribution, or transfer of donated foods;

28 (12) establish and collect fees for the rental of school facilities and for  
29 other programs and services provided by the schools;

30 (13) develop a model curriculum and provide technical assistance for  
31 early childhood education programs;

(14) notwithstanding any other provision of this title, intervene in a school district to improve instructional practices under standards established by the department in regulation, including directing the

(A) employees identified by the department to exercise supervisory authority for instructional practices in the district or in a specified school;

(B) use of appropriations under this title for distribution to a district;

(15) notwithstanding any other provision of this title, redirect public school funding under AS 14.17 appropriated for distribution to a school district, after providing notice to the district and an opportunity for the district to respond, when

(A) necessary to contract for services to improve instructional practices in the district; or

(B) the district has failed to take an action required by the department to improve instructional practices in the district; if funding is redirected under this subparagraph, the department shall provide the redirected funding to the district when the department has determined that the required action is satisfactorily completed.

\* **Sec. 2.** AS 19.30.080 is amended to read:

**Sec. 19.30.080. Construction standards and maintenance.** An access road constructed under AS 19.30.060 - 19.30.100 shall be of low standard, not necessarily suitable for all weather use. The state is not under obligation to maintain an access road constructed under AS 19.30.060 - 19.30.100. If an access road is constructed outside a municipality that has zoning ordinances, the right-of-way width for the road shall be determined by the division of lands and the Department of Transportation and Public Facilities. If an access road under AS 19.30.060 - 19.30.100 is constructed within the boundaries of a municipality that has zoning ordinances, the right-of-way width must [SHALL] conform to the subdivision control ordinances of the municipality in the same manner and to the same extent as private landowners. Contracts for the work on an access road are governed by AS 36.30 (State Procurement Code).

\* **Sec. 3.** AS 35.20.070 is repealed and reenacted to read:

**Sec. 35.20.070. Vacating and disposing of land; rights in land.** (a) The department may vacate an easement acquired for a public works purpose by executing and filing a deed in the appropriate recording district. Upon filing, title to the vacated rights in land inures to the underlying real property owner in the manner and proportion considered equitable by the commissioner and set out in the deed.

(b) If the department determines that land or rights in land acquired by the department are no longer necessary for public works purposes, the department may

(1) sell, contract to sell, lease, or exchange the land according to terms, standards, and conditions established by the commissioner; or

(2) at the request of the commissioner of natural resources, transfer the land to the Department of Natural Resources.

(c) Proceeds received from the sale or lease of land under this section shall be credited to the funds from which the purchase of the land was made originally.

\* **Sec. 4.** AS 38.04.022 is amended to read:

**Sec. 38.04.022. State land disposal income fund.** (a) The revenue from the state land disposal program shall be deposited in the state land disposal income fund in the state treasury. On June 30 of each fiscal year, the portion of that fund that exceeds **\$12,000,000** [\$5,000,000] shall be deposited in the state general fund. The legislature may appropriate money from the state land disposal income fund for expenditure by the Department of Natural Resources for necessary costs incurred by the commissioner in the implementation of state land disposal programs authorized under this title or for any other public purpose.

(b) Within five days after the legislature convenes in regular session, the Department of Natural Resources shall notify the legislature that a report reflecting all money deposited in the fund established under (a) of this section during the **previous** [PRIOR] fiscal year is available. **The report may include a recommendation to amend the deposit limit established in (a) of this section.**

\* **Sec. 5.** AS 38.05.055 is repealed and reenacted to read:

**Sec. 38.05.055. Auction sale or sealed bid procedures.** (a) Unless another method of sale is allowed 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.

(b) 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 must be 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.

(c) An aggrieved bidder may appeal to the commissioner within five days after the sale for a review of the director's determination.

(d) The director shall conduct a sale under this section. The successful bidder at a public action, or, for a sealed bid, each bidder when submitting a bid, shall provide an earnest money deposit in the amount of at least five percent of the bid amount. Not later than 10 days after the public auction or sale by sealed bid, the director shall issue a receipt to the successful bidder. The director's receipt shall contain a description of the land or property purchased, the bid price, and the amount deposited. If the bidder fails to enter into a contract to purchase or defaults in the payment of the bid amount, five percent of the bid amount shall be forfeited to the state.

\* **Sec. 6.** AS 38.05.065(a) is amended to read:

(a) A [THE] contract of sale for land, **an interest in land, or property** sold **under this chapter may be issued for** [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.

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

(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 **30** [20] years.

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

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

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

13 \* **Sec. 9.** AS 38.05.065(d) is amended to read:

14 (d) If a contract for a sale of state land has been breached, the director may  
15 issue a decision to [FORECLOSE AND] terminate the contract at any time 31 days  
16 after delivering by certified mail a written notice of the breach to the address of record  
17 of the purchaser. A breach caused by the failure to make payments required by the  
18 contract may be cured within 30 days after the notice of the breach has been received  
19 by the purchaser by payment of the sum in default together with the larger of a fee of  
20 \$50 or five percent of the sum in default. If there are material facts in dispute between  
21 the state and the purchaser, the purchaser may submit a written request for a public  
22 hearing for the review of the facts within 30 days after the notice of the breach has  
23 been received.

24 \* **Sec. 10.** AS 38.05.065(e) is amended to read:

25 (e) **Upon** [ON] a determination that there has been a breach of the contract  
26 based on the administrative record and the evidence presented at a hearing, **if**  
27 **requested**, the director shall issue a decision foreclosing the interest of the purchaser  
28 and terminating the contract. The obligation to make payments under the contract  
29 continues through the date of the **director's** decision to **terminate the contract**  
30 [FORECLOSE BY THE DIRECTOR].

31 \* **Sec. 11.** AS 38.05.065(f) is amended to read:

(f) The director shall deliver the decision to [FORECLOSE AND] terminate the contract 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.

\* **Sec. 12.** AS 38.05.065 is amended by adding a new subsection to read:

(j) If a sale of state land is to be made by means other than a means prescribed by AS 38.05.055, the director shall require a person applying to purchase land, an interest in land, or property to submit an earnest money deposit of at least five percent of the purchase price with the application for a contract to purchase land, an interest in land, or property. This earnest money deposit shall be applied toward the purchase price. If the applicant fails to enter into a contract to purchase or defaults in the payment of the purchase price, five percent of the purchase price shall be forfeited to the state.

\* **Sec. 13.** AS 38.05 is amended by adding a new section to read:

**Sec. 38.05.086. Leases and sales of land for commercial development. (a)**

For purposes of stimulating economic development in the state, the commissioner may lease and sell land identified in (b) of this section as appropriate for commercial development. As provided in (l) of this section, if a lease is in good standing and the development requirements of the lease have been satisfied, the lessee may purchase the leased land.

(b) The department may identify land appropriate for commercial development from any or all of the following categories:

(1) state land identified or nominated as a qualified opportunity zone under 26 U.S.C. 1400Z-1 and 1400Z-2;

(2) state land nominated by the public; public nominations under this

paragraph are limited to one for each person and nominated land may not exceed 640 acres in size;

(3) any other state land the department considers appropriate for commercial development.

(c) If land identified in (b) of this section is classified in a manner that does not allow disposal of the land, the commissioner may classify or reclassify the land under AS 38.04.065 and AS 38.05.300. Before classifying or reclassifying land under this subsection, the commissioner shall provide public notice under AS 38.05.945. Notwithstanding AS 38.05.945(c)(2) and (3), regardless of whether the land is located inside or outside a municipality, the commissioner shall provide notice to a

(1) 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;

(2) 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.

(d) The commissioner may open for leasing and sale certain areas of land identified in (b) of this section and issue a request for proposals to develop land within the areas. Before requesting proposals, a finding must be made under AS 38.05.035(e) that the lease and sale of the land within the areas opened is in the best interests of the state. The commissioner's request for proposals must be in writing.

(e) A person may apply to develop land within the areas by responding to the commissioner's request for proposals and paying an application fee as provided by regulation. In addition to information requested by the commissioner in the request for proposals, a response to the request for proposals must include the specific

(1) type of commercial development proposed; and

(2) location, description, and size of the land requested for the proposed commercial development; the size of land requested in a response to a request for proposals may not exceed 20 acres and must be reasonably compact.

(f) The commissioner's request for proposals must be posted on the Alaska Online Public Notice System (AS 44.62.175) for at least 30 consecutive days and must



1 be furnished in electronic format or by mail to each person who received notice of the  
2 decision issued under AS 38.05.035(e).

3 (g) A response to the commissioner's request for proposals must be in writing  
4 and submitted by the deadline set by the commissioner. The commissioner may reject  
5 a proposal that does not meet the requirements of this section or for which the  
6 commissioner makes a written determination that the proposal is not in the best  
7 interests of the state. The commissioner's decision to reject a proposal is subject to  
8 appeal or a petition for reconsideration under AS 44.37.011.

9 (h) If the commissioner determines that only one suitable proposal for a  
10 specific area of land exists, the commissioner may issue a lease to that person as  
11 provided in this section as long as the proposal is in the best interests of the state. If  
12 the commissioner determines that there are two or more suitable proposals for the  
13 same or overlapping land, the commissioner shall hold a public auction or sealed bid,  
14 limited to those persons who submitted proposals for the same or overlapping land,  
15 and award the lease to the highest bidder as long as the proposal of the highest bidder  
16 is in the best interests of the state.

17 (i) The commissioner shall set, using a method of compensation set out in  
18 AS 38.05.073(m), an annual fee for a commercial land lease under this section to  
19 ensure that the state receives, for the term of the lease, a fair return for the use of the  
20 land granted by the lease.

21 (j) A lease must be for a term of not more than five years. A lease in good  
22 standing may be renewed for one additional five-year period. The original lessee may  
23 not assign the lease during the term of the lease or any renewal without the approval of  
24 the director.

25 (k) The commissioner may terminate a commercial land lease under this  
26 section before the expiration of the lease for a breach of the terms of the lease,  
27 including a failure to use the land in a manner required by the lease. Upon expiration  
28 of the term of a lease or the termination of the lease before expiration, improvements  
29 to or personal property on the land subject to the lease shall be managed in the manner  
30 required by AS 38.05.090.

31 (l) At any time during the term of the lease, a lessee in good standing may

1 submit an application to the department to purchase all or a portion of the land leased  
2 under this section for its fair market value at the time of purchase. A lessee is eligible  
3 to purchase the land if the lessee

4 (1) has completed the development requirements of the land leased  
5 consistent with the proposal submitted under (g) of this section and as provided by the  
6 terms of the lease;

7 (2) has appraised and surveyed the site in a manner acceptable to the  
8 department, at the lessee's expense; and

9 (3) pays an application fee as provided by regulation.

10 (m) An eligible lessee under (l) of this section may apply the amount of the  
11 lease payments made under the lease to the purchase price of the land. Other amounts  
12 paid, including fees, penalties, survey costs, and appraisal costs, may not be applied to  
13 the purchase price of the land.

14 (n) If an application to purchase land under (l) of this section is denied, the  
15 lessee may continue to hold the lease according to the terms of the lease and may  
16 reapply to purchase the land. A subsequent application to purchase the land must  
17 address the reasons the previous application was denied.

18 (o) The commissioner shall adopt regulations under AS 44.62 (Administrative  
19 Procedure Act) to implement this section. Regulations adopted under this subsection  
20 must, at a minimum, address

21 (1) the application procedures for a commercial land lease or sale  
22 under this section;

23 (2) the auction or sealed bid process to be used, if necessary, under (h)  
24 of this section;

25 (3) the terms and conditions that may be included in a commercial land  
26 lease under this section;

27 (4) the method for resolving competitive bidding disputes and issues;

28 (5) the procedure for requesting proposals;

29 (6) the criteria for assessing proposals; and

30 (7) any administrative fees.

31 (p) The commissioner shall reserve easements and rights-of-way on and across

land made available for commercial development under this section after providing regional corporations, village corporations, tribes, municipal governments, and other interested parties an opportunity to review and comment on the proposed reserved easements and rights-of-way, and an opportunity to appeal a decision under AS 44.37.011. The commissioner shall reserve easements and rights-of-way under this subsection for trails that have an established history of use for commerce, recreation, transportation, or providing access to a traditional outdoor activity. In this subsection, "traditional outdoor activity" has the meaning given in AS 38.04.200.

(q) Before leasing or disposing of land under this section, the commissioner shall provide notice under AS 38.05.945 and prepare a best interest finding in writing in accordance with AS 38.05.035(e). In making a best interest finding under this subsection, the commissioner shall consider the effects of the lease or sale on subsistence uses, fish and wildlife habitat and populations and their uses, and historical and cultural resources.

\* **Sec. 14.** AS 38.05.321(a) is amended to read:

(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, including,

(A) for parcels larger than 20 acres,

(i) the production, storage, and sale of plants and animals for commercial or personal use;

(ii) the construction of housing for landowners and farm laborers, improvements for animals, or improvements that are reasonably required for or related to agricultural use;

(iii) the use of gravel reasonably required or related to agricultural production on the parcel; and

(iv) removal and disposition of timber for the purpose of bringing agricultural land into use; or

(B) for parcels of 20 acres or less,

**(i) uses authorized under (A) of this paragraph;**

**(ii) uses related to vertically integrated agricultural processing and production;**

**(iii) uses related to commercial support services for the agricultural industry; and**

**(iv) other agriculture-related purposes approved by the department; 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 **20** [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 **eight** [FOUR] parcels of the land of not less than **20** [40] acres each, subject to the restriction that a subdivided parcel may not be further subdivided; **or**

**(C) a perpetual covenant for the benefit of all Alaska residents and running with the land permitting the owner of land to convey the land in parcels of 20 acres or less if the land was originally conveyed by the department in a parcel of 20 acres or less and subject to the restriction that a subdivided parcel may not be further subdivided.**

\* **Sec. 15.** AS 38.05.321(d) is amended to read:

(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 **and do not limit** the primary use of the land for agricultural purposes **as described in (a)(1) of this section;**

(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.

\* **Sec. 16.** AS 38.05.965 is amended by adding a new paragraph to read:

(29) "public auction" means a public oral outcry auction or a public online auction.

\* **Sec. 17.** AS 38.50.010(b) is amended to read:

(b) **Except as provided by AS 38.50.015, land** [LAND] or an interest in land exchanged must be of approximately equal value; however, the director may accept from or pay to a party to an exchange cash or other consideration to equalize the value of the property conveyed and received by the state. If the director determines that the property to be exchanged is not of approximately equal value or if the value of the property cannot be ascertained with reasonable certainty, the director may enter into an exchange with a finding that the value of the property received, together with the value of other public benefits, equals or exceeds the value of the property relinquished by the state.

\* **Sec. 18.** AS 38.50 is amended by adding a new section to read:

**Sec. 38.50.015. Alaska Native Vietnam veteran land exchange.** (a) An

eligible individual who has received a land allotment under 43 U.S.C. 1629g-1 may apply to the department to exchange that land allotment for a parcel of state land identified by the department under (b) of this section.

(b) The department shall

(1) identify state land in each region of the state that may be exchanged for other land under (a) of this section;

(2) provide public notice of land available under this section, including legal descriptions of the land, together with a map or plat showing the location of parcels available under this section.

(c) A parcel of state land exchanged under (a) of this section may be in a different region of the state than the land for which it is exchanged.

(d) The director shall exchange a parcel of state land for land provided to an eligible individual as a land allotment under 43 U.S.C. 1629g-1 under (a) of this section as follows:

(1) for a land allotment of between 2.5 and 10 acres, the director shall exchange a parcel of state land that is equal in size, regardless of the value of the parcel of state land;

(2) for a land allotment of 10 acres or more, the value of which is

(A) less than or approximately equal to the value of a 10-acre parcel of state land subject to exchange under this section, the director shall exchange the state land for the land originally provided as an allotment, regardless of whether the parcel of state land is of lesser value; and

(B) greater than the value of a 10-acre parcel of state land subject to exchange under this section, the director shall adjust the acreage of the parcel of state land subject to exchange under this section to ensure the land exchanged is of approximately equal value.

(e) Notwithstanding AS 38.05.840, when determining the values of a parcel of land provided as an allotment under 43 U.S.C. 1629g-1 and a parcel of state land subject to exchange under this section, the department shall adopt an informal valuation process in regulation that may include consideration of state land sales in the area or areas where the land allotment and the parcel of state land are located.

1 (f) If a parcel of state land, or any portion of a parcel of state land, is requested  
2 for exchange by more than one eligible individual under (a) of this section, the  
3 department may meet with each of the eligible individuals and adjust the size and  
4 shape of the requested parcels of state land. In adjusting the size or shape of a parcel  
5 of state land under this subsection, the department may grant preference to the earliest  
6 filed application.

7 (g) To the extent practicable, the department shall attempt to complete a land  
8 exchange under this section within 180 days after receiving a completed application  
9 from an eligible individual.

10 (h) An eligible individual who applies for a land exchange under this section  
11 shall comply with all applicable federal laws and regulations necessary to exchange a  
12 land allotment awarded under 43 U.S.C. 1629g-1 with state land.

13 (i) In this section,

14 (1) "department" means the Department of Natural Resources;

15 (2) "eligible individual" has the meaning given in 43 U.S.C. 1629g-1.

16 \* **Sec. 19.** AS 38.05.321(j) is repealed.

17 \* **Sec. 20.** This Act takes effect immediately under AS 01.10.070(c).