

HOUSE BILL NO. 120

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/1/21

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to state land; relating to the authority of the Department of Education**
2 **and Early Development to dispose of state land; relating to the authority of the**
3 **Department of Transportation and Public Facilities to dispose of state land; relating to**
4 **the authority of the Department of Natural Resources over certain state land; relating to**
5 **the state land disposal income fund; relating to the leasing and sale of state land for**
6 **commercial development; repealing establishment of recreation rivers and recreation**
7 **river corridors; and providing for an effective date."**

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

9 *** Section 1.** AS 14.07.030 is amended to read:

10 (a) The department may

11 (1) establish, maintain, govern, operate, discontinue, and combine area,
12 regional, and special schools;

13 (2) enter into contractual agreements with the Bureau of Indian Affairs

1 or with a school district to share boarding costs of secondary school students;

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

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

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

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

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

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

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

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

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

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

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

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

1 department in regulation, including directing the

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

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

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

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

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

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

18 **Sec. 19.30.080. Construction standards and maintenance.** An access road
19 constructed under AS 19.30.060 - 19.30.100 shall be of low standard, not necessarily
20 suitable for all weather use. The state is not under obligation to maintain an access
21 road constructed under AS 19.30.060 - 19.30.100. If an access road is constructed
22 outside a municipality that has zoning ordinances, the right-of-way width for the road
23 shall be determined by the division of lands and the Department of Transportation and
24 Public Facilities. If an access road **under AS 19.30.060 - 19.30.100** is constructed
25 within the boundaries of a municipality that has zoning ordinances, the right-of-way
26 width **for the road** shall **be consistent with, but not in excess of, a municipal road**
27 **project's right-of-way** [CONFORM TO THE SUBDIVISION CONTROL
28 ORDINANCES OF THE MUNICIPALITY]. Contracts for the work on an access road
29 are governed by AS 36.30 (State Procurement Code).

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

31 **Sec. 35.20.070. Vacating and disposing of land; rights in land.** (a) The

department may vacate easements acquired for public works purposes 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 as authorized by 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 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 amended to read:

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

1 of the director, to the highest qualified bidder as determined by the director. The
 2 director may accept bids and sell state land under this section at not less than 70
 3 percent of the appraised fair market value of the land.

4 **(b)** To qualify to participate under this section in a public auction or sale by
 5 sealed bid of state land that is other than commercial, industrial, or agricultural land, a
 6 bidder shall have been a resident of the state for at least one year immediately
 7 preceding the date of the sale and submit proof of that fact, as the commissioner
 8 requires by regulation. A bidder may be represented by an attorney or agent at a public
 9 auction.

10 **(c)** An aggrieved bidder may appeal to the commissioner within five days after
 11 the sale for a review of the director's determination [. THE SALE SHALL BE
 12 CONDUCTED BY THE DIRECTOR, AND, AT THE TIME OF SALE, THE
 13 SUCCESSFUL BIDDER SHALL DEPOSIT AN AMOUNT EQUAL TO FIVE
 14 PERCENT OF THE PURCHASE PRICE. THE DIRECTOR SHALL
 15 IMMEDIATELY ISSUE A RECEIPT CONTAINING A DESCRIPTION OF THE
 16 LAND OR PROPERTY PURCHASED, THE PRICE BID, AND THE AMOUNT
 17 DEPOSITED. THE RECEIPT SHALL BE ACKNOWLEDGED IN WRITING BY
 18 THE BIDDER].

19 * **Sec. 6.** AS 38.05.055 is amended by adding a new subsection to read:

20 (d) The sale shall be conducted by the director. The successful bidder at a
 21 public action or all bidders at the time they submit their sealed bid, shall provide an
 22 earnest money deposit in the amount of at least five percent of the bid amount. Not
 23 later than 10 days after the public auction or sale by sealed bid, the director shall issue
 24 a receipt to the successful bidder. The director's receipt shall contain a description of
 25 the land or property purchased, the bid price, and the amount deposited. If the bidder
 26 fails to enter into a contract to purchase or defaults in the payment of the bid amount,
 27 five percent of the bid amount shall be forfeited to the state.

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

29 (a) A [THE] contract of sale for land, **an interest in land, or property** sold
 30 **under this chapter may be issued for** [AT PUBLIC AUCTION OR BY SEALED
 31 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 30 [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. 8.** 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. 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.

* **Sec. 9.** AS 38.05.065(c) is amended to read:

(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, termination [FORECLOSURE], ejectment, or other legal remedies in accordance with applicable state law.

* **Sec. 10.** AS 38.05.065(d) is amended to read:

(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.

* **Sec. 11.** AS 38.05.065(e) is amended to read:

(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, if requested, 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 director's decision to terminate the contract [FORECLOSE BY THE DIRECTOR].

* **Sec. 12.** 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. 13.** 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 towards 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. 14.** 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 that is identified in this section as appropriate for commercial development. As provided in this section, if the lease is in good standing and the

1 development requirements of the lease have been satisfied, the lessee may purchase
2 the leased land.

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

5 (1) state land identified or nominated as Qualified Opportunity Zones
6 under 26 U.S.C. 45D, 26 U.S.C. 1400Z-1 and 1400Z-2, and 26 C.F.R. 601.601;

7 (2) state land nominated by the public; public nominations under this
8 paragraph are limited to one for each person and may not exceed 640 acres in size;

9 (3) any other state land the department deems appropriate for
10 commercial development.

11 (c) If land identified in (b) of this section is classified in a manner that does
12 not allow disposal of the land, the commissioner may classify or reclassify the land
13 through a classification order under AS 38.05.300 and a written decision by the
14 director under AS 38.05.035(e).

15 (d) The commissioner may open certain areas of land identified in (b) of this
16 section for leasing and sale, and issue a request for proposals to develop land within
17 the areas. Before proposals may be requested, the commissioner shall issue a decision
18 under AS 38.05.035(e) that the lease and sale of the land within the areas opened is in
19 the state's best interest. The commissioner's request for proposals must be in writing.

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

24 (1) the specific type of commercial development proposed; and

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

29 (f) The commissioner's request for proposals must be posted on the Alaska
30 Online Public Notice System (AS 44.62.175) for at least 30 consecutive days and must
31 be furnished by electronic format or mail to a person who received notice of the

1 decision issued under (d) of this section.

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

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

17 (i) The annual fee for a commercial land lease under this section shall be set
18 by the commissioner so as to ensure that the state receives a fair return for the use
19 granted by the lease for the term of the lease and shall be a form of compensation set
20 out in AS 38.05.073(m). A lease must be for a term of not more than five years. A
21 lease in good standing may be renewed for one additional five-year period. The lease
22 may not be assigned by the original lessee during the term of the lease or any renewal
23 without the approval of the director.

24 (j) A commercial land lease under this section may be terminated by the
25 commissioner before the expiration of the term of the lease for a breach of the terms of
26 the lease, including a failure to use the land in a manner required by the terms of the
27 lease. After expiration of the lease term or termination of the lease before it expires,
28 improvements or personal property on the land subject to the lease shall be managed
29 in the manner required by AS 38.05.090.

30 (k) At any time during the lease, a lessee in good standing may submit an
31 application to the department to purchase all or a portion of the land leased under this

1 section for its fair market value at the time of purchase, if the lessee

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

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

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

8 (l) A lessee who purchases the land under (k) of this section may apply the
9 amount of the lease payments made under the lease to the purchase price of the land.
10 Other amounts paid, including fees, penalties, survey costs, and appraisal costs, may
11 not be applied to the purchase price of the land.

12 (m) If an application to purchase land is denied, the lessee may continue to
13 hold the lease according to the terms of the lease, and may apply again to purchase the
14 land. Any subsequent application must address the reasons the previous application
15 was denied.

16 (n) The commissioner shall adopt regulations under AS 44.62 (Administrative
17 Procedure Act) to implement this section. Regulations adopted under this subsection
18 shall, at a minimum, address

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

21 (2) the auction or sealed bid process, if necessary, under (h) of this
22 section;

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

25 (4) resolving any and all competitive bidding disputes and issues;

26 (5) the procedure for requesting proposals;

27 (6) the criteria for assessing proposals; and

28 (7) any administrative fees.

29 * **Sec. 15.** AS 38.05.321(a) is amended to read:

30 (a) The department shall include in a document that conveys state land
31 classified as agricultural land

1 (1) a perpetual covenant for the benefit of all Alaska residents and
 2 running with the land that restricts or limits the use of the land for agricultural
 3 purposes; and

4 (2) one of the following, as appropriate:

5 (A) a perpetual covenant for the benefit of all Alaska residents
 6 and running with the land permitting the owner of land that had been obtained
 7 under homestead entry to subdivide and convey the land in parcels of not less
 8 than 20 [40] acres each; or

9 (B) a perpetual covenant for the benefit of all Alaska residents
 10 and running with the land permitting the owner of land that had been obtained
 11 by purchase to subdivide and convey not more than eight [FOUR] parcels of
 12 the land of not less than 20 [40] acres each, subject to the restriction that a
 13 subdivided parcel may not be further subdivided.

14 * **Sec. 16.** AS 38.05.321(d) is amended to read:

15 (d) For state land classified as agricultural land that is conveyed under (a) of
 16 this section,

17 (1) the commissioner may require the landowner to cooperate with the
 18 appropriate soil and water conservation district under AS 41.10 in the development
 19 and implementation of soil conservation plans as authorized by AS 41.10.110(6);

20 (2) as a condition of the conveyance, the commissioner may not
 21 require preparation and implementation of a schedule of planned agricultural
 22 development or a farm development plan specified in a land purchase contract unless
 23 the commissioner permits modification of a plan in cases of economic hardship or
 24 other extenuating circumstances;

25 (3) the commissioner may not

26 (A) limit the right of the landowner to use the land and
 27 improvements for purposes that are [INCIDENTAL TO AND] not inconsistent
 28 with and do not limit the primary use of the land for agricultural purposes;

29 (B) except as provided by (i) of this section, limit the right of a
 30 landowner to construct housing for the landowner and farm laborers, to
 31 construct improvements for animals, or to construct improvements that are

1 reasonably required for or related to agricultural use on the original parcel and
 2 on additional subdivided parcels, not to exceed the limits and restrictions set by
 3 (a)(2) of this section; and

4 (C) limit the right of the landowner to subdivide and convey
 5 the land if the resulting parcels are not in violation of the limits and restrictions
 6 set out in (a)(2) of this section.

7 * **Sec. 17.** AS 38.05.321(j) is amended to read:

8 (j) In this section, "agricultural purposes" means

9 (1) the production, storage, and sale, for commercial or personal use,
 10 of useful plants and animals;

11 (2) the construction of

12 (A) housing for landowners and farm laborers;

13 (B) improvements for animals; or

14 (C) improvements that are reasonably required for or related to
 15 agricultural use;

16 (3) the use of gravel reasonably required or related to agricultural
 17 production on the parcel conveyed; and

18 (4) removal and disposition of timber in order to bring agricultural
 19 land into use.

20 * **Sec. 18.** AS 38.05.965 is amended by adding a new paragraph to read:

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

23 * **Sec. 19.** AS 41.23.400, 41.23.410, 41.23.420, 41.23.430, 41.23.440, 41.23.450, 41.23.460,
 24 41.23.470, 41.23.480, 41.23.490, 41.23.500, and 41.23.510 are repealed.

25 * **Sec. 20.** Section 1, ch. 122, SLA 1988 is repealed.

26 * **Sec. 21.** The uncoded law of the State of Alaska is amended by adding a new section to
 27 read:

28 TRANSITION: REGULATIONS. The commissioner of natural resources, the
 29 commissioner of education and early development, and the commissioner of transportation
 30 and public facilities may adopt or amend regulations as necessary to implement the changes
 31 made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act),

- 1 but not before the effective date of the law implemented by the regulations.
- 2 * **Sec. 22.** This Act takes effect immediately under AS 01.10.070(c).