

CS FOR SENATE BILL NO. 97(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/21/21

Referred: Finance

Sponsor(s): SENATE 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; 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(a) 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 must [SHALL] conform to the subdivision control ordinances of the
27 municipality in the same manner and to the same extent as private landowners.
28 Contracts for the work on an access road are governed by AS 36.30 (State
29 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

1 department may vacate an easement acquired for a public works purpose by executing
 2 and filing a deed in the appropriate recording district. Upon filing, title to the vacated
 3 rights in land inures to the underlying real property owner in the manner and
 4 proportion considered equitable by the commissioner and set out in the deed.

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

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

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

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

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

14 **Sec. 38.04.022. State land disposal income fund.** (a) The revenue from the
 15 state land disposal program shall be deposited in the state land disposal income fund in
 16 the state treasury. On June 30 of each fiscal year, the portion of that fund that exceeds
 17 **\$12,000,000** [\$5,000,000] shall be deposited in the state general fund. The legislature
 18 may appropriate money from the state land disposal income fund for expenditure by
 19 the Department of Natural Resources for necessary costs incurred by the
 20 commissioner in the implementation of state land disposal programs authorized under
 21 this title or for any other public purpose.

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

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

28 **Sec. 38.05.055. Auction sale or sealed bid procedures.** (a) Unless another
 29 method of sale is allowed under this chapter, AS 38.08, or AS 38.09, the sale of state
 30 land shall be made at public auction or by sealed bid, at the discretion of the director,
 31 to the highest qualified bidder as determined by the director. The director may accept

1 bids and sell state land under this section at not less than 70 percent of the appraised
2 fair market value of the land.

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

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

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

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

20 (a) A [THE] contract of sale for land, **an interest in land, or property** sold
21 **under this chapter may be issued for** [AT PUBLIC AUCTION OR BY SEALED
22 BID UNDER AS 38.05.055 SHALL REQUIRE] the remainder of the purchase price
23 to be paid in monthly, quarterly, or annual installments over a period of not more than
24 20 years, with interest at the rate provided in (i) of this section. Installment payments
25 plus interest shall be set on the level-payment basis.

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

27 (b) The contract of sale for land sold under AS 38.05.057 or under former
28 AS 38.05.078 shall require the remainder of the purchase price to be paid in monthly,
29 quarterly, or annual installments over a period of not more than **30** [20] years.
30 Installment payments plus interest shall be set on the level-payment basis. The interest
31 rate to be charged on installment payments is the rate provided in (i) of this section.

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

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

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

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

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

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

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

30 (f) The director shall deliver the decision to [FORECLOSE AND] terminate
31 **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;

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

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

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

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

16 (1) type of commercial development proposed; and

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

20 (f) The commissioner's request for proposals must be posted on the Alaska
21 Online Public Notice System (AS 44.62.175) for at least 30 consecutive days and must
22 be furnished in electronic format or by mail to each person who received notice of the
23 decision issued under AS 38.05.035(e).

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

30 (h) If the commissioner determines that only one suitable proposal for a
31 specific area of land exists, the commissioner may issue a lease to that person as

provided in this section as long as the proposal is in the best interests of the state. If the commissioner determines that there are two or more suitable proposals for the same or overlapping land, the commissioner shall hold a public auction or sealed bid, limited to those persons who submitted proposals for the same or overlapping land, and award the lease to the highest bidder as long as the proposal of the highest bidder is in the best interests of the state.

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

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

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

(l) At any time during the term of the lease, a lessee in good standing may submit an application to the department to purchase all or a portion of the land leased under this section for its fair market value at the time of purchase. A lessee is eligible to purchase the land if the lessee

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

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

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

(m) An eligible lessee under (l) of this section may apply the amount of the

1 lease payments made under the lease to the purchase price of the land. Other amounts
 2 paid, including fees, penalties, survey costs, and appraisal costs, may not be applied to
 3 the purchase price of the land.

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

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

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

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

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

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

18 (5) the procedure for requesting proposals;

19 (6) the criteria for assessing proposals; and

20 (7) any administrative fees.

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

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

24 (1) a perpetual covenant for the benefit of all Alaska residents and
 25 running with the land that restricts or limits the use of the land for agricultural
 26 purposes, **including,**

27 **(A) for parcels larger than 20 acres,**

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

30 **(ii) the construction of housing for landowners and**
 31 **farm laborers, improvements for animals, or improvements that**

1 are reasonably required for or related to agricultural use;

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

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

6 (B) for parcels of 20 acres or less,

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

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

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

12 (iv) other agriculture-related purposes approved by
13 the department; and

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

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

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

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

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

30 (d) For state land classified as agricultural land that is conveyed under (a) of
31 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 38.05.321(j) is repealed.

* **Sec. 18.** This Act takes effect immediately under AS 01.10.070(c).