

SENATE BILL NO. 133

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 4/28/21

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the sale or lease of state land for remote recreational sites; relating**
2 **to permits for remote recreational sites; and providing for an effective date."**

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

4 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 PURPOSE. The longstanding policy of the state, declared in art. VIII, secs. 1, 2, and 9,
7 Constitution of the State of Alaska, and the Alaska Land Act (AS 38.05) has been to
8 encourage the settlement of the state's land and the development of its resources by making
9 land available for the maximum use consistent with the public interest. Many Alaskans and
10 their families would like to own or have an interest in state land. With only 10 percent of state
11 land in private ownership, there is state land available for Alaskans to lease or purchase for
12 recreational purposes. Current law requires most state land to be sold or leased to the highest
13 bidder, which prevents many Alaskans from leasing or purchasing state land even for
14 recreational purposes. The purpose of this Act is to use the full extent of the authority under

1 the Constitution of the State of Alaska to provide Alaskans a more efficient and fair process to
 2 obtain an interest in remote state land for recreation. Consistent with the Constitution of the
 3 State of Alaska, this Act recognizes that making state land available to all Alaskans for
 4 remote recreational purposes provides for the maximum use of these state lands consistent
 5 with the public interest.

6 * **Sec. 2.** AS 38.05.035(e) is amended to read:

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

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

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

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

26 (i) applicable statutes and regulations;

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

31 (iii) issues that, based on the statutes and regulations

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

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

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

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

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

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

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

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

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

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

1 (4) a contract for the sale, lease, or other disposal of available land or
2 an interest in land is not legally binding on the state until the commissioner approves
3 the contract, but if the appraised value is not greater than \$50,000 in the case of the
4 sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or
5 interest in land, the director may execute the contract without the approval of the
6 commissioner;

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

11 (A) before a public hearing, if held, or in any case not less than
12 180 days before the sale, lease, or other disposal of available land or an interest
13 in land, the director shall make available to the public a preliminary written
14 finding that states the scope of the review established under (1)(A) of this
15 subsection and includes the applicable statutes and regulations, the material
16 facts and issues in accordance with (1)(B) of this subsection, and information
17 required by (g) of this section, upon which the determination that the sale,
18 lease, or other disposal will serve the best interests of the state will be based;
19 the director shall provide opportunity for public comment on the preliminary
20 written finding for a period of not less than 60 days;

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

30 (6) before a public hearing, if held, or in any case not less than 21 days
31 before the sale, lease, or other disposal of available land, property, resources, or

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

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

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

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

(D) a mineral claim located under AS 38.05.195;

(E) a mineral lease issued under AS 38.05.205;

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

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

(ii) not later than 45 days before the sale, the director

shall issue a notice describing the interests to be offered, the location and time of the sale, and the terms and conditions of the sale; and

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

(G) a surface use lease under AS 38.05.255;

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

(I) a remote recreational site lease under AS 38.05.610 or sale under AS 38.05.620;

(7) the director shall include in

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

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

* **Sec. 3.** AS 38.05.045 is amended to read:

Sec. 38.05.045. Generally. All land owned in fee by the state or to which the state may become entitled, excepting tide, submerged, or shoreland, and timber or grazing land, may be sold as provided in AS 38.05.045 - 38.05.069 and AS 38.08. However, this section does not prevent the disposition of land as provided in AS 38.05.300, 38.05.321, **38.05.600 - 38.05.690**, 38.05.810 - 38.05.870, 38.05.920, 38.05.945 and 38.05.946.

* **Sec. 4.** 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, **or under AS 38.05.600 - 38.05.690** 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. 5.** AS 38.05.125(a) is amended to read:

(a) Each contract for the sale, lease, or grant of state land, and each deed to state land, properties, or interest in state land, made under AS 38.05.045 - 38.05.120, 38.05.321, 38.05.600 - 38.05.690, 38.05.810 - 38.05.825, AS 38.08, or AS 38.50 except as provided in AS 38.50.050 is subject to the following reservations: "The party of the first part, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said land above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said land, or any part or parts thereof, at any and all times for the purpose of opening, developing, drilling, and working mines or wells on these or other land and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said land or any part thereof for the foregoing purposes and to occupy as much of said land as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved."

* **Sec. 6.** AS 38.05.600 is repealed and reenacted to read:

Sec. 38.05.600. Eligibility, nomination, classification, and staking of remote recreational sites. (a) The commissioner shall provide for the lease and sale of remote recreational sites and issuance of permits for remote recreational sites.

1 Remote recreational sites shall be made available to eligible applicants either through
2 a schedule of land offerings issued by the commissioner or through the remote
3 recreational site nomination process described in (e) of this section.

4 (b) Only an eligible applicant may submit an application to nominate a remote
5 recreational site, to lease or purchase a remote recreational site, or to be issued a
6 remote recreational site permit. The department will review all applications submitted
7 under AS 38.05.600 - 38.05.690 to determine whether the applicant is an eligible
8 applicant and shall reject any application submitted by an ineligible applicant. An
9 eligible applicant must provide proof of residency in this state for at least one year
10 before submitting any application provided for in AS 38.05.600 - 38.05.690. Proof of
11 residency must be submitted to the department and may include the following:

- 12 (1) voter registration and voting records;
- 13 (2) motor vehicle registration;
- 14 (3) hunting, fishing, driver's, or other licenses;
- 15 (4) rent receipts, or proof of home ownership or a home purchase
16 contract; or
- 17 (5) other proof of residency deemed acceptable by the department.

18 (c) A remote recreational site may not exceed 10 acres.

19 (d) The commissioner shall maintain and annually publish a schedule of land
20 offerings that lists areas available for the staking of remote recreational sites. The
21 department shall provide public notice of the annually published schedule of land
22 offerings and any revisions made to the schedule. The department shall accept
23 applications from eligible applicants who wish to stake a remote recreational site from
24 the schedule of land offerings.

25 (e) An eligible applicant may nominate up to 10 acres of vacant,
26 unappropriated, or unreserved state land as defined in AS 29.65.130 for a remote
27 recreational site that is not included in the commissioner's schedule of land offerings.
28 All nominated land must be unencumbered so that the surface estate may be leased or
29 sold as provided in AS 38.05.600 - 38.05.690. The commissioner shall review all site
30 nominations. If land nominated for a remote recreational site is not classified in a
31 manner allowing a remote recreational site, the commissioner may classify or

1 reclassify the land under AS 38.04.065 and AS 38.05.300. The eligible applicant is
 2 responsible for all administrative costs associated with the reclassification process.
 3 Before any staking of a nominated site occurs, the department shall provide public
 4 notice of a remote recreational site nomination and of the intent to lease those lands to
 5 the eligible applicant. If the eligible applicant fails to stake land nominated for a
 6 remote recreational site within 90 days of the department approving the nomination,
 7 the commissioner may include the nominated lands in the annual schedule of land
 8 offerings.

9 (f) An eligible applicant may either stake land listed in the commissioner's
 10 schedule of land offerings or land the applicant nominated and that the commissioner
 11 approved for a remote recreational site. Remote recreational sites will be staked using
 12 procedures prescribed by and approved by the commissioner.

13 (g) Not later than 15 days after staking the exterior boundaries of a remote
 14 recreational site, the eligible applicant shall file with the department the following:

15 (1) a sketch plat of the staked site that includes a detailed description
 16 of the site's location; and

17 (2) an application to lease the land.

18 (h) If an eligible applicant stakes a remote parcel in good faith that includes
 19 land previously claimed by another person eligible to stake a remote recreational site,
 20 the commissioner may approve that part of the later staking that does not conflict with
 21 the earlier staking and allow the applicant to stake additional land. An eligible
 22 applicant who stakes additional land for the applicant's remote recreational site under
 23 this subsection shall comply with (g) of this section and submit an amended lease
 24 application.

25 (i) If an eligible applicant stakes a remote recreational site in good faith that
 26 includes land not included in the schedule of land offerings or outside the land
 27 nominated for a remote recreational site, the commissioner shall disapprove of and not
 28 include in the applicant's site the land staked outside the schedule of land offerings or
 29 the nominated site.

30 * **Sec. 7.** AS 38.05 is amended by adding new sections to read:

31 **Sec. 38.05.610. Lease of remote recreational sites.** (a) An eligible applicant

1 may apply to lease the applicant's staked remote recreational site. The commissioner
2 shall review an application to lease the site. After reviewing the application, the
3 commissioner may enter a lease with the applicant consistent with the terms of this
4 section.

5 (b) An initial lease or lease renewal may not exceed 10 years. After the initial
6 lease term, a lease under this section may be renewed up to two times for a time period
7 not to exceed the initial term.

8 (c) The annual fee for a remote recreational site lease shall be set by the
9 commissioner consistent with AS 38.05.073(m) to ensure that the state receives a fair
10 return for the use granted by the lease for the term of the lease.

11 (d) The commissioner shall include the following restrictions in the terms of a
12 lease issued under this section:

13 (1) the lessee may not assign, convey, or otherwise transfer the lease,
14 though rights under the lease may devolve by estate or intestate succession;

15 (2) absent an extension given by the department, the lessee shall
16 survey and appraise the lessee's remote recreational site within 24 months of entering
17 the lease; extensions may not be unreasonably withheld by the department; and

18 (3) any other restriction the commissioner determines necessary to
19 protect the state's long-term interest in the land.

20 (e) A lease issued under this section may be terminated for noncompliance
21 with the lease terms. After termination of a remote recreational site lease,
22 improvements or personal property remaining on the land shall be managed in the
23 same manner as provided in AS 38.05.090 for removal or reversion of improvements
24 upon termination of leases of state land.

25 (f) Unless the lessee has a completed survey, a lessee shall annually ensure the
26 remote recreational site boundaries are readily visible from the ground. The
27 commissioner shall adopt standards for lessees to follow to ensure the visibility of the
28 leased remote recreational site.

29 (g) At any time during the lease, the lessee may purchase the remote
30 recreational site as provided in AS 38.05.620.

31 (h) Any appraisal or survey required under this section must comply with

1 AS 38.04.045, the Uniform Standards of Professional Appraisal Practice adopted by
2 the Appraisal Standards Board of the Appraisal Foundation, and any requirements
3 deemed appropriate by the commissioner to ensure compliance with state appraisal
4 and survey standards. The eligible applicant is responsible for all costs associated with
5 surveying, appraising, and platting the site.

6 **Sec. 38.05.620. Sale of remote recreational sites.** (a) An application by an
7 eligible applicant to purchase a remote recreational site must include a survey and
8 appraisal of the site. The eligible applicant must also agree in the application to pay
9 the remote recreational site's fair market value.

10 (b) The commissioner may reject an application to purchase a remote
11 recreational site for deficiencies in the survey or the appraisal.

12 (c) Unless the department determines the applicant's appraisal does not meet
13 the standards outlined in this section, the fair market value of the remote recreational
14 site shall be the value listed in the applicant's appraisal. The final purchase price for
15 the remote recreational site shall be the land's fair market value plus platting costs and
16 any administrative costs related to the sale of the land.

17 (d) If the remote recreational site has been appraised, surveyed, and platting,
18 the commissioner shall enter a contract of sale for the site with the eligible applicant.
19 The applicant shall deposit at least five percent of the final purchase price for the site
20 and enter into a contract under the terms specified in AS 38.05.065(b) to pay the
21 remaining balance of the final purchase price.

22 (e) If a purchaser of a remote recreational site under this section fails to
23 comply with the conditions in the contract of sale, the contract of sale is void and the
24 purchaser forfeits all rights to the site unless cured under AS 38.05.065.

25 (f) Any survey or appraisal required under this section must comply with
26 AS 38.05.610(h). For a site being leased or permitted by the applicant, the site's value
27 for purposes of the appraisal will be from the time of entry. The appraisal must have
28 been completed within 24 months before the date the application to purchase the land
29 was submitted to the department. The eligible applicant is responsible for all costs
30 associated with surveying, appraising, and platting the site.

31 **Sec. 38.05.630. Permit for a remote recreational site.** (a) The commissioner

1 may issue remote recreational site permits to eligible applicants. A permit may be for a
 2 term of up to 25 years. The permit may not be assigned by the original permittee
 3 during the term of the permit and it may not be renewed.

4 (b) A remote recreational site permit is revocable at will and may be
 5 terminated for any reason, including if a permittee fails to use the land under the
 6 permit in the manner required by the terms of the permit. After termination of a
 7 remote recreational site permit, improvements or personal property on the land subject
 8 to the permit shall be managed in the same manner as provided in AS 38.05.090.

9 (c) Unless otherwise specified in the remote recreational site permit, during
 10 the term of a permit, the permittee may apply to lease the site under AS 38.05.610 or
 11 purchase the site under AS 38.05.620.

12 (d) If land subject to a remote recreational site permit is offered for sale or
 13 lease, the commissioner shall first offer to sell or lease the site to the permittee. All
 14 leases or sales of land to a permittee shall be consistent with AS 38.05.610 and
 15 38.05.620.

16 (e) The commissioner shall adopt regulations that specify the state lands
 17 eligible for a remote recreational site permit, the staking procedures for a remote
 18 recreational permit site, the permit application procedures, the fees for a remote
 19 recreational site permit, and the terms and conditions of a remote recreational site
 20 permit.

21 **Sec. 38.05.640. Regulations.** The commissioner may adopt regulations under
 22 AS 44.62 (Administrative Procedure Act) necessary to carry out the purposes of
 23 AS 38.05.600 - 38.05.690.

24 **Sec. 38.05.690. Definitions.** In AS 38.05.600 - 38.05.690, unless the context
 25 requires otherwise,

26 (1) "eligible applicant" means a resident who

27 (A) has not leased or purchased a remote recreational cabin site
 28 or been issued a remote recreational site permit during the 10-year period
 29 before submitting an application under AS 38.05.600 - 38.05.630; and

30 (B) at the time of application, is at least 18 years of age;

31 (2) "resident" means an individual who has resided in the state for one

- 1 year before submitting an application under AS 38.05.600 - 38.05.630 and can prove
2 such residency as provided in AS 38.05.600(b).
3 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).