

SENATE BILL NO. 199

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/22/24

Referred: Transportation, Resources, Finance

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 sale and lease 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,

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

12 (B) when 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; or

17 (C) in accordance with AS 14.07.070, when the district has
18 failed to comply with the school laws of the state or with the regulations
19 adopted by the department.

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

21 **Sec. 19.30.080. Construction standards and maintenance.** An access road
22 constructed under AS 19.30.060 - 19.30.100 **may** [SHALL] be of low standard, not
23 necessarily suitable for all weather use. The state is not under obligation to maintain
24 an access road constructed under AS 19.30.060 - 19.30.100. If an access road is
25 constructed outside a municipality that has zoning ordinances, the right-of-way width
26 for the road shall be determined by the division of lands and the Department of
27 Transportation and Public Facilities. If an access road **under AS 19.30.060 -**
28 **19.30.100** is constructed within the boundaries of a municipality that has zoning
29 ordinances, the right-of-way width **must** [SHALL] conform to the subdivision control
30 ordinances of the municipality **in the same manner and to the same extent as**
31 **private landowners**. Contracts for the work on an access road are governed by

1 AS 36.30 (State Procurement Code).

2 * **Sec. 3.** AS 35.20.070 is repealed and reenacted to read:

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

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

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

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

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

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

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

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

30 * **Sec. 5.** AS 38.04.045(b) is amended to read:

31 (b) Before the issuance of [A LONG-TERM LEASE UNDER AS 38.05.070

1 OR OF] a patent for state land, an official cadastral survey shall be accomplished,
2 unless a comparable, approved survey exists that has been conducted by the federal
3 Bureau of Land Management. Before land may be offered under AS 38.08 or
4 AS 38.09, or before land may be offered under AS 38.05.055 or 38.05.057, except
5 land that is classified for agricultural uses, an official rectangular survey grid shall be
6 established. The rectangular survey section corner positions shall be monumented and
7 shown on a cadastral survey plat approved by the state. For those areas where the state
8 may wish to convey surface estate outside of an official rectangular survey grid, the
9 commissioner may waive monumentation of individual section corner positions and
10 substitute an official control survey with control points being monumented and shown
11 on control survey plats approved by the state. The commissioner may not issue more
12 than one conveyance for each section within a township outside of an official
13 rectangular survey grid. Land to be conveyed may not be located more than two miles
14 from an official survey control monument except that the commissioner may waive
15 this requirement on a determination that a single purpose use does not justify the
16 requirement if the existing status of the land is known with reasonable certainty. The
17 lots and tracts in state subdivisions shall be monumented and the cadastral survey and
18 plats for the subdivision shall be approved by the state. Where land is located within a
19 municipality with planning, platting, and zoning powers, plats for state subdivisions
20 shall comply with local ordinances and regulations in the same manner and to the
21 same extent as plats for subdivisions by other landowners. State subdivisions shall be
22 filed and recorded in the district recorder's office. The requirements of this section do
23 not apply to land made available for material sales, for short-term leases, for parcels
24 adjoining a surveyed right-of-way, or for land that has been open to random staking
25 under the homestead program in the past; however, for short-term leases, the lessee
26 shall comply with local subdivision ordinances unless waived by the municipality
27 under procedures specified by ordinance. In this subsection, "a single purpose use"
28 includes a communication site, an aid to navigation, and a park site.

29 * **Sec. 6.** AS 38.04.045 is amended by adding a new subsection to read:

30 (c) The commissioner may require an official cadastral survey under (b) of
31 this section before the issuance of a long-term lease under AS 38.05.070.

1 * **Sec. 7.** AS 38.05.055 is repealed and reenacted to read:

2 **Sec. 38.05.055. Auction sale or sealed bid procedures.** (a) Unless another
3 method of sale is allowed under this chapter, AS 38.08, or AS 38.09, the sale of state
4 land shall be made at public auction or by sealed bid, at the discretion of the director,
5 to the highest qualified bidder as determined by the director. The director may accept
6 bids and sell state land under this section at not less than 70 percent of the appraised
7 fair market value of the land.

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

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

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

24 * **Sec. 8.** AS 38.05.065(a) is amended to read:

25 (a) A [THE] contract of sale for land, **an interest in land, or property** sold
26 **under this chapter, including under AS 38.05.057, may be issued for** [AT PUBLIC
27 AUCTION OR BY SEALED BID UNDER AS 38.05.055 SHALL REQUIRE] the
28 remainder of the purchase price to be paid in monthly, quarterly, or annual
29 installments over a period of not more than **30** [20] years, with interest at the rate
30 provided in (i) of this section. Installment payments plus interest shall be set on the
31 level-payment basis.

1 * **Sec. 9.** 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
3 out 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. 10.** 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. 11.** 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
26 THE PURCHASER AND] terminating the contract. The obligation to make payments
27 under the contract continues through the date of the **director's** decision to **terminate**
28 **the contract** [FORECLOSE BY THE DIRECTOR].

29 * **Sec. 12.** 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

1 requested, to the address of record of the purchaser. If the breach is a failure to make
 2 payments required by the contract, the decision shall include a notice to the purchaser
 3 that if within 30 days the purchaser pays to the state the full amount of the unpaid
 4 contract price, including all accrued interest, and any fees assessed under (d) of this
 5 section, the **commissioner** [DEPARTMENT] shall issue to the purchaser a deed to the
 6 land. If full payment is not made within 30 days or the breach is for other than failure
 7 to make payment, the decision [FORECLOSES AND] terminates all legal and
 8 equitable rights the purchaser has in the land.

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

10 (h) The commissioner, after consulting with the Board of Agriculture and
 11 Conservation (AS 03.09.010),

12 (1) shall provide that, notwithstanding (a) [AND (b)] of this section, in
 13 a contract for the sale of land classified under AS 38.05.020(b)(6) for agricultural
 14 uses, the interest rate to be charged on installment payments may not exceed 9.5
 15 percent; and

16 (2) may declare a moratorium of up to five years on payments on land
 17 sold under this section for land classified under AS 38.05.020(b)(6) for agricultural
 18 uses if

19 (A) the commissioner determines that the moratorium is in the
 20 best interest of the state;

21 (B) the commissioner certifies and the contract purchaser
 22 agrees to perform farm development, crop production, and harvesting, not
 23 including land clearing or related activity, requiring the expenditure of
 24 amounts equivalent to the payments that would otherwise be made during the
 25 moratorium;

26 (C) the sale of the agricultural land takes place after July 1,
 27 1979; and

28 (D) the contract purchaser is in compliance with the
 29 development plan specified in the purchase contract at the time the purchaser
 30 applies for a moratorium under this paragraph and remains in compliance with
 31 the development plan during the moratorium; for the payments subject to the

1 moratorium declared under this paragraph, interest payments are subject to the
2 moratorium but interest continues to accrue during the moratorium.

3 * **Sec. 14.** AS 38.05.065 is amended by adding new subsections to read:

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

11 (k) Notwithstanding (a) of this section, the commissioner may, upon a best
12 interest finding, determine that the purchase price for a parcel of land with existing
13 improvements valued at greater than \$10,000 must be paid in full within 120 days of
14 closing.

15 * **Sec. 15.** AS 38.05 is amended by adding a new section to read:

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

17 For purposes of stimulating economic development in the state, the commissioner may
18 offer land identified under (b) of this section for lease for commercial development by
19 issuing a request for proposals. A lessee eligible under (m) of this section may
20 purchase the leased land.

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

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

25 (2) state land nominated by the public; a public nomination may not
26 exceed 640 acres in size;

27 (3) any other state land the commissioner deems appropriate for
28 commercial development.

29 (c) If land identified in (b) of this section is classified in a manner that does
30 not allow disposal of the land, the commissioner may classify or reclassify the land
31 under AS 38.04.065 and AS 38.05.300. Before classifying or reclassifying land under

1 this subsection, the commissioner shall provide public notice under AS 38.05.945.
2 Notwithstanding AS 38.05.945(c)(2) and (3), regardless of whether the land is located
3 inside or outside a municipality, the commissioner shall provide notice to a

4 (1) regional corporation if the boundaries of the corporation as
5 established by 43 U.S.C. 1606(a) (sec. 7(a), Alaska Native Claims Settlement Act)
6 encompass the land;

7 (2) village corporation organized under 43 U.S.C. 1607(a) (sec. 8(a),
8 Alaska Native Claims Settlement Act) if the land is within 25 miles of the village for
9 which the corporation was established.

10 (d) Upon a finding under AS 38.05.035(e) that the lease and sale of the land
11 within the areas opened is in the in the best interests of the state, the commissioner
12 may request in writing proposals to lease land within the areas identified in (b) of this
13 section for commercial development.

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

18 (1) type of commercial development proposed; and

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

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

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

1 (h) If the commissioner determines that only one suitable proposal for a
2 specific area of land exists, the commissioner may issue a lease to that person as
3 provided in this section as long as the proposal is in the best interests of the state. If
4 the commissioner determines that there are two or more suitable proposals for the
5 same or overlapping land, the commissioner shall hold a public auction or sealed bid,
6 limited to those persons who submitted proposals for the same or overlapping land,
7 and award the lease to the highest bidder as long as the proposal of the highest bidder
8 is in the best interests of the state.

9 (i) If a potential lessee selected under (h) of this section declines the lease
10 offer, the commissioner may begin negotiations with the potential lessee who provided
11 the next highest bid to develop the terms and conditions for a lease.

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

16 (k) A lease under this section may only be assigned by a lessee at the
17 discretion of the director. The initial term of the lease may be no more than five years.
18 At the director's discretion and only if the lease is in good standing, the lease may
19 renewed for one additional term of no more than five years. The director may extend a
20 lease in good standing for up to two years beyond the renewal term if the director
21 determines the extension will facilitate sale of the parcel to the lessee.

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

28 (m) At any time during the lease, a lessee in good standing may submit an
29 application to the department to purchase all or a portion of the land leased under this
30 section for its fair market value at the time of purchase. The lessee shall pay an
31 application fee provided by regulation.

1 (n) If an application to purchase land under (m) of this section is approved,
2 prior to closing, the lessee, at the lessee's expense, shall have the parcel appraised and
3 surveyed in a manner acceptable to the department

4 (o) An eligible lessee under (m) of this section may apply the amount of the
5 lease payments made under the lease to the purchase price of the land. Other amounts
6 paid, including fees, penalties, survey costs, and appraisal costs, may not be applied to
7 the purchase price of the land.

8 (p) If an application to purchase land under (m) of this section is denied, the
9 lessee may continue to hold the lease according to the terms of the lease, and may
10 reapply to purchase the land. A subsequent application to purchase the land must
11 address the reasons the previous application was denied.

12 (q) The commissioner shall adopt regulations under AS 44.62 (Administrative
13 Procedure Act) to implement this section. Regulations adopted under this subsection
14 must, at a minimum, address

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

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

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

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

22 (5) the procedure for requesting proposals;

23 (6) the criteria for assessing proposals; and

24 (7) any administrative fees.

25 (r) The commissioner shall reserve easements and rights-of-way on and across
26 land made available for commercial development under this section after providing
27 regional corporations, village corporations, tribes, municipal governments, and other
28 interested parties an opportunity to review and comment on the proposed reserved
29 easements and rights-of-way, and an opportunity to appeal a decision under
30 AS 44.37.011. The commissioner shall reserve easements and rights-of-way under this
31 section for trails that have an established history of use for commerce, recreation,

1 transportation, or providing access to a traditional outdoor activity. In this subsection,
2 "traditional outdoor activity" has the meaning given in AS 38.04.200.

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

9 (t) In this section, "good standing" means that a lessee is not in default on any
10 material term of a lease under this section and has satisfied all the development
11 requirements of the lease.

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

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

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

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

23 (3) the commissioner may not

24 (A) limit the right of the landowner to use the land and
25 improvements for purposes that are **consistent and do not interfere**
26 [INCIDENTAL TO AND NOT INCONSISTENT] with the primary use of the
27 land for agricultural purposes;

28 (B) except as provided by (i) of this section, limit the right of a
29 landowner to construct housing for the landowner and farm laborers, to
30 construct improvements for animals, or to construct improvements that are
31 reasonably required for or related to agricultural use on the original parcel and

1 on additional subdivided parcels, not to exceed the limits and restrictions set by
2 (a)(2) of this section; and

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

6 * **Sec. 17.** AS 38.05.965 is amended by adding a new paragraph to read:

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

9 * **Sec. 18.** AS 38.05.065(b) is repealed.

10 * **Sec. 19.** This Act takes effect immediately under AS 01.10.070(c).