

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 HOUSE BILL NO. 290

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the leasing of state land for
7 recreational facilities development."

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

9 * Section 1. AS 38.05 is amended by adding a new section to read:

10 Sec. 38.05.073. RECREATIONAL FACILITIES DEVELOPMENT LEASING.

11 (a) The commissioner may identify land suitable for recreational
12 facilities development leasing. In the discretion of the commis-
13 sioner, land identified for recreational facilities development leas-
14 ing may be offered for lease under this section. Except for AS 38.-
15 05.070(a), 38.05.085(c), 38.05.090, and 38.05.103, AS 38.05.070 -
16 38.05.105 do not apply to leasing under this section.

17 (b) Before requesting proposals from developers for land identi-
18 fied under (a) of this section, the commissioner shall prepare and
19 adopt a site-specific land use plan under AS 38.04.065 unless a land
20 use plan has been prepared and adopted for the land. If a land use
21 plan has been prepared and adopted for the land but does not specif-
22 ically allow the type of development under consideration, the commis-
23 sioner shall propose an amendment of the existing land use plan under
24 AS 38.04.065.

25 (c) After compliance with (b) of this section, and after evalu-
26 ating the information and comments obtained under (b) and (d) of this
27 section, the commissioner shall determine whether or not requesting
28 proposals from potential developers for recreational facilities devel-
29 opment leasing of land identified under (a) of this section is in the

best interests of the state. The commissioner's best interests decision shall be in writing and shall include a detailed statement of

- (1) the specific type of recreational facilities development for which the land may be leased;
- (2) the proposed terms and conditions of a lease for the development;
- (3) the minimum compensation that the state will accept for the lease, which must at least equal the fair market value of the land to be leased;
- (4) the potential economic, social, and environmental effects of the proposed development, including the effect on water quality and on the subsistence use of resources;
- (5) irreversible and irretrievable commitments of natural resources that would be involved in the proposed development;
- (6) alternatives to the proposed development, or measures that may reduce or eliminate the effects identified under (4) and (5) of this subsection;
- (7) the economic feasibility of the proposed development, including marketing analyses and the potential short-term and long-term costs to the state;
- (8) the selection criteria that the commissioner will use to determine the eligibility of a developer, including the developer's financial backing and capability, experience in the proposed undertaking, bonding, and insurance coverage;
- (9) the criteria that the commissioner will use to determine the suitability of proposals, including compliance with design requirements established by the commissioner.

(d) Before making the detailed statement under (c) of this section, the commissioner shall consult with and obtain comments from

1 the Department of Fish and Game, the Department of Environmental
2 Conservation, and the Department of Commerce and Economic Development,
3 and any other state agency or program that has jurisdiction over or
4 special expertise on an economic, social, or environmental effect
5 involved in the development. The agencies shall provide their com-
6 ments to the commissioner within 60 days after receiving written
7 notice of the request for comments.

8 (e) The commissioner shall issue a draft best interests decision
9 in writing and publish notice of the decision under AS 38.05.945.
10 Copies of the draft best interests decision, including the detailed
11 statement and the comments and views of the state agencies, shall be
12 made available to the public. The public shall have 90 days from
13 publication of the notice of the decision under this section to com-
14 ment on the draft best interests decision.

15 (f) After reviewing and considering the public comments received
16 under (e) of this section, the commissioner shall issue a final best
17 interests decision and give public notice of the decision under
18 AS 38.05.945.

19 (g) If the commissioner finds that requesting proposals from
20 potential developers best serves the interests of the state, the
21 commissioner may issue a request for proposals from persons who are
22 interested in leasing the land for recreational facilities develop-
23 ment. The proposals submitted to the commission must include the
24 specific facts on which the developer bases its ability to develop the
25 land, including its ability to comply with the criteria identified in
26 (c)(2) - (3) and (7) - (9) of this section.

27 (h) The commissioner shall require a developer who submits a
28 proposal for recreational facilities development to the commissioner
29 under (g) of this section to deposit an amount equal to the estimated

1 cost to the state of the administrative expenses under (b) - (g),
2 (i) - (j), (m), and (r) of this section of offering a lease to a
3 developer. If the land is leased to a developer, the lessee shall pay
4 the total actual administrative expenses, and the deposits of the
5 other developers who submitted proposals under (g) of this section
6 shall be refunded.

7 (i) After reviewing the proposals submitted under (g) of this
8 section, if the commissioner determines that only one developer sat-
9 isfies the proposal requirements established under (g) of this section
10 the commissioner may grant the developer a right of first refusal and
11 begin negotiations with the developer on the terms and conditions of
12 the potential lease.

13 (j) After reviewing the proposals submitted under (g) of this
14 section, if the commissioner determines that two or more developers
15 satisfy the proposal requirements established under (g) of this sec-
16 tion, the commissioner may grant a right of first refusal to the
17 developer who has submitted the best proposal, as determined by the
18 commissioner. If the commissioner grants a right of first refusal to
19 a developer, the commissioner may begin negotiations with the devel-
20 oper on the terms and conditions of the potential lease.

21 (k) The commissioner may require each developer who is offered a
22 right of first refusal under (i), (j), or (n) of this section to pay a
23 nonrefundable filing fee.

24 (l) Within five days of a decision of the commissioner under
25 (i), (j), or (n) of this section, a person aggrieved by the decision
26 may request the commissioner to reconsider the decision.

27 (m) After agreement on the proposed lease terms and conditions
28 with a developer under (i), (j), or (n) of this section, the commis-
29 sioner may issue a preliminary decision in the manner provided in

1 AS 38.05.035(e) that leasing the land under the proposed terms and
2 conditions best serves the interests of the state. The commissioner
3 shall give public notice of the decision under AS 38.05.945 and re-
4 quest comments from the public. If, after the public notice and
5 comment period, the commissioner makes a final determination that a
6 lease will best serve the interests of the state, the commissioner may
7 offer the lease to the developer holding the right of first refusal.
8 When making the final determination, the commissioner shall also
9 consider the detailed statement made under (c) of this section and the
10 agency comments and views obtained under (d) of this section.

11 (n) If a developer selected under (j) of this section declines
12 the lease offer made under (m) of this section, the commissioner may
13 offer a right of first refusal to the developer who provided the next
14 best proposal under (j) of this section. If a developer who is
15 offered a right of first refusal under this section declines the
16 offer, the commissioner may offer a right of first refusal to the
17 developer with the next best proposal under (j) of this section until
18 a developer accepts the offer. If the commissioner grants a right of
19 first refusal under this subsection to a developer, the commissioner
20 may begin negotiations with the developer on the terms and conditions
21 of the potential lease.

22 (o) The commissioner is not obligated to grant a right of first
23 refusal under (i), (j), or (n) of this section.

24 (p) The compensation to be paid to the state for a recreational
25 facilities development lease issued under this section may include, in
26 the discretion of the commissioner,

27 (1) a percentage of annual gross receipts as reported to
28 the United States Internal Revenue Service;

29 (2) a guaranteed annual minimum rent or a percentage of

1 gross receipts, whichever is greater;

2 (3) the fair market rental value;

3 (4) a fixed annual rent that is not less than the fair
4 market rental value of the land;

5 (5) a fee for each user; or

6 (6) a combination of the above.

7 (q) The annual compensation paid to the state for a recreational
8 facilities development lease shall be reevaluated and adjusted at
9 five-year intervals. The annual compensation for each five-year
10 period after the initial five years of the lease shall be calculated
11 by the same method and formula used to establish the compensation for
12 the initial five-year period.

13 (r) Before a lease is issued under this section, the land to be
14 covered by the lease shall be surveyed.

15 (s) Before entering into a lease under this section, the commis-
16 sioner shall require the lessee to post a performance bond or provide
17 other security acceptable to the commissioner to cover the costs to
18 the department of one or all of the following, as determined by the
19 commissioner:

20 (1) completing the development under the terms and con-
21 ditions of the lease;

22 (2) maintaining the development under the terms and con-
23 ditions of the lease;

24 (3) restoring the lease site if the lease is abandoned or
25 terminated.

26 (t) The term of the lease may not exceed 55 years. At the
27 expiration of the lease, the commissioner may offer the lessee a right
28 of first refusal on a new recreational facilities development lease
29 for the same land if the commissioner determines that leasing the land

1 for an additional term best serves the interests of the state.

2 (u) The lessee's violation of a provision of this section or of
3 a term or provision of a lease issued under this section subjects the
4 lessee to appropriate legal action and penalties, including a forfei-
5 ture of the lease.

6 (v) The commissioner of administration shall separately account
7 for all money collected under this section that the department de-
8 posits in the general fund. The annual estimated balance in the
9 account may be used by the legislature to make appropriations to the
10 department to carry out the purposes of this section.

11 (w) In this section, "recreational facilities development"
12 includes the development of lodges, resorts, and other tourism and
13 recreational-related facilities.