

Original sponsor(s): Resources Committee

1 IN THE HOUSE BY THE RESOURCES COMMITTEE  
2 CS FOR HOUSE BILL NO. 290 (Resources)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - SECOND 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 only through a regional land use plan  
13 or a site specific land use plan adopted under AS 38.04.065. If an  
14 adopted land use plan specifically allows the type of development  
15 under consideration, the commissioner may request proposals from  
16 potential lessees under (c) of this section. Consistent with AS 38.-  
17 04.065, the development of a land use plan used to identify land  
18 suitable for recreational facilities development leasing must consider  
19 the supply of recreational opportunities and alternatives, economic  
20 and social factors, and fish, wildlife, and other resources affected  
21 by the specific type and location of recreational facilities develop-  
22 ment under consideration.  
23 (b) AS 38.05.070(a), 38.05.085(c), 38.05.090, and 38.05.103  
24 apply to leasing under this section. The other provisions of AS 38.-  
25 05.070 - 38.05.105 do not apply to leasing under this section.  
26 (c) If the commissioner identifies land for recreational facili-  
27 ties development leasing under (a) of this section, the commissioner  
28 shall prepare a written request for proposals that includes  
29 (1) the specific type of recreational facilities

1 development for which the land may be leased;

2 (2) the form of compensation that the commissioner intends  
3 to require for the lease under (1) of this subsection;

4 (3) the selection criteria that the commissioner will use  
5 to determine the eligibility of a developer, including the developer's  
6 financial backing and capability, experience in the proposed undertak-  
7 ing, ability to meet bonding or insurance requirements, and ability to  
8 comply with resource and environmental analysis requirements; and

9 (4) the criteria that the commissioner will use to deter-  
10 mine the suitability of proposals.

11 (d) After preparing a request for proposals under (c) of this  
12 section, the commissioner may issue the request to solicit proposals  
13 from persons who are interested in leasing the land for recreational  
14 facilities development. The request for proposals must be advertised  
15 at least three times in a newspaper of general circulation in the  
16 state. The proposals submitted to the commissioner must include the  
17 specific facts on which the potential lessee bases its ability to  
18 develop the land, including its ability to comply with the items  
19 identified in (c)(1) - (4) of this section.

20 (e) After soliciting proposals under (d) of this section, if the  
21 commissioner determines that only one potential lessee is acceptable,  
22 the commissioner may begin negotiations with the potential lessee to  
23 develop the terms and conditions for the lease.

24 (f) After soliciting proposals under (d) of this section, if the  
25 commissioner determines that two or more potential lessees are accept-  
26 able, the commissioner may select the potential lessee who submits the  
27 highest bid during an auction or by sealed bids, whichever method the  
28 commissioner chooses. The minimum bid must equal the amount estab-  
29 lished by the commissioner plus the administrative fee established

1 under (j) of this section. The commissioner shall also require the  
2 potential lessee to make an earnest money deposit under AS 38.05.-  
3 860(b). After the commissioner selects a potential lessee, the com-  
4 missioner may begin negotiations with the potential lessee to develop  
5 the terms and conditions for the lease.

6 (g) After developing proposed lease terms and conditions with a  
7 potential lessee under (e), (f), or (i) of this section, the commis-  
8 sioner may issue a preliminary decision under AS 38.05.035(e) that  
9 leasing the land to the potential lessee on the proposed terms and  
10 conditions serves the best interests of the state. During preparation  
11 of the preliminary decision, the commissioner shall consult with  
12 affected state agencies regarding issues within the agencies' areas of  
13 responsibility and expertise. The commissioner shall give public  
14 notice of the preliminary decision under AS 38.05.945 and request  
15 comments from the public and state agencies. The preliminary decision  
16 must include

17 (1) a statement of the specific type of recreational facil-  
18 ities development for which the land will be leased;

19 (2) an analysis of alternative sites;

20 (3) a statement of the terms and conditions to be required  
21 in the proposed lease agreement;

22 (4) a statement of the compensation that the state may  
23 require under the proposed lease agreement;

24 (5) a statement of the potential economic, social, and  
25 environmental effects of the proposed development, including the  
26 effect on water quality and the traditional and recreational uses of  
27 the land;

28 (6) a statement of the long-term commitments of fish,  
29 wildlife, and other natural resources that would be involved in the

1 proposed development;

2 (7) a statement of alternatives to the commitments identi-  
3 fied under (6) of this subsection and alternatives or measures that  
4 may reduce or eliminate the effects identified under (5) of this  
5 subsection;

6 (8) an identification of any studies, including economic  
7 feasibility studies, or plans to be required by the commissioner; and

8 (9) for a large project, a preliminary assessment of the  
9 project's economic feasibility based on available information.

10 (h) After reviewing the comments received under (g) of this  
11 section, the commissioner shall make a final determination whether the  
12 proposed lease will serve the best interests of the state. If the  
13 commissioner determines that the proposed lease will serve the best  
14 interests of the state, the commissioner shall offer the lease to the  
15 proposed lessee subject to the terms, conditions, and study require-  
16 ments the commissioner determines to be necessary. If a study or plan  
17 is required, the potential lessee may be required to provide and pay  
18 for the study or plan. For a large project where the commissioner has  
19 determined under (g) of this section that there may be significant  
20 economic, social, or environmental effects or long-term commitments of  
21 fish, wildlife, or other natural resources, the commissioner shall  
22 require the potential lessee to prepare and submit a comprehensive  
23 economic feasibility study to be completed no later than 18 months  
24 after the execution of the lease. State agencies with pertinent  
25 expertise or responsibilities shall be involved in the review of  
26 required plans and studies. If the plan or study involves fish, game,  
27 or customary and traditional use of natural resources, the Department  
28 of Fish and Game shall approve the methodology and scope of the plan  
29 or study.

1 (i) If a potential lessee who was selected under (f) of this  
2 section declines the lease offer made under (h) of this section, the  
3 commissioner may begin negotiations with the potential lessee who  
4 provided the next highest bid under (f) of this section to develop  
5 under (f) of this section the terms and conditions for a lease.

6 (j) The commissioner shall require the potential lessee awarded  
7 the right to negotiate a lease under (e), (f), or (i) of this section  
8 to pay a nonrefundable administrative fee of at least \$250.

9 (k) The commissioner shall reject all proposals or bids for a  
10 lease when it is in the best interest of the state.

11 (l) The compensation to be paid to the state for a lease issued  
12 under this section may include, in the discretion of the commissioner,

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

15 (2) a guaranteed annual minimum rent or a percentage of  
16 gross receipts, whichever is greater;

17 (3) the fair market rental value;

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

20 (5) a fee for each user;

21 (6) other compensation acceptable to the commissioner; or

22 (7) a combination of the above.

23 (m) The annual compensation paid to the state for a recreational  
24 facilities development lease shall be reevaluated and adjusted at  
25 five-year intervals. The annual compensation for each five-year  
26 period after the initial five years of the lease shall be calculated  
27 by the same method used to establish the compensation for the initial  
28 five-year period.

29 (n) Before a lease is issued under this section, the land to be

1 covered by the lease shall be surveyed. The survey must be adequate  
2 to describe the land to be covered by the lease.

3 (o) Before entering into a lease under this section, the commis-  
4 sioner shall require the lessee to post a performance bond or provide  
5 other security acceptable to the commissioner to cover the costs to  
6 the department of one or more of the following, as determined by the  
7 commissioner:

8 (1) completing the development, including site planning,  
9 under the terms and conditions of the lease;

10 (2) maintaining the development under the terms and con-  
11 ditions of the lease;

12 (3) restoring the lease site if the lease is abandoned or  
13 terminated.

14 (p) The term of the lease may not exceed 55 years. At the  
15 expiration of the lease, the commissioner may offer the lessee a right  
16 of first refusal on a new lease under this section for the same land  
17 if the commissioner determines that leasing the land for an additional  
18 term serves the best interests of the state.

19 (q) The lessee's violation of a provision of this section or of  
20 a term or provision of a lease issued under this section subjects the  
21 lessee to appropriate legal action and penalties, including a forfei-  
22 ture of the lease.

23 (r) The commissioner of administration shall separately account  
24 for all money collected under this section that the department de-  
25 posits in the general fund. The annual estimated balance in the  
26 account may be used by the legislature to make appropriations to the  
27 department to carry out the purposes of this section.

28 (s) In this section, "recreational facilities development"  
29 includes the development of lodges, resorts, and other tourism and

1 recreation-related facilities.