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Referred: Rules

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Original sponsor(s): Resources Committee

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 290 (Finance)

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) To identify land suitable for recreational facilities development
12 leasing, the commissioner shall make the identification through a
13 regional land use plan or a site specific land use plan adopted under
14 AS 38.04.065. If an adopted land use plan specifically allows the
15 type of development under consideration, the commissioner may request
16 proposals from potential lessees under (c) of this section. Consis-
17 tent with AS 38.04.065, the development of a land use plan used to
18 identify land suitable for recreational facilities development leasing
19 must consider the supply of recreational opportunities and alterna-
20 tives, economic and social factors, and fish, wildlife, and other
21 resources affected by the specific type and location of recreational
22 facilities development 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 review the aspects of the methodology and scope
29 of the plan or study that deal with fish and game. If the Department

1 of Fish and Game determines that the aspects of the methodology and
2 scope that deal with fish and game are appropriate for the plan or
3 study, the aspects of the methodology and scope that deal with fish
4 and game may be used for the plan or study.

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

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

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

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

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

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

21 (3) the fair market rental value;

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

24 (5) a fee for each user;

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

26 (7) a combination of the above.

27 (m) The annual compensation paid to the state for a recreational
28 facilities development lease shall be reevaluated and adjusted at
29 five-year intervals. The annual compensation for each five-year

1 period after the initial five years of the lease shall be calculated
2 by the same method used to establish the compensation for the initial
3 five-year period.

4 (n) Before a lease is issued under this section, the land to be
5 covered by the lease shall be surveyed. The survey must be adequate
6 to describe the land to be covered by the lease.

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

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

14 (2) maintaining the development under the terms and con-
15 ditions of the lease;

16 (3) restoring the lease site if the lease is abandoned or
17 terminated.

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

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

27 (r) The commissioner of administration shall separately account
28 for all money collected under this section that the department de-
29 posits in the general fund. The annual estimated balance in the

1 account may be used by the legislature to make appropriations to the
2 department to carry out the purposes of this section.

3 (s) In this section, "recreational facilities development"
4 includes the development of lodges, resorts, and other tourism and
5 recreation-related facilities.