

Offered: 5/6/90  
Referred: Rules

6-0841M

Original sponsor(s): SEN. KERTTULA

1 IN THE SENATE BY THE RESOURCES COMMITTEE  
2 HOUSE CS FOR CS FOR SENATE BILL NO. 213 (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) 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. The identification of land for leasing under this  
15 section shall be consistent with any existing regional recreational  
16 management plan. The commissioner may request proposals from poten-  
17 tial lessees under this section if consistent with an adopted land use  
18 plan that expressly allows the specific type of development under  
19 consideration. Consistent with AS 38.04.065, the development of a  
20 land use plan used to identify land suitable for recreational facil-  
21 ities development leasing must consider the supply of recreational  
22 opportunities and alternatives, economic and social factors, and fish,  
23 wildlife, and other resources affected by the specific type and loca-  
24 tion of recreational facilities development under consideration.

25 (b) AS 38.05.070(a), 38.05.085(c), 38.05.090, and 38.05.103  
26 apply to leasing under this section. The other provisions of AS 38.-  
27 05.070 - 38.05.105 do not apply to leasing under this section.

28 (c) If the commissioner identifies land for recreational facili-  
29 ties development leasing under (a) of this section, at least 30 days

1 before the commissioner decides to solicit proposals from potential  
2 lessees, the commissioner shall provide public notice of the location  
3 and the specific type of recreational facilities development being  
4 considered and request comments. The notice shall be provided to (1)  
5 a municipality if the land is entirely or partially within the bound-  
6 aries of the municipality; (2) a regional corporation organized under  
7 43 U.S.C. 1601 - 1629e (Alaska Native Claims Settlement Act) if the  
8 boundaries of the corporation established by 43 U.S.C. 1606(a) encom-  
9 pass part or all of the land and the land encompassed by the corpo-  
10 ration's boundaries is entirely or partially outside the municipality;  
11 (3) a village corporation organized under 43 U.S.C. 1601 if all or  
12 part of the land is within 40 miles of the village for which the  
13 corporation was established and the land is located entirely or par-  
14 tially outside a municipality; (4) other persons affected by the  
15 specific recreational facility development; and (5) persons who have  
16 specifically requested to be notified. Public notice identifying the  
17 location and the specific type of recreational facilities development  
18 under consideration must also be published at least twice in a news-  
19 paper of general circulation in the state and in a local newspaper in  
20 general circulation in the region where the land is located. The  
21 comments received under this subsection become part of the public  
22 record for the consideration of the commissioner.

23 (d) If the commissioner decides to solicit proposals, the com-  
24 missioner shall prepare a written request for proposals that includes  
25 (1) the specific type of recreational facilities develop-  
26 ment for which the land may be leased;  
27 (2) the form of compensation that the commissioner intends  
28 to require for the lease under (1) of this subsection;  
29 (3) the selection criteria that the commissioner will use

1 to determine the eligibility of a developer, including the developer's  
2 financial backing and capability, experience in the proposed undertak-  
3 ing, ability to meet bonding or insurance requirements, and ability to  
4 comply with resource and environmental analysis requirements; and

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

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

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

21 (g) After soliciting proposals under (e) of this section, if the  
22 commissioner determines that two or more potential lessees are accept-  
23 able, the commissioner may select the potential lessee who submits the  
24 highest bid during an auction or by sealed bids, whichever method the  
25 commissioner chooses. The minimum bid must equal the amount estab-  
26 lished by the commissioner plus the administrative fee established  
27 under (k) of this section. The commissioner shall also require the  
28 potential lessee to make an earnest money deposit under AS 38.05.-  
29 860(b). After the commissioner selects a potential lessee, the

1 commissioner may begin negotiations with the potential lessee to  
2 develop the terms and conditions for the lease.

3 (h) After developing proposed lease terms and conditions with a  
4 potential lessee under (f), (g), or (j) of this section, the commis-  
5 sioner may issue a preliminary decision under AS 38.05.035(e) that  
6 leasing the land to the potential lessee on the proposed terms and  
7 conditions serves the best interests of the state. During preparation  
8 of the preliminary decision, the commissioner shall consult with  
9 affected state agencies regarding issues within the agencies' areas of  
10 responsibility and expertise. The commissioner shall give public  
11 notice of the preliminary decision under AS 38.05.945 and request  
12 comments from the public and state agencies. A public hearing shall  
13 be held in the region where the land proposed for lease is located if  
14 the commissioner determines there is sufficient local interest. The  
15 preliminary decision must include

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

18 (2) an analysis of alternative sites;

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

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

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

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

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

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

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

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

1 and scope may be used for the plan or study.

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

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

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

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

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

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

18 (3) the fair market rental value;

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

21 (5) a fee for each user;

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

23 (7) a combination of the above.

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

1 (o) Before a lease is issued under this section, the land to be  
2 covered by the lease shall be surveyed. The survey must be adequate  
3 to describe the land to be covered by the lease.

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

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

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

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

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

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

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

29 (t) In this section, "recreational facilities development"

- 1 includes the development of lodges, resorts, and other tourism and
- 2 recreation-related facilities.