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213

HOUSE COMMITTEE REPORT

(9)

Date Referred: April 28, 1990

FURTHER REFERRALS:

Date of Committee Action: 5/5/90

The RESOURCES Committee considered:

CSSB 213 (RESOURCES)

CS SB NO. 213 (Res)

COMMERCIAL DEVELOPMENT LEASING/STATE LAND

"An Act relating to the leasing of state land for recreational facilities development."

RECOMMENDATIONS:

be replaced with HCS CS SB 213 (Resources) the same title

have attached amendment(s)

do pass

do not pass

no recommendation

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

zero with analysis _____

zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass
No Rec
Amend

Cliff Davidson
Scott Williams
Mike Savana

	Do Not Pass	No Rec	Amend
<u>Cliff Davidson</u>			
<u>Scott Williams</u>		X	
<u>Mike Savana</u>		/	

Cliff Davidson

Chairman's Signature

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), 38.05.055(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.
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February 22, 1990

Rep. Curt Menard, Co-Chair
House Resources Committee
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Re: Recreational Facilities Development Leasing (HB 290)

Dear Representative Menard:

We appreciate the opportunities your committee is providing for public testimony on proposed legislation regulating recreational facilities development leasing. We thought it might be useful to clarify and expand somewhat the oral testimony ACE offered at the February 1 hearing.

We very much support the goal of the committee and DNR to ensure that the state receives a reasonable financial return from the leasing for private benefit of its most valuable long-term public resource, its land. Historically, on both state and federal lands, within and outside of Alaska, compensation to the public landholder has generally at best been adequate to manage impacts generated by the project, that is, impacts that would not have occurred but for the project, providing no net benefits to the landholder's coffers.

Furthermore, we strongly support focusing our commercial facility development efforts on the state's unreserved multiple use lands, the lands managed by the Division of Land and Water Management. With a large unreserved state land base, we have no excuse for making the serious mistake made Outside, where commercial development on park lands has in far too many instances destroyed or substantially degraded the very natural resources which were the basis for the establishment of the park. Unfortunately, and totally unnecessarily, we seem to be headed in that direction at Denali State Park.

And we have seen how extremely controversial commercial facility development leasing proposals can be, especially those for major facilities, like the ones proposed for Eagle River, Hatcher Pass, and Denali State Park, and those that could pose substantial conflicts to subsistence uses, like lodge proposals in rural Alaska. Attractive sites for commercial recreational facilities will generally have long ago been recognized and widely used for a variety of other purposes. An orderly, comprehensive procedure can benefit everyone--the agencies, the possible developers, and the public--by weeding out speculative or inappropriate projects, preventing wasteful expenditures of time and money, and avoiding litigation.

If this bill is to address concerns other than ensuring a reasonable financial return to the state, we would like to address a few of those issues.

1. Initial Land Allocation Decision. The initial land allocation decision is critical and deserves very careful consideration. The decision should be an interagency one and should require full public involvement. We feel uncomfortable relying totally on regional land use plans and believe that in every case the public should have some opportunity to comment before the process has proceeded all the way to the approval of lease terms and conditions phase. Regional plans deal with millions of acres of land. The decisions are necessarily somewhat abstract. In those situations where a site-specific plan or an amendment would be required (see subsection (b)), we feel fairly comfortable with the initial public participation opportunity. However, we have two concerns regarding the third situation (where a regional plan "specifically allows" the type of development under consideration).

Recommendations:

a. It should be made very clear that the mere fact that a land use designation or classification (such as "Resource Management") in the regional plan allows commercial development doesn't qualify as a specific allowance. The Management Intent or Management Guidelines narrative should have to specifically mention, and authorize, the type of development under consideration.

b. Even if a plan specifically mentions and authorizes the development, some minimal opportunity to comment should be provided at this initial stage, when the reality of a specific, focused proposal on a specific piece of land is first concretely proposed to the public without the distraction of hundreds of other competing issues affecting millions of acres of land. We suggest the following at the end of subsection (b): "If an adopted regional land use plan specifically allows the type of development under consideration, the commissioner shall nevertheless, before issuing a request for proposals, provide the public and other interested agencies with an opportunity to offer scoping comments regarding the proposed development and the issues which should be addressed in the Preliminary Decision required under (g) of this section."

2. Lands Available for Lease. This bill appears to allow DNR to lease lands regardless of any legislative or other designation they might have received. This is clearly inappropriate.

Recommendation: For legislatively designated lands entrusted to the management of an agency other than the Division of Land and Water Management (such as ADF&G), DNR should be allowed to proceed only with the concurrence of that agency.

3. Agency Involvement. Other interested agencies should be closely involved throughout the process. Their involvement should not be limited to commenting on a preliminary decision at the same time the public is commenting; when that happens the public does not have the benefit of the other agencies' perspectives and

concerns prior to commenting.

Recommendation:

a. Insert at the end of subsection (b): "In preparing a site-specific plan or proposing a plan amendment, the commissioner shall consult with other interested state agencies."

b. In subsection (g), insert the language proposed by Gary Gustafson.

4. Economic Feasibility. At least for major projects, economic feasibility, not environmental or social feasibility, generally determines whether or not the projects go forward. This was true for Eagle River and Hatcher Pass, and it appears that it will also be the case for South Denali. Unfortunately, there is no requirement, and to date we have not decided administratively to require, that a determination of likely economic feasibility be made prior to the expenditure of thousands of agency hours and thousands of public dollars. When, for varying reasons, economic feasibility determinations were finally made for Eagle River and Hatcher Pass, the conclusion reached was that the projects were not feasible. We don't know what will happen at South Denali, since after about 2 1/2 years of agency work attempting to justify the most recent proposal, an economic feasibility determination acceptable to the Division of Parks has yet to be made public.

In all three of these cases, we believe enough was known about the projects to do a determination long before one was actually done. For example, what did Mitsui learn a couple of weeks ago about the nature or scope of its proposed project from the phone calls it made to a few travel agents and airlines (after which it pulled out) that it did not know more than a year ago when it submitted its concept development plan--or even earlier? The relatively little money Mitsui spent doing low quality work on a prospective multi-million dollar project was for it a drop in the bucket. For state resource agencies with far too few individuals to do an adequate job of on-the-ground management of state lands, and budgets stretched about as thin as they can get, the waste of hours and dollars was substantial (please also see Tim Bradner's Feb 11, 1990 column in the Anchorage Daily News, which we have enclosed).

Recommendations:

a. For large projects, a preliminary determination of economic feasibility, based on available information, should be made either by the state before it requests proposals, or by the companies submitting proposals.

b. Within six months after a lease is signed the lessee should be required to submit a more detailed determination.

We appreciate Gary Gustafson's proposals addressing this issue, and

support authorizing the commissioner in subsection (g) to require lessees to prepare an economic feasibility study. This flexibility is probably appropriate in most situations. For large projects, however, which Gary would address in subsection (h), we believe that waiting 18 months for such a study is far too long and unnecessarily puts at risk too many hours and dollars of public resources.

5. State Subsidies. Another economic issue that is of great interest to the public, and to many decision-makers, is the amount of public subsidies a project is likely to require. For example, only when it became apparent that Mr. Rogner wanted millions of dollars worth of state loan guarantees did we decide to put a halt to lease processing pending the completion of an economic feasibility study, and require him to fund 1/2 of it (it's unfortunate that we aren't as protective of our public lands as we sometimes are of our public monies). The South Denali Preliminary Decision circulated for public comment contained no discussion of possible public subsidies. It was only after a direct question was asked at the Anchorage public meeting that DNR said that a \$6-10 million state subsidy for resort roads and utilities was likely. In the relatively short time since that meeting the estimate has risen to some \$14 million. At the Preliminary Decision stage, DNR should be required to estimate the likely amount of public dollars that will be needed (we know that would have been possible, at least roughly, for South Denali).

Recommendation: Insert a new (c) (3): "the estimated capital and operating costs to the state;".

6. Social, Economic and Environmental Studies. It is not unusual, at the federal level, for those who wish to profit from public resources to be required to bear the costs of any social, economic or environmental studies that are needed by the decision-makers and the public to arrive at a sound decision about the best use of public lands or resources. We agree with Mr. Bradner that, for large resource development projects, the state should follow the federal lead and require the developer to pay for necessary studies. The state should be a prudent steward of its lands and natural resources, not a pushover. Will such a requirement really discourage serious developers who have done their homework? We doubt it. What it might do is prevent the public waste of precious agency time and money, and weed out the speculators and the flakes.

Recommendation: In subsection (h) change "may" to "shall".

7. Adequate Financial Return to State. We understand that one of the primary reasons for this bill is DNR's desire to ensure that the public receives a reasonable return for the use of public land for profit making purposes by private individuals or businesses. As we said earlier, we fully support that goal. However, why shouldn't this goal apply to all leases, not just those for recreational facilities? And why is Gary proposing to delete the requirement that the state receive at least fair market rental

value for its lease? Although a dollar figure might not be able to be calculated until an appraisal is done, the ultimate requirement should remain.

Recommendations:

- a. Apply the financial return provisions to all leases.
- b. At subsection (1), page 4, line 21, insert between "section" and "may" the phrase "must at a minimum equal the fair market rental value of the land to be leased and".
- g. Evaluation of Alternative Sites. After a general area for possible leasing has been identified in subsection (b), it is still critical that several potential specific locations be evaluated. The environmental impacts at, or the political acceptability of, different specific locations can vary tremendously, as our experience at South Denali has demonstrated.

Recommendation: Insert at subsection (g) the language suggested by Gary Gustafson.

9. Bonding. At subsection (o), why shouldn't the bond cover all three possible needs: completing the development, maintaining the development, and restoring the lease site?

Recommendation: Rewrite lines 14 and 15 at page 5 to read "the department of the following:".

Thank you again for all your work on this bill. We would be happy to answer any questions you might have or to help in any way we can.

Sincerely,

Cliff Eames

Cliff Eames
Issues Director

cc: Committee Members
Senator Kerttula
Gary Gustafson

State can learn from the failure of ambitious resort plans

Mitsui's cancellation of its Hatcher Pass ski resort was a real disappointment. But coming not long after Austrian developer Robert Rogner shelved his ambitious Eagle River ski resort plan, it should have been no surprise.

In terms of winter tourism development, we're now left with Seibu's planned expansion at Mount Alyeska, which fortunately is moving ahead, Seibu Alaska told state officials last week.

All this seems to confirm the cynic's view that these ambitious plans were spawned by Anchorage's

Anch. Daily News
Feb 11, 1990

tim bradner



Winter Olympics bid. That having failed, for now at least, the "world-scale" resort projects faded away fast.

What have we learned from this? Two things are striking about Mitsui's plan, and that of Rogner's as well.

First is that neither seemed to have their project really thought out in terms of markets and problems like getting seats on international air carriers coming into Anchorage, both pretty basic. The second is that both projects required a considerable

investment of public dollars in dealing with their applications.

Let me first deal with this second issue: State agencies and local governments put a lot of time and money, including contracted consulting studies, into dealing with projects that in retrospect seemed highly speculative. Rogner and Mitsui also put up money, but I'll wager the public expenditure exceeded that private investment.

I'll admit the counter-argument that public agencies may spend too much money on planning and studies. But

I don't really buy that, in these cases.

Another argument. The planning work may not be wasted if it can be used by others someday proposing resorts in Hatcher Pass or Eagle River. That, however, just reminds me of the huge public expenditure we blew on environmental and feasibility studies for the Susitna River hydro project, now abandoned, that are still sitting around on shelves.

I'm a believer in the idea of public-private partnership in economic development, and that, at a certain point, it makes sense for public

investment to help a private project that generates public benefits move along.

But having seen two "world-scale" international tourism projects fade away, I would suggest federal and state governments require developers of these large resource-development projects to pay for an environmental impact statement (or an environmental assessment, in the case of state agencies) that also includes social and economic components. This work is actually done by private contractors working

Please see Page E-3, BRADNER

BRADNER: Alaskans can learn from disappointment after resort plans fall through

Continued from Page E-1

for the agencies involved, but with considerable involvement by the developer.

If this has the effect of increasing a developer's front-end investment in the conceptual stage, that's not all bad. If we up the entry fee a bit, it might make entrepreneurs and developers look more carefully, and perhaps do their homework

more thoroughly, before launching a process that costs us all money, arouses our expectations and then leads to disappointment.

Going to the first point made earlier: I was surprised at the evident lack of basic market research by Rogner and Mitsui. Rogner hadn't done a real market study until the legislature, as a condition to discussions of state investment, required

him to foot half the bill for a study done through Alaska Industrial Development and Export Authority. Rogner's project didn't look very good in that assessment, possibly a factor in his shelving the project.

With Rogner, we can accept, even admire, a certain amount of entrepreneurial seat-of-the-pants venturing, even if it costs us money. But we hold Mitsui, which is

a major Japanese world trading company, to a different standard.

We assumed Mitsui had its project thought-out and knew its own market in Japan. Turns out, it didn't. As far as state officials involved with the project could determine, Mitsui never did do a real market study. It did make inquiries of tour agencies and airlines,

the company told state officials.

In fairness, Mitsui always candidly said that its project was contingent on markets and feasibility. If Alaskans allowed their expectations to soar, that was their problem, not Mitsui's.

But all this has left a bit of a sour taste for me. We desperately need new tourism facilities in Alaska, and a winter resort, properly

planned, could help ease the overcrowding during summer. I just hope our disappointment with the Rogner and Mitsui projects doesn't hurt public acceptance of other tourism proposals.

□ Tim Bradner is editor of an Alaska economic reporting service, and does research and writing for private clients, including petroleum companies.

February 16, 1990

Briefing Paper CSHB 290

ADF&G Habitat Division

BACKGROUND/LEGISLATIVE INTENT

CSHB 290 establishes a recreational facilities leasing program within the Alaska Department of Natural Resources (ADNR) and is intended to expedite the process of leasing state lands for recreational development. Section (a) of the bill can be interpreted to give the commissioner of ADNR total discretion in the initial identification of state lands that may be leased for recreational facilities. No criteria are provided for what lands may or may not be selected, and no lands appear to be excluded from leasing, including tide and submerged lands or legislatively designated areas such as State Game Refuges, Critical Habitat Areas, and State Game Sanctuaries. It appears that Section (a) would give the commissioner of ADNR blanket approval to begin the process of offering these lands for lease prior to any analysis of economic return to the state or impacts to other resources or resource users.

Under section (b) the bill can be interpreted as requiring the commissioner of ADNR to propose a site-specific plan justifying a recreational disposal, or to propose an amendment to a regional land use plan if the plan does not allow for or prohibit the

proposed use.

CSHB 290 exempts ADNR from all present leasing statutes except those pertaining to lease terms, removal of improvements, and security holder's interests. It establishes new standards for lease payments and requires the lessee to pay for certain studies. It also establishes a legislative account for the receipt of lease payments and the possibility of these funds being allocated to ADNR.

ANALYSIS OF BILL/PROGRAM EFFECTS

It is not clear what advantages CSHB 290 offers over existing Title 38 statutes, beyond allowing the state to maximize its economic return from recreational leases, and there appears to be several disadvantages as presently drafted. It also is not clear why ADNR would not want to maximize the state's return from all other types of leases, and we suggest the bill be amended to include all types of leases. Based upon the recent Mitsui and Rogner ski area leasing process, it is clear that current statutes need to be changed to screen out, at the beginning rather than the end of the leasing process, those projects that are not economically viable, conflict with other beneficial uses, or do not have public support at the project identification stage. It does not appear that CSHB 290 does this.

CSHB 290 seems to allow the commissioner of ADNR almost total

discretion in selecting and leasing lands for economic development. Section (a) would allow ADNR to identify lands and begin the process of leasing prior to notifying other resource agencies, local governments, or residents of the area. The bill does not restrict any state lands from potential leasing, even if leasing is specifically prohibited in an ADNR area plan. During the development of many area plans, there was strong local opposition to the development of permanent recreational facilities because of likely conflicts with subsistence and the other traditional uses and conflicts with maintenance of important fish and wildlife habitat such as caribou calving areas, and goose and swan nesting areas. Although planning units were classified for recreation, it was intended to be dispersed public recreation. It would be unproductive to force ADNR to amend a regional or area land use plan as it can now be read, if the use was not allowed in the previous plan and if there is public opposition to amending the plan. Many areas of state land such as recreation rivers, State Game Refuges, and Critical Habitat Areas would not be appropriately addressed through this process even if they are open to recreational facilities leasing.

Under present wording in Section (a), CSHB 290 could allow ADNR to identify potential recreational facilities in legislatively designated State Game Refuges, Critical Habitat Areas, or State Game Sanctuaries prior to seeking Alaska Department of Fish and Game (ADF&G) concurrence. In many cases, this might be

incompatible with important fish and wildlife habitat, an ADF&G plan, or a primary purpose of the legislatively designated area (e.g., protection of fish and wildlife habitat and opportunities for public use of fish and wildlife resources).

The bill also appears to undermine ADF&G's ongoing process of identifying guide areas throughout the state, under SB 112 and CSHB 139. This bill could conflict with the legislative task force's report on guiding of game by allowing the opportunity to lease key guiding facility locations on state lands for periods longer than the recommended ten-year maximum or to individuals who do not have guiding rights. A section by section comparative analysis of CSHB 290 and these bills is necessary.

Although the ADF&G is the state agency that has expertise in the commercial, subsistence, and recreational and other non-consumptive uses of fish and wildlife and is responsible for maintaining these resources for public use, there is no requirement in CSHB 290 for ADNR to defer to ADF&G's expertise and responsibilities in identifying the impacts of fish and wildlife based recreational facilities.

There is also no opportunity to point out potential conflicts with important fish and wildlife habitat, or with existing recreational and subsistence uses in many rural areas of Alaska, such as the Kuskokwim river and Bristol Bay, prior to identifying lease sites

in Section (a). This deficiency is likely to result in unnecessary conflicts between the statutory mandates of resource agencies and between user groups. Failure to evaluate the need for and impact of proposed recreational facilities prior to initiating a leasing process is also likely to severely affect the value of existing recreational facilities in the area if the new facilities overload the market or degrade the quality of the attraction that present owners are offering. Sections (a) and (b) need to be combined to ensure that adequate social, economic (both short and long-term), and environmental assessments are done prior to identifying areas for leasing.

CSHB 290 should also be amended to require an economic analysis of the proposed project at the very beginning of the site identification process rather than at the end as is presently the case. Over the past five years, state agencies have spent hundreds of thousands of dollars in state funds participating in planning and leasing processes for recreational projects which have been dropped at the very end because they were economically nonviable. This includes both the Eagle River and Mitsui/Hatcher Pass ski areas. In both cases, state agencies may have invested more time and money than the project promoters. CSHB 290 appears to perpetuate that problem. This bill needs to be revised to require ADNR or the developer to demonstrate the economic viability of the project before the state invests a lot of time and money in it. Alternatively, the bill could be amended to require that the

prospective lessee fund the entire process beginning with the land use plan or plan amendment.

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

March 23, 1990

The Honorable Curt Menard
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Menard:

Thank you for the opportunity to address our concerns on the legislation you have proposed pertaining to the leasing of state land for recreational facilities. I was pleased that you incorporated the amendments jointly proposed by the Departments of Fish and Game (ADF&G) and Natural Resources into the new version of the bill. Accordingly, I want to restate the position that the Department of Fish and Game supports Committee Substitute for House Bill 290 (Resources).

I anticipate that as the bill continues to move through the Legislature, many questions will be raised about the amendments incorporated in your bill and the concerns the Department of Fish and Game has had with the bill. We will be restating our position before the House Finance committee on Wednesday, March 28, and for your convenience I wanted to take the time to reiterate in writing the nature of our concerns that serve as the basis for our support.

The bill addresses two distinct purposes. First, the bill proposes changes to the current statute to allow the state to receive a better financial return for leasing state land for recreational development. In the wake of the recent experience with the proposed Mitsui ski area in Hatcher Pass, these changes are fully warranted and fiscally responsible.

Secondly, the bill proposes revisions to the procedure for identifying and leasing state land for recreational facilities.

In order to ensure the success of recreation development and to generate the maximum economic benefits from recreation facilities, it is crucial to ensure protection of fish, wildlife, and other resources that serve as the primary attraction of visitors, tourists, and the Alaskan public seeking recreation opportunities.

We believe that recreation facilities development can occur compatibly with fish and wildlife resources, and in turn support long-term economic benefits, provided the conditions now in the bill and discussed below are adequately addressed.

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H.B.
290
PACK.

March 23, 1990

1. ADF&G has an appropriate role in the identification and leasing process.
2. The public is involved as much, or more so, than is currently provided.
3. User conflicts are taken into account.
4. Proper planning and management tools are in place.
5. Sites are selected, taking into account the ability of the resource to sustain increased pressure and use.
6. Mitigating measures are allowed.

I believe these concerns have been addressed in CSHB 290 (Resources) and will allow for long-term economic benefits by protecting fish and wildlife resources of concern to the public.

Because the long-term benefits depend on adequate protection for fish and wildlife resources, the list of concerns discussed above will continue to serve as a basis for evaluating any amendments that may be proposed to the bill.

Your continued support for these provisions is most appreciated. If any additional information would helpful, please do not hesitate to contact me or my staff.

Sincerely,



Don W. Collinsworth
Commissioner

cc: Senator Fahrenkamp, Chairman, Senate Resources Committee
Senator Binkley, Co-chair, Senate Finance Committee
Senator Uehling, Co-chair, Senate Finance Committee
Senator Kerttula, Vice-chair, Senate Resources Committee
Senator Eliason, Senate Resources Committee
Senator Frank, Senate Resources Committee
Senator Halford, Senate Resources Committee
Senator Sturgulewski, Senate Resources Committee
Senator Zharoff, Senate Resources Committee
Representative Davidson, Co-chair, House Resources Committee
Representative Hoffman, Co-chair, House Finance Committee
Representative Larson, Co-chair, House Finance Committee
Senate Sponsor of Companion Bill
Commissioner Lennie Gorsuch

Norman A. Cohen
Warren W. Wiley
Denby Lloyd
Bob Evans
Larry Ostrovsky
Gary Gustafson
Deborah Greenberg
Molly McCammon
Frank Rue
Lance Trasky
Steve Behnke
Lew Pamplin



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Representative Cliff Davidson
Representative Curt Menard

FROM: Representative Kay Wallis *KW*

DATE: May 1, 1990

SUBJ: SB 213

I still have concerns on SB 213 and have not worked out all my amendments/concerns. Please hold SB 213 today.

Thank you.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HCS CSSB 213(Resources) (draft 6-0841D, dated 5/1/90)

Page 1, lines 27 - 28:

Delete ", the commissioner may solicit proposals from potential lessees. If the commissioner"

Insert "and"

Page 2, following line 12:

Insert a new subsection to read:

"(d) After preparing a written request for proposals under (c) of this section, the commissioner shall give public notice under AS 38.05.945 of the written request for proposals and request comments from the public and state agencies."

Page 2, lines 13 - 14:

Delete

"(d) After preparing a request for proposals under (c) of this section"

Insert

"(e) If, after reviewing and considering the public and state agency comments received under (d) of this section, the commissioner determines that soliciting proposals is in the best interest of the state"

Reletter the following subsections accordingly.

Page 2, line 23:

Delete "(d)"

Insert "(e)"

Page 2, line 27:

Delete "(d)"

Insert "(e)"

Page 3, line 4:

Delete "(j)"

Insert "(k)"

Page 3, line 10:

Delete "(e), (f), or (i)"

Insert "(f), (g), or (j)"

Page 4, line 14:

Delete "(g)"

Insert "(h)"

Page 4, line 23:

Delete "(g)"

Insert "(h)"

Page 5, line 7:

Delete "(f)"

Insert "(g)"

Page 5, line 8:

Delete "(h)"

Insert "(i)"

Page 5, line 10:

Delete "(f)"

Insert "(g)"

Page 5, line 11:

Delete "(f)"

Insert "(g)"

Page 5, line 13:

Delete "(e), (f), or (i)"

Insert "(f), (g), or (j)"

SCR 213

SCR 34

A M E N D M E N T

by Davidson

Amendment to amendment #1

Page 2 Line 12, after "municipality;"
delete "and"

Line 13 after "development" add "and (5) any other individuals or groups which have specifically requested to be notified of proposals in a region".

May 1, 1990

A M E N D M E N T

Page 1, line 26

AFTER (c) DELETE

If the commissioner identifies land for recreational facilities development leasing under (a) of this section, the commissioner may solicit proposals from potential lessees.

AFTER (c) ADD

If the commissioner identifies land for recreational facilities development leasing under (a) of this section, the commissioner shall provide public notice of the location and the specific type of recreational facilities development under consideration at least 30 days prior to a decision to solicit proposals from potential lessees, ~~the~~ Public notice identifying the location and the specific type of recreational facilities development under consideration must ^{also} be published at least twice in a newspaper of general circulation in the state and in a local newspaper in general circulation in the region where the land is located.

Any comments received under this public notice will become part of the public record for the consideration of the commissioner.

The notice shall be provided to the following:

- 1) to a municipality if the land is within the boundaries of the municipality;
- 2) to a regional corporation if the boundaries of the corporation as established by § 7(a) of the AK Native Claims Settlement Act encompass the land and the land is outside the municipality; and
- 3) to a village corporation organized under § 8(a) of the AK Native Claims Settlement Act if the land is within 25 miles of the village for which the corporation was established and the land is located outside a municipality and
- 4) other entities affected by the ^{specific} recreational ~~facilities development~~

PROPOSED AMENDMENT TO CSSB 213 (RESOURCES)

To BE INSERTED in paragraph (i), line 22, p. 4 after "State"

In determining the best interest of the state the commissioner shall determine whether the proposal provides

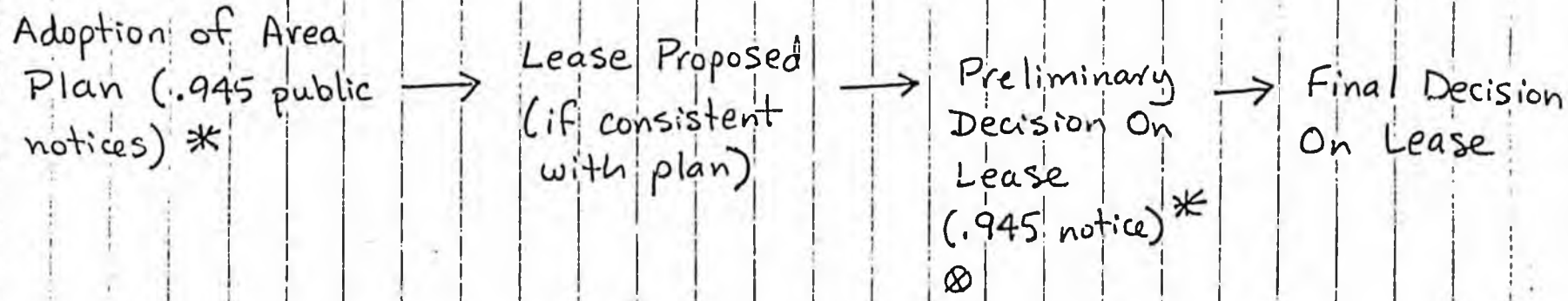
- (1) for maximum feasible equity ownership of the facility by citizens of the United States;
- (2) that the recreational use of the planned facility is consistent with prior existing uses of the surrounding areas;
- (3) that the public interest as defined in AS 38.04.010 and AS 38.04.015 is met by the plan.

Sever remainder of sec(i) as new paragraph p. 4, l. 22 beginning with "If the commissioner determines that..."

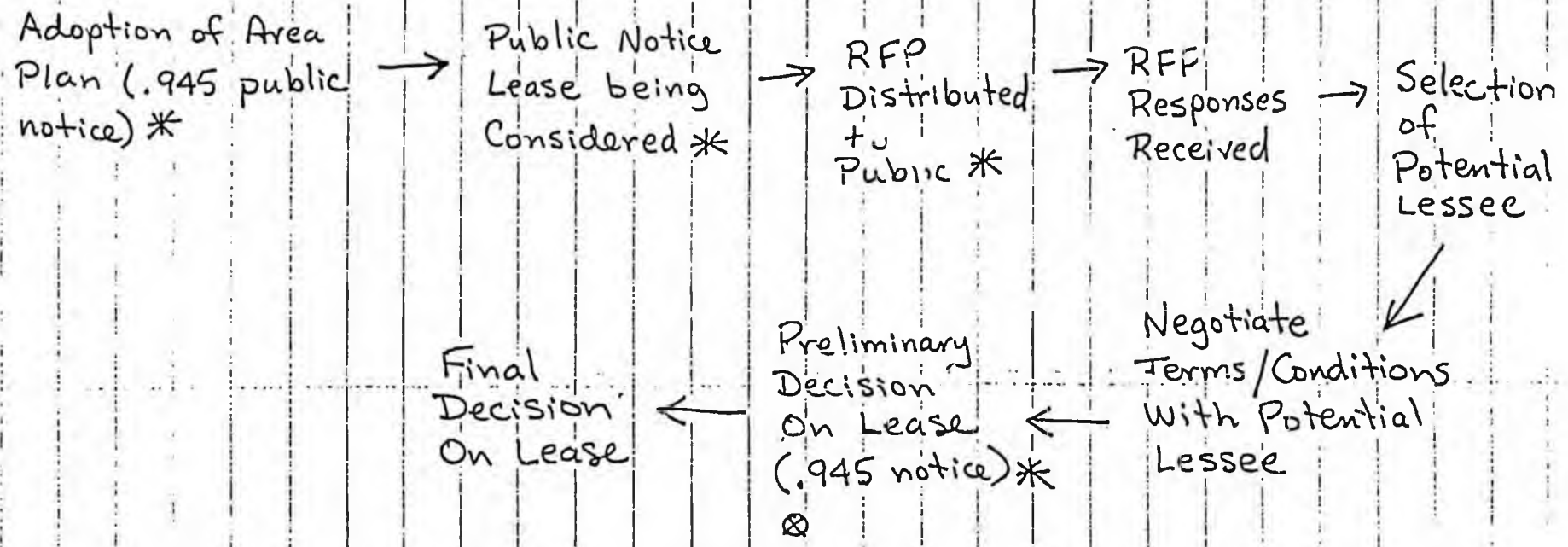
Remember remaining sections

* public notice
⊗ public hearing

EXISTING LEASE LAW - AS 38.05.070 - .075



PROPOSED CSSB 213



A M E N D M E N T # 1

TO HCS FOR CS FOR SENATE BILL NO 213 (RES)

PAGE 4, LINES 11 AFTER "agencies." IS AMENDED TO READ:

[THE COMMISSIONER MAY] "A public hearing[S] shall be held in the region[S] where the land proposed for lease is located [.] if the commissioner determines there is sufficient local interest."