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SENATE FINANCE COMMITTEE REPORT

DATE: 4/7/90

FURTHER:

DATE TURNED INTO OFFICE: 4/24/90

The Finance Committee considered

SB 213

"An Act relating to commercial development leasing of state land."

and recommended:

replace with _____ CS _____
 or adopt _____ CS SB 213 (RIS)
 attached amendment(s)
 _____ letter of intent adopted

same title
 new title
 technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

fiscal note(s) _____ Dept/Date: _____

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:

fiscal note(s) _____ Dept/Date: _____

zero fiscal note(s) DNR 4/17/90

SIGNING DO PASS:

Jim Duncan
Price
Dan Frick

OTHER RECOMMENDATIONS:

1. Rich Uhly (DO PASS) 2. _____
Co-Chairs: Signatures and Recommendations

R/O SFC 4-24-90

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: ^{RS} SB 213 (Res)

PUBLISH DATE: 4/2/90

FISCAL NOTE

REQUEST:

Revision Date:	17-Apr-89	Agency Affected:	Natural Resources
Title:	An Act relating to commercial development leasing of state land.	BRU:	Land & Water Mgmt
Sponsor:	Senator Kertulla	Components:	Land & Water Mgmt
Requestor:	Senate Resource		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 17-Apr-89

Approved by Commissioner: Lennie Gorsuch Date: 17-Apr-89
 Agency: Department of Natural Resources

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Changes in CS SB213 (Res)
 have no fiscal impact. This
 fiscal note is appropriate.
 Projections of no fiscal impact
 would continue through: 1996

Original sponsor(s): SEN. KERTTULA

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 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. 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 38.05.105
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 may solicit proposals from potential lessees. If the commissioner
29 decides to solicit proposals, the commissioner shall prepare a written

1 request for proposals that includes

2 (1) the specific type of recreational facilities develop-
3 ment for which the land may be leased;

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

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

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

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

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

27 (f) After soliciting proposals under (d) of this section, if the
28 commissioner determines that two or more potential lessees are accept-
29 able, the commissioner may select the potential lessee who submits the

1 highest bid during an auction or by sealed bids, whichever method the
2 commissioner chooses. The minimum bid must equal the amount estab-
3 lished by the commissioner plus the administrative fee established
4 under (j) of this section. The commissioner shall also require the
5 potential lessee to make an earnest money deposit under AS 38.05.-
6 860(b). After the commissioner selects a potential lessee, the com-
7 missioner may begin negotiations with the potential lessee to develop
8 the terms and conditions for the lease.

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

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

23 (2) an analysis of alternative sites;

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

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

28 (5) a statement of the potential economic, social, and
29 environmental effects of the proposed development, including the

1 effect on water quality and the traditional and recreational uses of
2 the land;

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

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

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

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

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

1 required plans and studies. If the plan or study involves fish, game,
2 or customary and traditional use of natural resources, the Department
3 of Fish and Game shall review the methodology and scope of the plan or
4 study. If the Department of Fish and Game determines that the method-
5 ology and scope are appropriate for the plan or study, the methodology
6 and scope may be used for the plan or study.

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

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

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

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

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

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

23 (3) the fair market rental value;

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

26 (5) a fee for each user;

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

28 (7) a combination of the above.

29 (m) The annual compensation paid to the state for a recreational

1 facilities development lease shall be reevaluated and adjusted at
2 five-year intervals. The annual compensation for each five-year
3 period after the initial five years of the lease shall be calculated
4 by the same method used to establish the compensation for the initial
5 five-year period.

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

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

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

16 (2) maintaining the development under the terms and con-
17 ditions of the lease;

18 (3) restoring the lease site if the lease is abandoned or
19 terminated.

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

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

29 (r) The commissioner of administration shall separately account

1 for all money collected under this section that the department de-
2 posits in the general fund. The annual estimated balance in the
3 account may be used by the legislature to make appropriations to the
4 department to carry out the purposes of this section.

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

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 17, 1989

The Honorable Bettye Fahrenkamp
Chair, Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Subject: SB 213, Commercial Development Leasing

Position: The Department of Natural Resources supports the concept of this new commercial development leasing statute. We believe our existing leasing statutes are inadequate to allow the department to capture a meaningful revenue return for the long-term use of state land and resources for commercial recreational purposes. The department does have some suggested changes to this bill which we believe will enhance its effectiveness.

Background: Under current leasing statutes rental is fixed for a 25-year period. It cannot be adjusted to reflect changes in the lease's fair market value. This makes it impossible to ensure that large commercial developments will bring a fair return to the state. Furthermore, there is no opportunity to employ alternative revenue generation techniques, such as percentage of gross receipts or user fees.

In order to ensure that proposed developments generate a fair return for the resources being utilized, a commercial development lease that allows the department more flexibility in negotiating a greater return would benefit the state. The proposed statute would allow the department to do business in a manner more consistent with private industry, as well as that already being used by many other public land agencies (i.e. U.S. Forest Service).

Recommendations: The department recommends the following modifications to SB 213.

1. Under (a), the commissioner requests the authority to apply AS 38.05.085(c), AS 38.05.085(f) and AS 38.05.095(a) to leases issued under this section.

2. Under (b), the area plan should be adopted prior to soliciting expressions of interest. The process for adopting a plan would require adequate public notice; therefore, (c) is redundant and could be deleted.

3. The commissioner requests the authority to set a minimum bid for the auction or sealed bid for the right of first refusal under (f).

4. Under (g), if the potential developer who is offered the lease declines, the commissioner is forced to begin the negotiations with the second highest bidder, thus requiring another preliminary decision, public notice and final finding. As an alternative, if the potential developer declines the offer, the same offer could be made to subsequent bidders until one of the potential developers accepted the offer.

5. The commissioner requests the authority to reappraise and adjust the annual compensation at five year intervals to ensure a fair return to the state.

6. The justification for a performance bond should be expanded to include the ability to complete and/or maintain a project in the event the lessee defaults on a condition of the lease. The department also needs the ability to cash in the bond for use on the project. In the past, the Department of Law has questioned whether bond proceeds could actually be used for such purposes. If the bond proceeds must be deposited into the general fund and an appropriation sought during the next budget cycle, the attendant delays could result in a great deal of interim damage.

7. Under (j), the lease appears to be renewable. The lease should not be automatically renewable, however. The commissioner should reserve the right to offer the lessee the right of first refusal if the land is going to be offered again as a commercial development lease.

8. The commissioner requires the ability to terminate the lease for a breach of a term or condition of the lease.

9. The income generated from commercial development leases should be accounted for separately by the Commissioner of Administration to allow the Legislature to make appropriations to carry out the purposes of AS 38.05.073.

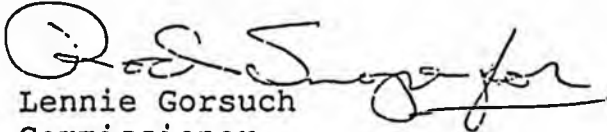
Senator Fahrenkamp

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April 17, 1989

We appreciate the opportunity to work with the committee and offer our continued assistance to the committee and staff on this important piece of legislation.

Sincerely,


Lennie Gorsuch
Commissioner

cc: Bill Sponsor
Committee Members
Denby Lloyd, Special Staff Assistant
Office of the Governor
Bob Evans, Legislative Liaison
Office of the Governor
Gary Gustafson, Director
Division of Land and Water Management
Department of Natural Resources