



LAWS OF ALASKA

1990

Source

HCS CSSB 213(Res)

Chapter No.

183

AN ACT

Relating to the leasing of state land for recreational facilities development.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1, LINE 9

Approved by the Governor: June 21, 1990
Actual Effective Date: September 19, 1990

AN ACT

Relating to the leasing of state land for recreational facilities development.

* Section 1. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.073. RECREATIONAL FACILITIES DEVELOPMENT LEASING.

(a) To identify land suitable for recreational facilities development leasing, the commissioner shall make the identification through a regional land use plan or a site-specific land use plan adopted under AS 38.04.065. The identification of land for leasing under this section shall be consistent with any existing regional recreational management plan. The commissioner may request proposals from potential lessees under this section if consistent with an adopted land use plan that expressly allows the specific type of development under consideration. Consistent with AS 38.04.065, the development of a land use plan used to identify land suitable for recreational facilities development leasing must consider the supply of recreational opportunities and alternatives, economic and social factors, and fish, wildlife, and other resources affected by the specific type and location of recreational facilities development under consideration.

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

(c) If the commissioner identifies land for recreational facilities development leasing under (a) of this section, at least 30 days

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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

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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

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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"

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