

CS FOR HOUSE BILL NO. 282(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 3/1/24

Referred: Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to access roads; relating to state land; relating to contracts for the sale**
2 **of state land; relating to the authority of the Department of Education and Early**
3 **Development to dispose of state land; relating to the authority of the Department of**
4 **Transportation and Public Facilities to dispose of state land; relating to the authority of**
5 **the Department of Natural Resources over certain state land; relating to the state land**
6 **disposal income fund; relating to the sale and lease of state land; relating to covenants**
7 **and restrictions on agricultural land; and providing for an effective date."**

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

9 * **Section 1.** AS 14.07.030(a) is amended to read:

10 (a) The department may

11 (1) establish, maintain, govern, operate, discontinue, and combine area,
12 regional, and special schools;

13 (2) enter into contractual agreements with the Bureau of Indian Affairs

1 or with a school district to share boarding costs of secondary school students;

2 (3) provide for citizenship night schools when and where expedient;

3 (4) provide for the sale or other disposition of abandoned or obsolete
4 buildings and other state-owned school property;

5 (5) prescribe a classification for items of expense of school districts;

6 (6) acquire and transfer personal property, acquire real property, and
7 transfer an interest in real property according to terms, standards, and conditions
8 established by the commissioner [TO FEDERAL AGENCIES, STATE AGENCIES,
9 OR TO POLITICAL SUBDIVISIONS];

10 (7) enter into contractual agreements with school districts to provide
11 more efficient or economical education services; reasonable fees may be charged by
12 the department to cover the costs of providing services under an agreement, including
13 costs for professional services, reproduction or printing, and mailing and distribution
14 of educational materials;

15 (8) provide for the issuance of elementary and secondary diplomas to
16 persons not in school who have completed the equivalent of an 8th or 12th grade
17 education, respectively, in accordance with standards established by the department;

18 (9) apply for, accept, and spend endowments, grants, and other private
19 money available to the state for educational purposes in accordance with AS 37.07
20 (Executive Budget Act);

21 (10) set student tuition and fees for educational and extracurricular
22 programs and services provided and schools operated by the department under the
23 provisions of (1) of this section and AS 14.07.020(a)(9), (11), and (12);

24 (11) charge fees to cover the costs of care and handling with respect to
25 the acquisition, warehousing, distribution, or transfer of donated foods;

26 (12) establish and collect fees for the rental of school facilities and for
27 other programs and services provided by the schools;

28 (13) develop a model curriculum and provide technical assistance for
29 early childhood education programs;

30 (14) notwithstanding any other provision of this title, intervene in a
31 school district to improve instructional practices under standards established by the

1 department in regulation, including directing the

2 (A) employees identified by the department to exercise
3 supervisory authority for instructional practices in the district or in a specified
4 school;

5 (B) use of appropriations under this title for distribution to a
6 district;

7 (15) notwithstanding any other provision of this title, redirect public
8 school funding under AS 14.17 appropriated for distribution to a school district, after
9 providing notice to the district and an opportunity for the district to respond,

10 (A) when necessary to contract for services to improve
11 instructional practices in the district;

12 (B) when the district has failed to take an action required by the
13 department to improve instructional practices in the district; if funding is
14 redirected under this subparagraph, the department shall provide the redirected
15 funding to the district when the department has determined that the required
16 action is satisfactorily completed; or

17 (C) in accordance with AS 14.07.070, when the district has
18 failed to comply with the school laws of the state or with the regulations
19 adopted by the department.

20 * **Sec. 2.** AS 19.30.080 is amended to read:

21 **Sec. 19.30.080. Construction standards and maintenance.** An access road
22 constructed under AS 19.30.060 - 19.30.100 may [SHALL] be of low standard, not
23 necessarily suitable for all weather use. The state is not under obligation to maintain
24 an access road constructed under AS 19.30.060 - 19.30.100. If an access road is
25 constructed outside a municipality that has zoning ordinances, the right-of-way width
26 for the road shall be determined by the division of lands and the Department of
27 Transportation and Public Facilities. If an access road under AS 19.30.060 -
28 19.30.100 is constructed within the boundaries of a municipality that has zoning
29 ordinances, the right-of-way width must [SHALL] conform to the subdivision control
30 ordinances of the municipality in the same manner and to the same extent as
31 private landowners. Contracts for the work on an access road are governed by

1 AS 36.30 (State Procurement Code).

2 * **Sec. 3.** AS 35.20.070 is repealed and reenacted to read:

3 **Sec. 35.20.070. Vacating and disposing of land; rights in land.** (a) The
4 department may vacate an easement acquired for a public works purpose by executing
5 and filing a deed in the appropriate recording district. Upon filing, title to the vacated
6 rights in land inures to the underlying real property owner in the manner and
7 proportion considered equitable by the commissioner and set out in the deed.

8 (b) If the department determines that land or rights in land acquired by the
9 department are no longer necessary for public works purposes, the department shall
10 offer the land to the Department of Natural Resources. If the Department of Natural
11 Resources accepts the offer within 45 days after receiving the offer, the department
12 shall transfer the land to the Department of Natural Resources. If the Department of
13 Natural Resources rejects the offer or fails to accept the offer within 45 days after
14 receiving the offer, the offer is terminated and the department may sell, contract to
15 sell, lease, or exchange the land according to terms, standards, and conditions
16 established by the commissioner.

17 (c) Proceeds received from the sale or lease of land under this section shall be
18 credited to the funds from which the purchase of the land was originally made.

19 * **Sec. 4.** AS 38.04.022 is amended to read:

20 **Sec. 38.04.022. State land disposal income fund.** (a) The revenue from the
21 state land disposal program shall be deposited in the state land disposal income fund in
22 the state treasury. On June 30 of each fiscal year, the portion of that fund that exceeds
23 **\$12,000,000** [\$5,000,000] shall be deposited in the state general fund. The legislature
24 may appropriate money from the state land disposal income fund for expenditure by
25 the Department of Natural Resources for necessary costs incurred by the
26 commissioner in the implementation of state land disposal programs authorized under
27 this title or for any other public purpose.

28 (b) Within five days after the legislature convenes in regular session, the
29 Department of Natural Resources shall notify the legislature that a report reflecting all
30 money deposited in the fund established under (a) of this section during the **previous**
31 [PRIOR] fiscal year is available. **The report may include a recommendation to**

amend the deposit limit established in (a) of this section.

* **Sec. 5.** AS 38.04.045(b) is amended to read:

(b) Before the issuance of [A LONG-TERM LEASE UNDER AS 38.05.070 OR OF] a patent for state land, an official cadastral survey shall be accomplished, unless a comparable, approved survey exists that has been conducted by the federal Bureau of Land Management. Before land may be offered under AS 38.08 or AS 38.09, or before land may be offered under AS 38.05.055 or 38.05.057, except land that is classified for agricultural uses, an official rectangular survey grid shall be established. The rectangular survey section corner positions shall be monumented and shown on a cadastral survey plat approved by the state. For those areas where the state may wish to convey surface estate outside of an official rectangular survey grid, the commissioner may waive monumentation of individual section corner positions and substitute an official control survey with control points being monumented and shown on control survey plats approved by the state. The commissioner may not issue more than one conveyance for each section within a township outside of an official rectangular survey grid. Land to be conveyed may not be located more than two miles from an official survey control monument except that the commissioner may waive this requirement on a determination that a single purpose use does not justify the requirement if the existing status of the land is known with reasonable certainty. The lots and tracts in state subdivisions shall be monumented and the cadastral survey and plats for the subdivision shall be approved by the state. Where land is located within a municipality with planning, platting, and zoning powers, plats for state subdivisions shall comply with local ordinances and regulations in the same manner and to the same extent as plats for subdivisions by other landowners. State subdivisions shall be filed and recorded in the district recorder's office. The requirements of this section do not apply to land made available for material sales, for short-term leases, for parcels adjoining a surveyed right-of-way, or for land that has been open to random staking under the homestead program in the past; however, for short-term leases, the lessee shall comply with local subdivision ordinances unless waived by the municipality under procedures specified by ordinance. In this subsection, "a single purpose use" includes a communication site, an aid to navigation, and a park site.

1 * **Sec. 6.** AS 38.04.045 is amended by adding a new subsection to read:

2 (c) The commissioner may require an official cadastral survey under (b) of
3 this section before the issuance of a long-term lease under AS 38.05.070.

4 * **Sec. 7.** AS 38.05.055 is repealed and reenacted to read:

5 **Sec. 38.05.055. Auction sale or sealed bid procedures.** (a) Unless another
6 method of sale is allowed under this chapter, AS 38.08, or AS 38.09, the sale of state
7 land shall be made at public auction or by sealed bid, at the discretion of the director,
8 to the highest qualified bidder as determined by the director. The director may accept
9 bids and sell state land under this section at not less than 70 percent of the appraised
10 fair market value of the land.

11 (b) To qualify to participate under this section in a public auction or sale by
12 sealed bid of state land that is other than commercial, industrial, or agricultural land, a
13 bidder must be a resident of the state for at least one year immediately preceding the
14 date of the sale and submit proof of that fact as required by regulation. A bidder may
15 be represented by an attorney or agent at a public auction.

16 (c) An aggrieved bidder may appeal to the commissioner within five days after
17 the sale for a review of the director's determination.

18 (d) The director shall conduct a sale under this section. The successful bidder
19 at a public auction, or, for a sealed bid, each bidder when submitting a bid, shall
20 provide an earnest money deposit in the amount of at least five percent of the bid
21 amount. Not later than 10 days after the public auction or sale by sealed bid, the
22 director shall issue a receipt to the successful bidder. The director's receipt shall
23 contain a description of the land or property purchased, the bid price, and the amount
24 deposited. If the bidder fails to enter into a contract to purchase or defaults in the
25 payment of the bid amount, five percent of the bid amount shall be forfeited to the
26 state.

27 * **Sec. 8.** AS 38.05.065(a) is amended to read:

28 (a) A [THE] contract of sale for land, **an interest in land, or property** sold
29 **under this chapter, including under AS 38.05.057, may be issued for** [AT PUBLIC
30 AUCTION OR BY SEALED BID UNDER AS 38.05.055 SHALL REQUIRE] the
31 remainder of the purchase price to be paid in monthly, quarterly, or annual

installments over a period of not more than **30** [20] years, with interest at the rate provided in (i) of this section. Installment payments plus interest shall be set on the level-payment basis.

* **Sec. 9.** AS 38.05.065(c) is amended to read:

(c) The director shall, for contracts under (a) [, (b),] or (h) of this section, set out in the contract for each sale the period for the payment of installments and the total purchase price plus interest. The director, with the consent of the commissioner, may also include in contracts under this section conditions, limitations, and terms considered necessary and proper to protect the interest of the state. Violations of any provision of this chapter or the terms of the contract of sale subject the purchaser to appropriate administrative and legal action, including but not limited to specific performance, **termination** [FORECLOSURE], ejectment, or other legal remedies in accordance with applicable state law.

* **Sec. 10.** AS 38.05.065(d) is amended to read:

(d) If a contract for a sale of state land has been breached, the director may issue a decision to [FORECLOSE AND] terminate the contract at any time 31 days after delivering by certified mail a written notice of the breach to the address of record of the purchaser. A breach caused by the failure to make payments required by the contract may be cured within 30 days after the notice of the breach has been received by the purchaser by payment of the sum in default together with the larger of a fee of \$50 or five percent of the sum in default. If there are material facts in dispute between the state and the purchaser, the purchaser may submit a written request for a public hearing for the review of the facts within 30 days after the notice of the breach has been received.

* **Sec. 11.** AS 38.05.065(e) is amended to read:

(e) **Upon** [ON] a determination that there has been a breach of the contract based on the administrative record and the evidence presented at a hearing, **if requested,** the director shall issue a decision [FORECLOSING THE INTEREST OF THE PURCHASER AND] terminating the contract. The obligation to make payments under the contract continues through the date of the **director's** decision to **terminate the contract** [FORECLOSE BY THE DIRECTOR].

1 * **Sec. 12.** AS 38.05.065(f) is amended to read:

2 (f) The director shall deliver the decision to [FORECLOSE AND] terminate
 3 **the contract** personally to the purchaser or send it certified mail, return receipt
 4 requested, to the address of record of the purchaser. If the breach is a failure to make
 5 payments required by the contract, the decision shall include a notice to the purchaser
 6 that if within 30 days the purchaser pays to the state the full amount of the unpaid
 7 contract price, including all accrued interest, and any fees assessed under (d) of this
 8 section, the **commissioner** [DEPARTMENT] shall issue to the purchaser a deed to the
 9 land. If full payment is not made within 30 days or the breach is for other than failure
 10 to make payment, the decision [FORECLOSES AND] terminates all legal and
 11 equitable rights the purchaser has in the land.

12 * **Sec. 13.** AS 38.05.065(h) is amended to read:

13 (h) The commissioner, after consulting with the Board of Agriculture and
 14 Conservation (AS 03.09.010),

15 (1) shall provide that, notwithstanding (a) [AND (b)] of this section, in
 16 a contract for the sale of land classified under AS 38.05.020(b)(6) for agricultural
 17 uses, the interest rate to be charged on installment payments may not exceed 9.5
 18 percent; and

19 (2) may declare a moratorium of up to five years on payments on land
 20 sold under this section for land classified under AS 38.05.020(b)(6) for agricultural
 21 uses if

22 (A) the commissioner determines that the moratorium is in the
 23 best interest of the state;

24 (B) the commissioner certifies and the contract purchaser
 25 agrees to perform farm development, crop production, and harvesting, not
 26 including land clearing or related activity, requiring the expenditure of
 27 amounts equivalent to the payments that would otherwise be made during the
 28 moratorium;

29 (C) the sale of the agricultural land takes place after July 1,
 30 1979; and

31 (D) the contract purchaser is in compliance with the

development plan specified in the purchase contract at the time the purchaser applies for a moratorium under this paragraph and remains in compliance with the development plan during the moratorium; for the payments subject to the moratorium declared under this paragraph, interest payments are subject to the moratorium but interest continues to accrue during the moratorium.

* **Sec. 14.** AS 38.05.065 is amended by adding new subsections to read:

(j) If a sale of state land is to be made by means other than as prescribed by AS 38.05.055, the director shall require a person applying to purchase land, an interest in land, or property to submit an earnest money deposit of at least five percent of the purchase price with the application for a contract to purchase land, an interest in land, or property. The earnest money deposit shall be applied toward the purchase price. If the applicant fails to enter into a contract to purchase or defaults in the payment of the purchase price, five percent of the purchase price shall be forfeited to the state.

(k) Notwithstanding (a) of this section, the commissioner may, upon a best interest finding, determine that the purchase price for a parcel of land with existing improvements valued at greater than \$10,000 must be paid in full within 120 days of closing.

* **Sec. 15.** AS 38.05 is amended by adding a new section to read:

Sec. 38.05.086. Leases and sales of land for commercial development. (a)

For purposes of stimulating economic development in the state, the commissioner may offer land identified under (b) of this section for lease for commercial development by issuing a request for proposals. A lessee eligible under (m) of this section may purchase the leased land.

(b) The commissioner may identify land appropriate for commercial development from any or all of the following categories:

(1) state land identified or nominated as a qualified opportunity zone under 26 U.S.C. 1400Z-1 and 1400Z-2;

(2) state land nominated by the public; a public nomination may not exceed 640 acres in size;

(3) any other state land the commissioner deems appropriate for commercial development.

(c) If land identified in (b) of this section is classified in a manner that does not allow disposal of the land, the commissioner may classify or reclassify the land under AS 38.04.065 and AS 38.05.300. Before classifying or reclassifying land under this subsection, the commissioner shall provide public notice under AS 38.05.945. Notwithstanding AS 38.05.945(c)(2) and (3), regardless of whether the land is located inside or outside a municipality, the commissioner shall provide notice to a

(1) regional corporation if the boundaries of the corporation as established by 43 U.S.C. 1606(a) (sec. 7(a), Alaska Native Claims Settlement Act) encompass the land;

(2) village corporation organized under 43 U.S.C. 1607(a) (sec. 8(a), Alaska Native Claims Settlement Act) if the land is within 25 miles of the village for which the corporation was established.

(d) Upon a finding under AS 38.05.035(e) that the lease and sale of the land within the areas opened is in the best interests of the state, the commissioner may request in writing proposals to lease land within the areas identified in (b) of this section for commercial development.

(e) A person may apply to develop land within the areas by responding to the commissioner's request for proposals and paying an application fee established by regulation. In addition to information requested by the commissioner in the request for proposals, a response to the request for proposals must include the specific

(1) type of commercial development proposed; and

(2) location, description, and size of the land for the proposed commercial development; the size of land requested in a response to a request for proposals may not exceed 20 acres and must be reasonably compact.

(f) The commissioner's request for proposals must be posted on the Alaska Online Public Notice System (AS 44.62.175) for at least 30 consecutive days and must be furnished in electronic format or by mail to each person who received notice of the decision issued under AS 38.05.035(e).

(g) A response to the commissioner's request for proposals must be in writing and submitted by the deadline set by the commissioner. The commissioner may reject a proposal that does not meet the requirements of this section or that the commissioner

1 determines in writing is not in the best interests of the state. The commissioner's
2 decision to reject a proposal is subject to appeal or a petition for reconsideration under
3 AS 44.37.011.

4 (h) If the commissioner determines that only one suitable proposal for a
5 specific area of land exists, the commissioner may issue a lease to that person as
6 provided in this section as long as the proposal is in the best interests of the state. If
7 the commissioner determines that there are two or more suitable proposals for the
8 same or overlapping land, the commissioner shall hold a public auction or sealed bid,
9 limited to those persons who submitted proposals for the same or overlapping land,
10 and award the lease to the highest bidder as long as the proposal of the highest bidder
11 is in the best interests of the state.

12 (i) If a potential lessee selected under (h) of this section declines the lease
13 offer, the commissioner may begin negotiations with the potential lessee who provided
14 the next highest bid to develop the terms and conditions for a lease.

15 (j) The commissioner shall set, using a method of compensation set out in
16 AS 38.05.073(m), an annual fee for a commercial land lease under this section to
17 ensure that the state receives, for the term of the lease, a fair return for the use of the
18 land granted by the lease.

19 (k) A lease under this section may only be assigned by a lessee at the
20 discretion of the director. The initial term of the lease may not be more than five years.
21 At the director's discretion and only if the lease is in good standing, the lease may
22 renewed for one additional term of not more than five years. The director may extend
23 a lease in good standing for up to two years beyond the renewal term if the director
24 determines the extension will facilitate sale of the parcel to the lessee.

25 (l) The commissioner may terminate a commercial land lease under this
26 section before the expiration of the lease for a breach of the terms of the lease,
27 including a failure to use the land in a manner required by the lease. Upon expiration
28 of the term of a lease or the termination of the lease before expiration, improvements
29 to or personal property on the land subject to the lease shall be managed in the manner
30 required by AS 38.05.090.

31 (m) At any time during the lease, a lessee in good standing may submit an

1 application to the department to purchase all or a portion of the land leased under this
 2 section for the fair market value of the land at the time of purchase. The lessee shall
 3 pay an application fee provided by regulation.

4 (n) If an application to purchase land under (m) of this section is approved,
 5 before closing, the lessee, at the lessee's expense, shall have the parcel appraised and
 6 surveyed in a manner acceptable to the department.

7 (o) An eligible lessee under (m) of this section may apply the amount of the
 8 lease payments made under the lease to the purchase price of the land. Other amounts
 9 paid, including fees, penalties, survey costs, and appraisal costs, may not be applied to
 10 the purchase price of the land.

11 (p) If an application to purchase land under (m) of this section is denied, the
 12 lessee may continue to hold the lease according to the terms of the lease, and may
 13 reapply to purchase the land. A subsequent application to purchase the land must
 14 address the reasons the previous application was denied.

15 (q) The commissioner shall adopt regulations under AS 44.62 (Administrative
 16 Procedure Act) to implement this section. Regulations adopted under this subsection
 17 must, at a minimum, address

18 (1) the application procedures for a commercial land lease or sale
 19 under this section;

20 (2) the auction or sealed bid process to be used, if necessary, under (h)
 21 of this section;

22 (3) the terms and conditions that may be included in a commercial land
 23 lease under this section;

24 (4) the method for resolving competitive bidding disputes and issues;

25 (5) the procedure for requesting proposals;

26 (6) the criteria for assessing proposals; and

27 (7) any administrative fees.

28 (r) The commissioner shall reserve easements and rights-of-way on and across
 29 land made available for commercial development under this section after providing
 30 regional corporations, village corporations, tribes, municipal governments, and other
 31 interested parties an opportunity to review and comment on the proposed reserved

easements and rights-of-way, and an opportunity to appeal a decision under AS 44.37.011. The commissioner shall reserve easements and rights-of-way under this section for trails that have an established history of use for commerce, recreation, transportation, or providing access to a traditional outdoor activity. In this subsection, "traditional outdoor activity" has the meaning given in AS 38.04.200.

(s) Before leasing or disposing of land under this section, the commissioner shall provide notice under AS 38.05.945 and prepare a best interest finding in writing in accordance with AS 38.05.035(e). In making a best interest finding under this subsection, the commissioner shall consider the effects of the lease or sale on subsistence uses, fish and wildlife habitat and populations and their uses, and historical and cultural resources.

(t) In this section, "good standing" means that a lessee is not in default on any material term of a lease under this section and has satisfied all the development requirements of the lease.

* **Sec. 16.** AS 38.05.321(d) is amended to read:

(d) For state land classified as agricultural land that is conveyed under (a) of this section,

(1) the commissioner may require the landowner to cooperate with the appropriate soil and water conservation district under AS 41.10 in the development and implementation of soil conservation plans as authorized by AS 41.10.110(6);

(2) as a condition of the conveyance, the commissioner may not require preparation and implementation of a schedule of planned agricultural development or a farm development plan specified in a land purchase contract unless the commissioner permits modification of a plan in cases of economic hardship or other extenuating circumstances;

(3) the commissioner may not

(A) limit the right of the landowner to use the land and improvements for purposes that are **consistent and do not interfere** [INCIDENTAL TO AND NOT INCONSISTENT] with the primary use of the land for agricultural purposes;

(B) except as provided by (i) of this section, limit the right of a

landowner to construct housing for the landowner and farm laborers, to construct improvements for animals, or to construct improvements that are reasonably required for or related to agricultural use on the original parcel and on additional subdivided parcels, not to exceed the limits and restrictions set by (a)(2) of this section; and

(C) limit the right of the landowner to subdivide and convey the land if the resulting parcels are not in violation of the limits and restrictions set out in (a)(2) of this section.

* **Sec. 17.** AS 38.05.965 is amended by adding a new paragraph to read:

(29) "public auction" means a public oral outcry auction or a public online auction.

* **Sec. 18.** AS 38.05.065(b) is repealed.

* **Sec. 19.** This Act takes effect immediately under AS 01.10.070(c).