

1 SB542
2 140232-2
3 By Senators Pittman, Waggoner and Keahey
4 RFD: Finance and Taxation Education
5 First Read: 19-APR-12

2
3
4
5
6
7
8 SYNOPSIS: This bill would authorize the Department of
9 Conservation and Natural Resources to provide for
10 projects at the Gulf State Park. This bill would
11 authorize the department to enter into project
12 agreements and would provide criteria for proposals
13 submitted to the department for the enhancement of
14 the park. This bill would authorize the
15 commissioner of the department to reject all
16 proposals and negotiate a project agreement on
17 terms no less favorable than those presented in the
18 proposals submitted to the department. This bill
19 would also repeal Chapter 14D of Title 9 of the
20 Code of Alabama 1975.

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 Relating to Gulf State Park; to provide for the
27 management of projects at the park by the Department of

1 Conservation and Natural Resources; to provide for the
2 submission of proposals for projects; to provide criteria for
3 the project agreement; to exempt persons submitting proposals
4 from certain laws with regard to the proposal; to authorize
5 the commissioner of the department to reject all proposals and
6 negotiate a project on terms no less favorable than the terms
7 provided in submitted proposals; and to repeal Chapter 14D of
8 Title 9 of the Code of Alabama 1975.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. (a) The Legislature finds, determines,
11 and declares that:

12 (1) The property owned by the State of Alabama in
13 Baldwin County, Alabama, known as "Gulf State Park," is an
14 area rich in a variety of unique natural, recreational,
15 aesthetic, and economic resources of immediate and potential
16 value to the present and future well-being of the State of
17 Alabama and its citizens.

18 (2) There is an abiding and particular state
19 interest in the effective administration, beneficial use,
20 improvement, and protection of the area within Gulf State
21 Park.

22 (3) It is the policy and purpose of the State of
23 Alabama by this act to provide for the enhancement,
24 improvement, preservation, and protection of an area within
25 Gulf State Park by the authorization of the Governor of the
26 State of Alabama, the Commissioner of the Department of
27 Conservation and Natural Resources, and the Chair of the Joint

1 Legislative Committee on State Parks to provide specifically
2 for the improvement and beneficial use of lodging and meeting
3 facilities and related recreational and other facilities
4 within Gulf State Park as provided in this act, for the
5 present and future well-being and welfare of the citizens of
6 the State of Alabama.

7 (b) This act shall be liberally construed to effect
8 the policy and purposes hereof.

9 Section 2. The following terms as used in this act
10 shall have the following meanings:

11 (1) CHAIR. The Chair of the Joint Legislative
12 Committee on State Parks.

13 (2) COMMISSIONER. The Commissioner of the Department
14 of Conservation of Natural Resources.

15 (3) DEPARTMENT. The Department of Conservation and
16 Natural Resources.

17 (4) GOVERNOR. The Governor of the State of Alabama.

18 (5) GULF STATE PARK. The real property comprising
19 approximately 6,150 acres, including facilities and fixtures
20 located thereon and appurtenances thereto, owned by the state
21 in Baldwin County, Alabama.

22 (6) JOINT COMMITTEE. The Joint Legislative Committee
23 on State Parks as established by Section 9-14A-21 of the Code
24 of Alabama 1975, and its successors.

25 (7) PERSON. Any private person or any public person.

26 (8) PRIVATE PERSON. Any natural person, corporation,
27 general or limited partnership, limited liability company or

1 partnership, unincorporated association or organization, or
2 other nongovernmental entity.

3 (9) PROJECT. Real and personal property to be
4 located on the project site in Gulf State Park to consist of
5 some or all of the following as specified by the department:
6 Lodge facilities, conference, education, and meeting space,
7 banquet areas, primary and specialty restaurants, recreation
8 facilities, business centers, and infrastructure such as
9 parking facilities, transportation facilities for pedestrian
10 and vehicular traffic, and utilities.

11 (10) PROJECT AGREEMENT. Any project agreement which
12 is delivered by the department pursuant to Section 3 and
13 provides for the improvement, lease, management, occupancy,
14 and use of the project.

15 (11) PROJECT REVENUES. All gross earnings, income,
16 receipts, revenues, and other moneys derived from or with
17 respect to the project.

18 (12) PROJECT SITE. The real property located within
19 Gulf State Park of approximately 29 acres more particularly
20 described as follows: POC (Point of Commencement) SW Corner
21 Section 16, T9S, R4E; thence N 89 degrees 49'16"E, 5,290ft to
22 a calculated point in Lake Shelby, being the SE corner of
23 Section 16: Thence South 664ft to a point, on the south ROW
24 (Right Of Way) of State Route 182 and the east boundary of a
25 deed with restrictions (Deed Book 55n.s., Page 363-4, Baldwin
26 Co.), being the POB (Point of Beginning); thence eastwardly
27 along said ROW for 2,644ft more or less to a point; thence

1 south leaving said ROW and passing east of existing cul-de-sac
2 for 351ft more or less to the CCL (Coastal Construction Line);
3 thence westward along CCL (Coastal Construction Line) for
4 2,592ft more or less to a point on the East boundary of a said
5 deed; thence north leaving CCL (Coastal Construction Line) and
6 along East boundary of said deed for 826ft more or less back
7 to the POB all containing 29.1 Ac +/-.

8 (13) PROPOSAL. Any proposal submitted to the
9 commissioner pursuant to a request for proposal issued by the
10 commissioner under Section 3.

11 (14) PUBLIC PERSON. Any county, municipality, or
12 public corporation and any agency, branch, department,
13 instrumentality, or political subdivision of the state or any
14 entity created by the Legislature.

15 (15) STATE. The State of Alabama.

16 (16) USER. Any person who is a party to and is
17 obligated to the department under a project agreement.

18 Section 3. (a) In furtherance of the duty of the
19 department to maintain, supervise, operate, and manage Gulf
20 State Park, as provided by law, the commissioner is
21 authorized, in the discretion thereof, to provide for the
22 improvement and beneficial use of a project in the manner, and
23 subject to the terms, provided in this act.

24 (b) (1) The commissioner, in consultation with the
25 Governor and the chair, shall issue requests for proposals for
26 the improvement and beneficial use of a project, to persons

1 whom the department shall have determined are qualified to
2 develop and operate the project.

3 (2) The commissioner shall also deliver a request
4 for proposal to any person who shall have made a request
5 therefor in writing prior to the time and date stated therein
6 for the submission of a proposal thereof to the commissioner.

7 (c) The requests for proposals shall do all of the
8 following:

9 (1) Describe the project and the requirements of the
10 department for the qualifications and standards of the project
11 and the architects, contractors, managers, and operators
12 thereof.

13 (2) Require the person to provide to the department
14 such information as the department may require with respect to
15 the terms of the proposed project agreement for the project
16 and the experience, financial capacity, and qualifications of
17 the person and all other persons to be engaged as architects,
18 contractors, managers, and operators of the project.

19 (3) State the time and date by when, and the place
20 at which, the proposals shall be submitted to the
21 commissioner.

22 (4) State the time, date, and place at which the
23 proposals shall be publicly opened by the commissioner and
24 that no proposal shall be accepted after such time and date.

25 (5) State that the commissioner may, with the advice
26 and consent of the Governor and the chair, reject all
27 proposals, and thereupon negotiate a project agreement for the

1 improvement and beneficial use of the project on terms no less
2 favorable to the state than submitted in the most favorable
3 proposal received and rejected by the commissioner.

4 (d) The commissioner shall give public notice of the
5 time, date, and place of opening of the proposals in the
6 manner provided for public notices issued by the department,
7 and any interested person may be present in person or by
8 representative for the opening of the proposals. All proposals
9 shall be delivered under seal to the commissioner by the time
10 and date as the commissioner shall direct and as shall be
11 stated in the requests for proposals. The commissioner shall
12 publicly open the proposals in the Office of the Commissioner
13 in Montgomery, Alabama, at the time and date as shall have
14 been stated in the requests for proposal.

15 (e) After the opening of the proposals, the
16 proposals shall be immediately placed on file and available
17 for public inspection and shall become matters of public
18 record.

19 (f) The commissioner shall deliver written notice to
20 each person who submitted a proposal of the decision of the
21 commissioner to accept or reject the proposal of the person
22 within 30 days of the date on which the proposals were opened.

23 (g) In the event no proposals are received, or all
24 of the proposals are rejected by the commissioner, the
25 commissioner may, with the advice and consent of the Governor
26 and chair, negotiate a project agreement for the improvement
27 and beneficial use of the project on terms no less favorable

1 to the state than submitted in the most favorable proposal
2 received and rejected by the commissioner.

3 (h) Officers and employees of the department,
4 members of the Alabama Legislature, and members of their
5 families, are excluded from submission of a proposal
6 hereunder.

7 Section 4. (a) Each project agreement delivered
8 pursuant to this act shall do all of the following:

9 (1) Provide for the improvement, insurance,
10 management, occupancy, operation, repair and capital
11 improvement, and use of the project and the project site on
12 terms approved by the department.

13 (2) Provide for a term of years consistent with the
14 limitation thereupon set forth in subsection (b) of this
15 section.

16 (3) Be made for a valuable consideration, as
17 determined by the department, and provide for the payment of
18 all of the following:

19 a. Revenues to the department at times, not less
20 frequently than annually, and amounts approved by the
21 department.

22 b. All of the expenses at any time incurred by the
23 department and the state in connection with the project
24 agreement.

25 c. Indemnification of the department and the state.

26 (4) Provide for the custody, investment, and use of
27 project revenues.

1 (5) Provide that a user under a project agreement
2 shall not create or deliver a mortgage or other encumbrance
3 upon a project agreement without the prior written consent of
4 the department.

5 (6) Prohibit the creation or sufferance of any
6 mortgage or other encumbrance upon any of the property
7 constituting the project or the project site.

8 (7) Provide that the user under a project agreement
9 shall not, without the prior written consent of the
10 department, do any of the following:

11 a. Assign any of its rights or interests under a
12 project agreement or with respect to the project.

13 b. Delegate any of its duties, liabilities, or
14 obligations under a project agreement.

15 c. Lease or sublease all or any part of the project.

16 d. Permit or suffer any other person to do any of
17 the foregoing.

18 (8) Provide for the remedies of the department in
19 event of a failure by a user to observe or perform a project
20 agreement.

21 (9) Provide that title to all real and personal
22 property constituting the project and the project site shall
23 immediately vest in the state, without encumbrance or charge
24 of any kind, upon expiration of the project agreement.

25 (b) The term of any ground lease executed as a part
26 of any project agreement delivered pursuant to this act shall

1 not exceed 99 years from the date of delivery of the project
2 agreement delivered under this act.

3 (c) The department and the state shall not
4 undertake, and no provision of any project agreement shall
5 operate or be construed to impose upon the department or the
6 state, any liability or obligation, whether direct, indirect,
7 or contingent, for the payment of any amount, or the
8 performance of any action which creates or results in a
9 pecuniary obligation of the department or the state, pursuant
10 to, or with respect to, a project agreement.

11 (d) The department may not, directly or indirectly,
12 cause, permit, or suffer any property belonging to the state
13 to be donated to any private person whether under a project
14 agreement or otherwise.

15 (e) The department shall provide a copy of each
16 proposed project agreement to the joint committee not less
17 than 30 days prior to the date on which the project agreement
18 is to become effective by delivery thereof by the department
19 to the parties signatory thereto.

20 (f) The commissioner, on behalf of the department,
21 shall execute and deliver each project agreement made
22 hereunder, and the written approval of the Governor and the
23 chair shall be set forth on each such project agreement.

24 (g) If any project agreement is terminated prior to
25 or upon the expiration thereof, the department may deliver
26 another project agreement in place thereof upon compliance
27 with the provisions of this section for the making and

1 delivery of a project agreement under this act, subject to
2 subsection (b) of this section.

3 (h) All revenues, and all other amounts which are
4 not reimbursement of expenses or indemnification, paid to the
5 department under any project agreement shall be for the sole
6 use and benefit of the State Park System.

7 Section 5. (a) Any contract for the acquisition,
8 construction, or installation of any part of the project that
9 shall be paid for or financed with public funds shall be
10 subject to the laws of the state now or hereafter in effect
11 that require competitive bids for the contract, including,
12 without limitation, Chapter 2 of Title 39 and Chapter 16 of
13 Title 41, Code of Alabama 1975. Any contract for the
14 acquisition, construction, or installation of any part of the
15 project that shall not be paid for or financed with public
16 funds shall be exempt from the laws of the state at any time
17 in effect that require competitive bids for the contracts.

18 (b) A user under a project agreement, subject to
19 compliance with this act and the project agreement, as
20 approved by the department, may employ or engage private
21 persons for the acquisition, construction, installation,
22 maintenance, management, operation, repair, and capital
23 improvement of the project, or any part thereof, as the user
24 shall determine.

25 (c) At all times when a project agreement is in
26 effect both of the following apply:

1 (1) Any part of the project revenues which, by the
2 terms of the project agreement, are subject to a claim in
3 favor of the department or the state, or are payable or paid
4 to the department or the state, shall be public funds of the
5 State Park System as restricted in subsection (h) of Section
6 4.

7 (2) Any part of the project revenues which, by the
8 terms of the project agreement, are to be retained, applied,
9 or used by the user thereunder, whether with respect to the
10 project or otherwise, shall not be public funds and shall not
11 be funds of the state.

12 Section 6. Subject to compliance with applicable
13 provisions of the Constitution of Alabama of 1901, as amended,
14 any public person, upon approval by the governing body thereof
15 in accordance with law and upon such terms and with or without
16 consideration as it determines, may do all of the following:

17 (1) Lend or donate money for, or perform services
18 for the benefit of, the project.

19 (2) Donate, sell, convey, transfer, lease, or grant
20 to, or for the use or benefit of, the project, without the
21 necessity of authorization at any election of qualified
22 voters, any property of any kind.

23 (3) Grant abatements of taxes for the benefit of the
24 project.

25 (4) Do any and all things, whether or not
26 specifically authorized in this section, not otherwise
27 prohibited by law, that are necessary or convenient to aid the

1 planning, undertaking, acquisition, construction, financing,
2 maintenance, management, operation, repair, or capital
3 improvement of the project.

4 (5) Incur indebtedness in order to provide moneys to
5 make any loan, donation, or payment authorized in this
6 section.

7 Section 7. (a) This act shall constitute complete
8 and comprehensive authority for the taking of all actions
9 necessary or desirable to effect the policy and purposes of
10 this act. Insofar as this act may be in conflict or
11 inconsistent with any provisions of any other law concerning
12 actions authorized by this act, this act shall control and
13 govern, any other provision of law to the contrary
14 notwithstanding. Subject to the foregoing, this act does and
15 shall be construed to provide an additional and alternative
16 method for the doing of the things authorized thereby and
17 shall be regarded as supplemental and additional to other
18 laws.

19 (b) Each project agreement delivered pursuant to
20 this act shall be exempt from the following provisions of law
21 and the department and any user under a project agreement
22 shall not be required to comply with any of these provisions
23 of law in the execution, delivery, or performance of any
24 project agreement:

25 (1) Article 2, Chapter 14 of Title 9 of the Code of
26 Alabama 1975.

1 (2) Chapter 14B, Title 9 of the Code of Alabama
2 1975.

3 (3) Article 3, Chapter 15 of Title 9 of the Code of
4 Alabama 1975.

5 (4) Section 9-2-44 of Title 9 of the Code of Alabama
6 1975.

7 (5) Article 6, Chapter 9 of Title 41 of the Code of
8 Alabama 1975.

9 Section 8. Chapter 14D of Title 9 of the Code of
10 Alabama 1975, is repealed.

11 Section 9. In the event that any provision of this
12 act shall be held or declared invalid or unenforceable by any
13 court of competent jurisdiction, the holding shall not
14 invalidate or render unenforceable any other provision hereof.

15 Section 10. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.