

1 SB231
2 148040-1
3 By Senators Pittman, Waggoner, Scofield, Whatley, Allen,
4 Fielding, Glover, Dial, Marsh, Keahey and Reed
5 RFD: Tourism and Marketing
6 First Read: 19-FEB-13

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8 SYNOPSIS: This bill would authorize the Department of
9 Conservation and Natural Resources, subject to the
10 approval of the Governor and a majority of the
11 Joint Legislative Committee on State Parks, to
12 enter into projects agreements at Gulf State Park
13 to provide criteria for proposals submitted to the
14 department for the enhancement of the park.

15 This bill would also authorize the
16 commissioner of the department, the Governor, or a
17 majority of the Joint Legislative Committee on
18 State Parks to reject all proposals and for the
19 commissioner to negotiate a project agreement on
20 terms deemed by him or her to be most beneficial to
21 the state, subject to the approval of the Governor
22 and a majority of the Joint Legislative Committee
23 on State Parks.

24 This bill would also repeal Chapter 14D of
25 Title 9 of the Code of Alabama 1975.

26 This bill would prohibit a sale or long-term
27 lease of any state park or park real property,

1 other than the project site, lying seaward of the
2 current location of Alabama Highway 182 in Baldwin
3 County, Alabama, unless the Legislature approves
4 such sale or long-term lease by majority vote of
5 each house.

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 Relating to Gulf State Park; requiring the
12 Legislature to approve by a majority vote of each house a sale
13 or long-term lease of any state park real property, other than
14 the project site lying seaward of the current location of
15 Alabama Highway 182 in Baldwin County, Alabama; to provide for
16 the management of projects at the park by the Department of
17 Conservation and Natural Resources; to provide for the
18 submission of proposals for projects; to provide criteria for
19 the project agreement; to exempt persons submitting proposals
20 from certain laws with regard to the proposal; to authorize
21 the commissioner of the department, the Governor, or a
22 majority of the Joint Legislative Committee on State Parks to
23 reject all proposals and for the commissioner to negotiate a
24 project on terms deemed by the commissioner to be most
25 beneficial to the state, subject to the approval of the
26 Governor and a majority of the Joint Legislative Committee on

1 State Parks; and to repeal Chapter 14D of Title 9 of the Code
2 of Alabama 1975.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. (a) The Legislature finds, determines,
5 and declares that:

6 (1) The property owned by the State of Alabama in
7 Baldwin County, Alabama, known as "Gulf State Park," is an
8 area rich in a variety of unique natural, recreational,
9 aesthetic, and economic resources of immediate and potential
10 value to the present and future well-being of the State of
11 Alabama and its citizens.

12 (2) There is an abiding and particular state
13 interest in the effective administration, beneficial use,
14 improvement, sustainability, and protection of Gulf State Park
15 and the entire State Park System.

16 (3) It is the policy and purpose of the State of
17 Alabama by this act to provide for the enhancement,
18 improvement, preservation, sustainability, and protection of
19 Gulf State Park and the entire State Park System by the
20 authorization of the Governor of the State of Alabama, the
21 Commissioner of the Department of Conservation and Natural
22 Resources, and the Joint Legislative Committee on State Parks
23 to provide specifically for the improvement and beneficial use
24 of lodging and meeting facilities and related recreational and
25 other facilities within Gulf State Park as provided in this
26 act, for the present and future well-being and welfare of the
27 citizens of the State of Alabama.

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

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

5 (1) CHAIR. The Chair of the Joint Legislative
6 Committee on State Parks.

7 (2) COMMISSIONER. The Commissioner of the Department
8 of Conservation and Natural Resources.

9 (3) DEPARTMENT. The Department of Conservation and
10 Natural Resources.

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

12 (5) GULF STATE PARK. The real property comprising
13 approximately 6,150 acres, and any future additions thereto,
14 including facilities and fixtures located thereon and
15 appurtenances thereto, owned and managed by the state and the
16 department in south Baldwin County, Alabama.

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

20 (7) MAJORITY OF THE JOINT COMMITTEE. The majority
21 vote of those members present at a called meeting of the Joint
22 Legislative Committee on State Parks with a quorum in
23 attendance in accordance with the rules and procedures adopted
24 by the joint committee.

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

26 (9) 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 (10) PROJECT. Real and personal property to be
4 located on the approximately 29 acre project site in Gulf
5 State Park to consist of some or all of the following as
6 specified by the department: Lodge facilities; conference,
7 education, and meeting space; banquet areas; primary and
8 specialty restaurants; recreation and other facilities;
9 business centers; and infrastructure such as parking
10 facilities; transportation facilities for pedestrian and
11 vehicular traffic; and utilities.

12 (11) PROJECT AGREEMENT. Any project agreement which
13 is delivered by the department pursuant to Section 6 and
14 provides for the improvement, lease, management, occupancy,
15 and use of the project.

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

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

1 along said ROW for 2,644ft more or less to a point; thence
2 south leaving said ROW and passing east of existing cul-de-sac
3 for 351ft more or less to the CCL (Coastal Construction Line);
4 thence westward along CCL (Coastal Construction Line) for
5 2,592ft more or less to a point on the East boundary of a said
6 deed; thence north leaving CCL (Coastal Construction Line) and
7 along East boundary of said deed for 826ft more or less back
8 to the POB all containing 29.1Ac +/-.

9 (14) PROPOSAL. Any proposal submitted to the
10 commissioner pursuant to a request for proposal issued by the
11 commissioner under Section 5.

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

16 (16) STATE. The State of Alabama.

17 (17) USER. The department or any person who is a
18 party to and is obligated to the department under a project
19 agreement.

20 Section 3. Before any state park or park property
21 lying seaward of the current location of Alabama Highway 182
22 in Baldwin County, Alabama, shall be sold or leased for a
23 period of 12 years or longer, including all extension or
24 renewal periods, such sale or lease shall be subject to
25 approval by a majority vote of the members of each house of
26 the Legislature in accordance with the rules and procedures

1 adopted by the Legislature, after complying with all other
2 applicable provisions of law.

3 Section 4. The provisions of Section 3 shall not
4 apply to the project site or to utility or other easements,
5 highway rights of way, or imposition of conservation
6 restrictions. The project site may not be sold.

7 Section 5. (a) In furtherance of the duty of the
8 department to maintain, supervise, operate, and manage Gulf
9 State Park, as provided by law, the commissioner is
10 authorized, in the discretion thereof, to provide for the
11 improvement and beneficial use of a project on the project
12 site in the manner, and subject to the terms, provided in this
13 act.

14 (b) The commissioner, in consultation with the
15 Governor and the chair, shall issue requests for proposals for
16 the improvement and beneficial use of a project to persons
17 whom the department shall have determined are qualified to
18 develop and operate the project.

19 (c) The requests for proposals shall do all of the
20 following:

21 (1) Describe the project and the requirements of the
22 department for the qualifications and standards of the project
23 and the architects, contractors, managers, and operators
24 thereof.

25 (2) Require the person to provide to the department
26 such information as the department may require with respect to
27 the terms of the proposed project agreement for the project

1 and the experience, financial capacity, and qualifications of
2 the person and all other persons to be engaged as architects,
3 contractors, managers, and operators of the project.

4 (3) State the time and date by when, and the place
5 at which, the proposals shall be submitted to the
6 commissioner.

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

10 (5) State that the commissioner, subject to the
11 approval of the Governor and a majority of the joint
12 committee, may accept one of the proposals submitted or, the
13 commissioner, the Governor, or the joint committee, may reject
14 all proposals, and thereupon the commissioner may negotiate a
15 project agreement for the improvement and beneficial use of
16 the project on terms deemed by the commissioner, with the
17 approval of the Governor, and a majority of the joint
18 committee, to be most beneficial to the state.

19 (6) Provide that all requests for proposals shall
20 automatically expire and terminate 180 days from the date they
21 are opened if there has not been an acceptance thereof or
22 rejection thereof prior to such date.

23 (d) The commissioner shall give public notice of the
24 time, date, and place of opening of the proposals in the
25 manner provided for public notices issued by the department,
26 and any interested person may be present in person or by
27 representative for the opening of the proposals. All proposals

1 shall be delivered under seal to the commissioner by the time
2 and date as the commissioner shall direct and as shall be
3 stated in the requests for proposals. The commissioner shall
4 publicly open the proposals in the Office of the Commissioner
5 in Montgomery, Alabama, at the time and date as shall have
6 been stated in the requests for proposals.

7 (e) After the opening of the proposals, the
8 proposals shall be immediately placed on file and available
9 for public inspection and shall become matters of public
10 record.

11 (f) The commissioner shall deliver written notice to
12 each person who submitted a proposal of the decision of the
13 commissioner to accept or reject the proposal of the person
14 within 60 days of the date on which the proposals were opened.

15 (g) In the event the commissioner desires to accept
16 a proposal, then such proposal shall be subject to approval by
17 the Governor and a majority of the joint committee. In the
18 event that the commissioner or the Governor or a majority of
19 the joint committee rejects all proposals, all proposals shall
20 be deemed to have been rejected. Then, in either event, the
21 commissioner shall negotiate a project agreement that he or
22 she deems in his or her discretion to be most beneficial to
23 the state. Any project agreement negotiated by the
24 commissioner after acceptance of any proposal by the
25 department, the Governor, and a majority of the joint
26 committee, or after rejection of all proposals by the
27 department, the Governor, or a majority of the joint

1 committee, shall be subject to final approval of such
2 negotiated project agreement by the Governor and a majority of
3 the joint committee. If such negotiated project agreement is
4 not so approved by the Governor and a majority of the joint
5 committee, then the commissioner shall re-negotiate a new
6 project agreement and repeat the process until such time as a
7 project agreement negotiated by the commissioner is so
8 approved by the Governor and a majority of the joint
9 committee. In all events, the final project agreement must be
10 approved by the commissioner, the Governor, and a majority of
11 the joint committee. If the joint committee has not acted upon
12 any proposal by the commissioner to accept a proposal or has
13 not acted to reject all proposals within 30 days of the
14 opening of proposals, or has not acted upon any proposed
15 project agreement negotiated by the commissioner within 30
16 days after delivery to the clerk of the joint committee by the
17 commissioner of such proposed project agreement, then a
18 majority of the joint committee shall be deemed to have
19 approved such proposal or such negotiated project agreement,
20 as the case may be.

21 (h) Officers and employees of the department,
22 members of the Legislature, and members of their families, are
23 excluded from submission of a proposal hereunder.

24 Section 6. (a) Each project agreement delivered
25 pursuant to this act shall do all of the following:

26 (1) Provide for the improvement, insurance,
27 management, occupancy, operation, repair and capital

1 improvement, and use of the project and the project site on
2 terms approved by the commissioner.

3 (2) Provide for a term of years consistent with the
4 limitation thereupon set forth in subsection (b).

5 (3) Be made for a valuable consideration, as
6 determined by the commissioner, and provide for the payment of
7 all of the following:

8 a. Project revenues to the department at times, not
9 less frequently than annually, and amounts approved by the
10 department.

11 b. All of the expenses at anytime incurred by the
12 department and the state in connection with the project
13 agreement.

14 c. Indemnification of the department, the state, and
15 its officers and employees.

16 (4) Provide for the custody, investment, and use of
17 project revenues.

18 (5) Provide that a user under a project agreement
19 shall not create or deliver a mortgage or other encumbrance
20 upon a project agreement without prior written consent of the
21 commissioner.

22 (6) Prohibit the creation or sufferance of any
23 mortgage or other encumbrance upon any of the real property
24 constituting the project site.

25 (7) Provide that the user under a project agreement
26 shall not, without the prior written consent of the
27 commissioner, do any of the following:

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

3 b. Delegate any of its duties, liabilities, or
4 obligations under a project agreement.

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

6 d. Permit or suffer any other person to do any of
7 the foregoing.

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

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

15 (b) The term of any ground lease executed as a part
16 of any project agreement delivered pursuant to this act shall
17 not exceed 99 years from the date of delivery of the project
18 agreement delivered under this act.

19 (c) The department and the state shall not
20 undertake, and no provision of any project agreement shall
21 operate or be construed to impose upon the department or the
22 state, any liability or obligation, whether direct, indirect,
23 or contingent, for the payment of any amount, or the
24 performance of any action which creates or results in
25 pecuniary obligation of the department or the state, pursuant
26 to, or with respect to, a project agreement.

1 (d) The department may not, directly or indirectly,
2 cause, permit, or suffer any property belonging to the state
3 to be donated to any private person whether under a project
4 agreement or otherwise.

5 (e) The commissioner, on behalf of the department,
6 shall execute and deliver each project agreement made
7 hereunder, and the written approval of the Governor and the
8 chair shall be set forth on each such project agreement.

9 (f) If any project agreement is terminated prior to
10 or upon the expiration thereof, the department may deliver
11 another project agreement in place thereof upon compliance
12 with the provisions of this section for the making and
13 delivery of a project agreement under this act, subject to
14 subsection (b).

15 (g) All project revenues, and all other amounts
16 which are not reimbursement of expenses or indemnification,
17 paid to the department under any project agreement shall be
18 for the sole use and benefit of the State Park System.

19 Section 7. (a) Any contract for the acquisition,
20 construction, or installation of any part of the project that
21 shall be paid for or financed with public funds shall be
22 subject to the laws of the state now or hereafter in effect
23 that require competitive bids for the contract, including,
24 without limitation, Chapter 2 of Title 39 and Chapter 16 of
25 Title 41, Code of Alabama 1975. Any contract for the
26 acquisition, construction, or installation of any part of the
27 project that shall not be paid for or financed with public

1 funds shall be exempt from the laws of the state at any time
2 in effect that required competitive bids for the contracts.

3 (b) A user under a project agreement, subject to
4 compliance with this act and the project agreement, as
5 approved by the department, may employ or engage private
6 persons for the acquisition, construction, installation,
7 maintenance, management, operation, repair, and capital
8 improvement of the project, or any part thereof as the user
9 shall determine.

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

12 (1) Any part of the project revenues which, by the
13 terms of the project agreement, are subject to a claim in
14 favor of the department or the state, or are payable or paid
15 to the department or the state, shall be public funds of the
16 State Park System as restricted in subsection (g) of Section
17 6.

18 (2) Any part of the project revenues which, by the
19 terms of the project agreement, are to be retained, applied,
20 or used by the user thereunder, whether with respect to the
21 project or otherwise, shall not be public funds and shall not
22 be funds of the state.

23 Section 8. Subject to compliance with applicable
24 provisions of the Constitution of Alabama of 1901, as amended,
25 any public person, upon approval by the governing body thereof
26 in accordance with law and upon such terms and with or without
27 consideration as it determines, may do all of the following:

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

3 (2) Donate, sell, convey, transfer, lease, or grant
4 to, or for the use or benefit of, the project, without the
5 necessity of authorization at any election of qualified
6 voters, any property of any kind.

7 (3) Grant abatements of taxes for the benefit of the
8 project.

9 (4) Do any and all things, whether or not
10 specifically authorized in this section, not otherwise
11 prohibited by law, that are necessary or convenient to aid the
12 planning, undertaking, acquisition, construction, financing,
13 maintenance, management, operation, repair, or capital
14 improvement of the project.

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

18 Section 9. (a) This act shall constitute complete
19 and comprehensive authority for the taking of all actions
20 necessary or desirable to put into effect the policy and
21 purposes of this act. Insofar as this act may be in conflict
22 or inconsistent with any provisions of any other law
23 concerning actions authorized by this act, this act shall
24 control and govern, any other provision of law to the contrary
25 notwithstanding. Subject to the foregoing, this act does and
26 shall be construed to provide an additional and alternative
27 method for the doing of the things authorized thereby and

1 shall be regarded as supplemental and additional to other
2 laws.

3 (b) Each project agreement delivered pursuant to
4 this act shall be exempt from the following provisions of law
5 and the department and any user under a project agreement
6 shall not be required to comply with any of these provisions
7 of law in the execution, delivery, or performance of any
8 project agreement:

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

11 (2) Chapter 14B, Title 9 of the Code of Alabama
12 1975.

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

15 (4) Section 9-2-44 of Title 9 of the Code of Alabama
16 1975.

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

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

21 Section 11. In the event that any provision of this
22 act shall be held or declared invalid or unenforceable by any
23 court of competent jurisdiction, the holding shall not
24 invalidate or render unenforceable any other provision hereof.

25 Section 12. This act shall become effective on the
26 first day of the third month following its passage and
27 approval by the Governor, or its otherwise becoming law.

