CS FOR SENATE BILL NO. 162(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  2/14/96
Referred:  Rules

Sponsor(s):  SENATORS GREEN, Torgerson, Lincoln

REPRESENTATIVES Austerman, Ogan, James

A BILL

FOR AN ACT ENTITLED

"An Act relating to land used for agricultural purposes and to state land classified for agricultural purposes or subject to the restriction of use for agricultural purposes only; and annulling certain program regulations of the Department of Natural Resources that are inconsistent with the amendments made by this Act."

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

* Section 1. LEGISLATIVE INTENT. It is the intent of the legislature in amending AS 38.05.321(a) in sec. 9 of this Act that, for state land classified as agricultural land, the state convey fee title subject to a covenant running with the land that limits use of the land to agricultural purposes.

* Sec. 2. 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 38.05.055, 38.05.057,] 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 [NO PORTION OF 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 through a cabin permit system, 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 remote parcel program or homestead program in the past; however, for short-term leases, the lessee shall [MUST] 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.

* Sec. 3. AS 38.04.065(h) is amended to read:

(h) Before the commissioner adopts a regional land use plan, a land
classification may be made on the basis of a site-specific land use plan, except a
classification for a land disposal under AS 38.05.057, AS 38.08, or AS 38.09 [, OR
A NEW COMMERCIAL AGRICULTURE PROJECT UNDER AS 38.05.020(b)(6)].
After adoption of a regional land use plan, land classifications shall be made under the
plan.

* Sec. 4. AS 38.05.020(b) is amended to read:

  (b) The commissioner may

      (1) establish reasonable procedures and adopt reasonable regulations
      necessary to carry out this chapter and, whenever necessary, issue directives or orders
      to the director to carry out specific functions and duties; regulations adopted by the
      commissioner shall be adopted under AS 44.62 (Administrative Procedure Act); orders
      by the commissioner classifying land, issued after January 3, 1959, are not required
      to be adopted under AS 44.62 (Administrative Procedure Act);

      (2) enter into agreements considered necessary to carry out the purposes
      of this chapter, including agreements with federal and state agencies;

      (3) review any order or action of the director;

      (4) exercise the powers and do the acts necessary to carry out the
      provisions and objectives of this chapter;

      (5) notwithstanding the provisions of any other section of this chapter,
      grant an extension of the time within which payments due on any exploration license,
      lease, or sale of state land, minerals, or materials may be made, including payment of
      rental and royalties, on a finding that compliance with the requirements is or was
      prevented by reason of war, riots, or acts of God;

      (6) classify tracts for agricultural uses [AND REQUIRE THE
      PREQUALIFICATION, INCLUDING THE SUBMISSION OF CONSERVATION
      PLANS, DEVELOPMENT PLANS, OR OTHER PLANS, SCHEDULES, OR
      PROGRAMS, OF PERSONS WHO APPLY TO PARTICIPATE IN AN
      AGRICULTURAL DEVELOPMENT PROJECT UNDER AS 44.33.475];

      (7) waive, postpone, or otherwise modify the development requirements
      of a contract for the sale of agricultural land if

      (A) the land is inaccessible by road; or [AND]
(B) transportation, marketing, and development costs render the required development uneconomic;

(8) reconvey or relinquish land or an interest in land to the federal government if

(A) the land is described in an amended application for an allotment under 43 U.S.C. 1617; and

(B) the reconveyance or relinquishment is

(i) for the purposes provided in 43 U.S.C. 1617; and

(ii) in the best interests of the state.

* Sec. 5. AS 38.05.057(j) is amended to read:

(j) The commissioner may require a participant in a lottery under this section for the sale of land that is part of an agricultural development project under former AS 44.33.475 to submit a single application for that land. Immediately following the drawing of an applicant’s name in the lottery, the applicant shall be given an opportunity to select for purchase one parcel of the land that is offered in the lottery. The names of alternate applicants shall be drawn after all parcels have been selected. If the applicant who originally selected a parcel unequivocally rejects the offer to purchase the parcel or fails to sign the contract of sale within the period of time specified by the commissioner, the parcel shall be offered for sale to alternate applicants in the order in which their names were drawn.

* Sec. 6. AS 38.05.059 is repealed and reenacted to read:

Sec. 38.05.059. SALE OF AGRICULTURAL LAND. The commissioner may provide for the sale of land classified under AS 38.05.020(b)(6) for agricultural uses in parcels or tracts described by aliquot parts. The parcels or tracts are subject to state subdivision requirements and municipal ordinances.

* Sec. 7. AS 38.05.065(c) is amended to read:

(c) The director shall, for contracts under (a), [OR] (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, foreclosure, ejectment, or other legal remedies in accordance with applicable state law.

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

  (h) The commissioner

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

  (2) may declare a moratorium of up to five years on payments on land sold under this section for [A SALE OF AGRICULTURAL] land classified under AS 38.05.020(b)(6) for agricultural uses [UNDER THIS SECTION] if

      (A) [(1)] the commissioner determines that the moratorium is in the best interest of the state;

      (B) [(2)] the commissioner certifies and the contract purchaser agrees to perform farm development, crop production, and harvesting, not including land clearing or related activity, requiring the expenditure of amounts equivalent to the payments that would otherwise be made during the moratorium;

      (C) [(3)] the sale of the agricultural land takes place after July 1, 1979; and

      (D) [(4)] 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 subsection and remains in compliance with the development plan during the moratorium; for the payments subject to the moratorium declared under this paragraph, interest [INTEREST] payments are subject to the moratorium but interest continues to accrue during the moratorium.

* Sec. 9. AS 38.05.321(a) is repealed and reenacted to read:

  (a) The department shall include in a document that conveys state land
classified as agricultural land

(1) a covenant running with the land that restricts or limits the use of
the land exclusively for agricultural purposes; and

(2) a covenant running with the land permitting the owner of state land
classified as agricultural land to subdivide and sell the land in not more than four
parcels of not less than 40 acres each and prohibiting the parcels resulting from the
subdivision that is authorized by this paragraph from being further subdivided.

* Sec. 10. AS 38.05.321(b) is amended to read:

  (b) **Subject to (a) of this section, state** [STATE] land classified as agricultural
land that has been selected by a municipality under former AS 29.18.190 - 29.18.200
or former AS 29.18.205(e) may be approved by the director for patent under
AS 29.65.050(c) [; HOWEVER, ONLY RIGHTS IN THE LAND FOR
AGRICULTURAL PURPOSES MAY BE TRANSFERRED AND ALL OTHER
INTERESTS IN THE LAND WILL REMAIN WITH THE STATE]. Agricultural land
approved for patent to a municipality shall be credited, acre for acre, toward fulfillment
of that municipality’s entitlement under AS 29.65.010 - 29.65.030 or former
AS 29.18.201 - 29.18.203. [IF THE DIRECTOR LATER DETERMINES IT TO BE
IN THE BEST INTERESTS OF THE STATE TO TRANSFER SOME OR ALL OF
THE ADDITIONAL RIGHTS IN THAT APPROVED OR PATENTED
AGRICULTURAL LAND, THOSE RIGHTS SHALL PASS WITHOUT
CONSIDERATION TO THE MUNICIPALITY IN WHICH THE LAND IS
LOCATED. THE NOTICE AND REVIEW PROVISIONS OF AS 38.05.945 ARE
APPLICABLE TO CONVEYANCE OF RIGHTS UNDER THIS SECTION.]

* Sec. 11. AS 38.05.321 is amended by adding new subsections 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 farm development plan unless the commissioner
permits modification of a plan in cases of economic hardship or other extenuating circumstances;

(3) the commissioner may not limit

(A) the landowner’s right to construct improvements related to agricultural use;

(B) the landowner’s right to use the land and improvements for purposes that are incidental to and not inconsistent with the primary use of the land for agricultural purposes; and

(C) the landowner’s right to subdivide and sell the land if the resulting parcels are not in violation of the minimum parcel size set out in (a)(2) of this section.

(e) A covenant described in (a) of this section may be enforced only by a civil action.

(f) In this section, "agricultural purposes" means

(1) the production of plants and animals useful to man, including forage and sod crops, grains and feed crops, fruits, trees, and vegetables, dairy animals and products, and livestock;

(2) the construction of fixed, permanent, or immovable structures reasonably required for or related to agricultural production, including that farmstead normally required for yards, driveways, parking, barns, and other outbuildings, and similar uses;

(3) the use of gravel reasonably required for agricultural production on the parcel conveyed; and

(4) removal and disposition of timber in order to bring agricultural land into production.

* Sec. 12. CONVERSION OF DISPOSALS MADE UNDER AS 38.05.069(c) OR UNDER FORMER AS 38.05.321(a). (a) The provisions of AS 38.05.321(a), as amended by sec. 9 of this Act, apply to state land classified as agricultural land that, under AS 38.05.069(c) or under AS 38.05.321(a) before its amendment by sec. 9 of this Act, was subject to the limitation of the conveyance of only the interest in the land that related to agricultural purposes and that was sold, leased, or disposed of by the state after August 15, 1976, and
before the effective date of this Act.

(b) When the owner of the rights for agricultural purposes in land described in this section applies to the Department of Natural Resources, the commissioner of natural resources shall issue a new instrument of conveyance for the land that conforms to AS 38.05.321(a) and (d), as amended and enacted by secs. 9 and 11 of this Act. The commissioner of natural resources may issue a new instrument of conveyance under this section only if the owner of the rights tenders a deed or other appropriate instrument of conveyance transmitting the owner’s interests in the land to the state, accompanied by title insurance coverage for or a title report affirming ownership of the rights in the person making application under this subsection.

(c) Until the commissioner of natural resources issues the new instrument of conveyance under (b) of this section, when necessary to enforce a state interest in the land, the state may enforce the interests in the land in the manner authorized by the instrument of conveyance that transferred the rights for agricultural purposes.

*Sec. 13.* CONVERSION OF DISPOSALS MADE UNDER FORMER AS 38.05.321(b).

(a) The provisions of AS 38.05.321(a), as amended by sec. 9 of this Act, apply to state land classified as agricultural land that, under AS 38.05.321(b) before its amendment by sec. 10 of this Act, was subject to the limitation of the conveyance of only the interest in the land that related to agricultural purposes and that was conveyed by the state to a municipality after June 30, 1978, and before the effective date of this Act.

(b) When a municipality holding the rights for agricultural purposes in land described in this section applies to the Department of Natural Resources, the commissioner of natural resources shall issue a new instrument of conveyance for the land that conforms to AS 38.05.321, as amended by secs. 9 - 11 of this Act. The commissioner of natural resources may issue a new instrument of conveyance under this section only if the municipality tenders a deed or other appropriate instrument of conveyance returning the municipality’s interests in the land to the state, accompanied by title insurance coverage for or a title report affirming the municipality’s ownership of the rights.

(c) Until the commissioner of natural resources issues the new instrument of conveyance under (b) of this section, when necessary to enforce a state interest in the land, the state may enforce the interests in the land in the manner authorized by the instrument of conveyance.
conveyance that transferred the rights for agricultural purposes.

*Sec. 14.* The following regulations are annulled: 11 AAC 67.162, 11 AAC 67.165, 11 AAC 67.167(d), 11 AAC 67.170, 11 AAC 67.172, 11 AAC 67.175(1), 11 AAC 67.185, 11 AAC 67.187, 11 AAC 67.188(a)(3), 11 AAC 67.188(a)(4), 11 AAC 67.188(a)(5), 11 AAC 67.188(a)(6), 11 AAC 67.188(b), 11 AAC 67.188(c), 11 AAC 67.190(a), 11 AAC 67.192.