

28-LS0675\R
Martin
3/7/14

CS FOR HOUSE BILL NO. 207()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE FEIGE

A BILL

FOR AN ACT ENTITLED

"An Act relating to the Board of Agriculture and Conservation; transferring to the Department of Commerce, Community, and Economic Development the authority to approve loans from the agricultural revolving loan fund; relating to loans from the agricultural revolving loan fund; and providing for an effective date."

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

*** Section 1.** AS 03.09.010(a) is repealed and reenacted to read:

(a) The Board of Agriculture and Conservation is established in the department. The board is composed of 10 members as follows:

(1) seven voting members appointed by the governor and subject to confirmation by the legislature in joint session as follows:

(A) four members who are engaged in commercial production agriculture, including at least one member from each of the four judicial districts in the state;

(B) one member who is a land user of a soil and water

conservation district established under AS 41.10.130(a) and who is engaged in commercial production agriculture; in this subparagraph, "land user" has the meaning given in AS 41.10.140;

(C) one member who has general business or financial experience who is not engaged in commercial production agriculture; and

(D) one member who has experience in the preparation, storage, processing, handling, sale, or marketing of food products in a wholesale or retail environment and is not engaged in commercial production agriculture;

(2) three ex officio nonvoting members as follows:

(A) the commissioner or the commissioner's designee;

(B) the commissioner of environmental conservation or the commissioner of environmental conservation's designee; and

(C) the chancellor of the University of Alaska Fairbanks or the chancellor's designee from the Cooperative Extension Service or the School of Natural Resources and Extension.

* **Sec. 2.** AS 03.09.010(d) is repealed and reenacted to read:

(d) Notwithstanding AS 39.52.150(a), a person with a lease, permit, installment contract, or loan under AS 03.10 or AS 38.05, or who has an immediate family member or owns a business with a lease, permit, installment contract, or loan under AS 03.10 or AS 38.05, may be appointed to the board. Notwithstanding AS 39.52.150(a), a board member may apply for and receive a lease, permit, installment contract, or loan under AS 03.10 or AS 38.05. However, that person may not take or withhold any official action that affects the lease, permit, installment contract, or loan of that person or an immediate family member who shares the same household and financial resources with that person. A person with a lease, permit, installment contract, or loan under AS 03.10 or AS 38.05, or who has an immediate family member who shares the same household and financial resources with the person or owns a business with a lease, permit, installment contract, or loan under AS 03.10 or AS 38.05, may not be appointed to the board and may be removed from the board if the person, or the person's immediate family member who shares the same

household and financial resources of the person, or business, is in violation of the terms and conditions of the lease, permit, installation contract, or loan. In this section, "immediate family member" and "official action" have the meanings given in AS 39.52.960.

* **Sec. 3.** AS 03.09.010 is amended by adding new subsections to read:

(f) The board shall meet at least four times a year, with at least one meeting held in the state capital during the legislative session. Not more than two meetings may be held in the same judicial district in a calendar year. Board members may attend meetings by teleconference. The chair of the board may call additional meetings as necessary.

(g) In this section, "commercial production agriculture" means agriculture engaged in with the intent to sell agricultural products with a value of \$5,000 or greater a year.

* **Sec. 4.** AS 03.09 is amended by adding a new section to read:

Sec. 03.09.015. Powers of the board. (a) The board shall

(1) advise the commissioner, the commissioner of environmental conservation, and the commissioner of fish and game on

(A) promotion, regulation, and protection of the agricultural and food industry to broaden the economic base of the state and to protect consumers;

(B) policy relating to

(i) agriculture;

(ii) land use;

(iii) resource conservation;

(iv) food safety and security;

(v) pesticides and broadcast chemicals;

(vi) noxious and invasive plants;

(vii) animals and pests;

(viii) animal care;

(ix) forestry; and

(x) mariculture;

(2) at the request of an applicant for a loan under this chapter, review a loan request denied by the Department of Commerce, Community, and Economic Development; if the board determines that it is in the best interest of agricultural development in the state to approve the loan, and the loan does not unnecessarily place the assets of the agricultural revolving loan fund at risk, the board shall recommend to the commissioner that the loan be approved;

(3) consult with the director of the division of lands on modification to contracts for the sale or lease of agricultural land including waiving, postponing, or otherwise modifying the development requirements of a contract for the sale or lease of agricultural land if

(A) the land is inaccessible by road; or

(B) transportation, marketing, and development costs render the required development uneconomic;

(4) ensure the wise use of the state's natural resources through conservation of its soil and water;

(5) enter into agreements with private lending institutions, other state agencies or agencies of the federal government, to carry out the purposes of this chapter;

(6) collect the fees and collection charges established under this chapter;

(7) recommend to the University of Alaska Cooperative Extension Service or School of Natural Resources and Extension programs and activities that will further the promotion, regulation, and protection of the agricultural and food industry, broaden the economic base of the state, and protect consumers; and

(8) adopt regulations

(A) establishing guidelines for approval of loans made under AS 03.10;

(B) establishing guidelines for approval of emergency loans in an amount not to exceed \$50,000; and

(C) outlining the process for foreclosure on a loan, and collecting on liens against security for the loan; the regulations must include a

requirement that any security collected shall become property of the agricultural revolving loan fund (AS 03.10.040) and be disposed of by the board.

* **Sec. 5.** AS 03.09.020(a) is amended to read:

(a) The director of the division of the department with responsibility for agriculture shall serve as the director of the **board** [BOARD OF AGRICULTURE AND CONSERVATION]. The director may employ staff and, as directed by the board, is responsible for the **overall management and policy** [DAILY OPERATIONS] of the agricultural revolving loan fund (AS 03.10.040).

* **Sec. 6.** AS 03.09.030 is amended to read:

Sec. 03.09.030. Quorum. Five **voting** members of the **board** [BOARD OF AGRICULTURE AND CONSERVATION] constitute a quorum for the transaction of business. **Action may be taken only upon the affirmative vote of a majority of the full voting membership of the board. Board members may vote in person or by teleconference** [OR THE EXERCISE OF A POWER OR FUNCTION AT A MEETING OF THE BOARD].

* **Sec. 7.** AS 03.09.040(a) is amended to read:

(a) The **board** [BOARD OF AGRICULTURE AND CONSERVATION] may adopt regulations under AS 44.62 (Administrative Procedure Act) to carry out its duties, **including regulations to establish reasonable fees for services provided and charges for collecting the fees.**

* **Sec. 8.** AS 03.09.050 is amended to read:

Sec. 03.09.050. Agricultural land. The **board** [BOARD OF AGRICULTURE AND CONSERVATION] may recommend to the commissioner that land in the land disposal bank established under AS 38.04.020 be classified as suitable for agriculture. The board may identify state land for agricultural disposal and request the commissioner to provide for the survey and disposal of the land.

* **Sec. 9.** AS 03.09 is amended by adding a new section to read:

Sec. 03.09.090. Definitions. In this chapter,

(1) "agriculture" includes farming, ranching, grazing, mariculture, and storage or control of crops or livestock, but does not include fishing, rearing of fish, or

fisheries products;

(2) "board" means the Board of Agriculture and Conservation.

* **Sec. 10.** AS 03.10 is amended by adding a new section to read:

Sec. 03.10.025. Loans. (a) The department shall approve loans made from the agricultural revolving loan fund (AS 03.10.040).

(b) The department may approve a loan according to regulations adopted by the board to an individual state resident farmer, homesteader, or a partnership or corporation composed of farmers and homesteaders for

(1) clearing land for agricultural purposes;

(2) development of farms, including mariculture farms;

(3) storage and processing of farm products;

(4) the purchase of livestock or machinery;

(5) storage and processing plants for agricultural products;

(6) the commercial production or processing of horticultural products in the state;

(7) the commercial production or processing of animal feed in the state;

(8) the raising or care of animals in the state for the purpose of marketing their fur;

(9) the commercial production or processing of lime products, or other minerals products if at least 50 percent of the production or process is for agricultural use; and

(10) the supply, sale, manufacture, or repair of equipment, if at least 50 percent of the supply, sale, manufacture, or repair of equipment is for agricultural use.

(c) In this section, "horticultural products" means vegetables, fruit plants, grass seed, sod, tree seedlings, ornamental plants, foliage, or flowering plants, grown in a greenhouse or nursery.

* **Sec. 11.** AS 03.10.030(a) is amended to read:

(a) A [THE] farm development, chattel, or irrigation loan made under this chapter

(1) may not exceed a term of 30 years, except that a chattel loan may

not exceed a term of seven years;

(2) may not, when added to the outstanding balance of other loans made under this chapter, exceed a total outstanding balance of \$1,000,000; **and**

(3) shall be secured by a real estate or chattel mortgage of any priority, except that the portion of a loan that exceeds \$500,000, when added to prior indebtedness that is secured by the same property, must be secured by a first mortgage [;

(4) SHALL BEAR INTEREST AT A FIXED RATE COMPARABLE TO THAT CHARGED BY OTHER AGRICULTURAL LENDING INSTITUTIONS IN THE STATE FOR LOANS SIMILAR TO THOSE REFERRED TO IN THIS SUBSECTION].

* **Sec. 12.** AS 03.10.030(c) is amended to read:

(c) A short-term loan, to be amortized within one year, not to exceed \$350,000 to any one borrower may be made for operating purposes, except that a loan made under this subsection may not exceed \$200,000 unless the loan is made to a borrower in a farm disaster area declared under AS 03.10.058. The loan shall bear interest at a fixed rate comparable to that charged by other agricultural lending institutions in the state for loans similar to those referred to in this subsection, **but the rate may not be less than three percent.** An applicant for a short-term loan may be required to purchase insurance through the Federal Crop Insurance Act (7 U.S.C. 1501 - 1520) as a condition of the loan. The term of a loan made under this subsection may be extended for up to three years by the **department** [BOARD OF AGRICULTURE AND CONSERVATION], in the discretion of the **department** [BOARD], upon application by the borrower.

* **Sec. 13.** AS 03.10.030(e) is amended to read:

(e) An installment payment is delinquent unless it is received by the **Department of Natural Resources** [BOARD OF AGRICULTURE AND CONSERVATION OR THE DIRECTOR OF THE BOARD] on or before the 30th day after the date specified for payment in the loan agreement. If an installment payment is delinquent, the **Department of Natural Resources** [DIRECTOR OF THE BOARD] may assess a delinquency penalty **as established by the board.**

1 * **Sec. 14.** AS 03.10.030(f) is amended to read:

2 (f) A farm product processing loan may not exceed \$250,000. A mortgage that
3 secures a farm product processing loan may be of any priority if the total indebtedness
4 on the real estate, including the secured farm product processing loan, does not exceed
5 \$250,000. A farm product processing loan that, if made, would raise the existing
6 indebtedness on the real estate securing the loan above \$250,000, or a farm product
7 processing loan on real estate that has a prior indebtedness of \$250,000 or more, may
8 be made only if all prior mortgagees agree to subordinate their mortgages to that of the
9 state for the amount of the farm product processing loan that exceeds the \$250,000
10 indebtedness limit on the real estate. A farm product processing loan may not exceed a
11 term of 30 years [OR BEAR INTEREST AT A RATE THAT IS LESS THAN A
12 FIXED RATE COMPARABLE TO THAT CHARGED BY OTHER
13 AGRICULTURAL LENDING INSTITUTIONS IN THE STATE FOR SIMILAR
14 LOANS,] and shall be secured by a real estate or chattel mortgage or both.

15 * **Sec. 15.** AS 03.10.030(h) is amended to read:

16 (h) The **board** [BOARD OF AGRICULTURE AND CONSERVATION]
17 shall adopt regulations to establish other terms for loans made under this chapter,
18 consistent with the provisions of this section, and may establish interest rates for loans
19 under **AS 03.10.050(h)** [(a)(4) OF THIS SECTION THAT

20 (1) ENCOURAGE AGRICULTURAL DEVELOPMENT;

21 (2) DO NOT SUBSIDIZE NONVIALE AGRICULTURAL
22 ENTERPRISES; AND

23 (3) DO NOT DISCRIMINATE AGAINST VIALE EXISTING
24 AGRICULTURAL ENTERPRISES].

25 * **Sec. 16.** AS 03.10.033(a) is amended to read:

26 (a) To increase the return to the state, the **department** [BOARD OF
27 AGRICULTURE AND CONSERVATION] may restructure loans (1) in existence on
28 January 1, 1987, made by the former Agricultural Revolving Loan Fund Board or by
29 the former Alaska Agricultural Action Council based **on** [UPON] guidelines approved
30 by the **board** [BOARD OF AGRICULTURE AND CONSERVATION]; (2) of a
31 borrower in an area that has been declared a farm disaster area under AS 03.10.058; or

(3) of a borrower who has experienced an agricultural disaster based on [UPON] regulations adopted by the board [BOARD OF AGRICULTURE AND CONSERVATION]. Notwithstanding any other provision of law that relates to loan terms, the restructuring may only include reduction of interest to a fixed rate not more than one percent less than the current rate for similar loans made from the agricultural revolving loan fund but not less than three percent [LESS THAN FIVE PERCENT A YEAR], an extension of the term of the loan, and an improvement to the security interest of the state. It may not reduce the amount of principal and interest owed before the loan is restructured.

* **Sec. 17.** AS 03.10.033(c) is amended to read:

(c) Notwithstanding any other provision of this section, the department [BOARD OF AGRICULTURE AND CONSERVATION] may approve an application for restructuring under this section only upon

(1) the applicant's written release of the state, including the University of Alaska, from all potential liability for actions and omissions occurring before the date of restructuring that relate in any way to a state farm project, land sale, land sale relinquishment, farm loan, or loan application or loan modification application, whether granted or denied by the state; and

(2) assignment by the applicant to the state [BOARD] of the proceeds from the federal government under 7 U.S.C. 1442 (Conservation Reserve Program) and P.L. 88-26 (Feed Grain Act of 1963), as amended, and other farm programs; the proceeds collected under this paragraph shall be deposited in the agricultural revolving loan fund (AS 03.10.040).

* **Sec. 18.** AS 03.10.033(d) is repealed and reenacted to read:

(d) If the proceeds received under (c)(2) of this section exceed the amount owed and credited to the loan during the year, the extra proceeds shall be refunded to the applicant from the agricultural revolving loan fund (AS 03.10.040).

* **Sec. 19.** AS 03.10.035(a) is amended to read:

(a) A borrower may not use farm land for a nonfarm use or sell, lease, or otherwise dispose of farm land if that land is encumbered by a mortgage given to secure the payment of a loan under this chapter unless the borrower either

(1) pays the outstanding balance of the loan in a lump sum or under other terms agreed to by the department [BOARD OF AGRICULTURE AND CONSERVATION] that accelerate payment of the loan; or

(2) pays the outstanding principal balance for the remaining term of the loan at the prevailing rate of interest that is charged by commercial banks in the state during the calendar quarter in which the board receives notice of the change of use, sale, lease, or other disposal of the farm land.

* **Sec. 20.** AS 03.10.035(b) is amended to read:

(b) In this section, "nonfarm use" means a use of land other than for agricultural or related activities [THE PRODUCTION OF DOMESTICATED PLANTS AND ANIMALS USEFUL TO HUMANS], including production of forage and sod crops, grain and feed crops, fruits, vegetables, [AND] livestock, and related activities.

* **Sec. 21.** AS 03.10.040(b) is amended to read:

(b) Money in the fund may be appropriated [USED] by the legislature [TO MAKE APPROPRIATIONS] for costs of administering this chapter [AND FOR OPERATIONS OF THE BOARD OF AGRICULTURE AND CONSERVATION].

* **Sec. 22.** AS 03.10.050(a) is amended to read:

(a) The board [BOARD OF AGRICULTURE AND CONSERVATION] shall administer the agricultural revolving loan fund. [A LOAN MAY NOT BE MADE WITHOUT THE APPROVAL OF A MAJORITY OF THE BOARD, EXCEPT THAT EMERGENCY LOANS BASED UPON REGULATIONS ADOPTED BY THE BOARD AND NOT TO EXCEED \$50,000 MAY BE MADE UPON THE APPROVAL, BY MAJORITY VOTE, OF A COMMITTEE COMPOSED OF THE CHAIR OF THE BOARD, ANOTHER BOARD MEMBER, AND THE DIRECTOR OF THE BOARD.]

* **Sec. 23.** AS 03.10.050 is amended by adding new subsections to read:

(h) The board shall set interest rates on loans from the agricultural revolving loan fund established in AS 03.10.040. The interest rates must be set at fixed levels that

(1) encourage agricultural development;

- (2) do not subsidize nonviable agricultural enterprises;
- (3) do not discriminate against viable existing agricultural enterprises;
- (4) are comparable to the rates charged by other agricultural lending institutions in the state for similar loans, but are at a rate of not less than three percent.

(i) Notwithstanding (h) of this section, the board may set an interest rate at a rate lower than the rates charged by other agricultural lending institutions if the loan

- (1) has been denied by other lenders;
- (2) falls within a particular geographic area; or
- (3) is for an activity that is established by the board as a priority.

* **Sec. 24.** AS 03.10 is amended by adding a new section to read:

Sec. 03.10.090. Definitions. In this chapter,

(1) "agricultural" has the meaning given to "agriculture" in AS 03.09.090;

(2) "board" has the meaning given in AS 03.09.090; and

(3) "department," notwithstanding AS 03.90.010, means the Department of Commerce, Community, and Economic Development.

* **Sec. 25.** AS 03.10.020 and 03.10.050(b) are repealed.

* **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: TERMS AND INITIAL APPOINTMENTS. (a) Notwithstanding AS 03.09.010(a), the terms of the current members of the Board of Agriculture and Conservation expire on January 31, 2015. A person whose term expires on January 31, 2015, is eligible for appointment under AS 03.09.010(a) to a term beginning February 1, 2015.

(b) The governor may make the initial appointments to the Board of Agriculture and Conservation immediately, but a member appointed under this subsection may not take office until February 1, 2015.

(c) Notwithstanding AS 03.09.010(b), the terms of the members of the Board of Agriculture and Conservation whose terms begin on February 1, 2015, are as follows:

- (1) three members serve for three years;
- (2) two members serve for two years; and
- (3) two members serve for one year.

1 * **Sec. 27.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 TRANSITION: REGULATIONS. The Department of Commerce, Community, and
4 Economic Development and the Department of Natural Resources may adopt regulations
5 necessary to implement the changes made by this Act. The regulations take effect under
6 AS 44.62 (Administrative Procedure Act), but not before January 31, 2015.

7 * **Sec. 28.** Sections 26(b) and 27 of this Act take effect immediately under AS 01.10.070(c).

8 * **Sec. 29.** Except as provided in sec. 28 of this Act, this Act takes effect January 31, 2015.