

HOUSE CS FOR CS FOR SENATE BILL NO. 109(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/17/97

Referred: Today's Calendar

Sponsor(s): SENATORS GREEN, Pearce

REPRESENTATIVES James, Therriault

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to land used for agricultural purposes and to state land
2 classified for agricultural purposes or subject to the restriction of use for
3 agricultural purposes only; and annulling certain program regulations of the
4 Department of Natural Resources that relate to agricultural land and agricultural
5 homesteads."

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

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

11 * **Sec. 2.** AS 38.04.045(b) is amended to read:

12 (b) Before the issuance of a long-term lease under AS 38.05.070 or of a patent
13 for state land, an official cadastral survey shall be accomplished, unless a comparable,

1 approved survey exists that has been conducted by the federal Bureau of Land
 2 Management. Before land may be offered under [AS 38.05.055, 38.05.057,] AS 38.08
 3 [,] or AS 38.09, **or before land may be offered under AS 38.05.055 or 38.05.057,**
 4 **except land that is classified for agricultural uses,** an official rectangular survey grid
 5 shall be established. The rectangular survey section corner positions shall be
 6 monumented and shown on a cadastral survey plat approved by the state. For those
 7 areas where the state may wish to convey surface estate outside of an official
 8 rectangular survey grid, the commissioner may waive monumentation of individual
 9 section corner positions and substitute an official control survey with control points
 10 being monumented and shown on control survey plats approved by the state. The
 11 commissioner may not issue more than one conveyance for each section within a
 12 township outside of an official rectangular survey grid. **Land** [NO PORTION OF
 13 LAND] to be conveyed may **not** be located more than two miles from an official
 14 survey control monument except that the commissioner may waive this requirement
 15 on a determination that a single purpose use does not justify the requirement if the
 16 existing status of the land is known with reasonable certainty. The lots and tracts in
 17 state subdivisions shall be monumented and the cadastral survey and plats for the
 18 subdivision shall be approved by the state. Where land is located within a
 19 municipality with planning, platting, and zoning powers, plats for state subdivisions
 20 shall comply with local ordinances and regulations in the same manner and to the same
 21 extent as plats for subdivisions by other landowners. State subdivisions shall be filed
 22 and recorded in the district recorder's office. The requirements of this section do not
 23 apply to land made available through a cabin permit system, for material sales, for
 24 short-term leases, for parcels adjoining a surveyed right-of-way, or for land that has
 25 been open to random staking under the remote parcel program or homestead program
 26 in the past; however, for short-term leases, the lessee **shall** [MUST] comply with local
 27 subdivision ordinances unless waived by the municipality under procedures specified
 28 by ordinance. In this subsection, "a single purpose use" includes a communication site,
 29 an aid to navigation, and a park site.

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

31 (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 perpetual covenant for the benefit of all Alaska residents and running with the land that restricts or limits the use of the land for agricultural purposes; and

(2) one of the following, as appropriate:

(A) a perpetual covenant for the benefit of all Alaska residents and running with the land permitting the owner of land that had been obtained under homestead entry to subdivide and convey the land in parcels of not less than 40 acres each; or

(B) a perpetual covenant for the benefit of all Alaska residents and running with the land permitting the owner of land that had been obtained by purchase to subdivide and convey not more than four parcels of the land of not less than 40 acres each, subject to the restriction that a subdivided parcel may not be 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:

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

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

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

11 (3) the commissioner may not

12 (A) limit the right of the landowner to use the land and
13 improvements for purposes that are incidental to and not inconsistent with the
14 primary use of the land for agricultural purposes;

15 (B) except as provided by (i) of this section, limit the right of
16 a landowner to construct housing for the landowner and farm laborers, to
17 construct improvements for animals, or to construct improvements that are
18 reasonably required for or related to agricultural use on the original parcel and
19 on additional subdivided parcels, not to exceed the limits and restrictions set
20 by (a)(2) of this section; and

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

24 (e) A landowner may subdivide land classified for agricultural use and for
25 which the landowner obtained a patent under a homestead entry permit issued under
26 AS 38.09 so long as the resulting parcels are not in violation of the minimum parcel
27 size set out in (a) of this section. A landowner may subdivide other land classified for
28 agricultural use as authorized under (d)(3)(C) of this section. If the subdivision
29 involves land classified for agricultural use and for which the landowner obtained a
30 patent under a homestead entry permit issued under AS 38.09, or if the subdivision of
31 land authorized under (d)(3)(C) of this section results only in parcels of 640 acres or

more, the landowner may subdivide without payment as required by this subsection. If subdivision of land authorized by (d)(3)(C) of this section would result in one or more parcels of less than 640 acres, the landowner may subdivide only if the landowner first tenders payment to the department for the right to construct housing in each subdivided parcel of less than 640 acres. For purposes of this subsection, the value of the right to construct housing in a subdivided parcel

(1) is \$4,000 for the parcel, subject to adjustment under (h) of this section; or

(2) shall be determined by an appraisal made by an appraiser under contract to the landowner owning the parcel, and the appraisal must include the value, determined as of the date of subdivision, of the right to construct housing by the landowner under (d)(3) of this section.

(f) Notwithstanding (e) of this section, the landowner is not required to pay an amount due under (e) of this section until the subdivided parcel is conveyed by the owner to a person not a member of the person's immediate family. The department has a lien on the parcel as security for payment of the amount due. For purposes of this subsection, "immediate family" means

(1) the spouse of the person; or

(2) a parent, child, including a stepchild and an adoptive child, or sibling of the person if the parent, child, or sibling resides with the person, is financially dependent on the person, or shares a substantial financial interest with the person.

(g) A perpetual covenant described in (a) of this section may be enforced only by a civil action brought by the state, a municipality, or a resident. If a municipality or a resident brings an action under this subsection, the municipality or resident shall also serve a copy of the summons and complaint on the state in the manner prescribed by the Alaska Rules of Civil Procedure for service on the state. An action may be maintained under this subsection only if

(1) commenced within six years after the cause of action has accrued; and

(2) the plaintiff has first notified in writing the appropriate soil and

1 water conservation district under AS 41.10 of the violation of the covenant at least 90
2 days before the civil action is filed.

3 (h) The value of the right to construct housing determined under (e) of this
4 section shall be adjusted to correspond with the change in the consumer price index
5 for all urban consumers for the Anchorage Metropolitan Area compiled by the Bureau
6 of Labor Statistics, United States Department of Labor. The base year for the
7 computation shall be the calendar year in which the process of conveyance of state
8 land authorized by (a) of this section is initiated under this section.

9 (i) The authority given in (d)(3)(B) of this section to construct housing and the
10 payment required under (e) of this section for the right to construct housing do not
11 permit the landowner the right to construct condominiums under AS 34.07 or other
12 common interest ownership communities under AS 34.08.

13 (j) In this section, "agricultural purposes" means

14 (1) the production, for commercial or personal use, of useful plants and
15 animals;

16 (2) the construction of

17 (A) housing for landowners and farm laborers;

18 (B) improvements for animals; or

19 (C) improvements that are reasonably required for or related to
20 agricultural use;

21 (3) the use of gravel reasonably required or related to agricultural
22 production on the parcel conveyed; and

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

25 * **Sec. 12. CONVERSION OF DISPOSALS MADE UNDER AS 38.05.069(c) OR UNDER**
26 **FORMER AS 38.05.321(a).** (a) The provisions of AS 38.05.321(a), as amended by sec. 9
27 of this Act, apply to state land classified as agricultural land that, under AS 38.05.069(c) or
28 under AS 38.05.321(a) before its amendment by sec. 9 of this Act, was subject to the
29 limitation of the conveyance of only the interest in the land that related to agricultural
30 purposes and that was sold, leased, or disposed of by the state after August 15, 1976, and
31 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 patent or other instrument of conveyance for the remaining interests in the land estate. The patent or other instrument of conveyance must conform to AS 38.05.321, as amended and enacted by secs. 9 - 11 of this Act. The commissioner of natural resources shall issue a patent or other instrument of conveyance under this section if the owner of the rights tenders an affidavit of ownership accompanied by a limited liability report affirming ownership of the rights for agricultural purposes in the person making application under this subsection and a copy of the original patent showing recording information.

(c) Until the commissioner of natural resources issues a patent or other 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 patent or other instrument of conveyance for all remaining interests in the land. The patent or other instrument of conveyance must conform to AS 38.05.321, as amended by secs. 9 - 11 of this Act. The commissioner of natural resources shall issue a patent or other instrument of conveyance under this section if the municipality tenders an affidavit of ownership accompanied by a title report affirming the municipality's ownership of the rights for agricultural purposes.

(c) Until the commissioner of natural resources issues the patent or other 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. 14.** APPLICABILITY TO PERSONS WHO HAVE ACQUIRED RIGHTS FOR AGRICULTURAL PURPOSES AT POINT MCKENZIE. (a) The provisions of AS 38.05.321, as amended by secs. 9 - 11 of this Act, and sec. 12 of this Act apply to a person who, on the effective date of this Act, holds agricultural rights in land classified for agricultural use in the area described in (b) of this section. However, notwithstanding AS 38.05.321(e), added by sec. 11 of this Act, for those landowners who purchase parcels conveyed by the state after the effective date of this Act, the value of the landowner's right to construct housing on that land shall be determined by an appraisal, completed by an appraiser under contract to the landowner, of the value, determined as of the date of subdivision, of the landowner's right to construct housing under AS 38.05.321(d)(3).

(b) The provisions of this section apply to land within tracts 1 - 19 and 21 - 30 of Alaska state land survey no. 80-111, according to the amended survey plat filed in the Palmer Recording District on July 26, 1982, as plat no. 82-80, concerning land described as follows:

(1) Township 14 North, Range 4 West, Seward Meridian

Sections 5 - 8

Section 18;

(2) Township 14 North, Range 5 West, Seward Meridian

Section 1

Section 12;

(3) Township 15 North, Range 4 West, Seward Meridian

Section 7

Sections 17 - 20

Sections 29 - 32;

(4) Township 15 North, Range 5 West, Seward Meridian

Section 1

Section 2

Sections 11 - 14

Sections 23 - 26

Section 36; and

(5) Township 16 North, Range 5 West, Seward Meridian

Section 26

1 Sections 35 - 36.

2 * **Sec. 15.** The following regulations are annulled: 11 AAC 67.154(1), 11 AAC 67.154(2),
3 11 AAC 67.154(3), 11 AAC 67.154(4), 11 AAC 67.154(5), 11 AAC 67.162, 11 AAC 67.165,
4 11 AAC 67.167(d), 11 AAC 67.170, 11 AAC 67.172, 11 AAC 67.175(1), 11 AAC 67.185,
5 11 AAC 67.187, 11 AAC 67.188(a)(3), 11 AAC 67.188(a)(4), 11 AAC 67.188(a)(5), 11 AAC
6 67.188(a)(6), 11 AAC 67.188(b), 11 AAC 67.188(c), 11 AAC 67.190(a), 11 AAC 67.192.