

**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.

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

7 (b) The commissioner may

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

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

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

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

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

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

31 (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.

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

## 6 (h) The commissioner

(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

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

**\* Sec. 9.** AS 38.05.321(a) is repealed and reenacted to read:

31 (a) The department shall include in a document that conveys state land

1 classified as agricultural land

2 (1) a perpetual covenant for the benefit of all Alaska residents and  
3 running with the land that restricts or limits the use of the land for agricultural  
4 purposes; and

5 (2) one of the following, as appropriate:

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

31 \* **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 schedule of planned agricultural development or a farm development plan specified in a land purchase contract unless the commissioner permits modification of a plan in cases of economic hardship or other extenuating circumstances;

(3) the commissioner may not

(A) limit the right of the landowner 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;

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

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

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

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

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

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

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

18 (1) the spouse of the person; or

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

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

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

31 (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.

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

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

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

20 (b) When a municipality holding the rights for agricultural purposes in land described  
21 in this section applies to the Department of Natural Resources, the commissioner of natural  
22 resources shall issue a patent or other instrument of conveyance for all remaining interests in  
23 the land. The patent or other instrument of conveyance must conform to AS 38.05.321, as  
24 amended by secs. 9 - 11 of this Act. The commissioner of natural resources shall issue a  
25 patent or other instrument of conveyance under this section if the municipality tenders an  
26 affidavit of ownership accompanied by a title report affirming the municipality's ownership  
27 of the rights for agricultural purposes.

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

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

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

- 14           (1) Township 14 North, Range 4 West, Seward Meridian
  - 15                   Sections 5 - 8
  - 16                   Section 18;
- 17           (2) Township 14 North, Range 5 West, Seward Meridian
  - 18                   Section 1
  - 19                   Section 12;
- 20           (3) Township 15 North, Range 4 West, Seward Meridian
  - 21                   Section 7
  - 22                   Sections 17 - 20
  - 23                   Sections 29 - 32;
- 24           (4) Township 15 North, Range 5 West, Seward Meridian
  - 25                   Section 1
  - 26                   Section 2
  - 27                   Sections 11 - 14
  - 28                   Sections 23 - 26
  - 29                   Section 36; and
- 30           (5) Township 16 North, Range 5 West, Seward Meridian
  - 31                   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.