

LAW OFFICES

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Representative Eric Feige  
House Resources Committee  
State Capitol Building, Room 126  
Juneau, AK 99801

Representative Dan Saddler  
House Resources Committee  
State Capitol Building, Room 104  
Juneau, AK 99801

Dear Representatives:

This letter is to submit written testimony with respect to House Bill 207 currently under consideration by the legislature. The bill pertains to agriculture.

My concern with respect to the bill is the definition section with respect to defining commercial agriculture.

Specifically, Section 03.09.010(g) of the bill indicates that commercial agriculture is exists where \$5,000 per year is spent with the intent to engage in farming. The section is unfortunately a ripe field for litigation.

Intention is always a factual based question and can be defined with different approaches. For example, I was recently involved in a piece of litigation where the court ruled that a person did not "intend" to engage in farming, but simply "hoped" to engage in farming, notwithstanding the fact that this person spent well in excess of \$5,000 per year in agriculture. Much of litigation unfortunately centers around defining terms.

The federal definition for farming has been in existence for several years and defines a farm as "a tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence." 7 CFR 761.2. The USDA defines a farm as "any place from which \$1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the census year." If the State of Alaska enacts a contrary definition of commercial agriculture, there will be a significant potential for disputes between federal programs and state programs simply because one program defines agriculture differently from the other.

Secondly, as indicated, whether or not a person "intends" to engage in farming will be a ripe battleground for litigation.

In the event that the legislature is welded to the theory that \$5,000 should be the amount of money to be spent, I would respectfully recommend that the approach be dealt with similar to mining where, if an individual can demonstrate that they have spent \$5,000 a year toward agriculturally-related purposes, they will be defined as having engaged in commercial agriculture. As we are aware, there are many times when a farmer will have no production over a period of time, either due to crop failures, or land development. Crop failures are common. To the same degree, many farms, such as even peony farms in Alaska, take several years to develop before any results are obtained.

I furthermore would submit that legislature should also establish that, in the event that a parcel of land has an approved agricultural plan by the Department of Agriculture, the presumption is that it is a farm. Agricultural plans are difficult to obtain and take a considerable amount of work before approved. In the event that the individual has gone to the extent of having an approved agricultural plan, this should be taken into consideration.

On another note, your consideration is respectfully requested to try to decipher that provision of Section 20 of the Act, which seems to be contradictory in nature and which discusses "nonfarm use." I have read this section several times, and cannot understand whether or not the section is intended to exclude or include the items listed in the final clause.

Of final note, the word "farm" has yet to be defined anywhere in the Alaska Statutes. It would seem, however, that this is probably the most important definition to be made in the area of agricultural work, since "farm" is a term which is a relatively common usage, but has yet to be defined, and, as such, needs to be. Specifically, what is a farm, and who is a farmer?

Thank you very much for your kind consideration of this written testimony.

Sincerely,



William R. Satterberg, Jr.

WRS:akw/mrb