



LAWS OF ALASKA

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Chapter No.

108

AN ACT

Relating to forest resources and practices; and providing for an effective date.

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

* Section 1. AS 41 is amended by adding a new chapter to read:

CHAPTER 17. FOREST RESOURCES AND PRACTICES.

Sec. 41.17.010. DECLARATION OF INTENT. The legislature declares that

(1) the forest resources of Alaska are among the most valuable natural resources of the state, and furnish timber and wood products, fish and wildlife, tourism, outdoor recreation, water, soil, air, minerals, and general health and welfare;

(2) economic enterprises and other activities and pursuits derived from forest resources warrant the continuing recognition and support of the state;

(3) the state has a fundamental obligation to insure that management of forest resources guarantees perpetual supplies of renewable resources, provides nonrenewable resources in a manner consistent with that obligation, and serves the needs of all Alaska for the many products, benefits, and services obtained from them;

(4) government administration of forest resources should combine professional management services, regulatory measures, and economic incentives in a complementary fashion, and should draw upon the expertise of professional foresters in conjunction with other disciplines;

(5) under the leadership of the Department of Environmental Conservation, the state should exercise its full responsibility and authority for control of nonpoint source pollution with respect to the Federal Water Pollution Control Act, as amended;

(6) subject to sec. 307(f) of the Coastal Zone Management Act of 1972 (P.L. 92-583), the provisions of this chapter shall be the basis for forest management standards, policies, and guidelines developed under the Alaska Coastal Management Act.

Sec. 41.17.020. DIVISION OF FOREST, LAND, AND WATER MANAGEMENT ESTABLISHED. (a) The governor shall establish, within the Department of Natural Resources, a division of forest, land, and water management to carry out this chapter and other appropriate duties designated by the governor. The division shall be headed by a director who shall be the state forester, appointed to the partially exempt service in accordance with law by the commissioner, from a list of two or more candidates submitted by the board. The commissioner may reject all candidates, in which case the board shall submit a new list. The state forester shall be a natural resources land manager with generally accepted educational credentials, familiar and experienced with the renewable and nonrenewable resources and values of forest land and the products, benefits, and services obtained from them.

(b) The commissioner shall administer this chapter and is authorized and encouraged to delegate responsibilities for carrying out this chapter to the state forester.

(c) After planning and classification procedures under AS 38.05 have been completed, the governor may propose to the legislature, state forests, to consist of forest land determined by him to be desirable for retention in state ownership as multiple-use land.

(d) The commissioner may designate and operate experimental and research forests on state land consistent with the limitations of AS 38.05.300. Laboratories and other facilities may be employed in conjunction with those forests.

(e) The commissioner may establish and maintain forest vegetation nurseries and greenhouses for planting stock to be made available, with or without charge, to organizations, institutions, government agencies, individuals, and businesses for reforestation, afforestation, and related purposes.

(f) The commissioner is authorized to undertake cooperative forestry programs, extension services and educational programs, and to otherwise offer a full range of professional management services to the interested public. When he considers it beneficial, the commissioner may participate in federal assistance programs by accepting assistance in whatever form offered.

(g) The commissioner may develop proposed regulations under this chapter as part of the state program for control of nonpoint source pollution under the Federal Water

Pollution Control Act, as amended, and shall seek to enter into a cooperative agreement with the commissioner of environmental conservation for that purpose. However, the Department of Environmental Conservation is the lead agency for water quality and control of nonpoint source pollution under that Act, and the regulations and cooperative agreement are therefore subject to the advance approval of the commissioner of environmental conservation.

(h) In the administration of this chapter, the commissioner shall consult with and draw upon the expertise of interested organizations, enterprises, individuals, government agencies, educational institutions, and landowners. The commissioner may enter into cooperative agreements and contracts with them to carry out this chapter.

(i) The commissioner shall locate department personnel with forestry expertise throughout the state to facilitate public access to professional management services and other forest resources programs.

(j) Notwithstanding any other provision of this chapter, the commissioner may not employ the authority vested by this chapter so as to duplicate or preempt the statutory authority of other state agencies to adopt regulations or undertake other administrative actions governing resources, values, or activities on forest land except for (1) regulations under the Coastal Management Act; and (2) if authorized by the commissioner of environmental conservation, regulations relating to control of nonpoint source pollution.

(k) The commissioner may take other actions necessary and proper for the administration of this chapter, including the adoption of regulations under the Administrative Procedure Act (AS 44.62) and under sec. 40(f) of this chapter.

Sec. 41.17.030. RESPONSIBILITIES OF DIVISION. (a) The division shall manage state forests and, as directed by the commissioner, provide technical advice to the division of lands on sound forest practices necessary to ensure the continuous growing and harvesting of commercial forest species on other state land.

(b) The division shall regulate operations on private forest land as authorized by the provisions of this chapter or state law.

(c) The division shall provide public information and assistance regarding forest practices and timber management generally.

Sec. 41.17.040. BOARD OF FORESTRY. (a) The Board of Forestry is established in the Department of Natural Resources, division of forest, land, and water management.

(b) The board is composed of 14 members appointed by the governor from nominations submitted from the groups listed in (c) of this section. The board shall elect its own presiding officer.

(c) Seats on the board shall be allocated as follows:

- (1) the state forester ex officio has one seat;
- (2) a nominee of the regional forester, United States Forest Service has one seat;
- (3) a nominee of the Society of American Foresters has one seat;
- (4) nominees of Native corporations owning or likely to own commercial timber stands have four seats;
- (5) a nominee of the Alaska Loggers' Association or of a timber processor doing business in Alaska has one seat;
- (6) a nominee of an Alaskan environmental group has one seat;
- (7) a nominee of the Alaska Coastal Management Council has one seat;
- (8) a nominee of unions engaged in processing forest products has one seat;
- (9) a nominee of the United Fishermen of Alaska has one seat;
- (10) a nominee of the Alaska Miners' Association has one seat; and
- (11) a member from the public at large has one seat.

(d) Each group entitled to make nominations under (c) of this section shall submit three names to the governor for the vacancy on the board it is entitled to make nominations for.

(e) The term of office of a member of the board is three years; the governor shall make his initial appointments to the board in such a way that four nominations expire during 1980, four appointments expire during 1981, and three appointments expire during 1982. The state forester serves an indefinite term, ex officio.

(f) The board shall review and comment to the commissioner on regulations proposed for adoption under this chapter. The board shall also report to the legislature its recommendations for changes in the provisions of this chapter and its comments on the regulations adopted by the commissioner under this chapter. It may also review and advise the legislature on the activities of the division.

(g) Members of the board, except the state forester, do not serve at the pleasure of the governor.

(h) The governor may initiate the removal of a board member for inefficiency, neglect of duty, or misconduct in office by delivering to the member a written copy of the charges and giving the member an opportunity to be heard in person or by counsel at a public hearing before the

governor or his designee on at least 10 days written notice by registered mail. The member has a right of confrontation and cross-examination of witnesses testifying. The removal is effective 15 days after the governor files a complete statement of all charges made against the member and the findings on those charges, in the main office of the board, except that a member may appeal the findings to the superior court. The court shall limit its review to a determination of whether the findings on the charges are substantiated by the evidence presented. The removal is suspended for any period of time during which an appeal from the findings of the governor or his designee is pending.

Sec. 41.17.050. APPLICABILITY. (a) Unless otherwise specified, this chapter applies to forest land under state, municipal, or private ownership.

(b) The provisions of this chapter applicable to state land are applicable to forest land under federal ownership to the extent permitted by law.

(c) The commissioner shall exempt by regulation from the provisions of this chapter

(1) minor, small scale, or incidental commercial operations of little significance with respect to the purposes of this chapter; and

(2) operations for primarily noncommercial purposes, including but not limited to the harvesting of timber for personal use.

Sec. 41.17.060. REGULATORY AND ADMINISTRATIVE STANDARDS. (a) All regulations, administrative actions, and other activities and duties undertaken under this chapter shall be in full accordance with the standards set out in this section.

(b) With respect to state, municipal, and private forest land, the following standards apply:

(1) to the maximum extent possible, all applicable data and information of applicable disciplines shall be updated and used in making decisions relative to the management of forest resources;

(2) environmentally sensitive areas and best management practices shall be recognized in the implementation of any nonpoint source pollution control measures authorized under this chapter;

(3) administration of forest land shall consider marketing conditions and other economic constraints affecting the forest landowner, timber owner, or the operator;

(4) to the fullest extent practicable, harvested forest land shall be reforested, naturally or artificially, so as to result in a sustained yield of merchantable timber from that land; if artificial planting is required, silviculturally acceptable seedlings must first be available for planting at an economically fair price in Alaska.

(c) With respect to state and municipal forest land

Chapter 108

only, the following standards also apply:

(1) forest land shall be administered for the multiple use of the renewable and nonrenewable resources and for the sustained yield of the renewable resources of the land in the manner which best provides for the present needs and preserves the future options of the people of Alaska;

(2) any system of allocating predominant uses or values to particular units within a contiguous area of land shall reflect in reasonable proportion the various resources and values present in that area;

(3) to the extent its capacity permits, forest land shall be administered so as to provide for the continuation of businesses, activities, and lifestyles which are dependent upon or derived from forest resources;

(4) timber harvesting is limited to areas where data and information demonstrate that natural or artificial reforestation techniques will result in the production of a sustained yield of merchantable timber from that area;

(5) there shall be no significant impairment of the productivity of the land and water with respect to renewable resources; and

(6) where economically practicable, allowance may be made for scenic quality in or adjacent to areas of substantial importance to the tourism and recreation industry.

Sec. 41.17.070. ADMINISTRATIVE PLAN AND REPORT. (a) The commissioner shall develop and continually maintain a long-range plan for the administration of this chapter which demonstrates that the provisions of sec. 10 are being recognized and that the standards of sec. 60 are being met. The commissioner shall maintain a current inventory or assessment of timber on forest land to assist in meeting the requirements of this section.

(b) On December 31, 1980, and at two-year intervals after that date, the commissioner shall submit a detailed report to the legislature reviewing the administration of this chapter over the preceding two years, demonstrating compliance with (a) of this section, and describing how the plan will affect the welfare of the forest products industry and other activities and pursuits derived from or affected by forest resources.

(c) As a part of the report to be submitted on December 31, 1980, under (b) of this section, the commissioner shall, after consultation with interested constituencies,

(1) review the structure and operations of the division;

(2) describe the degree to which the division has established a high-profile forestry program utilizing the expertise of professional foresters;

(3) describe the responsiveness of the division to the interest of forest resources constituencies; and

(4) make recommendations to the legislature respecting the legal authority of the Department of Natural Resources relating to forestry, the qualifications of the director of the division, and the location of the division within the department.

(d) On December 31, 1980, the commissioner, after consultation with the commissioner of revenue, shall transmit to the legislature recommendations for legislation establishing economic incentives which would further the purposes of this chapter.

Sec. 41.17.080. REGULATIONS. (a) The commissioner may adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) and under sec. 40(f) of this chapter governing operations on forest land with respect to the following:

- (1) harvesting and removal from the site of timber and tree products;
- (2) reforestation, revegetation, and prescribed burning;
- (3) brush, slash, and debris, and salvage of trees;
- (4) soil erosion and wasting;
- (5) fire and flood hazards;
- (6) prevention and control of disease and insect infestation.

(b) An operator may apply through the commissioner for permits required by other state agencies to operate on forest land, which applications may be forwarded to the commissioner of environmental conservation for procedures in accordance with AS 46.35. The commissioner shall notify the operator of the action taken. Where practicable and desirable, the commissioner may enter into cooperative agreements with federal agencies authorizing the department to serve as a collection point for federal permit applications.

(c) The commissioner may establish regions, districts, or other subdivisions of forest land in the state in which different regulations apply to reflect varying conditions in the state, or to facilitate administration.

(d) The commissioner shall adopt only those regulations necessary to accomplish the purposes of this chapter, and shall avoid those which increase operating costs without yielding significant benefits.

Sec. 41.17.090. NOTIFICATION AND REVIEW OF OPERATIONS.

(a) Operations on forest land shall be reviewed under this section for consistency with the policies and provisions of this chapter and regulations adopted under this chapter.

(b) The commissioner shall make full use of professional management services and other educational and assistance programs of the department to encourage early contact between operators and the state and to minimize reliance on this section as a principal means of achieving the purposes of this chapter.

(c) Before operating on forest land, an operator shall give notification to the commissioner consisting of

(1) a brief written description of the proposed operation;

(2) a USGS map of the largest available scale showing the location of all proposed activities;

(3) proposed measures for soil conservation and reforestation; and

(4) evidence that the landowner and timber owner (if different from the operator) have approved the proposed operation.

(d) Within five days after receipt, the commissioner shall distribute the notification materials to affected state agencies. The agencies shall make their recommendations within 20 days after receiving the materials.

(e) Within 30 days of receipt of a notification under (c) of this section, the commissioner may inspect the proposed operation to ensure that the proposed operation is in accord with the standards promulgated by this chapter.

(f) The operator may legally commence operations upon the expiration of the 30-day period or upon notice from the commissioner that the inspection has been completed, whichever occurs first. Whether or not an inspection is conducted, the operator is liable for a violation of this chapter or other violation of law.

(g) An operator shall notify the commissioner of a proposed substantial change in his operations by following the procedure specified in (c) - (d) of this section.

(h) Information and paperwork required of the operator under this section shall be limited to that necessary to accomplish the purposes of this section. Site examinations, including an interdisciplinary review, may be undertaken by the commissioner.

(i) The commissioner may limit the review process under this section to 10 days where such action is immediately necessary for the preservation of the public peace, health, safety or general welfare, and is undertaken in concert with affected agencies.

(j) Operations which begin before the effective date of this Act have one year to comply with this chapter.

Sec. 41.17.100. DEPLOYMENT OF BROADCAST CHEMICALS. The commissioner of environmental conservation, in consultation with the commissioner, shall formulate necessary plans and measures to insure that application of broadcast

chemicals and other substances foreign to the Alaska forest ecosystem do not lead to results contrary to the objectives and provisions of this chapter and other applicable laws and regulations relating to renewable resources. Regulations adopted by the commissioner of environmental conservation may include requirements for advance testing, posting of security, written reports, and other matters.

Sec. 41.17.110. CONVERSION OF FOREST LAND TO OTHER USES. An intention to convert forest land to other uses after timber harvesting may be stated in the notification submitted under sec. 90 of this chapter. In that event, reforestation requirements adopted under this chapter do not apply, except that conversion shall be completed during the time set by regulation for minimum reforestation of the land, and other requirements for revegetation may be imposed to the extent permitted by law. If the commissioner finds at any time that the responsible party has failed to conform to the intent to convert as stated in the notification, the commissioner shall revoke approval of the conversion and require full compliance with reforestation requirements.

Sec. 41.17.120. INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT. The commissioner may inspect and investigate forest land and activities on it and may enter upon it in conjunction with any operations as necessary to insure compliance with applicable regulations and requirements and to otherwise enforce the provisions of this chapter. Other state agencies have this same authority to the extent necessary to enforce their own laws and regulations on forest land. Those agencies and the commissioner shall coordinate their actions under this section.

Sec. 41.17.130. PROHIBITIONS, PENALTIES, AND ENFORCEMENT PROCEDURES. (a) No person may violate or permit a violation of a provision of this chapter, a regulation adopted under this chapter, or a term or condition of any approval granted under secs. 90 - 110 of this chapter. A person who commits a violation is liable for a civil fine to be assessed by the commissioner not to exceed \$10,000.

(b) If an investigation discloses probable cause to believe a violation has occurred, the commissioner shall serve upon the alleged violator (the "respondent") written notice and a formal complaint which describes the alleged violation and requires the respondent to answer the charges at a hearing not more than 10 days thereafter. The respondent shall be granted 10-day extensions up to a total of 60 days upon request. The notice shall also describe any damage which has occurred or might occur as a result of the violation. At the hearing, the state shall show by clear and convincing evidence that the respondent has caused or permitted a violation described in (a) of this section.

(c) Within 10 days after the hearing, or upon non-appearance of the respondent, the hearing officer shall enter a final order. The order shall be based on the evidence presented at the hearing, and shall be accompanied by a written opinion stating the reasons for the decision. The commissioner shall immediately notify the respondent of the order by registered mail. The order may include:

- (1) a directive to stop the violation;

Chapter 108

(2) the imposition of a civil fine under (a) of this section, which is payable immediately;

(3) a directive to repair damages;

(4) a finding that the charges are wholly or partially unjustified; or

(5) a combination of (1) - (4) of this subsection.

(d) In determining the amount of any civil fine imposed, the following shall be considered, as appropriate:

(1) the character and degree of injury to forest resources and values;

(2) the degree of intent or negligence of the respondent in causing or permitting the violation;

(3) the character and number of past violations caused or permitted by the respondent; and

(4) if such information is available, the net economic savings realized by the respondent through the violation described in (a) of this section.

(e) If the commissioner finds that a violation described in (a) of this section has occurred and that continuation of the violation or failure to repair damage would likely result in irreversible or irretrievable damage to the forest resources or values affected, and it would be prejudicial to the welfare of the state to delay action pending a hearing, the commissioner may, without prior hearing, issue a temporary order in addition to the documents required by (b) of this section requiring the respondent to stop the violation or repair damage or both. The order remains in effect for 21 days unless a final order is issued earlier; an extension of time granted under (b) of this section extends the order issued under this subsection until the hearing officer issues a final order under (c) of this section. Proceedings in conjunction with the alleged violation must otherwise be the same.

(f) If a person fails to comply with an order issued under (c) or (e) of this section, the attorney general, at the request of the commissioner, may seek an injunction suspending all or part of the operations being conducted by the respondent until the respondent complies with the order. If the order directs the respondent to repair damage, the commissioner may proceed with department staff or contractors to repair the damage, and the respondent is liable for the cost of the repair after delivery by the commissioner of an itemized statement of expenses incurred.

(g) All orders issued under this section are enforceable by injunction, attachment, garnishment, or other appropriate remedy.

(h) Unless otherwise specified, proceedings under this section are not subject to the Administrative Procedure Act (AS 44.62). A hearing under this section shall be held before a hearing officer, appointed by the attorney general

from among members of the Alaska Bar Association who have been nominated by the Board of Forestry and who are knowledgeable and experienced in the subject matter. A person who has assisted in the preparation of the state's case or who is a state employee is ineligible. Hearings are not limited by common law, statutory, or judicial rules of evidence; however, the hearing officer may admit only that evidence which appears to him to be reliable and trustworthy. All hearings shall be open to the public. Written or oral testimony may be submitted. A party to a hearing may make written or oral argument, secure the issuance of a subpoena under AS 44.62.430, offer testimony or other evidence, and cross-examine witnesses. The hearing officer shall endeavor, in conducting any hearing, to insure that the respondent understands the proceedings and that the facts supporting the position of each party have been adequately presented. Hearings shall be held as close as practicable to the location of the alleged violation. Testimony given at the hearing shall be recorded.

(i) If the respondent notifies the commissioner within five days before the hearing provided for in (h) of this section, the following rules and procedures apply to the hearing:

(1) the hearing shall be a nonadversary proceeding, with the hearing officer fully and impartially representing the interests of the state and the respondent;

(2) the hearing officer shall thoroughly investigate the facts and circumstances relating to the alleged violation, including taking testimony from appropriate persons, collecting and examining documents and other evidence, and performing other actions consistent with due process of law;

(3) issue a decision in accordance with the applicable procedures of (h) of this section.

Sec. 41.17.140. APPEALS AND JUDICIAL REVIEW. (a) An administrative action of the department under this chapter, except actions under sec. 130 of this chapter and except for adoption of regulations, may be appealed to the commissioner within 30 days after it is taken. The commissioner shall hold a hearing, at which all substantial issues shall be considered, within 15 days after an appeal is filed. The respondent shall be granted 10-day extensions up to a total of 60 days upon request. Within 10 days after conclusion of the hearing, the commissioner shall issue a written decision based upon the evidence, which shall be provided to the appellant. The commissioner may delegate his duties, in whole or in part, under this subsection to a hearing officer appointed by the attorney general from among members of the Alaska Bar Association who have been nominated by the Board of Forestry and who are knowledgeable and experienced in the subject matter.

(b) A final decision under (a) of this section or a final order under sec. 130 of this chapter may be appealed to the superior court within 30 days after it is issued. Judicial review shall be as provided in AS 44.62.560 and 44.62.570.

Chapter 108

(c) A temporary order issued under sec. 130 of this chapter may be immediately appealed to the superior court as to its propriety.

Sec. 41.17.950. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "board" means the Board of Forestry established in sec. 40 of this chapter;

(2) "broadcast chemicals" includes pesticides, herbicides, fungicides, fertilizers, poisons, and any other substances

(A) used for silvicultural management or related purposes;

(B) not native to the ecosystem in which they are being applied; and

(C) having a foreseeable adverse impact on the welfare of renewable resources, as determined by the commissioner of environmental conservation;

(3) "commissioner" means the commissioner of natural resources;

(4) "department" means the Department of Natural Resources;

(5) "division" means the division of forest, land, and water management;

(6) "forest land" means land stocked or having been stocked with forest trees of any size and not currently developed for nonforest use, regardless of whether presently available or accessible for commercial purposes, and includes any such land under state, municipal, or private ownership;

(7) "forest landowner" means a person who owns forest land;

(8) "multiple use" means

(A) the management of all the various resources of forest land so that they are used in the combination that will best meet the needs of the citizens of Alaska, making the most judicious use of the land for some or all of these resources or related values, benefits, and services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions;

(B) that some land will be used for less than all of the resources, and

(C) harmonious and coordinated management of the various resources, each with the other, without significant impairment of the productivity of the land and water, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the

greatest dollar return or the greatest unit output;

(9) "operations" means timber harvesting or activities associated with timber harvesting or forest development unless exempted under sec. 50 of this chapter;

(10) "operator" means a person who is engaged in timber harvesting or activities associated with timber harvesting or forest development himself, or who contracts with others to conduct operations on his behalf, except a person who is engaged in an operation as employee with wages or piecework as his sole compensation;

(11) "person" includes a joint venture as well as the entities set out in AS 01.10.060(7);

(12) "silviculture" means the art of producing and tending a forest, the application of the knowledge of silvics in the treatment of a forest, and the theory and practice of controlling and managing forest establishment, composition, and growth;

(13) "state forest" means an area which is retained in state ownership in order to

(A) provide a base for sustained yield management of renewable resources; and

(B) permit a variety of beneficial uses;

(14) "sustained yield" means the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of forest land and water without significant impairment of the productivity of the land and water, but does not require that timber be harvested in a non-declining yield basis over a rotation period;

(15) "timber owner" means a person who owns timber on forest land or who has the rights to timber, but does not own the land itself; and

(16) "significant impairment of the productivity of the land and water" means any activity which may foreseeably result in prolonged or substantial damage to renewable resources or prolonged or substantial reduction of the continuing capability of the land or water to produce renewable resources at their natural or historic levels.

* Sec. 2. AS 39.25.120 is amended by adding a new paragraph to read:

(1) the state forester, in the Department of Natural Resources.

* Sec. 3. This Act takes effect January 1, 1979. However, the commissioner of natural resources is not precluded from undertaking preparatory activities in the interim.