

CS FOR SENATE BILL NO. 109(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 4/4/97

Offered: 4/2/97

Sponsor(s): SENATORS GREEN, Pearce

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

1 classification may be made on the basis of a site-specific land use plan, except a
 2 classification for a land disposal under AS 38.05.057, AS 38.08, or AS 38.09 [, OR
 3 A NEW COMMERCIAL AGRICULTURE PROJECT UNDER AS 38.05.020(b)(6)].
 4 After adoption of a regional land use plan, land classifications shall be made under the
 5 plan.

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

7 (b) The commissioner may

8 (1) establish reasonable procedures and adopt reasonable regulations
 9 necessary to carry out this chapter and, whenever necessary, issue directives or orders
 10 to the director to carry out specific functions and duties; regulations adopted by the
 11 commissioner shall be adopted under AS 44.62 (Administrative Procedure Act); orders
 12 by the commissioner classifying land, issued after January 3, 1959, are not required
 13 to be adopted under AS 44.62 (Administrative Procedure Act);

14 (2) enter into agreements considered necessary to carry out the purposes
 15 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]

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

3 (8) reconvey or relinquish land or an interest in land to the federal
4 government if

5 (A) the land is described in an amended application for an
6 allotment under 43 U.S.C. 1617; and

7 (B) the reconveyance or relinquishment is

8 (i) for the purposes provided in 43 U.S.C. 1617; and

9 (ii) in the best interests of the state.

10 * **Sec. 5.** AS 38.05.057(j) is amended to read:

11 (j) The commissioner may require a participant in a lottery under this section
12 for the sale of land that is part of an agricultural development project under **former**
13 AS 44.33.475 to submit a single application for that land. Immediately following the
14 drawing of an applicant's name in the lottery, the applicant shall be given an
15 opportunity to select for purchase one parcel of the land that is offered in the lottery.
16 The names of alternate applicants shall be drawn after all parcels have been selected.
17 If the applicant who originally selected a parcel unequivocally rejects the offer to
18 purchase the parcel or fails to sign the contract of sale within the period of time
19 specified by the commissioner, the parcel shall be offered for sale to alternate
20 applicants in the order in which their names were drawn.

21 * **Sec. 6.** AS 38.05.059 is repealed and reenacted to read:

22 **Sec. 38.05.059. Sale of agricultural land.** The commissioner may provide
23 for the sale of land classified under AS 38.05.020(b)(6) for agricultural uses in parcels
24 or tracts described by aliquot parts. The parcels or tracts are subject to state
25 subdivision requirements and municipal ordinances.

26 * **Sec. 7.** AS 38.05.065(c) is amended to read:

27 (c) The director shall, for contracts under (a), [OR] (b), **or (h)** of this section,
28 set out in the contract for each sale the period for the payment of installments and the
29 total purchase price plus interest. The director, with the consent of the commissioner,
30 may also include in contracts under this section conditions, limitations, and terms
31 considered necessary and proper to protect the interest of the state. Violations of any

1 provision of this chapter or the terms of the contract of sale subject the purchaser to
 2 appropriate administrative and legal action, including but not limited to specific
 3 performance, foreclosure, ejectment, or other legal remedies in accordance with
 4 applicable state law.

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

6 (h) The commissioner

7 **(1) shall provide that, notwithstanding (a) and (b) of this section,**
 8 **in a contract for the sale of land classified under AS 38.05.020(b)(6) for**
 9 **agricultural uses, the interest rate to be charged on installment payments may not**
 10 **exceed 9.5 percent; and**

11 **(2)** may declare a moratorium of up to five years on payments on **land**
 12 **sold under this section for** [A SALE OF AGRICULTURAL] land **classified under**
 13 **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;

16 **(B)** [(2)] the commissioner certifies and the contract purchaser
 17 agrees to perform farm development, crop production, and harvesting, not
 18 including land clearing or related activity, requiring the expenditure of amounts
 19 equivalent to the payments that would otherwise be made during the
 20 moratorium;

21 **(C)** [(3)] the sale of the agricultural land takes place after
 22 July 1, 1979; and

23 **(D)** [(4)] the contract purchaser is in compliance with the
 24 development plan specified in the purchase contract at the time the purchaser
 25 applies for a moratorium under this subsection and remains in compliance with
 26 the development plan during the moratorium; **for the payments subject to the**
 27 **moratorium declared under this paragraph, interest** [. INTEREST]
 28 payments are subject to the moratorium but interest continues to accrue during
 29 the moratorium.

30 * **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) a perpetual covenant for the benefit of all Alaska residents and
6 running with the land permitting the owner of the land to subdivide and convey the
7 land in four parcels of not less than 40 acres each.

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

9 (b) **Subject to (a) of this section, state** [STATE] land classified as agricultural
10 land that has been selected by a municipality under former AS 29.18.190 - 29.18.200
11 or former AS 29.18.205(e) may be approved by the director for patent under
12 AS 29.65.050(c) [; HOWEVER, ONLY RIGHTS IN THE LAND FOR
13 AGRICULTURAL PURPOSES MAY BE TRANSFERRED AND ALL OTHER
14 INTERESTS IN THE LAND WILL REMAIN WITH THE STATE]. Agricultural land
15 approved for patent to a municipality shall be credited, acre for acre, toward fulfillment
16 of that municipality's entitlement under AS 29.65.010 - 29.65.030 or former
17 AS 29.18.201 - 29.18.203. [IF THE DIRECTOR LATER DETERMINES IT TO BE
18 IN THE BEST INTERESTS OF THE STATE TO TRANSFER SOME OR ALL OF
19 THE ADDITIONAL RIGHTS IN THAT APPROVED OR PATENTED
20 AGRICULTURAL LAND, THOSE RIGHTS SHALL PASS WITHOUT
21 CONSIDERATION TO THE MUNICIPALITY IN WHICH THE LAND IS
22 LOCATED. THE NOTICE AND REVIEW PROVISIONS OF AS 38.05.945 ARE
23 APPLICABLE TO CONVEYANCE OF RIGHTS UNDER THIS SECTION.]

24 * **Sec. 11.** AS 38.05.321 is amended by adding new subsections to read:

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

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

30 (2) as a condition of the conveyance, the commissioner may not require
31 preparation and implementation of a farm development plan unless the commissioner

1 permits modification of a plan in cases of economic hardship or other extenuating
2 circumstances;

3 (3) the commissioner may not limit the right of a landowner to

4 (A) construct housing for the landowner and farm laborers, and
5 improvements for animals or that are reasonably required for or related to
6 agricultural use on the original parcel and on additional subdivided parcels
7 authorized under (a)(2) of this section;

8 (B) use the land and improvements for purposes that are
9 incidental to and not inconsistent with the primary use of the land for
10 agricultural purposes; and

11 (C) subdivide and convey the land if the resulting parcels are
12 not in violation of the minimum parcel size set out in (a)(2) of this section.

13 (e) A landowner may subdivide land classified for agricultural use and for
14 which the landowner obtained a patent under a homestead entry permit issued under
15 AS 38.09 so long as the resulting parcels are not in violation of the minimum parcel
16 size set out in (a)(2) of this section. A landowner may subdivide other land classified
17 for agricultural use as authorized under (d)(3)(C) of this section. If the subdivision
18 involves land classified for agricultural use and for which the landowner obtained a
19 patent under a homestead entry permit issued under AS 38.09, or if the subdivision of
20 land authorized under (d)(3)(C) of this section results only in parcels of 640 acres or
21 more, the landowner may subdivide without payment as required by this subsection.

22 If subdivision of land authorized by (d)(3)(C) of this section would result in one or
23 more parcels of less than 640 acres, the landowner may subdivide only if the
24 landowner first tenders payment to the department for the fair market value of the
25 interest in each subdivided parcel of less than 640 acres exclusive of the value of the
26 rights for agricultural purposes. For purposes of this subsection, fair market value of
27 the interest in a parcel exclusive of the value of the rights for agricultural purposes

28 (1) is \$6,000 for the parcel, subject to adjustment under (h) of this
29 section; or

30 (2) shall be determined by an appraisal by an appraiser under contract
31 to the owner of the rights for agricultural purposes in the parcel; the appraisal must

1 (A) be based upon the value of the parcel at the time of the
2 original state conveyance of the agricultural rights, subject to adjustment under
3 (h) of this section; and

4 (B) include the fair market value, determined as of the date of
5 subdivision, of the interests in land based on the value, if any, of the additional
6 rights that are confirmed in the landowner under (d)(3)(A) of this section.

7 (f) Notwithstanding (e) of this section, the owner of the rights to agricultural
8 land is not required to pay an amount due under (e)(1) or (2) of this section until the
9 subdivided parcel is conveyed by the owner to a person not a member of the person's
10 immediate family. The department has a lien on the parcel as security for payment of
11 the amount due. For purposes of this subsection, "immediate family" means

12 (1) the spouse or spousal equivalent of the person; or

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

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

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

25 (2) the plaintiff has first notified in writing the appropriate soil and
26 water conservation district under AS 41.10 of the violation of the covenant at least 90
27 days before the civil action is filed.

28 (h) The value of the rights for agricultural purposes determined under (e)(1)
29 or (e)(2)(A) of this section shall be adjusted to correspond with the change in the
30 consumer price index for all urban consumers for the Anchorage Metropolitan Area
31 compiled by the Bureau of Labor Statistics, United States Department of Labor. The

1 base year for the computation shall be the calendar year in which the process of
 2 conveyance of state land authorized by (a) of this section is initiated under this section.

3 (i) In this section, "agricultural purposes" means

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

6 (2) the construction of housing for owners and farm laborers, or
 7 improvements for animals or that are reasonably required for or related to agricultural
 8 use;

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

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

13 * **Sec. 12. CONVERSION OF DISPOSALS MADE UNDER AS 38.05.069(c) OR UNDER**
 14 **FORMER AS 38.05.321(a).** (a) The provisions of AS 38.05.321(a), as amended by sec. 9
 15 of this Act, apply to state land classified as agricultural land that, under AS 38.05.069(c) or
 16 under AS 38.05.321(a) before its amendment by sec. 9 of this Act, was subject to the
 17 limitation of the conveyance of only the interest in the land that related to agricultural
 18 purposes and that was sold, leased, or disposed of by the state after August 15, 1976, and
 19 before the effective date of this Act.

20 (b) When the owner of the rights for agricultural purposes in land described in this
 21 section applies to the Department of Natural Resources, the commissioner of natural resources
 22 shall issue a new instrument of conveyance for the land that conforms to AS 38.05.321(a) and
 23 (d), as amended and enacted by secs. 9 and 11 of this Act. The commissioner of natural
 24 resources may issue a new instrument of conveyance under this section only if the owner of
 25 the rights tenders

26 (1) a deed or other appropriate instrument of conveyance transmitting the
 27 owner's interests in the land to the state, accompanied by title insurance coverage for or a title
 28 report affirming ownership of the rights in the person making application under this
 29 subsection; or

30 (2) an affidavit of ownership accompanied by a limited liability report
 31 affirming ownership of the rights in the person making application under this subsection and

1 a copy of the original patent showing recording information.

2 (c) Until the commissioner of natural resources issues the new instrument of
3 conveyance under (b) of this section, when necessary to enforce a state interest in the land,
4 the state may enforce the interests in the land in the manner authorized by the instrument of
5 conveyance that transferred the rights for agricultural purposes.

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

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

12 (b) When a municipality holding the rights for agricultural purposes in land described
13 in this section applies to the Department of Natural Resources, the commissioner of natural
14 resources shall issue a new instrument of conveyance for the land that conforms to
15 AS 38.05.321, as amended by secs. 9 - 11 of this Act. The commissioner of natural resources
16 may issue a new instrument of conveyance under this section only if

17 (1) the municipality tenders payment to the department for the fair market
18 value of the interest in the land exclusive of the value of the rights for agricultural purposes;
19 for purposes of this paragraph,

20 (A) for a parcel of land that does not exceed 640 acres, fair market
21 value of the interest in the land exclusive of the value of the rights for agricultural
22 purposes is \$6,000 for the parcel;

23 (B) except for land described in (A) of this paragraph, fair market value
24 of the interest in land exclusive of the value of the rights for agricultural purposes shall
25 be determined by an appraisal by an appraiser under contract to the municipality; the
26 appraisal must be based upon the value of the land at the time of the original state
27 conveyance of the agricultural rights; and

28 (2) a deed or other appropriate instrument of conveyance returning the
29 municipality's interests in the land to the state, accompanied by title insurance coverage for
30 or a title report affirming the municipality's ownership of the rights.

31 (c) Until the commissioner of natural resources issues the new instrument of

1 conveyance under (b) of this section, when necessary to enforce a state interest in the land,
2 the state may enforce the interests in the land in the manner authorized by the instrument of
3 conveyance that transferred the rights for agricultural purposes.

4 * **Sec. 14.** A person who, before January 1, 1997, obtained a parcel of land classified as
5 agricultural land that had been subdivided as allowed by the Department of Natural Resources
6 may obtain title to that parcel of land in the manner authorized by AS 38.05.321, except that
7 the landowner may not further subdivide the parcel. The commissioner of natural resources
8 shall provide with the deed or other appropriate instrument of conveyance a covenant
9 restricting the landowner from subdividing the parcel.

10 * **Sec. 15.** The following regulations are annulled: 11 AAC 67.149(b), 11 AAC 67.154,
11 11 AAC 67.155, 11 AAC 67.162, 11 AAC 67.165, 11 AAC 67.167(d), 11 AAC 67.170, 11
12 AAC 67.172, 11 AAC 67.175(1), 11 AAC 67.185, 11 AAC 67.187, 11 AAC 67.188(a)(3), 11
13 AAC 67.188(a)(4), 11 AAC 67.188(a)(5), 11 AAC 67.188(a)(6), 11 AAC 67.188(b), 11 AAC
14 67.188(c), 11 AAC 67.190(a), 11 AAC 67.192.