

SENATE BILL NO. 85

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/12/21

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to forest land use plans; relating to forest land use plan appeals;**
2 **relating to negotiated timber sales; and providing for an effective date."**

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

4 * **Section 1.** AS 38.05.035(e) is amended to read:

5 (e) Upon a written finding that the interests of the state will be best served, the
6 director may, with the consent of the commissioner, approve contracts for the sale,
7 lease, or other disposal of available land, resources, property, or interests in them. In
8 approving a contract under this subsection, the director need only prepare a single
9 written finding. In addition to the conditions and limitations imposed by law, the
10 director may impose additional conditions or limitations in the contracts as the director
11 determines, with the consent of the commissioner, will best serve the interests of the
12 state. The preparation and issuance of the written finding by the director are subject to
13 the following:

14 (1) with the consent of the commissioner and subject to the director's

1 discretion, for a specific proposed disposal of available land, resources, or property, or
2 of an interest in them, the director, in the written finding,

3 (A) shall establish the scope of the administrative review on
4 which the director's determination is based, and the scope of the written
5 finding supporting that determination; the scope of the administrative review
6 and finding may address only reasonably foreseeable, significant effects of the
7 uses proposed to be authorized by the disposal;

8 (B) may limit the scope of an administrative review and finding
9 for a proposed disposal to

10 (i) applicable statutes and regulations;

11 (ii) the facts pertaining to the land, resources, or
12 property, or interest in them, that the director finds are material to the
13 determination and that are known to the director or knowledge of which
14 is made available to the director during the administrative review; and

15 (iii) issues that, based on the statutes and regulations
16 referred to in (i) of this subparagraph, on the facts as described in (ii) of
17 this subparagraph, and on the nature of the uses sought to be authorized
18 by the disposal, the director finds are material to the determination of
19 whether the proposed disposal will best serve the interests of the state;
20 and

21 (C) may, if the project for which the proposed disposal is
22 sought is a multiphased development, limit the scope of an administrative
23 review and finding for the proposed disposal to the applicable statutes and
24 regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that
25 pertain solely to the disposal phase of the project when

26 (i) the only uses to be authorized by the proposed
27 disposal are part of that phase;

28 (ii) the disposal is a disposal of oil and gas, or of gas
29 only, and, before the next phase of the project may proceed, public
30 notice and the opportunity to comment are provided under regulations
31 adopted by the department;

(iii) the department's approval is required before the next phase of the project may proceed; and

(iv) the department describes its reasons for a decision to phase;

(2) the director shall discuss in the written finding prepared and issued under this subsection the reasons that each of the following was not material to the director's determination that the interests of the state will be best served:

(A) facts pertaining to the land, resources, or property, or an interest in them other than those that the director finds material under (1)(B)(ii) of this subsection; and

(B) issues based on the statutes and regulations referred to in (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this subsection;

(3) a written finding for an oil and gas lease sale or gas only lease sale under AS 38.05.180 is subject to (g) of this section;

(4) a contract for the sale, lease, or other disposal of available land or an interest in land is not legally binding on the state until the commissioner approves the contract, but if the appraised value is not greater than \$50,000 in the case of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner;

(5) public notice requirements relating to the sale, lease, or other disposal of available land or an interest in land for oil and gas, or for gas only, proposed to be scheduled in the five-year oil and gas leasing program under AS 38.05.180(b), except for a sale under (6)(F) of this subsection, are as follows:

(A) before a public hearing, if held, or in any case not less than 180 days before the sale, lease, or other disposal of available land or an interest in land, the director shall make available to the public a preliminary written finding that states the scope of the review established under (1)(A) of this subsection and includes the applicable statutes and regulations, the material facts and issues in accordance with (1)(B) of this subsection, and information

required by (g) of this section, upon which the determination that the sale, lease, or other disposal will serve the best interests of the state will be based; the director shall provide opportunity for public comment on the preliminary written finding for a period of not less than 60 days;

(B) after the public comment period for the preliminary written finding and not less than 90 days before the sale, lease, or other disposal of available land or an interest in land for oil and gas or for gas only, the director shall make available to the public a final written finding that states the scope of the review established under (1)(A) of this subsection and includes the applicable statutes and regulations, the material facts and issues in accordance with (1) of this subsection, and information required by (g) of this section, upon which the determination that the sale, lease, or other disposal will serve the best interests of the state is based;

(6) before a public hearing, if held, or in any case not less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them other than a sale, lease, or other disposal of available land or an interest in land for oil and gas or for gas only under (5) of this subsection, the director shall make available to the public a written finding that, in accordance with (1) of this subsection, sets out the material facts and applicable statutes and regulations and any other information required by statute or regulation to be considered upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based; however, a written finding is not required before the approval of

(A) a contract for a negotiated sale **of timber in an amount equal to or less than 500,000 board feet or equivalent other measure** authorized under **AS 38.05.118** [AS 38.05.115];

(B) a lease of land for a shore fishery site under AS 38.05.082;

(C) a permit or other authorization revocable by the commissioner;

(D) a mineral claim located under AS 38.05.195;

(E) a mineral lease issued under AS 38.05.205;

(F) an exempt oil and gas lease sale or gas only lease sale under

AS 38.05.180(d) of acreage subject to a best interest finding issued within the previous 10 years or a reoffer oil and gas lease sale or gas only lease sale under AS 38.05.180(w) of acreage subject to a best interest finding issued within the previous 10 years, unless the commissioner determines that substantial new information has become available that justifies a supplement to the most recent best interest finding for the exempt oil and gas lease sale or gas only lease sale acreage and for the reoffer oil and gas lease sale or gas only lease sale acreage; however, for each oil and gas lease sale or gas only lease sale described in this subparagraph, the director shall call for comments from the public; the director's call for public comments must provide opportunity for public comment for a period of not less than 30 days; if the director determines that a supplement to the most recent best interest finding for the acreage is required under this subparagraph,

(i) the director shall issue the supplement to the best interest finding not later than 90 days before the sale;

(ii) not later than 45 days before the sale, the director shall issue a notice describing the interests to be offered, the location and time of the sale, and the terms and conditions of the sale; and

(iii) the supplement has the status of a final written best interest finding for purposes of (i) and (l) of this section;

(G) a surface use lease under AS 38.05.255;

(H) a permit, right-of-way, or easement under AS 38.05.850;

(7) the director shall include in

(A) a preliminary written finding, if required, a summary of agency and public comments, if any, obtained as a result of contacts with other agencies concerning a proposed disposal or as a result of informal efforts undertaken by the department to solicit public response to a proposed disposal, and the department's preliminary responses to those comments; and

(B) the final written finding a summary of agency and public comments received and the department's responses to those comments.

* **Sec. 2.** AS 38.05.110(c) is amended to read:

(c) If a sale of timber may be offered under multiple provisions of AS 38.05.110 - 38.05.123, the commissioner shall determine the applicable provisions under which to offer the timber **by considering**

(1) the best interests of the state under AS 38.05.035(e);

(2) the local timber market;

(3) specialized or developing foreign or domestic markets;

(4) the presence of underutilized timber;

(5) the economic constraints of the intended timber market; and

(6) any other reasonably foreseeable benefits to the state and local economy by the sale.

* **Sec. 3.** AS 38.05.112(a) is amended to read:

(a) **Except** [THE DEPARTMENT MAY NOT AUTHORIZE THE HARVEST OF TIMBER, EXCEPT] for harvests of **20** [10] acres or less or timber salvaged from land cleared for a nonforest use, **the department may not permit the harvest of timber in a harvest unit** until a site-specific forest land use plan has been adopted. **A forest land use plan may authorize timber harvests for multiple harvest units included in a timber sale contract. The department is not required to adopt the forest land use plan before awarding a timber sale contract** [A FOREST LAND USE PLAN IS REQUIRED WHETHER OR NOT A REGIONAL OR AREA LAND USE PLAN UNDER AS 38.04.065(a) OR A FOREST MANAGEMENT PLAN UNDER AS 41.17.230 HAS BEEN ADOPTED. THE REQUIREMENTS OF AS 38.04.065(b) SHALL APPLY TO A LAND USE PLAN ADOPTED UNDER THIS SECTION ONLY IF A REGIONAL OR AREA LAND USE PLAN UNDER AS 38.04.065(a) OR A FOREST MANAGEMENT PLAN UNDER AS 41.17.230 HAS NOT BEEN ADOPTED].

* **Sec. 4.** AS 38.05.112 is amended by adding new subsections to read:

(d) A forest land use plan is required whether or not a regional or area land use plan under AS 38.04.065(a) or a forest management plan under AS 41.17.230 has been adopted. The requirements of AS 38.04.065(b) shall apply to a land use plan adopted under this section only if a regional or area land use plan under AS 38.04.065(a) or a forest management plan under AS 41.17.230 has not been adopted.

(e) Notwithstanding AS 44.37.011, a person may not seek reconsideration of or appeal to the commissioner a decision to adopt a forest land use plan.

* **Sec. 5.** AS 38.05.115(a) is amended to read:

(a) The commissioner shall determine the timber to be sold and the limitations, conditions, and terms of sale. The limitations, conditions, and terms shall include the utilization, development, and maintenance of the sustained yield principle, subject to preference among other beneficial uses. [THE COMMISSIONER MAY NEGOTIATE SALES OF TIMBER WITHOUT ADVERTISEMENT AND ON THE LIMITATIONS, CONDITIONS, AND TERMS THAT ARE CONSIDERED TO BE IN THE BEST INTERESTS OF THE STATE. WITHIN A ONE-YEAR PERIOD, THE COMMISSIONER MAY NOT NEGOTIATE A SALE WITHOUT ADVERTISEMENT TO THE SAME PURCHASER OF MORE THAN 500 M.B.M. OR EQUIVALENT OTHER MEASURE OF TIMBER.]

* **Sec. 6.** AS 38.05.118(a) is amended to read:

(a) Notwithstanding AS 38.05.120 and 38.05.123 [AS 38.05.115 and 38.05.120], and upon a finding that a [THE] sale is in the best interest of the state, the commissioner may negotiate a sale of timber [TO A LOCAL MANUFACTURER OF WOOD PRODUCTS OR A USER OF WOOD FIBER] at appraised value. The period of a contract for a sale of timber negotiated under this section may not exceed 25 years. The contract shall provide that the appraised value of timber remaining to be harvested under the provisions of the contract shall be redetermined at least once every five years.

* **Sec. 7.** AS 38.05.118(b) is amended to read:

(b) Notice of intent to negotiate a contract authorized by (a) of this section **for the sale of timber in an amount greater than 500,000 board feet or equivalent other measure** shall be given in accordance with AS 38.05.945.

* **Sec. 8.** AS 38.05.118 is amended by adding a new subsection to read:

(d) Within a one-year period, the commissioner may not negotiate additional timber sales to the same purchaser for an amount greater than 500,000 board feet or equivalent other measure. Negotiated sales in an amount equal to or less than 500,000 board feet or equivalent other measure are exempt from the requirements of

1 AS 34.15.150.

2 * **Sec. 9.** AS 38.05.123(a) is amended to read.

3 (a) Notwithstanding the provisions of **AS 38.05.118** [AS 38.05.115] and
 4 38.05.120, and upon a finding that the sale is in the best interest of the state, the
 5 commissioner may negotiate a sale of timber for use in the local manufacture of high
 6 value-added wood products **or other value-added wood products**. A timber sale
 7 contract entered into under this section may provide for a harvest of up to 10,000,000
 8 board feet of timber each year, consistent with sustained yield principles, and may be
 9 for a term of up to 10 years. Initial stumpage rates for a contract under this section
 10 shall be determined by negotiation but may not be less than the base price for the area
 11 as established under regulations adopted by the commissioner. A contract under this
 12 section must provide that stumpage rates shall be redetermined by negotiation at least
 13 once every three years during the term of the contract, to reflect changes in market
 14 conditions; the redetermined rates may not be less than the base price for the area as
 15 established under regulations adopted by the commissioner. The commissioner shall
 16 by regulation set a maximum number of contracts, but not less than two, per region of
 17 the state that may be negotiated each year under this section.

18 * **Sec. 10.** AS 38.05.123(c) is amended to read.

19 (c) The commissioner may negotiate a sale of timber under this section if the
 20 prospective purchaser agrees to use to the maximum extent commercially practicable
 21 the timber subject to the sale for the local manufacture of high value-added wood
 22 products. [THE COMMISSIONER SHALL DETERMINE THE MAXIMUM
 23 AMOUNT OF THE TIMBER BEING SOLD THAT IS COMMERCIALY
 24 PRACTICABLE TO USE FOR THOSE PURPOSES AND MAKE THE USE OF
 25 THAT PERCENTAGE OF THE TIMBER FOR THOSE PURPOSES A TERM OF
 26 THE CONTRACT.] In evaluating proposals, the commissioner shall take into account
 27 the proposed manufacture of other value-added wood products to be produced under a
 28 negotiated contract.

29 * **Sec. 11.** AS 41.23.470(b) is amended to read.

30 (b) The commissioner may conduct [ONLY] a negotiated timber sale under
 31 **AS 38.05.118 only** [AS 38.05.115] to provide for personal use, including house logs

1 and firewood, or for a use incidental to the construction of access, or for habitat
2 enhancement.

3 * **Sec. 12.** AS 38.05.115(b), 38.05.115(c), 38.05.123(e), and 38.05.123(g) are repealed.

4 * **Sec. 13.** This Act takes effect immediately under AS 01.10.070(c).