

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 586

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE -- SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to disposal of agricultural interests;
7 and providing for an effective date."

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

9 * Section 1. AS 38.05.321 is amended to read:

10 Sec. 38.05.321. RESTRICTION ON SALE OR LEASE OR OTHER DISPOSAL
11 OF AGRICULTURAL LAND. No state land classified as agricultural land
12 may be sold, leased, or otherwise disposed of in a manner inconsistent
13 with chapter 7 of this title [SEC. 69 OF THIS CHAPTER].

14 * Sec. 2. AS 38.07 is amended by adding new sections to read:

15 CHAPTER 07. DISPOSAL [CLEARING AND DRAINING] OF
16 AGRICULTURAL INTEREST IN STATE LAND.

17 ARTICLE 1. INTRODUCTORY PROVISIONS.

18 Sec. 38.07.005. PURPOSE. It is the purpose of this chapter to

19 (1) establish a system for the disposal of the agricultural
20 interest in state land consistent with the mandates and directives of
21 Article VIII of the Alaska Constitution;

22 (2) promote the development of desirable and viable agri-
23 cultural projects in the state and the necessary improvements to bring
24 land into agricultural production;

25 (3) encourage agricultural development by lowering the
26 capital requirements for initiating agricultural projects on state
27 land; and

28 (4) preserve the agricultural land base in the state by
29 discouraging the diversion of agricultural land to other uses.

1 Sec. 38.07.015. ADMINISTRATION. The director of the division of
2 lands, under the supervision of the commissioner, shall administer
3 this chapter. To the extent necessary and proper to administer and
4 implement this chapter, the director and the commissioner may exercise
5 the authority vested by AS 38.05.035 and 38.05.020, respectively.

6 Sec. 38.07.025. SCOPE. The authority vested by this chapter
7 extends only to the disposal of the agricultural interest in state
8 land as that interest is described in secs. 270 -- 290 of this chapter,
9 except as provided in sec. 130 of this chapter.

10 Sec. 38.07.035. LAND AFFECTED. Disposal of the agricultural
11 interest in state land under this chapter may be undertaken only with
12 respect to land classified as agricultural land under AS 38.05.300 or
13 38.05.362.

14 ARTICLE 2. DISPOSALS.

15 Sec. 38.07.070. DISPOSAL BY COMPETITIVE BID. The director may
16 dispose of the agricultural interest in state land by competitive bid.
17 All applicable provisions of AS 38.05, relating to disposal of state
18 land, except for AS 38.05.102, 38.05.103, and 38.05.340, govern such
19 transactions.

20 Sec. 38.07.080. DISPOSAL BY LOTTERY. (a) The director may
21 dispose of the agricultural interest in state land by lottery where
22 conditions warrant disposal of that interest at its fair value for
23 agricultural purposes. Those conditions include, but are not limited
24 to,

25 (1) a scarcity of land suitable or available for private
26 ownership;

27 (2) the likelihood that artificially high land values would
28 result from disposal by competitive bid;

29 (3) prohibitive costs of bringing land into agricultural

1 production; or

2 (4) other factors relating to the characteristics of the
3 land or the land market which inhibit the development of agriculture.

4 (b) Determinations under (a) of this section are to be made at
5 the discretion of the director, and must be accompanied by a written
6 justification.

7 (c) The director shall establish, by regulations adopted under
8 the Administrative Procedure Act (AS 44.62), a detailed and equitable
9 system for appraising the fair value of agricultural interests.

10 (d) The director shall determine

11 (1) the land subject to any disposal;

12 (2) the limitations, conditions, and terms applicable to
13 the disposal;

14 (3) the time and manner of giving notice of the disposal;
15 and

16 (4) the location of the sale, which must be in the record-
17 ing district where the property is located.

18 (e) The director may establish an application system and eligi-
19 bility standards for prospective applicants for a lottery disposal.
20 The director may reject any or all applicants for a lottery disposal
21 where in the public interest.

22 (f) AS 38.05.125, 38.05.127, 38.05.130, 38.05.305, 38.05.345,
23 and 38.05.350 - 38.05.362 apply to disposals under this section. Any
24 document disposing of an agricultural interest under this chapter must
25 accurately describe the interest being disposed of as described in
26 this chapter and the rights, powers, and interests retained by the
27 State of Alaska.

28 (g) When an agricultural interest is disposed of by sale under
29 this section, the purchaser shall at the time of sale deposit an

1 amount no less than five per cent of the purchase price. The director
2 shall immediately issue a receipt containing a description of the
3 interest purchased, the price, and the terms and conditions of the
4 sale, which receipt must be acknowledged in writing by the purchaser.
5 A contract of sale must be signed by the purchaser and, after approval
6 by the commissioner, by the director on behalf of the state. The
7 contract must require the remainder of the purchase price and any
8 reimbursable costs to be paid over a period set by the director for
9 the sale but not to exceed 20 years, with installment payments plus
10 interest set on the level-payments basis. However, the director may
11 provide that the first installment payment is not due until two years
12 after the sale. The interest rate must be the prevailing rate on
13 similar land transactions at the time of sale, or if none exists, as
14 otherwise determined by the director, but must be at least seven per
15 cent per year and no more than the usury rate set by AS 45.45.010(b)
16 and (d).

17 (h) Where an agricultural interest is disposed of by lease under
18 this section, the lessee shall at the time of the lease deposit the
19 first year's rental. The director shall immediately issue a receipt
20 containing a description of the property leased, the price, and the
21 terms and conditions of the lease, which receipt must be acknowledged
22 in writing by the lessee. A lease must be signed by the lessee and,
23 after approval by the commissioner, by the director on behalf of the
24 state. The term of the lease must be established by the director in
25 conjunction with the disposal, but may not exceed 30 years. A provision
26 for rent readjustment must be included in the lease and, to the extent
27 it does not frustrate the purposes of this chapter, must be consistent
28 with AS 38.05.085 and 38.05.105. AS 38.05.090 applies to leases under
29 this section.

1 Sec. 38.07.090. LEASE WITH AN OPTION TO PURCHASE. The director
2 may dispose of an agricultural interest under secs. 70 or 80 of this
3 chapter through a lease with an option to purchase. The director may
4 permit rent paid during the lease phase to apply to the purchase price
5 when the option is exercised. The director may require that specified
6 portions of the farm conservation plan or farm development plan or
7 both be completed before the option is exercised. When a lease with
8 an option is used in a disposal under sec. 80 of this chapter, the
9 provisions of sec. 80(h) apply during the lease phase and the pro-
10 visions of sec. 80(g) apply when the purchase is consummated; however,
11 the lottery disposal must be conducted, and the purchase price and
12 terms of the purchase established, at the time the agricultural interest
13 is leased.

14 Sec. 38.07.100. CONDITIONAL SALES CONTRACT. In conjunction with
15 the sale of an agricultural interest under secs. 70 or 80 of this
16 chapter, the director may use a conditional sales contract in which
17 title is retained by the state until the agricultural interest is
18 completely paid for. The contents of sec. 290 of this chapter must be
19 included as provisions of the contract and as conditions subsequent in
20 the title, except as otherwise authorized in sec. 200 of this chapter.

21 Sec. 38.07.110. REDISPOSAL. The director shall establish by
22 regulations adopted under the Administrative Procedure Act (AS 44.62)
23 procedures for redispisal of an agricultural interest when the original
24 disposal is not completed or the agricultural interest otherwise
25 becomes again the property of the state.

26 Sec. 38.07.120. TRANSFERS OF AN AGRICULTURAL INTEREST. (a) A
27 party owning or leasing an agricultural interest in state land may,
28 after giving the director 30 days advance notice and, if appropriate,
29 opportunity to meet the price and terms offered, transfer all or part

1 of the agricultural interest to another person.

2 (b) The conditions subsequent identified in sec. 270 of this
3 chapter, and the covenants identified in sec. 280 of this chapter, are
4 binding upon all transferees. However, when a subdivided agricultural
5 interest is transferred the director may, upon the request of the
6 transferee, modify the conditions subsequent or the covenants, but
7 only to the extent necessary to make them logical in view of the
8 subdivision.

9 Sec. 38.07.130. DISPOSAL OF REMAINING INTEREST. (a) When an
10 agricultural interest has been disposed of under this chapter, the
11 director may dispose of the remaining equitable interest of the state
12 only if

13 (1) the grantee or lessee so request in writing; and

14 (2) the director determines that confining the property to
15 agricultural uses would no longer serve the purposes of this chapter,
16 or that there is a compelling and convincing public interest in devot-
17 ing the property to another use.

18 (b) The disposal of the remaining equitable interest of the
19 state must be at public auction. The grantee or lessee has a pre-
20 ference right to meet the high bid within 30 days after the day of the
21 auction. If the right is exercised in conjunction with a purchase,
22 the value of improvements owned by the holder of the preference right
23 included with the remaining equitable interest sold must be deducted
24 from the purchase price.

25 (c) By requesting disposal of the remaining equitable interest
26 of the state, the grantee or lessee consents to the disposal, and if
27 the preference right under (b) is not exercised, consents to the sale
28 of improvements relating to the remaining interest at not less than
29 their fair market value, as determined by the director.

1 (d) The remaining equitable interest of the state may not be
2 disposed of under this section for less than its appraised value
3 except for the deduction allowed by (b) of this section.

4 (e) As used in this section, "grantee" and "lessee" includes the
5 heirs or assigns of a grantee or a lessee.

6 ARTICLE 3. CLEARING AND DRAINING OF
7 AGRICULTURAL LAND.

8 Sec. 38.07.150. CLEARING OR DRAINING. The director may select
9 areas of state land classified as agricultural land and contract for
10 the land to be cleared or drained or both at state expense so as to
11 prepare it for agricultural production. The director shall seek
12 recommendations from the U.S. Soil Conservation Service. The agri-
13 cultural interest in land cleared or drained under this section must
14 be offered by the director for disposal under the provisions of this
15 chapter.

16 Sec. 38.07.160. CLEARING OR DRAINING ADJACENT LAND. (a) An
17 owner of agricultural land, or an owner or lessee of the agricultural
18 interest in state land, where the land is in the general vicinity of
19 land to be cleared or drained under sec. 150 of this chapter, may
20 apply to the director to have his or her land cleared or drained or
21 both along with the state land. The land of the applicant must be
22 included in the contract for clearing or draining if the director
23 determines that the inclusion is feasible and is consistent with the
24 policies and purposes of this chapter.

25 (b) The cost of clearing or draining, if the land or the agri-
26 cultural interest is privately owned, must be borne by the owner. If
27 the agricultural interest or the land is leased from the state, the
28 cost of clearing or draining must be borne by the state. The lessee
29 shall repay the cost to the state over a period designated by the

1 director at five per cent per year interest.

2 ARTICLE 4. FARM CONSERVATION AND DEVELOPMENT PLANS.

3 Sec. 38.07.180. FARM CONSERVATION PLANS. As a prerequisite to
4 the disposal of an agricultural interest under this chapter, the
5 director shall require a prospective purchaser or lessee to submit a
6 farm conservation plan approved by the director before the disposal is
7 consummated. The format and contents of the plan must be specified by
8 the director. The contents of the plan may include, but are not
9 limited to:

10 (1) the location and nature of any planned alterations of
11 the land, such as clearing and breaking of ground;

12 (2) the location and characteristics of any planned real
13 property improvements, if authorized; and

14 (3) the location and description of soil and other farm
15 conservation measures, plans, and improvements.

16 Sec. 38.07.190. FARM DEVELOPMENT PLANS. As a prerequisite to
17 the disposal of an agricultural interest under this chapter, the
18 director may require a prospective purchaser or lessee to accede to a
19 farm development plan formulated by the director before the disposal
20 is consummated. The format and contents of the plan must be specified
21 by the director.

22 Sec. 38.07.200. GENERAL REQUIREMENTS. (a) After a farm conser-
23 vation plan and a farm development plan are made final by the director,
24 they must be incorporated into the document of disposal in a manner
25 consistent with sec. 290(c) of this chapter. However, if an agricul-
26 tural interest is disposed of by sale through a conditional sales
27 contract, and the farm conservation plan or farm development plan will
28 expire by its own terms before title is transferred, the plan must be
29 included in the conditional sales contract only.

1 (b) Failure to submit or obtain approval of a farm conservation
2 plan or to accede to a farm development plan, if required, within the
3 time specified in the disposal notice (or within an extension of time
4 granted by the director for good cause) voids the disposal.

5 ARTICLE 5. AGRICULTURAL PREFERENCES.

6 Sec. 38.07.220. DETERMINATION OF APPLICABILITY. (a) Before any
7 disposal of an agricultural interest under sec. 80 of this chapter,
8 the director shall determine whether an agricultural preference will
9 be granted to a qualified person. The director may, in his discretion,
10 designate none, some, or all of the land subject to the disposal for
11 agricultural preferences after evaluation of the following and other
12 pertinent factors:

13 (1) whether the award of agricultural preferences would
14 enhance the economic viability of existing farm units considering the
15 characteristics of the land, the marketplace, and the range of present
16 and anticipated local agricultural products;

17 (2) whether the award of agricultural preferences would
18 permit the expansion of agriculture in the area with lesser expendi-
19 tures for new public services;

20 (3) whether new entrants into agriculture in the area would
21 strengthen or diversify or otherwise benefit the local agriculture
22 industry.

23 (b) Where land is designated for agricultural preferences under
24 this section, a qualified person may obtain the agricultural interest
25 in it for the fair value as determined under sec. 80 of this chapter.
26 If more than one person who is qualified for an agricultural preference
27 applies for the same tract of land, the director shall effectuate the
28 disposal through a rating of applicants, a lottery, or another equit-
29 able system consistent with the purposes of this chapter.

1 Sec. 38.07.230. QUALIFICATIONS. (a) In order to qualify for an
2 agricultural preference, an applicant must:

3 (1) comply with all applicable requirements and prerequisites
4 established for participants in the disposal;

5 (2) own or lease land or the agricultural interest in it in
6 the general vicinity of the land subject to the disposal; and

7 (3) submit an application to the director for an agricultu-
8 ral preference demonstrating the need for the preference and including
9 any other contents specified by the director.

10 (b) In addition, the director may require that an applicant for
11 an agricultural preference have a specified percentage of the appli-
12 cant's existing tillable land cleared, drained, brought into agri-
13 cultural production, or all of the foregoing, in order to qualify.

14 Sec. 38.07.240. LIMITATIONS. The award of an agricultural pre-
15 ference must be made on the basis of the characteristics and conditions
16 of the existing farm as an economic unit. Multiple ownership of a
17 farm does not create eligibility for multiple preferences. The direc-
18 tor may impose any other limitations or conditions on the award of
19 agricultural preferences as are necessary and proper for the admini-
20 stration of this chapter, and may limit the total acreage and the
21 number of preferences which may be awarded to a particular farm unit
22 over a given period of time.

23 Sec. 38.07.250. PREFERENCE OF LESSEE. Upon the termination of
24 a lease of an agricultural interest in state land, the lessee is
25 entitled to re-obtain that interest if

26 (1) the termination was not brought about through a breach
27 of the lease by the lessee;

28 (2) the lessee meets the eligibility standards established
29 by the director for the redisposal; and

1 (3) the lessee meets the price and terms and other require-
2 ments established for the redisposal.

3 ARTICLE 6. AGRICULTURAL INTEREST.

4 Sec. 38.07.270. SALE OF AN AGRICULTURAL INTEREST. If an agricul-
5 tural interest in state land is sold under this chapter, the interest
6 conveyed is a fee simple subject to a condition subsequent. Use of
7 the property inconsistent with sec. 290 of this chapter constitutes a
8 breach of condition subsequent. Notwithstanding any other provision
9 or principle of statutory or common law, the following characteristics
10 apply to a fee simple subject to a condition subsequent conveyed under
11 this chapter:

12 (1) the state retains an equitable interest in the property
13 known as a power of termination, which may be exercised in the event
14 of a breach but which may be alienated only in accordance with sec.
15 130 of this chapter;

16 (2) the fee simple subject to a condition subsequent may be
17 freely alienated, encumbered, or inherited subject to the provisions
18 of sec. 90 of this chapter;

19 (3) any particular condition subsequent may be in the form
20 of an affirmative or negative duty, or may be extinguished upon the
21 expiration of a period of time or a designated event.

22 Sec. 38.07.280. LEASE OF AN AGRICULTURAL INTEREST. If an
23 agricultural interest in state land is leased, the leasehold is a
24 tenancy for years subject to a condition subsequent. Use of the
25 property inconsistent with sec. 290 of this chapter constitutes a
26 breach of a condition subsequent, after which the state may exercise a
27 power of termination of the tenancy.

28 Sec. 38.07.290. PERMISSIBLE USES OF AN AGRICULTURAL INTEREST.

29 (a) The holder of an agricultural interest disposed of under this

1 chapter shall use the land only for:

2 (1) the controlled production of plants and animals useful
3 to man, including, without limitation, forage and sod crops, grains,
4 and feed crops, fruits, trees, vegetables, dairy animals and products,
5 and livestock;

6 (2) the maintenance of the land in its existing natural or
7 undeveloped state, unless otherwise required by a farm conservation
8 plan or a farm development plan;

9 (3) the construction, operation, and maintenance of fixed,
10 permanent, or immovable structures reasonably required for or directly
11 related to use of the land for agricultural production to the extent
12 authorized by the director;

13 (4) the use of indigenous gravel reasonably required for
14 agricultural production or conservation of agricultural land;

15 (5) the disposal by sale or otherwise of indigenous timber
16 necessary to bring the land into agricultural production in accordance
17 with accepted principles of land management and conservation.

18 (b) In addition, the holder shall comply with and carry out any
19 applicable farm conservation plan and, if required, farm development
20 plan.

21 (c) The use limitations set out in this section are conditions
22 binding upon all subsequent transferees of the agricultural interest
23 or a part of it.

24 ARTICLE 7. DAMAGES AND FORFEITURE.

25 Sec. 38.07.310. PROCEDURE FOR BREACH. (a) If the holder of an
26 agricultural interest commits a breach as described in secs. 270 --
27 290 of this chapter, the director shall serve upon the holder and upon
28 the holder of any recorded security interest notice of the breach,
29 which includes a description of it. The holder and the holder of any

1 recorded security interest have six months to cure the breach, unless
2 an additional period is allowed by the director for good cause. If
3 the breach is not cured within the time allowed, the attorney general,
4 at the request of the director, may institute an action for injunction
5 and for immediate and consequential damages resulting from the breach.

6 (b) For the period allowed for cure of a breach by the director
7 under (a) of this section, the power of termination is temporarily
8 waived. If, after expiration of that period, the director determines
9 that (1) the breach has not been cured, and (2) the breach is of
10 sufficient extent or gravity to result in prolonged or permanent
11 impairment of the usefulness or productivity of the land for agri-
12 cultural purposes, the director may re-enter the land and, through an
13 action instituted in the superior court by the attorney general, exer-
14 cise the power of termination. The state has a right to enforcement
15 of the power of termination and to forfeiture of the agricultural
16 interest to the state, if the state shows, by a preponderance of the
17 evidence, that the director's determination under this subsection is
18 supported by a rational basis. An action to exercise a power of
19 termination under this subsection does not prevent an action for
20 immediate and consequential damages under (a) of this section.

21 (c) If the director determines that a breach is serious and is
22 causing immediate and irreparable or irretrievable impairment of the
23 usefulness or productivity of the land for agricultural purposes, and
24 that delay in curing the breach is prejudicial to the public interest,
25 he shall request the attorney general to institute an injunctive
26 action in the superior court commanding that the breach be cured. The
27 injunction shall issue if the state shows, by a preponderance of the
28 evidence, that the director's determination under this subsection is
29 supported by a rational basis. If the breach is not cured within the

1 time allowed by the superior court in the injunction, action may be
2 taken under (b) of this section except that the period allowed for
3 cure of a breach is considered to have expired.

4 ARTICLE 8. APPEALS AND JUDICIAL REVIEW.

5 Sec. 38.07.330. APPEALS AND JUDICIAL REVIEW. (a) A person
6 aggrieved by an action of the director under this chapter may appeal
7 to the commissioner within 30 days after the action is taken. The
8 commissioner shall, within 30 days and after a hearing, render a
9 decision. The commissioner may delegate his responsibilities under
10 this section in whole or in part to a hearing officer appointed by
11 him.

12 (b) A person aggrieved by a decision of the commissioner under
13 (a) of this section may appeal the decision to the superior court
14 within 30 days after it is taken. Judicial review is available in
15 accordance with AS 44.62.560 and 44.62.570.

16 ARTICLE 9. GENERAL PROVISIONS.

17 Sec. 38.07.900. DEFINITIONS. As used in this chapter,

18 (1) "clearing" means the preparation of land for planting
19 or other agricultural uses;

20 (2) "commissioner" means the commissioner of natural
21 resources;

22 (3) "director" means the director of the division of lands
23 in the Department of Natural Resources;

24 (4) "disposal" means a lease, sale, lease with option to
25 purchase or similar arrangement, or any other transfer of an interest
26 in property;

27 (5) "document of disposal" means the lease, deed, or other
28 legal instrument which transfers the interest in property;

29 (6) "holder" means a lessee, owner, or other holder of an

1 interest in property; and, if an interest in property is transferred,
2 the transferee becomes a "holder";

3 (7) "person" includes a joint venture as well as the entities
4 described in AS 01.10.060(7);

5 (8) "state land" include any land under state ownership,
6 including tide and submerged land; and

7 (9) "transfer" means any transfer of an interest in pro-
8 perty and includes a sale, assignment, lease, sublease, or inheritance.

9 * Sec. 3. AS 38.05.069, 38.07.010, 38.07.020, 38.07.030, 38.07.040,
10 38.07.050, and 38.07.060 are repealed.

11 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
12 10.070(c).