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Referred: Resources

1 IN THE HOUSE

BY CARNEY, MOSS AND ZHAROFF

2 HOUSE BILL NO. 280

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the preservation of agricultural
7 land."

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

9 * Section 1. AS 38 is amended by adding a new chapter to read:

10 CHAPTER 60. PRESERVATION OF AGRICULTURAL LAND.

11 Sec. 38.60.010. ACQUISITION OF AGRICULTURAL PRESERVATION EASE-
12 MENTS. (a) If privately owned agricultural land meets the requirements
13 specified in AS 38.60.020, the director may acquire by purchase an
14 agricultural preservation easement in that land.

15 (b) The director, with the concurrence of the commissioner, is
16 authorized to dispose of state land or an interest in state land by ex-
17 changing it for privately owned agricultural land or for an agricultural
18 preservation easement in privately owned agricultural land if the pri-
19 vately owned agricultural land meets the requirements specified in
20 AS 38.60.020.

21 (c) The value of an agricultural preservation easement received
22 by the state in an exchange made under this chapter must be equal to
23 the fair market value of the state land or the interest in state land
24 exchanged. If the value of the state land or the interest in state
25 land is not equal to the value of the agricultural preservation ease-
26 ment, the director may accept money from, or pay money or transfer land
27 sale certificates to, a landowner. The money paid or accepted or the
28 value of the land sale certificates transferred by the director must
29 equal the difference between the fair market value of the agricultural

1 preservation easement and the fair market value of state land or the
2 interest in state land exchanged under this chapter.

3 (d) A purchase of an agricultural preservation easement or an
4 exchange of state land for an agricultural preservation easement shall
5 be to preserve the agricultural use of land.

6 Sec. 38.60.020. LAND ELIGIBLE FOR AGRICULTURAL PRESERVATION.
7 Land eligible for agricultural preservation under this chapter must

8 (1) be under private ownership;

9 (2) be located in an area of the state surveyed by the
10 United States Soil Conservation Service;

11 (3) contain over at least 90 per cent of the surface area
12 soils which are classified as classes I - IV by the United States Soil
13 Conservation Service; and

14 (4) contain not less than five acres.

15 Sec. 38.60.030. APPLICATION TO EXCHANGE OR SELL EASEMENT IN AGRI-
16 CULTURAL LAND. (a) An owner of agricultural land which meets the
17 requirements of AS 38.60.020 may offer by written application to sell
18 or exchange an agricultural preservation easement to the state on all
19 or a portion of his agricultural land.

20 (b) In order to be considered by the director, an application to
21 sell or exchange must

22 (1) include an asking price at which the owner is willing to
23 sell an easement; and

24 (2) include a complete description of the agricultural land.

25 (c) Within 30 days after the receipt of an application, the
26 director shall notify the landowner of the sufficiency of the applica-
27 tion. If the application is insufficient, the director shall specify
28 the reason and shall allow an additional 30 days for the landowner to
29 remedy the insufficiency. If the application is made sufficient within

1 30 days of the notification by the director, the application shall be
2 approved. The director shall notify all landowners whose applications
3 have been rejected, and he shall specify the reasons for the rejection.

4 (d) If the agricultural land, or any part of it, is located in a
5 municipality, the director shall notify the governing body of the muni-
6 cipality within 30 days after approval of an application that an appli-
7 cation has been approved. Within 30 days after the notification, the
8 municipal governing body may appeal to the director for reconsideration
9 of his decision. If a municipality appeals, the director shall hold a
10 public hearing in the municipality before an offer to sell or exchange
11 is tendered to the landowner. If, after a public hearing in the muni-
12 cipality, the director's decision remains unchanged, the municipality
13 may appeal to the commissioner within five days for a review of the
14 director's decision.

15 Sec. 38.60.040. OFFER TO BUY OR EXCHANGE. Within 90 days after
16 approval of the landowner's application to sell or exchange an agricul-
17 tural preservation easement, the director shall tender to the landowner
18 an offer to buy or exchange containing the specific terms of the acqui-
19 sition. An offer to buy or exchange may specify terms, contingencies,
20 and conditions not contained in the landowner's application. A land-
21 owner has 30 days from the date of receipt of the offer to buy or ex-
22 change in which to accept or reject the offer.

23 Sec. 38.60.050. VALUE OF AGRICULTURAL PRESERVATION EASEMENT. (a)
24 The maximum value of an agricultural preservation easement acquired
25 under this chapter shall be the asking price or the difference between
26 the fair market value of the land and the agricultural value of the
27 land, whichever is less.

28 (b) The value of an agricultural preservation easement shall be
29 determined by the director based on one or more appraisals by qualified

1 appraisers. The valuation date of the easement shall be the postmark
2 date of the landowner's application to sell or exchange. If the land-
3 owner and the director fail to agree on the value of the easement, the
4 landowner, at his own expense, may have the easement appraised by a
5 qualified appraiser agreed upon by the landowner and the director. The
6 value determined by that appraiser is binding on the director and the
7 landowner for two years after the date of the appraisal unless the
8 landowner and the director agree on a value less than that determined
9 by the landowner's appraisal.

10 Sec. 38.60.060. PROVISIONS TO BE INCLUDED IN EASEMENT. An agri-
11 cultural preservation easement acquired under this chapter shall include
12 the following provisions:

13 (1) agricultural use of the land by the landowner or his
14 assigns is permitted;

15 (2) removal of minerals or materials from the subsurface of
16 the land by the landowner or his assigns is permitted if the landowner
17 immediately returns the land to agricultural use and restores the land
18 to a condition at least as favorable for agricultural use as existed
19 before the nonagricultural use began;

20 (3) operation of machinery used in agricultural production
21 or the primary processing of agricultural products is permitted;

22 (4) normal agricultural operations are permitted, including,
23 but not limited to, sale of agricultural products produced on the land
24 where the sale is made;

25 (5) residential subdivision for commercial purposes by the
26 landowner or his assigns is not permitted;

27 (6) construction of buildings for farming operations is
28 permitted, but land used for this construction may not exceed one acre
29 per 40 acres of land under an agricultural preservation easement; and

1 (7) acquisition of an agricultural preservation easement by
2 the state does not grant the public a right of access or right of use
3 of the property subject to the easement.

4 Sec. 38.60.070. TERMINATION OF EASEMENT. (a) After 25 years
5 from the date of acquisition of an agricultural preservation easement,
6 the landowner or his successor in title may request that the easement
7 be reviewed for termination.

8 (b) After a request for review of an agricultural preservation
9 easement for termination, an inquiry shall be conducted by the director
10 to determine the feasibility of nonagricultural use of the land subject
11 to the easement. The inquiry shall be concluded and a decision reached
12 by the director within 180 days after the request for termination, and
13 shall include:

14 (1) on-site inspection of the land subject to the easement;
15 and

16 (2) a public hearing conducted by the director in the municipi-
17 pality containing the land or in the municipality nearest to the land.

18 (c) If the land subject to an agricultural preservation easement
19 or any part of it is located in a municipality, the easement may be
20 terminated only with the approval of the governing body of the municipi-
21 pality. The decision of the governing body of the municipality shall
22 be made after the public hearing required in (b)(2) of this section,
23 and the governing body shall notify the director of its decision within
24 30 days after the conclusion of the public hearing.

25 (d) Upon the approval of the commissioner and, if the land subject
26 to the easement or a part of it is located in a municipality, the
27 approval of the municipal governing body, a request for termination
28 shall be approved, and the landowner shall be notified.

29 (e) If a request for termination of an agricultural preservation

1 easement is approved, an appraisal of the land by a qualified appraiser
2 shall be ordered by the director at the expense of the landowner re-
3 questing termination of the easement. Within 180 days after the ap-
4 praisal, the landowner may repurchase the easement by paying to the
5 director the difference between the fair market value and the agricul-
6 tural value of the land as determined by the appraisal. For the pur-
7 poses of this subsection, the agricultural value is the price on the
8 agreed valuation date which a vendor, willing but not obligated to
9 sell, would accept, and which a purchaser, willing but not obligated to
10 buy, would pay for agricultural land comparable in quality and composi-
11 tion to the property being appraised, but located in the nearest
12 location where profitable agricultural use is feasible.

13 (f) If a request for termination is denied, or if the landowner
14 fails to repurchase the easement within 180 days after the appraisal,
15 the landowner may not again request termination of the easement until
16 five years after the date of his request for termination.

17 Sec. 38.60.080. LAND CREDIT CERTIFICATES. If the landowner
18 agrees, the director may purchase an agricultural preservation easement
19 or equalize the value of an exchange of state land or interest in state
20 land for an agricultural preservation easement by issuing freely trans-
21 ferable land credit certificates which may be applied toward the pur-
22 chase or lease of state land under the jurisdiction of the division of
23 lands, except tide, submerged, and shoreland and land belonging to the
24 state which has been obtained by escheat, purchase, or any means other
25 than by general land grant. A land credit certificate is valid for a
26 period of 20 years after issue. After the expiration of 20 years from
27 date of issue the holder may not start an action against the state or
28 against any person based upon the certificate. The method of disposing
29 of land and resources and restrictions upon their disposal established

1 by law or regulation are not affected by the use of land credit certi-
2 ficates.

3 Sec. 38.60.090. STATE LAND AVAILABLE FOR EXCHANGE. (a) The
4 director of the division of lands shall identify, classify, appraise,
5 and make available for exchange by the director of the division of
6 agriculture state land in the vicinity of agricultural land considered
7 for agricultural preservation.

8 (b) The director of the division of agriculture may negotiate
9 directly with a landowner of privately owned agricultural land whose
10 application has been approved as provided in AS 38.60.030 to identify
11 parcels of state land acceptable to the landowner and which satisfy the
12 value requirement of AS 38.60.010(c).

13 (c) The provisions of AS 38.05.305 and 38.05.345 requiring public
14 notice and review of disposal of state land apply to exchanges of state
15 land under this chapter.

16 (d) After receiving certified copies of the offer to exchange and
17 the landowner's acceptance from the director of the division of agri-
18 culture, the director of the division of lands shall formally convey
19 state land or an interest in state land available for exchange under
20 (a) of this section to the person certified by the director of the
21 division of agriculture as an approved applicant for the sale or
22 exchange.

23 Sec. 38.60.100. CONDEMNATION OF LAND UNDER AGRICULTURAL PRESERVA-
24 TION EASEMENT. (a) This chapter does not prohibit an agency of the
25 state or of a municipality from acquiring by condemnation land which is
26 under an agricultural preservation easement held by the state if the
27 acquisition is for a public purpose.

28 (b) If land under an agricultural preservation easement is con-
29 demned, a municipal condemning authority shall pay

1 (1) to the landowner, the full amount to which the landowner
2 would be entitled if the land were not subject to the easement, less
3 the consideration paid to the landowner by the state for the easement;

4 (2) to the state treasury, an amount equal to the considera-
5 tion paid by the state for the easement.

6 Sec. 38.60.300. DEFINITIONS. In this chapter

7 (1) "agricultural operations" means those activities related
8 to the production of domesticated plants and animals useful to man;

9 (2) "agricultural use" means the use of land for the pro-
10 duction of domesticated plants and animals useful to man, and other
11 related uses and activites;

12 (3) "agricultural value" means the price on the valuation
13 date which a vendor, willing but not obligated to sell, would accept
14 for the property, and which a purchaser, willing but not obligated to
15 buy, would pay for the property to be used for agricultural operations;

16 (4) "commissioner" means the commissioner of the Department
17 of Natural Resources;

18 (5) "director" means the director of the division of agri-
19 culture in the Department of Natural Resources;

20 (6) "fair market value" means the price on the valuation
21 date for the highest and best use of the property which a vendor,
22 willing but not obligated to sell, would accept for the property, and
23 which a purchaser, willing but not obligated to buy, would pay for the
24 property if the property was not subject to any restriction imposed
25 under this chapter;

26 (7) "municipality" means a unified municipality or a home
27 rule borough or general law borough or city, of any class, incorporated
28 under the laws of the state;

29 (8) "qualified appraiser" means a senior member of the

1 American Institute of Real Estate Appraisers, the Society of Real
2 Estate Appraisers, a person meeting the requirements for certification
3 as an appraiser II by the division of personnel, Department of Adminis-
4 tration, or a person qualified according to regulations adopted by the
5 commissioner under the Administrative Procedure Act (AS 44.62);

6 (9) "residential subdivision for commercial purposes" means
7 the division of a tract or parcel of land into two or more lots, sites
8 or other divisions for the purpose, whether immediate or future, of
9 sale or building development, and includes a resubdivision, except
10 that, upon written application to the director, conveyance of one acre
11 or less for the owner who originally sold an agricultural preservation
12 easement to the state and for each of his children to construct one
13 dwelling house intended for his or their use shall be permitted one
14 time only for that owner and each child, and does not constitute a
15 residential subdivision for commercial purposes.

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