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1 IN THE HOUSE

BY LACHER AND LARSON

2

HOUSE BILL NO. 148

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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

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

9 * Section 1. LEGISLATIVE FINDINGS AND DECLARATION OF PURPOSE.

10 (1) Land used in farming with soil and topographic characteris-
11 tics that have been enhanced by years of agricultural use is an irreplace-
12 able natural resource. When farmland is converted to urban and suburban
13 uses that do not require the special fertility and landscape characteris-
14 tics of farmland, an important economic and natural resource is lost to the
15 state.

16 (2) Alaska is a desirable place to live and visit because of the
17 quantity, variety and natural beauty of its open space that contributes a
18 vital ingredient to the quality of life of the people of the state. The
19 farmland of the state provides a natural separation between urban areas,
20 furnishes unique aesthetic and economic benefits to the citizens of the
21 state and is an important part of the heritage of the state.

22 (3) The agricultural industry in the state provides Alaskans
23 with an opportunity to obtain locally grown agricultural products with
24 advantages in flavor, quality, and cost that does not otherwise exist.

25 (4) It is the policy of the state to protect and preserve agri-
26 cultural land by permitting current use taxation of agricultural land as
27 well as by property tax deferral policies of local governments in which
28 farmland is located.

29 (5) The policies by themselves have not been effective to

1 provide long-term protection of farmlands under the pressure of increasing
2 urban development.

3 (6) Farmland close to an urban center generally has a greater
4 market value for future urban development than its market value for farm-
5 ing. This value encourages the speculative purchase of the land at high
6 prices for future development, regardless of the current use of the land.
7 Farmland that has a market value greater than its agricultural value does
8 not attract sustained agricultural investment and eventually the land is
9 sold and removed from agricultural use.

10 (7) The acquisition by the state of voluntarily offered inter-
11 ests in farmland within the state will permit the land to remain in farm
12 use in developing urban areas and provide long-term protection for the
13 public interests that are served by farmland within the state.

14 * Sec. 2. AS 03 is amended by adding a new chapter to read:

15 CHAPTER 07. PRESERVATION OF AGRICULTURAL LAND.

16 Sec. 03.07.010. ACQUISITION OF AGRICULTURAL PRESERVATION EASE-
17 MENTS. (a) The director may acquire by purchase an agricultural
18 preservation easement in privately owned agricultural land that meets
19 the requirements of AS 03.07.020.

20 (b) The director, with the concurrence of the commissioner, may
21 dispose of state land or an interest in state land by exchanging it
22 for privately owned agricultural land or for an agricultural preserva-
23 tion easement in privately owned agricultural land if the privately
24 owned agricultural land meets the requirements of AS 03.07.020.

25 (c) The value of an agricultural preservation easement received
26 by the state in an exchange made under this chapter must be equal to
27 the fair market value of the state land or the interest in state land
28 exchanged. If the value of the state land or the interest in state
29 land is not equal to the value of the agricultural preservation

1 easement, the director may accept money from or pay money to an owner
2 of land. The money accepted or paid must equal the difference between
3 the fair market value of the agricultural preservation easement and
4 the fair market value of state land or the interest in state land
5 exchanged under this chapter.

6 (d) The director may not purchase an agricultural preservation
7 easement or exchange state land for an agricultural preservation
8 easement except to preserve the agricultural use of land.

9 (e) The director may accept a remainder interest or a future
10 interest in land in place of an agricultural preservation easement if
11 the land will continue in agricultural use.

12 (f) A sale, exchange or donation of an agricultural preservation
13 easement is voluntary. A parcel of land may be considered for ex-
14 change under this chapter only on application of the owner of the
15 land. After sale, exchange, or donation of agricultural preservation
16 rights, an owner may not be required to carry out specific agricul-
17 tural activities as long as the owner of the land does not use or
18 subdivide the land for residential, commercial, or industrial purposes
19 or activities which are not related to agricultural uses.

20 Sec. 03.07.020. LAND ELIGIBLE FOR AGRICULTURAL PRESERVATION. A
21 parcel of land is eligible for protection under this chapter if

22 (1) it is privately owned;

23 (2) the soil under no less than 40 percent of the surface
24 of the parcel is classified as classes II - IV by the United States
25 Soil Conservation Service; and

26 (3) it is

27 (A) a parcel with no less than 40 acres in cultivation
28 or farm use; or

29 (B) a parcel with no less than 20 acres in cultivation

1 or farm use adjacent to an established farm or farms totalling no
2 less than 40 acres in size that has been in operation as a farm
3 or farms for no less than 10 years.

4 Sec. 03.07.030. PRIORITY DISTRICTS. If the director does not
5 have money to purchase agricultural preservation easements in all
6 eligible land, the director may establish a system of farmland preser-
7 vation priority districts by regulation and allocate money for agri-
8 cultural preservation easements within the districts according to the
9 following priority:

10 (1) farmland that is threatened by early conversion to
11 subdivisions, commercial or industrial uses;

12 (2) farmland that is of recognized value for tourism
13 because of historic associations, natural setting, closeness to tour-
14 ism routes, or other reasons;

15 (3) farmland that has a history of high productivity
16 because of soils, temperatures and other reasons;

17 (4) farmland that is close to market; and

18 (5) farmland that is within an established agricultural
19 area.

20 Sec. 03.07.040. CRITERIA FOR SELECTION WITHIN A PRIORITY DIS-
21 TRICT. If funds are not available within a priority district to
22 purchase all eligible land of equal priority for which valid offers
23 have been received by the director, the director shall consider the
24 following criteria in accepting offers:

25 (1) an offer of land that is more threatened by urban
26 development is favored over an offer of land that is less threatened;

27 (2) an offer that is below appraisal is favored over an
28 offer that is at or above appraisal;

29 (3) an offer of land used for farming in the 12 months

1 before the offer is favored over an offer of land that has been fallow
2 for the preceding 12 months;

3 (4) an offer of land that will form a contiguous farming
4 area with other offered or acquired eligible land is favored over an
5 offer of land that is separated from other farms;

6 (5) an offer of land that will achieve both urban separa-
7 tion and agricultural production or that will separate commercial and
8 industrial uses from residential or recreational uses is favored over
9 an offer of land that will serve only one of the purposes.

10 Sec. 038.07.050. AGRICULTURAL LAND WITHIN A MUNICIPALITY. The
11 director shall, before making an allocation of agricultural preserva-
12 tion easement money to a farmland preservation priority district
13 within a municipality, consider any comprehensive plan or ordinances
14 of the municipality on municipal farmland preservation priorities
15 adopted by the municipality and shall, before making an allocation,
16 consider recommendations from the municipality regarding priorities
17 for farmland preservation within the municipality.

18 Sec. 03.07.060. DETERMINATION OF ELIGIBILITY FOR EXCHANGE OR
19 SALE OF EASEMENT. (a) An owner of land that meets the requirements
20 of AS 03.07.020 may offer in writing to sell or exchange the agricul-
21 tural preservation easement to the state on all or a portion of the
22 agricultural land.

23 (b) An offer to sell or exchange

24 (1) must include a price at which the owner is willing to
25 sell an agricultural preservation easement to the state;

26 (2) must include a complete legal description of the land
27 offered;

28 (3) may include an appraisal in support of the price.

29 (c) Within 30 days after the receipt of an offer, the director

1 shall notify the owner of the land of the sufficiency of the offer.
2 If the offer is insufficient, the director shall specify the reason
3 and permit the owner of the land 30 days to correct the insufficiency.
4 If a corrected, sufficient offer is made within 30 days of the noti-
5 fication by the director, the land is determined to qualify as land
6 that meets the requirements of AS 03.07.020.

7 (d) If any part of the land determined to qualify under (c) of
8 this section is in a municipality, the director shall notify the
9 governing body of the municipality within 30 days of the determination
10 under (c) of this section. Within 30 days after the notification by
11 the director, the municipal governing body may request the director to
12 reconsider the determination. If a municipality requests reconsidera-
13 tion, the director shall hold a public hearing in the municipality
14 before an offer to sell or exchange is tendered to the owner of the
15 land. If, after a public hearing in the municipality, the decision of
16 the director remains unchanged, the municipality may appeal to the
17 commissioner within five days for a review of the decision of the
18 director.

19 Sec. 03.07.070. OFFER TO BUY OR EXCHANGE. The director may
20 accept the offer to buy or exchange land at a price and upon terms
21 offered by the owner of the land or may make a counter offer to buy or
22 exchange and may specify terms and conditions not contained in the
23 landowner's application within 90 days after approval of the land-
24 owner's offer to sell or exchange an agricultural preservation ease-
25 ment. An owner of land has 30 days from the receipt of the counter
26 offer to buy or exchange in which to accept or reject the offer.

27 Sec. 03.07.080. VALUATION OF AGRICULTURAL PRESERVATION EASEMENT.

28 (a) The maximum valuation of an agricultural preservation easement
29 acquired under this chapter is either the asking price or the

1 difference between the fair market value of the land and the agricul-
2 tural value of the land, whichever is less.

3 (b) The valuation of an agricultural preservation easement shall
4 be determined by the director based on one or more appraisals by
5 qualified appraisers.

6 Sec. 03.07.090. USES OF LAND ACQUIRED. (a) An agricultural
7 preservation easement acquired under this chapter permits

8 (1) agricultural use of the land by the owner of the land;
9 (2) removal of minerals or materials from the subsurface of
10 the land if the land is immediately returned to a condition at least
11 as favorable for agricultural use as existed before the removal of
12 minerals or materials began;

13 (3) operation of machinery used in agricultural production
14 or the primary processing of agricultural products;

15 (4) sale of agricultural products produced on the land;

16 (5) construction of buildings for farming operations but
17 land used for farm residences may not exceed one acre per 40 acres of
18 land under an agricultural preservation easement.

19 (b) The acquisition of an agricultural preservation easement by
20 the state does not grant the public a right of access or right of use
21 of the property subject to the easement nor does it affect any exist-
22 ing easements, rights of way, or rights of access. Residential sub-
23 division is not permitted.

24 Sec. 03.07.100. DEFINITIONS. In this chapter

25 (1) "agricultural operations" means activities related to
26 the production of domesticated plants and animals useful to humans;

27 (2) "agricultural preservation easement" means an interest
28 in land under which all development rights are owned by the state and
29 an owner of the property subject to the agricultural preservation

1 easement retains an interest in and the right to use and possess land
2 for purposes and activities related to the production of domesticated
3 plants and animals useful to humans;

4 (3) "agricultural use" means the use of land for the pro-
5 duction of domesticated plants and animals useful to humans;

6 (4) "agricultural value" means the amount on a valuation
7 date which an owner of land, willing but not obligated to sell, would
8 accept for property subject to an agricultural preservation easement,
9 and which a purchaser, willing but not obligated to buy, would pay for
10 property subject to an agricultural preservation easement;

11 (5) "commissioner" means the commissioner of natural re-
12 sources;

13 (6) "development rights" means an interest in and the right
14 to use and subdivide land for any and all residential, commercial and
15 industrial purposes and activities which are not incident to agricul-
16 tural uses;

17 (7) "director" means the director of agriculture in the
18 Department of Natural Resources;

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

25 (9) "municipality" means a unified municipality or a home
26 rule borough or general law borough or city, of any class, incorpo-
27 rated under the laws of the state;

28 (10) "qualified appraiser" means a senior member of the
29 American Institute of Real Estate Appraisers, the Society of Real

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

5 (11) "residential subdivision" means the division of a tract
6 or parcel of land into two or more lots, sites or other divisions for
7 the purpose, whether immediate or future, of sale or building develop-
8 ment, and includes a resubdivision.

9 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
10 10.070(c).