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Finance

1 IN THE SENATE

BY MOSS

2

SENATE BILL NO. 237

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."

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 require-
13 ments specified in AS 38.60.020, the commissioner may acquire by
14 purchase an agricultural preservation easement in that land.

15 (b) The commissioner is authorized to dispose of state land or
16 an interest in state land by exchanging it for privately owned agri-
17 cultural land or for an agricultural preservation easement in priv-
18 ately owned agricultural land if the privately owned agricultural land
19 meets the requirements of AS 38.60.020.

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

1 state land or the interest in state land exchanged under this chapter.

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

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

7 (1) be under private ownership;

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

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

13 (4) contain not less than five acres.

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

19 (b) In order to be considered by the commissioner, an applica-
20 tion to sell or exchange must

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

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

25 (c) Within 30 days after the receipt of an application, the
26 commissioner shall notify the landowner of the sufficiency of the
27 application. If the application is insufficient, the commissioner
28 shall specify the reason and shall allow an additional 30 days for the
29 landowner to remedy the insufficiency. The commissioner shall notify

1 all landowners whose applications have been rejected and shall specify
2 the reasons for the rejection.

3 (d) The commissioner shall provide 60 days' advance notice to
4 the governing body of a municipality of an intention to approve under
5 this section an application to exchange or sell an easement in agri-
6 cultural land located within the municipality. The municipality may
7 request the commissioner to reconsider the decision and to hold a
8 public hearing in the municipality on the application before an offer
9 to sell or exchange is tendered to the landowner. If the decision of
10 the commissioner is unchanged after the hearing, the commissioner
11 shall proceed with the processing of the application.

12 Sec. 38.60.040. OFFER TO BUY OR EXCHANGE. Within 90 days after
13 approval of the landowner's application to sell or exchange an agri-
14 cultural preservation easement, the commissioner shall tender to the
15 landowner an offer to buy or exchange containing the specific terms of
16 the acquisition. An offer to buy or exchange may specify terms, con-
17 tingencies, and conditions not contained in the landowner's applica-
18 tion. A landowner has 30 days from the date of receipt of the offer
19 to buy or exchange in which to accept or reject the offer.

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

25 (b) The value of an agricultural preservation easement shall be
26 determined by the commissioner based on one or more appraisals by
27 qualified appraisers. The valuation date of the easement shall be the
28 postmark date of the landowner's application to sell or exchange. If
29 the landowner and the commissioner fail to agree on the value of the

1 easement, the landowner may have the easement appraised by a qualified
2 appraiser agreed upon by the landowner and the commissioner; the
3 landowner shall pay the costs of the appraisal. The value determined
4 by that appraiser is binding on the commissioner and the landowner for
5 two years after the date of the appraisal unless the landowner and the
6 commissioner agree on a value less than that determined by the land-
7 owner's appraisal.

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

11 (1) agricultural use of the land by the landowner or the
12 assigns of the landowner is permitted;

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

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

20 (4) normal agricultural operations are permitted, includ-
21 ing, but not limited to, sale of agricultural products produced on the
22 land where the sale is made;

23 (5) residential subdivision for commercial purposes by the
24 landowner or the assigns of the landowner is not permitted;

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

28 (7) acquisition of an agricultural preservation easement by
29 the state does not grant the public a right of access or right of use

1 of the property subject to the easement.

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

6 (b) After a request for review of an agricultural preservation
7 easement for termination, an inquiry shall be conducted by the commis-
8 sioner to determine the feasibility of nonagricultural use of the land
9 subject to the easement. The inquiry shall be concluded and a deci-
10 sion reached by the commissioner within 180 days after the request for
11 termination, and shall include

12 (1) on-site inspection of the land subject to the easement;
13 and

14 (2) a public hearing conducted by the commissioner in the
15 municipality containing the land or in the municipality nearest to the
16 land.

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

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

28 (e) If a request for termination of an agricultural preservation
29 easement is approved, an appraisal of the land by a qualified

1 appraiser shall be ordered by the commissioner at the expense of the
2 landowner requesting termination of the easement. Within 180 days
3 after the appraisal, the landowner may repurchase the easement by
4 paying to the commissioner the difference between the fair market
5 value and the agricultural value of the land as determined by the
6 appraisal. For the purposes of this subsection, the agricultural
7 value is the price on the agreed valuation date which a vendor, will-
8 ing but not obligated to sell, would accept, and which a purchaser,
9 willing but not obligated to buy, would pay for agricultural land
10 comparable in quality and composition to the property being appraised,
11 but located in the nearest location where profitable agricultural use
12 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 the request for termination.

17 (g) Notwithstanding the provisions of this section, a landowner
18 shall on written application to the commissioner receive permission to
19 convey one acre or less to a child of the landowner for construction
20 of a dwelling house intended for the use of the child. The rights
21 established under this subsection may be exercised only once in a
22 lifetime for each child and does not constitute a residential subdivi-
23 sion for commercial purposes.

24 Sec. 38.60.080. LAND CREDIT CERTIFICATES. If the landowner
25 agrees, the commissioner may purchase an agricultural preservation
26 easement or equalize the value of an exchange of state land or inter-
27 est in state land for an agricultural preservation easement by issuing
28 freely transferable land credit certificates that may be applied
29 toward the purchase or lease of state land under the jurisdiction of

1 the Department of Natural Resources, except tide, submerged, and
2 shoreland and land belonging to the state that has been obtained by
3 escheat, purchase, or any means other than by general land grant. A
4 land credit certificate is valid for a period of 20 years after issue.
5 After the expiration of 20 years from date of issue the holder may not
6 start an action against the state or against any person based upon the
7 certificate. The method of disposing of land and resources and re-
8 strictions upon their disposal established by law or regulation are
9 not affected by the use of land credit certificates.

10 Sec. 38.60.090. STATE LAND AVAILABLE FOR EXCHANGE. (a) The
11 commissioner shall identify, classify, appraise, and make available
12 for exchange state land in the vicinity of agricultural land con-
13 sidered for agricultural preservation.

14 (b) The commissioner may negotiate with a landowner of privately
15 owned agricultural land whose application has been approved under
16 AS 38.60.030 to identify parcels of state land acceptable to the
17 landowner that satisfy the value requirement of AS 38.60.010(c).

18 (c) The provisions of AS 38.05.345 requiring public notice and
19 review of disposal of state land apply to exchanges of state land
20 under this chapter.

21 (d) After receiving the landowner's acceptance of the offer to
22 exchange, the commissioner shall convey state land or an interest in
23 state land available for exchange under (a) of this section to the
24 landowner.

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

1 (b) If land under an agricultural preservation easement is con-
2 demned, the condemning authority shall pay

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

6 (2) to the state treasury an amount equal to the considera-
7 tion paid by the state for the easement.

8 Sec. 38.60.300. DEFINITIONS. In this chapter

9 (1) "agricultural operations" means those activities re-
10 lated to the production of domesticated plants and animals useful to
11 man;

12 (2) "agricultural use" means the use of land for the pro-
13 duction of domesticated plants and animals useful to man, and other
14 related uses and activities;

15 (3) "agricultural value" means the price on the valuation
16 date that a vendor, willing but not obligated to sell, would accept
17 for the property, and that a purchaser, willing but not obligated to
18 buy, would pay for the property to be used for agricultural opera-
19 tions;

20 (4) "commissioner" means the commissioner of natural re-
21 sources;

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

28 (6) "municipality" means a unified municipality or a home
29 rule borough or general law borough or city of any class incorporated

1 under the laws of the state;

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

8 (8) "residential subdivision for commercial purposes" means
9 the division of a tract or parcel of land into two or more lots, sites
10 or other divisions for the purpose, whether immediate or future, of
11 sale or building development, and includes a resubdivision.