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1 IN THE HOUSE

BY LARSON

2

HOUSE BILL NO. 39

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH 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 03 is amended by adding a new chapter to read:

10

CHAPTER 07. PRESERVATION OF AGRICULTURAL LAND.

11

Sec. 03.07.010. ACQUISITION OF AGRICULTURAL PRESERVATION EASE-

12

MENTS. (a) The director may acquire by purchase an agricultural  
13 preservation easement in privately owned agricultural land that meets  
14 the requirements of AS 03.07.020.

15

(b) The director, with the concurrence of the commissioner, may  
16 dispose of state land or an interest in state land by exchanging it  
17 for privately owned agricultural land or for an agricultural preserva-  
18 tion easement in privately owned agricultural land

19

(1) if the privately owned agricultural land meets the  
20 requirements of AS 03.07.020; and

21

(2) if the state land or the interest in state land to be  
22 exchanged is classified under AS 38.05.300 for a purpose consistent  
23 with the disposal.

24

(c) The value of an agricultural preservation easement received  
25 by the state in an exchange made under this chapter must be equal to  
26 the fair market value of the state land or the interest in state land  
27 exchanged. If the value of the state land or the interest in state  
28 land is not equal to the value of the agricultural preservation ease-  
29 ment, the director may accept money from or pay money to an owner of

1 land. The money accepted or paid must equal the difference between  
2 the fair market value of the agricultural preservation easement and  
3 the fair market value of state land or the interest in state land  
4 exchanged under this chapter.

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

9 (e) The director shall follow the procedures established in  
10 AS 38.05.345 before disposing of state land or an interest in state  
11 land or agreeing to the acquisition of privately owned agricultural  
12 land or an agricultural preservation easement in privately owned  
13 agricultural land. In addition to compliance with the requirements of  
14 AS 38.05.345, the director shall at the same time make available for  
15 public inspection

16 (1) information regarding the valuations of the interest or  
17 interests in the various properties affected by the disposal or acqui-  
18 sition; and

19 (2) a copy of the offer required in AS 03.07.060.

20 (f) A sale, exchange or donation of an agricultural preservation  
21 easement is voluntary. A parcel of land may be considered for ex-  
22 change under this chapter only on application of the owner of the  
23 land. After sale, exchange, or donation of agricultural preservation  
24 rights, an owner may not be required to carry out specific agricul-  
25 tural activities as long as the owner of the land does not use or  
26 subdivide the land for residential, commercial, or industrial purposes  
27 or activities which are not related to agricultural uses.

28 (g) The director may not purchase land or an interest in land  
29 under AS 03.07 with funds appropriated from the general fund of the

1 state unless the appropriation is specifically stated to be for that  
2 purpose. Nothing in this subsection prevents the use by the director  
3 of funds available to the director from sources other than the general  
4 fund of the state.

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

7 (1) it is privately owned;

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

11 (3) it is

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

14 (B) a parcel with no less than 20 acres in cultivation  
15 or farm use adjacent to an established farm or farms totalling no  
16 less than 40 acres in size that has been in operation as a farm  
17 or farms for no less than 10 years.

18 Sec. 03.07.030. PRIORITY DISTRICTS. If the director does not  
19 have money to purchase agricultural preservation easements in all  
20 eligible land, the director may establish a system of farmland preser-  
21 vation priority districts by regulation and allocate money for agri-  
22 cultural preservation easements within the districts according to the  
23 following priority:

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

26 (2) farmland that is of recognized value for tourism be-  
27 cause of historic associations, natural setting, closeness to tourism  
28 routes, or other reasons;

29 (3) farmland that has a history of high productivity

1 because of soils, temperatures and other reasons;

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

3 (5) farmland that is within an established agricultural  
4 area.

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

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

12 (2) an offer that is below appraisal is favored over an  
13 offer that is at or above appraisal;

14 (3) an offer of land used for farming in the 12 months  
15 before the offer is favored over an offer of land that has been fallow  
16 for the preceding 12 months;

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

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

24 Sec. 03.07.050. AGRICULTURAL LAND WITHIN A MUNICIPALITY. The  
25 director shall, before making an allocation of agricultural preserva-  
26 tion easement money to a farmland preservation priority district  
27 within a municipality, consider any comprehensive plan or ordinances  
28 of the municipality on municipal farmland preservation priorities  
29 adopted by the municipality and shall, before making an allocation,

1 consider recommendations from the municipality regarding priorities  
2 for farmland preservation within the municipality.

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

8 (b) An offer to sell or exchange must

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

11 (2) include a complete legal description of the land of-  
12 fered;

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

14 (c) Within 30 days after the receipt of an offer, the director  
15 shall notify the owner of the land of the sufficiency of the offer.  
16 If the offer is insufficient, the director shall specify the reason  
17 and permit the owner of the land 30 days to correct the insufficiency.  
18 If a corrected, sufficient offer is made within 30 days of the noti-  
19 fication by the director, the land is determined to qualify as land  
20 that meets the requirements of AS 03.07.020.

21 (d) If any part of the land determined to qualify under (c) of  
22 this section is in a municipality, the director shall notify the  
23 governing body of the municipality within 30 days of the determination  
24 under (c) of this section. Within 30 days after the notification by  
25 the director, the municipal governing body may request the director to  
26 reconsider the determination. If a municipality requests reconsidersa-  
27 tion, the director shall hold a public hearing in the municipality  
28 before an offer to sell or exchange is tendered to the owner of the  
29 land. If, after a public hearing in the municipality, the decision of

1 the director remains unchanged, the municipality may appeal to the  
2 commissioner within five days for a review of the decision of the  
3 director.

4 Sec. 03.07.070. OFFER TO BUY OR EXCHANGE. The director may  
5 accept the offer to buy or exchange land at a price and upon terms  
6 offered by the owner of the land or may make a counter offer to buy or  
7 exchange and may specify terms and conditions not contained in the  
8 landowner's application within 90 days after approval of the land-  
9 owner's offer to sell or exchange an agricultural preservation ease-  
10 ment. An owner of land has 30 days from the receipt of the counter  
11 offer to buy or exchange in which to accept or reject the offer.

12 Sec. 03.07.080. VALUATION OF AGRICULTURAL PRESERVATION EASEMENT.  
13 (a) The maximum valuation of an agricultural preservation easement  
14 acquired under this chapter is either the asking price or the differ-  
15 ence between the fair market value of the land and the agricultural  
16 value of the land, whichever is less.

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

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

22 (1) agricultural use of the land by the owner of the land  
23 or by a lessee of the owner of the land;

24 (2) the owner of the land to remove minerals or materials  
25 from the subsurface of the land after acquisition of the agricultural  
26 preservation easement if the land is immediately returned to a condi-  
27 tion at least as favorable for agricultural use as existed before the  
28 removal of minerals or materials began;

29 (3) operation of machinery used in agricultural production

1 or the primary processing of agricultural products;

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

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

6 (b) The acquisition of an agricultural preservation easement by  
7 the state does not grant the public a right of access or right of use  
8 of the property subject to the easement nor does it affect any exist-  
9 ing easements, rights of way, or rights of access. Residential sub-  
10 division and the removal from the land of minerals or materials for  
11 commercial purposes are not permitted.

12 Sec. 03.07.100. DEFINITIONS. In this chapter

13 (1) "agricultural operations" means activities related to  
14 the production of domesticated plants and animals or fowl useful to  
15 humans;

16 (2) "agricultural preservation easement" means an interest  
17 in land under which all development rights are owned by the state and  
18 an owner of the property subject to the agricultural preservation  
19 easement retains an interest in and the right to use and possess land  
20 for purposes and activities related to the production of domesticated  
21 plants and animals or fowl useful to humans;

22 (3) "agricultural use" means the use of land for the pro-  
23 duction of domesticated plants and animals or fowl useful to humans;

24 (4) "agricultural value" means the amount on a valuation  
25 date which an owner of land, willing but not obligated to sell, would  
26 accept for property subject to an agricultural preservation easement,  
27 and which a purchaser, willing but not obligated to buy, would pay for  
28 property subject to an agricultural preservation easement;

29 (5) "commissioner" means the commissioner of natural

1 resources;

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

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

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

14 (9) "municipality" means a political subdivision incorpo-  
15 rated under the laws of the state that is a home rule or general law  
16 city, a home rule or general law borough, or a unified municipality;

17 (10) "qualified appraiser" means a senior member of the  
18 American Institute of Real Estate Appraisers, the Society of Real  
19 Estate Appraisers, a person meeting the requirements for certification  
20 as an appraiser II by the division of personnel, Department of Admin-  
21 istration, or a person qualified according to regulations adopted by  
22 the commissioner under the Administrative Procedure Act (AS 44.62);

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

27 \* Sec. 2. AS 29.53.035(a) is amended to read:

28 (a) Farm use land that is [LANDS] included in a farm unit,  
29 [AND] not dedicated or being used for nonfarm purposes, and not

1 subject to an agricultural preservation easement shall be assessed on  
2 the basis of full and true value for farm use, and shall not be asses-  
3 sed as if subdivided or used for some other nonfarm purpose. The  
4 assessor shall maintain records valuing the farm use land for both  
5 full and true value and farm use value. Should the farm use land be  
6 sold, leased, or otherwise disposed of for uses incompatible with farm  
7 use or be converted to a use incompatible with farm use by the owner,  
8 the owner is liable to pay an amount equal to the additional tax at  
9 the current mill levy together with eight percent interest for the  
10 preceding seven years, as though the land had not been assessed for  
11 farm use purposes. Payment by the owner shall be made to the state to  
12 the extent of its reimbursement for revenue loss under (e) of this  
13 section for the preceding seven years. The balance of the payment  
14 shall be made to the city or borough. The owner of farm land subject  
15 to this subsection who grants an agricultural preservation easement to  
16 the state under AS 03.07 may not be required to reimburse the state  
17 under this subsection for revenue loss.

18 \* Sec. 3. AS 29.53 is amended by adding a new section to read:

19       Sec. 29.53.036. AGRICULTURAL PRESERVATION EASEMENT. Farm land  
20 subject to an agricultural preservation easement shall be assessed on  
21 the basis of full and true value for farm use. The owner of farm land  
22 subject to an agricultural preservation easement is not subject to  
23 AS 29.53.035.

24 \* Sec. 4. AS 38.05.945(a) is amended by adding a new paragraph to read:

25               (5) preservation of agricultural land under AS 03.07;  
26 including  
27                       (A) the disposal of state land or an interest in state  
28 land; and  
29                       (B) the acquisition of privately owned agricultural

1 land or an agricultural preservation easement in privately owned  
2 agricultural land.

3 \* Sec. 5. The commissioner of natural resources shall report to the  
4 First Session of the Fifteenth Legislature within the first 10 days of the  
5 session on the following:

6 (1) an estimate by the commissioner of natural resources of the  
7 cost to the state for the next five fiscal years of the program enacted in  
8 this Act if the provisions of this Act were fully implemented;

9 (2) an estimate by the commissioner of natural resources of the  
10 interest in the program enacted in this Act;

11 (3) an identification of the priority districts to be estab-  
12 lished under AS 03.07.030 as enacted in sec. 1 of this Act, if any;

13 (4) the implications of the program enacted in this Act for  
14 comprehensive plans or other ordinances of municipalities of the state;

15 (5) the implications of the program enacted in this Act for tax  
16 revenues of municipalities of the state as a result of the acquisition of  
17 agricultural land and agricultural land preservation easements;

18 (6) other information considered by the commissioner of natural  
19 resources to be of interest to the legislature.