

Original sponsors: Jones and Sturgulewski

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 112 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to forest management agreements."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
8 * Section 1. AS 36.30.850(b) is amended by adding a new paragraph to
9 read:
10 (14) agreements for the management of state timber under
11 AS 41.17.500 - 41.17.640.
12 * Sec. 2. AS 41.17 is amended by adding new sections to read:
13 ARTICLE 5A. FOREST MANAGEMENT AGREEMENTS.
14 Sec. 41.17.500. PURPOSE. (a) The purpose of AS 41.17.500 -
15 41.17.640 is to authorize the commissioner to enter into forest man-
16 agement agreements that may include provisions for the development of
17 a forest products plant and facilities or services such as refor-
18 estation, road construction and maintenance, recreation improvements,
19 and fish and wildlife habitat protection, monitoring of activities
20 under a forest management agreement, and the enforcement of terms,
21 conditions, and laws protecting other beneficial uses of state land.
22 (b) A forest management agreement must provide for consideration
23 of other existing beneficial uses of forest land in an agreement under
24 AS 41.17.500 - 41.17.640.
25 (c) A forest management agreement may
26 (1) relieve the state of some of the administrative respon-
27 sibility of developing and managing a timber sale;
28 (2) provide for the long-term management of state timber,
29 creating stability for the forest products industry, and incentives

1 for the responsible use of state timber; and

2 (3) provide an operator with a stable source of timber from
3 a designated area on the basis of successive renewals of contractual
4 rights.

5 (d) The provisions of AS 41.17.500 - 41.17.640 do not affect the
6 obligation of an operator to comply with state laws or regulations on
7 environmental conservation, timber practices, fish and game, or any
8 other resource or use of a resource.

9 Sec. 41.17.510. FOREST MANAGEMENT AGREEMENTS. (a) The commis-
10 sioner may, after consultation with the commissioners of environmental
11 conservation, fish and game, and commerce and economic development and
12 with affected municipalities, enter into an agreement for the
13 management of the forest resources of the state under AS 41.17.500 -
14 41.17.640.

15 (b) A forest management agreement is subject to each applicable
16 state and federal law and regulation in effect on the effective date
17 of the agreement and to all laws and regulations adopted after the
18 effective date of the agreement.

19 Sec. 41.17.520. PLANS. (a) A forest management agreement
20 entered into under AS 41.17.500 - 41.17.640 must be consistent with
21 the Alaska coastal management program, an area and a management plan
22 adopted by the commissioner under AS 38.04.065, and a land classifi-
23 cation adopted by the commissioner under AS 38.05.300. A management
24 plan that allows forest management agreements must include

25 (1) an inventory of human uses and renewable and nonrenew-
26 able resources in the area;

27 (2) location, type, and duration of access for forest
28 management;

29 (3) operable timber base areas that may be harvested;

1 (4) annual allowable cut as determined by the commissioner;
2 (5) silvicultural prescriptions;
3 (6) possible facility development;
4 (7) area-specific management practices or prescriptions
5 needed in addition to forest practices regulations and best management
6 practices to protect or enhance fish and wildlife habitat and harvest,
7 public recreation, water quality, and other significant public or
8 private resources and uses of the area.

9 (b) Before the commissioner enters into a forest management
10 agreement, a bidder selected under AS 41.17.560 shall submit a master
11 plan for implementation of the proposed forest management agreement, a
12 five-year operating plan and an annual harvesting plan for the first
13 two years of operation. The commissioner shall prepare a plan for
14 administrative oversight of the forest management agreement in consul-
15 tation with other affected state agencies. The master, operating,
16 harvesting, and administrative plans are subject to agency and public
17 review under AS 41.17.570.

18 (c) Each year the operator shall prepare and the commissioner
19 shall review and shall approve, reject, or require a revision of an
20 annual harvesting plan. During the term of a forest management agree-
21 ment the operator shall annually update the master plan and five-year
22 operating plans subject to the approval of the commissioner.

23 Sec. 41.17.530. NOTICE OF INTENT TO DEVELOP AN AGREEMENT. After
24 meeting the planning requirements under AS 41.17.520(a) and before a
25 forest management agreement is offered for bid under AS 41.17.560, the
26 commissioner shall publish notice under AS 38.05.945 of the intention
27 to consider a forest management agreement for an area. The commis-
28 sioner shall provide written notice to private property owners within
29 and adjacent to the proposed agreement area and shall hold public

1 hearings in affected communities.

2 Sec. 41.17.540. REQUIREMENTS OF FOREST MANAGEMENT AGREEMENT.

3 (a) A forest management agreement for the harvest of state timber
4 under this section must provide for

5 (1) the term of the initial agreement, not to exceed 20
6 years, and the conditions for an extension of the term under AS 41.-
7 17.600;

8 (2) the stumpage prices to be charged for the timber and a
9 periodic review and, if appropriate, adjustment of the stumpage
10 prices;

11 (3) the penalties for the violation of the terms of the
12 agreement and provisions for termination of the agreement under (d) of
13 this section;

14 (4) an annual update of the master and operating plans;

15 (5) public use of state land involved in the forest manage-
16 ment agreement, except that the commissioner may limit access in an
17 area that is being harvested or where hazardous conditions exist;

18 (6) the protection of multiple uses, such as mining,
19 recreation, and fish and wildlife habitat and harvest;

20 (7) performance and payment bonds from the purchaser to
21 protect the interests of the state;

22 (8) specific mitigating measures and monitoring plans to
23 protect water quality;

24 (9) protection of state-owned land within a minimum of 100
25 feet of rivers, lakes, or streams to provide soil stability, protect
26 fish and wildlife habitat, water quality, and other important uses
27 although more state land may be protected as determined in the master
28 plan, the five-year operating plan, or the annual harvesting plan;

29 (10) provisions to protect or enhance areas of high public

1 value other than timber;

2 (11) the maximum annual allowable cut as determined by the
3 commissioner;

4 (12) the maximum and minimum development requirements as
5 determined by the commissioner;

6 (13) the preclusion of a contractor under a forest manage-
7 ment agreement from bidding on timber sales of 5,000,000 board feet or
8 less under AS 38.05.115;

9 (14) the preparation of reports required by the commission-
10 er; and

11 (15) other terms, conditions, and limitations determined to
12 be in the public interest by the commissioner.

13 (b) The commissioner shall establish by regulation the require-
14 ments of a forest management agreement for access, development, har-
15 vest, management, the contents of plans required under AS 41.17.-
16 520(b), and reforestation of timber.

17 (c) A forest management agreement may require the purchaser to

18 (1) enter into a reimbursable services agreement with the
19 state for monitoring and enforcement of the terms and conditions of
20 the agreement and applicable state law;

21 (2) compensate the state for the scaling services required
22 to account for the timber sold;

23 (3) construct and maintain roads required for the harvest
24 of timber by the agreement; and

25 (4) designate a percentage of the timber volume to be
26 subcontracted to a small operator; the commissioner shall make the
27 final designation from areas included in the operating plan.

28 (d) A forest management agreement entered into or extended under
29 AS 41.17.500 - 41.17.640 must contain a requirement that the operator

1 comply with the terms of the forest management agreement and AS 41.-
2 17.500 - 41.17.640 and must contain conditions under which the agree-
3 ment may be terminated or subject to other penalties including a cease
4 and desist order, a fine, a reduction in the allowable cut, location
5 or cutting periods, or other remedies as determined by the commis-
6 sioner on a finding that the operator has not complied with the terms
7 of the agreement or with state law.

8 Sec. 41.17.550. CREDITS. (a) In a forest management agreement,
9 the commissioner may provide, subject to (c) of this section, for
10 contractor credit against future stumpage payments due under the
11 forest management agreement. A credit against future stumpage is not
12 transferable between contractors or between sales and may not be paid
13 in cash. A credit may not exceed the value owed to the state. A
14 credit against future stumpage payments may be granted for the

15 (1) loss of roads and drainage structures that
16 (A) have future value to the state; and
17 (B) are lost through an act of God not due to negli-
18 gence on the part of the contractor;

19 (2) construction that
20 (A) does not directly contribute to the management or
21 harvest of timber resources such as recreation improvements;
22 (B) was not included in the initial agreement or its
23 extensions; and

24 (C) is reviewed by affected agencies and authorized in
25 advance by the commissioner; or

26 (3) additional silviculture treatments beyond those re-
27 quired in the agreement reviewed by affected agencies and authorized
28 in advance by the commissioner.

29 (b) The commissioner shall provide public notice under

1 AS 38.05.945 before granting a credit under (a)(2) or (3) of this
2 section.

3 (c) The grant of credit against future stumpage payments under
4 this section may be made under the following procedures:

5 (1) the commissioner shall submit a report to the Legisla-
6 tive Budget and Audit Committee on the credit that is proposed to be
7 granted;

8 (2) 45 days shall elapse before the grant of the credit
9 unless the Legislative Budget and Audit Committee recommends that the
10 grant of credit be made;

11 (3) if within the 45-day period the Legislative Budget and
12 Audit Committee recommends that the commissioner not grant the credit,
13 the commissioner shall again review the proposed grant of credit; if
14 the commissioner decides to grant the credit after further review, the
15 commissioner shall provide a statement of the commissioner's reasons
16 for granting the credit before the grant of the credit is made.

17 Sec. 41.17.560. MOST QUALIFIED BIDDER DETERMINED. (a) The
18 commissioner shall determine the most qualified bidder for a forest
19 management agreement based on minimum qualifications established for
20 bidders in regulations and in a multiple variable bid process. In
21 reviewing bids received the commissioner shall consider

22 (1) the stumpage payments proposed by the bidder;

23 (2) the amount of the investment in plant and facilities
24 proposed by the bidder;

25 (3) the forest resource utilization standards proposed by
26 the bidder;

27 (4) the number of jobs to be provided by the bidder;

28 (5) road construction, reforestation, and recreation im-
29 provements requested by the commissioner;

1 (6) measures proposed by the bidder to maintain, enhance,
2 or mitigate the effects on other beneficial uses or resources of
3 forest land; and

4 (7) other items requested by the commissioner or offered by
5 the bidder.

6 (b) Before requesting bids or accepting applications, the com-
7 missioner shall adopt regulations detailing the bidding procedure and
8 the method of determining the most qualified bidder.

9 Sec. 41.17.570. REVIEW AND PUBLIC NOTICE. Before the commis-
10 sioner enters into or extends an agreement or makes a finding under
11 AS 41.17.580, the proposed agreement, the proposed best interest
12 finding under AS 41.17.580, and each plan prepared under AS 41.17.-
13 520(b) and (c) shall be reviewed by the commissioners of environmental
14 conservation, fish and game, and commerce and economic development and
15 by affected municipalities. The commissioner shall provide public
16 notice under AS 38.05.945 before adopting the best interest finding,
17 the proposed agreement, the master plan, the five-year operating plan,
18 and the annual harvesting plan and shall hold appropriate public
19 hearings.

20 Sec. 41.17.580. BEST INTEREST FINDING. Before the commissioner
21 enters into or extends an agreement, the commissioner shall issue a
22 written finding that the proposed agreement or extension is in the
23 best interest of the state. The finding shall include an analysis of
24 the social, economic, and environmental effects of the proposed agree-
25 ment or extensions.

26 Sec. 41.17.590. INCREMENTAL VOLUME AVAILABLE. If allowed in an
27 agreement, at any time during an agreement the commissioner may make
28 incremental volume available to the contractor if the commissioner
29 determines that forest management by the contractor has increased the

1 annual allowable cut consistent with the other objectives of the
2 agreement.

3 Sec. 41.17.600. EXTENSIONS OF FOREST MANAGEMENT AGREEMENT. (a)
4 Each five years of the agreement, either during or after the initial
5 term of the agreement, the commissioner may extend the forest manage-
6 ment agreement if

7 (1) the term of the extension does not exceed five years;

8 (2) the contractor submits a proposed operating plan for
9 the next five years of operation and amends the master plan for the
10 forest management agreement, as the commissioner considers necessary;
11 and

12 (3) the commissioner, after review of existing and proposed
13 operations and consultation with the commissioners of environmental
14 conservation, fish and game, and commerce and economic development,
15 and with other affected agencies and municipalities finds that the
16 operator has complied with AS 41.17.500 - 41.17.640 and the terms of
17 the forest management agreement.

18 (b) Before extending a forest management agreement, the commis-
19 sioner shall

20 (1) adopt a best interest finding under AS 41.17.580; and

21 (2) provide public notice under AS 38.05.945 and hold
22 appropriate public hearings.

23 Sec. 41.17.610. ACCOUNTING. The commissioner of administration
24 shall separately account for money received under this section that
25 the Department of Natural Resources deposits in the general fund. The
26 annual estimated balance in the account may be used by the legislature
27 to make appropriations to the department to carry out the purposes of
28 AS 41.17.500 - 41.17.640.

29 Sec. 41.17.620. OTHER AUTHORITIES UNAFFECTED. The provisions of

1 AS 41.17.500 - 41.17.640 do not affect the authority of

2 (1) the Department of Fish and Game, the Board of Fisher-
3 ies, or the Board of Game under AS 16 or AS 41.99.010;

4 (2) the Department of Environmental Conservation under
5 AS 46.03; or

6 (3) state agencies and municipalities under AS 44.19.-
7 145(a)(11) and AS 46.40.100.

8 Sec. 41.17.630. EXEMPTION. Agreements for the management of
9 state timber under AS 41.17.500 - 41.17.640 are exempt from AS 36.30.

10 Sec. 41.17.640. DEFINITIONS. In AS 41.17.500 - 41.17.640

11 (1) "annual harvesting plan" is a site specific plan that
12 identifies on maps locations of roads and harvest units, gives esti-
13 mated volumes by species, miles of road to be constructed, facilities
14 to be constructed and mitigating measures for protection of other
15 associated resources, and provides details of management such as
16 engineering, silviculture, enhancement projects for fish and wildlife
17 habitat, and protection of water quality in a forest management agree-
18 ment;

19 (2) "area plan" means a regional land use plan adopted
20 under AS 38.04.065 that is developed to provide management direction
21 for the multiple-use of the forest resources of the state, prepared by
22 the department, and involves interagency and public participation;

23 (3) "five-year operating plan" is a description of manage-
24 ment and harvest activities over a five-year period that may include
25 the general location of units, roads, volumes to be harvested, and
26 necessary improvements in a forest management agreement;

27 (4) "management plan" means a regional land use plan adopt-
28 ed under AS 38.05.065 that makes more detailed allocation decisions,
29 gives more detailed guidance for management than an area plan, is

1 prepared by the department, and involves interagency and public par-
2 ticipation;

3 (5) "master plan" means a general resource use plan to
4 provide direction for the harvesting of timber and management of other
5 resources in a forest management agreement; and

6 (6) "small operator" means a timber business that

7 (A) employs an average of 25 or fewer full-time equiv-
8 alent employees;

9 (B) is not owned, in whole or in part, by the operator
10 under a forest management agreement; and

11 (C) is not controlled by contract or agreement by the
12 timber operator.

13 * Sec. 3. AS 38.05.120 is amended by adding a new subsection to read:

14 (b) The commissioner may also dispose of timber under AS 41.17.-
15 500 - 41.17.640.