

Offered: 5/5/89  
Referred: Judiciary and  
Finance

6-0749E

Original sponsors: Menard and Larson  
By Request

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 205 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to forest stewardship agreements."

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

8 \* Section 1. AS 41.17 is amended by adding new sections to read:

9 ARTICLE 5A. FOREST STEWARDSHIP AGREEMENTS.

10 Sec. 41.17.500. PURPOSE. (a) The purpose of AS 41.17.500 -  
11 41.17.640 is to authorize the commissioner to enter into forest stew-  
12 ardship agreements that may include provisions for the development of  
13 a forest products plant and facilities or services such as reforesta-  
14 tion, road construction and maintenance, recreation improvements, and  
15 fish and wildlife habitat protection, monitoring of activities under a  
16 forest stewardship agreement, and the enforcement of terms, condi-  
17 tions, and laws protecting other beneficial uses of state land.

18 (b) A forest stewardship agreement must provide for consider-  
19 ation of other existing beneficial uses of forest land in an agreement  
20 under AS 41.17.500 - 41.17.640.

21 (c) A forest stewardship agreement may

22 (1) relieve the state of some of the administrative respon-  
23 sibility of developing and managing a timber sale;

24 (2) provide for the long-term management of state timber,  
25 creating stability for the forest products industry, and incentives  
26 for the responsible use of state timber; and

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

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

5 Sec. 41.17.510. FOREST STEWARDSHIP AGREEMENTS. (a) The commis-  
6 sioner may, after consultation with the commissioners of environmental  
7 conservation, fish and game, and commerce and economic development and  
8 with affected municipalities, enter into an agreement for the manage-  
9 ment of the forest resources of the state under AS 41.17.500 - 41.17.-  
10 640.

11 (b) A forest stewardship agreement is subject to each applicable  
12 state and federal law and regulation in effect on the effective date  
13 of the agreement and to each applicable law and regulation adopted  
14 after the effective date of the agreement.

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

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

23 (2) location, type, and duration of access for forest  
24 management;

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

26 (4) annual allowable cut as determined by the commissioner;

27 (5) silvicultural prescriptions;

28 (6) possible facility development;

29 (7) area-specific management practices or prescriptions

1 needed in addition to forest practices regulations and best management  
2 practices to protect or enhance fish and wildlife habitat and harvest,  
3 public recreation, water quality, and other significant public or  
4 private resources and uses of the area.

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

14 (c) Each year the operator shall prepare and the commissioner  
15 shall review and shall approve, reject, or require a revision of an  
16 annual harvesting plan. During the term of a forest stewardship  
17 agreement the operator shall annually update the master plan and  
18 five-year operating plans subject to the approval of the commissioner.

19 Sec. 41.17.530. NOTICE OF INTENT TO DEVELOP AN AGREEMENT. After  
20 meeting the planning requirements under AS 41.17.520(a) and before a  
21 forest stewardship agreement is offered for bid under AS 41.17.560,  
22 the commissioner shall publish notice under AS 38.05.945 of the inten-  
23 tion to consider a forest stewardship agreement for an area. The  
24 commissioner shall provide written notice to private property owners  
25 within and adjacent to the proposed agreement area and shall hold  
26 public hearings in affected communities.

27 Sec. 41.17.540. REQUIREMENTS OF FOREST STEWARDSHIP AGREEMENT.

28 (a) A forest stewardship agreement for the harvest of state timber  
29 under this section must provide for

- 1 (1) the term of the initial agreement, not to exceed 20  
2 years, and the conditions for an extension of the term under AS 41.-  
3 17.600;
- 4 (2) the stumpage prices to be charged for the timber and a  
5 periodic review and, if appropriate, adjustment of the stumpage  
6 prices;
- 7 (3) the penalties for the violation of the terms of the  
8 agreement and provisions for termination of the agreement under (d) of  
9 this section;
- 10 (4) an annual update of the master and operating plans;
- 11 (5) public use of state land involved in the forest stew-  
12 ardsip agreement, except that the commissioner may limit access in an  
13 area that is being harvested or where hazardous conditions exist;
- 14 (6) the protection of multiple uses, such as mining, recre-  
15 ation, and fish and wildlife habitat and harvest;
- 16 (7) performance and payment bonds from the purchaser to  
17 protect the interests of the state;
- 18 (8) specific mitigating measures and monitoring plans to  
19 protect water quality;
- 20 (9) protection of state-owned land within a minimum of 100  
21 feet of rivers, lakes, or streams to provide soil stability, protect  
22 fish and wildlife habitat, water quality, and other important uses,  
23 although more state land may be protected as determined in the master  
24 plan, the five-year operating plan, or the annual harvesting plan;
- 25 (10) provisions to protect or enhance areas of high public  
26 value other than timber;
- 27 (11) the maximum annual allowable cut as determined by the  
28 commissioner;
- 29 (12) the maximum and minimum development requirements as

1 determined by the commissioner;

2 (13) the preclusion of a contractor under a forest steward-  
3 ship agreement from bidding on timber sales of 5,000,000 board feet or  
4 less under AS 38.05.115;

5 (14) the preparation of reports required by the commission-  
6 er; and

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

9 (b) The commissioner shall establish by regulation the require-  
10 ments of a forest stewardship agreement for access, development, har-  
11 vest, management, and reforestation of timber and the contents of  
12 plans required under AS 41.17.520(b).

13 (c) A forest stewardship agreement may require the purchaser to

14 (1) enter into a reimbursable services agreement with the  
15 state for monitoring and enforcement of the terms and conditions of  
16 the agreement and applicable state law;

17 (2) compensate the state for the scaling services required  
18 to account for the timber sold;

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

21 (4) designate not less than 20 percent of the timber volume  
22 to be subcontracted to a small operator; the commissioner shall make  
23 the final designation from areas included in the operating plan.

24 (d) A forest stewardship agreement entered into or extended  
25 under AS 41.17.500 - 41.17.640 must contain a requirement that the  
26 operator comply with the terms of the forest stewardship agreement and  
27 AS 41.17.500 - 41.17.640 and must contain conditions under which the  
28 agreement may be terminated or subject to other penalties including a  
29 cease and desist order, a fine, a reduction in the allowable cut,

1 location or cutting periods, or other remedies as determined by the  
2 commissioner on a finding that the operator has not complied with the  
3 terms of the agreement or with state law.

4 Sec. 41.17.550. CREDITS. (a) In a forest stewardship agree-  
5 ment, the commissioner may provide, subject to (c) of this section,  
6 for contractor credit against future stumpage payments due under the  
7 forest stewardship agreement. A credit against future stumpage is not  
8 transferable between contractors or between sales and may not be paid  
9 in cash. A credit may not exceed the value owed to the state. A  
10 credit against future stumpage payments may be granted for the

11 (1) loss of roads and drainage structures that

12 (A) have future value to the state; and

13 (B) are lost through an act of God not due to negli-  
14 gence on the part of the contractor;

15 (2) construction that

16 (A) does not directly contribute to the management or  
17 harvest of timber resources such as recreation improvements;

18 (B) was not included in the initial agreement or its  
19 extensions; and

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

22 (3) additional silviculture treatments beyond those re-  
23 quired in the forest stewardship agreement.

24 (b) The commissioner shall provide public notice under AS 38.-  
25 05.945 before granting a credit under (a)(2) or (3) of this section.

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

28 (1) the commissioner shall submit a report to the Legisla-  
29 tive Budget and Audit Committee on the credit that is proposed to be

1 granted;

2 (2) 45 days must elapse before the grant of the credit  
3 unless the Legislative Budget and Audit Committee recommends that the  
4 grant of credit be made;

5 (3) if within the 45-day period the Legislative Budget and  
6 Audit Committee recommends that the commissioner not grant the credit,  
7 the commissioner shall again review the proposed grant of credit;

8 (4) if the commissioner decides to grant the credit after  
9 further review, the commissioner shall provide a statement of the  
10 commissioner's reasons for granting the credit before the grant of the  
11 credit is made.

12 Sec. 41.17.560. MOST QUALIFIED BIDDER DETERMINED. (a) The  
13 commissioner shall determine the most qualified bidder for a forest  
14 stewardship agreement based on minimum qualifications established for  
15 bidders in regulations and in a multiple variable bid process. In  
16 reviewing bids received the commissioner shall consider

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

18 (2) the amount of the investment in plant and facilities  
19 proposed by the bidder;

20 (3) the forest resource utilization standards proposed by  
21 the bidder;

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

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

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

28 (7) other items requested by the commissioner or offered by  
29 the bidder.

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

4 Sec. 41.17.570. REVIEW AND PUBLIC NOTICE. Before the commis-  
5 sioner enters into or extends an agreement or makes a finding under  
6 AS 41.17.580, the proposed agreement, the proposed best interest  
7 finding under AS 41.17.580, and each plan prepared under AS 41.17.-  
8 520(b) and (c) shall be reviewed by the commissioners of environmental  
9 conservation, fish and game, and commerce and economic development and  
10 by affected municipalities. The commissioner shall provide public  
11 notice under AS 38.05.945 before adopting the best interest finding,  
12 the proposed agreement, the master plan, the five-year operating plan,  
13 and the annual harvesting plan and shall hold appropriate public  
14 hearings.

15 Sec. 41.17.580. BEST INTEREST FINDING. Before the commissioner  
16 enters into or extends an agreement, the commissioner shall issue a  
17 written finding that the proposed agreement or extension is in the  
18 best interest of the state.

19 Sec. 41.17.590. INCREMENTAL VOLUME AVAILABLE. If allowed in an  
20 agreement, at any time during an agreement the commissioner may make  
21 incremental volume available to the contractor if the commissioner  
22 determines that forest management by the contractor has increased the  
23 annual allowable cut consistent with the other objectives of the  
24 agreement.

25 Sec. 41.17.600. EXTENSIONS OF FOREST STEWARDSHIP AGREEMENT. (a)  
26 Each five years of the agreement, either during or after the initial  
27 term of the agreement, the commissioner may extend the forest steward-  
28 ship agreement if

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

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

4 Sec. 41.17.570. REVIEW AND PUBLIC NOTICE. Before the commis-  
5 sioner enters into or extends an agreement or makes a finding under  
6 AS 41.17.580, the proposed agreement, the proposed best interest  
7 finding under AS 41.17.580, and each plan prepared under AS 41.17.-  
8 520(b) and (c) shall be reviewed by the commissioners of environmental  
9 conservation, fish and game, and commerce and economic development and  
10 by affected municipalities. The commissioner shall provide public  
11 notice under AS 38.05.945 before adopting the best interest finding,  
12 the proposed agreement, the master plan, the five-year operating plan,  
13 and the annual harvesting plan and shall hold appropriate public  
14 hearings.

15 Sec. 41.17.580. BEST INTEREST FINDING. Before the commissioner  
16 enters into or extends an agreement, the commissioner shall issue a  
17 written finding that the proposed agreement or extension is in the  
18 best interest of the state.

19 Sec. 41.17.590. INCREMENTAL VOLUME AVAILABLE. If allowed in an  
20 agreement, at any time during an agreement the commissioner may make  
21 incremental volume available to the contractor if the commissioner  
22 determines that forest management by the contractor has increased the  
23 annual allowable cut consistent with the other objectives of the  
24 agreement.

25 Sec. 41.17.600. EXTENSIONS OF FOREST STEWARDSHIP AGREEMENT. (a)  
26 Each five years of the agreement, either during or after the initial  
27 term of the agreement, the commissioner may extend the forest steward-  
28 ship agreement if

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

1 (2) the contractor submits a proposed operating plan for  
2 the next five years of operation and amends the master plan for the  
3 forest stewardship agreement, as the commissioner considers necessary;  
4 and

5 (3) the commissioner, after review of existing and proposed  
6 operations and consultation with the commissioners of environmental  
7 conservation, fish and game, and commerce and economic development,  
8 and with other affected agencies and municipalities finds that the  
9 operator has complied with AS 41.17.500 - 41.17.640 and the terms of  
10 the forest stewardship agreement.

11 (b) Before extending a forest stewardship agreement, the commis-  
12 sioner shall

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

14 (2) provide public notice under AS 38.05.945 and hold  
15 appropriate public hearings.

16 Sec. 41.17.610. ACCOUNTING. The commissioner of administration  
17 shall separately account for money received under this section that  
18 the department deposits in the general fund. The annual estimated  
19 balance in the account may be used by the legislature to make appro-  
20 priations to the department to carry out the purposes of AS 41.17.-  
21 500 - 41.17.640.

22 Sec. 41.17.620. OTHER AUTHORITIES UNAFFECTED. The provisions of  
23 AS 41.17.500 - 41.17.640 do not affect the authority of

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

26 (2) the Department of Environmental Conservation under  
27 AS 46.03; or

28 (3) state agencies and municipalities under AS 44.19.-  
29 145(a)(11) and AS 46.40.100.

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

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

4           (1) "annual harvesting plan" is a site specific plan that  
5 identifies on maps locations of roads and harvest units, gives esti-  
6 mated volumes by species, miles of road to be constructed, facilities  
7 to be constructed and mitigating measures for protection of other  
8 associated resources, and provides details of management such as  
9 engineering, silviculture, enhancement projects for fish and wildlife  
10 habitat, and protection of water quality in a forest stewardship  
11 agreement;

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

16           (3) "five-year operating plan" is a description of manage-  
17 ment and harvest activities over a five-year period that may include  
18 the general location of units, roads, volumes to be harvested, and  
19 necessary improvements in a forest stewardship agreement;

20           (4) "management plan" means a regional land use plan adopt-  
21 ed under AS 38.05.065 that makes more detailed allocation decisions,  
22 and gives more detailed guidance for management than an area plan, is  
23 prepared by the department, and involves interagency and public par-  
24 ticipation;

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

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

29           (A) employs an average of 25 or fewer full-time

1 equivalent employees;

2 (B) is not owned, in whole or in part, by the operator  
3 under a forest stewardship agreement; and

4 (C) is not controlled by contract or agreement by the  
5 timber operator.

6 \* Sec. 2. AS 36.30.850(b) is amended by adding a new paragraph to read:

7 (18) agreements for the management of state timber under  
8 AS 41.17.500 - 41.17.640.

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

10 (b) The commissioner may also dispose of timber under AS 41.17.-  
11 500 - 41.17.640.

12 \* Sec. 4. AS 38.05.945(a) is amended to read:

13 (a) This section establishes the requirements for notice given  
14 by the department for the following actions:

15 (1) classification or reclassification of state land under  
16 AS 38.05.300 and the closing of land to mineral leasing or entry under  
17 AS 38.05.185;

18 (2) zoning of land under applicable law;

19 (3) a decision under AS 38.05.035(e) regarding the sale,  
20 lease, or disposal of an interest in state land or resources;

21 (4) a competitive disposal of an interest in state land or  
22 resources after final decision under AS 38.05.035(e);

23 (5) a public hearing under AS 38.05.856(b);

24 (6) a preliminary finding under AS 38.05.035(e) and 38.05.-  
25 855(c) concerning sites for aquatic farms and related hatcheries;

26 (7) notice of intent to consider a forest stewardship  
27 agreement under AS 41.17.530;

28 (8) notice of intent to grant stumpage credits for con-  
29 struction under AS 41.17.550(a)(2) or additional silviculture under

1 AS 41.17.550(a)(3):

2 (9) adoption of a best interest finding, a forest steward-  
3 ship agreement, a master plan, a five-year operating plan, or the  
4 annual harvesting plan under AS 41.17.570;

5 (10) extension of a forest stewardship agreement under  
6 AS 41.17.600(b).