

SENATE BILL NO. 310

IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY SENATORS FRANK. Taylor, Pearce, Sharp, Miller, Kelly, Halford

Introduced: 2/14/94
Referred: Resources

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the management and sale of state timber; relating to the
2 classification of state land that would preclude harvesting of timber or would
3 designate harvesting of timber as an incompatible use; relating to the
4 administration of forest land, proposals for state forest, and the determination of
5 sustained yield; and providing for an effective date."

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

7 * Section 1. AS 38.05.112 is repealed and reenacted to read:

8 Sec. 38.05.112. BEST INTERESTS DETERMINATION; IDENTIFICATION.
9 In determining whether the sale of timber will be in the best interests of the state under
10 AS 38.05.035(e), the department shall consider the standards set out in AS 41.17.060.
11 Before authorizing the sale of timber on state land, the department shall identify the
12 land involved and actions proposed in sufficient detail so as to inform the public of
13 the nature and location of the proposed sale and operations.

1 * **Sec. 2.** AS 38.05.113(c) is amended to read:

2 (c) Sales under 500,000 board feet [THE DEPARTMENT MAY ADOPT
3 REGULATIONS EXEMPTING SMALL] and emergency sales are exempt from the
4 requirements of this section.

5 * **Sec. 3.** AS 38.05 is amended by adding a new section to article 4 to read:

6 Sec. 38.05.122. FOREST MANAGEMENT AGREEMENTS. (a)
7 Notwithstanding the requirements of AS 38.05.110 - 38.05.120 or another provision
8 of this chapter, the commissioner, under the procedures set out in this section, may
9 enter into a forest management agreement with a person to authorize the person to
10 enter on the state forest land covered by the agreement for the purposes of selecting,
11 harvesting, and regenerating timber in a manner consistent with sustained yield. A
12 portion of a state forest that is covered by a final forest management agreement is
13 exempt from the requirements of an operational level forest inventory and management
14 plan under AS 41.17.230.

15 (b) At least once each calendar year, the commissioner shall solicit proposals
16 for forest management agreements on state forest land. The commissioner shall provide
17 notice of the solicitation to all persons who have requested notification and may
18 provide for any additional notice that the commissioner determines is appropriate.
19 Regardless of whether the commissioner has solicited proposals under this subsection,
20 a person may submit a proposal for a forest management agreement to the
21 commissioner at any time for consideration.

22 (c) The commissioner shall evaluate proposed agreements submitted under (b)
23 of this section. In evaluating a proposed agreement, the commissioner shall consider
24 the

- 25 (1) financial feasibility of the proposed agreement;
- 26 (2) technical and financial qualifications of the proposer;
- 27 (3) stumpage payments offered to be paid;
- 28 (4) economic benefits from the proposed agreement to the region in
29 which the land that is to be covered by the agreement is located;
- 30 (5) economic benefits to state forest land under the proposed
31 agreement; and

1 (6) other factors that the commissioner determines are relevant and
2 appropriate.

3 (d) After evaluating proposed agreements under (c) of this section, the
4 commissioner may designate a tentatively successful proposed agreement. If a
5 tentatively successful proposed agreement is designated, the commissioner shall make
6 a written finding that sets out facts and applicable law to support the commissioner's
7 conclusion that

8 (1) land or timber covered by the tentatively successful proposed
9 agreement is not reasonably necessary to provide sustained harvest for a sawmill or
10 wood processing facility using that land or timber at the time the proposed agreement
11 was evaluated, or that a final agreement can adequately address those needs; and

12 (2) the tentatively successful proposed agreement will best serve the
13 interests of the state.

14 (e) The commissioner shall provide notice under AS 38.05.945(b) and (c) of
15 a finding under (d) of this section and designation of a tentatively successful proposed
16 agreement. The commissioner shall solicit comments from the public concerning each
17 tentatively successful proposed agreement. The commissioner may solicit
18 recommendations from state and local government agencies on a tentatively successful
19 proposed agreement.

20 (f) If a tentatively successful proposed agreement is designated under (d) of
21 this section, the commissioner, after considering comments and recommendations
22 received under (e) of this section, may proceed to develop a proposed final agreement
23 between the proposer and the state. A proposed final agreement

24 (1) may provide for terms, conditions, and limitations determined by
25 the commissioner to be in the public interest;

26 (2) must contain

27 (A) the initial term of the agreement, which may not exceed 20
28 years;

29 (B) provisions regarding extension of the term of the agreement;
30 an extension may not exceed 20 years;

31 (C) the stumpage prices for the timber;

1 (D) provisions regarding compensation from the proposer for
2 scaling services required in order to account for timber sold;

3 (E) provisions regarding compensation, if required by the
4 department, for state services provided to administer the agreement;

5 (F) provisions regarding responsibilities for construction and
6 maintenance of access roads necessary to manage the land that is to be covered
7 by the agreement;

8 (G) provisions regarding consideration for the sale of material
9 obtained from state land for the construction of access roads on the land that
10 is to be covered by the agreement;

11 (H) provisions regarding responsibilities for reforestation and
12 silvicultural practices on land that is to be covered by the agreement;

13 (I) a statement that activities under the agreement are governed
14 by the provisions of AS 41.17 and regulations adopted under AS 41.17
15 applicable to operations on state land;

16 (J) provisions for the submission and approval of periodic
17 operational plans for activities authorized or required by the agreement;

18 (K) requirements for reports and submission of information to
19 the department regarding performance under the agreement; and

20 (L) procedures for enforcement and termination of the
21 agreement.

22 (g) The form of the proposed final agreement developed under (f) of this
23 section must be approved by the attorney general before the agreement is signed by
24 the commissioner. After approval by the attorney general under this subsection, the
25 commissioner and the proposer may sign the proposed final agreement.

26 (h) Proposed agreements submitted under this section are confidential and are
27 not open to public inspection or disclosure under AS 09.25.120. However, if the
28 commissioner selects a tentatively successful proposed agreement under (d) of this
29 section, all documents regarding that proposed agreement and all other competing
30 proposed agreements, as well as a subsequent final agreement and all documents
31 leading up to that agreement, are public records and are open for inspection under

1 AS 09.25.120.

2 (i) All right, title, and interest in or to timber or material in or on land covered
3 by a final forest management agreement remains with the state until the timber or
4 material has been cut or severed, determined as to volume, removed from the site, and
5 paid for in compliance with the agreement. Timber or material that is not removed
6 from land covered by a final forest management agreement within the period specified
7 by the agreement or by an extension of the agreement remains the property of the
8 state.

9 (j) An interest in a final forest management agreement may not be assigned
10 without the prior written consent of the commissioner. An assignment without the
11 prior written consent of the commissioner is void. The commissioner may not consent
12 under this subsection unless the assignment is of the entire interest in the final forest
13 management agreement.

14 (k) The activities conducted under a final forest management agreement are
15 governed by AS 41.17 and regulations adopted under AS 41.17 applicable to
16 operations on state land.

17 (l) In this section,

18 (1) "agreement" means a forest management agreement;

19 (2) "proposer" means the person who submitted a proposed forest
20 management agreement under (b) of this section;

21 (3) "sustained yield" has the meaning given in AS 41.17.950.

22 * Sec. 4. AS 38.05.300(a) is amended to read:

23 (a) The commissioner shall classify for surface use land in areas considered
24 necessary and proper. This section does not prevent reclassification of land where the
25 public interest warrants reclassification, nor does it preclude multiple purpose use of
26 land whenever different uses are compatible. If the area involved contains more than
27 640 contiguous acres, state land, water, or land and water area may not, except by act
28 of the state legislature, (1) be closed to multiple purpose use, or (2) be otherwise
29 classified by the commissioner so that (A) mining, mineral entry or location, mineral
30 prospecting, or mineral leasing, or (B) harvesting of timber, is precluded or is
31 designated an incompatible use, except when the classification is necessary for a land

1 disposal or exchange or is for the development of utility or transportation corridors or
2 projects or similar projects or infrastructure, or except as allowed under (c) of this
3 section.

4 * Sec. 5. AS 38.05.300(c) is amended to read:

5 (c) Notwithstanding (a)(2) of this section, if the commissioner considers it
6 necessary and proper, the commissioner may provide by order for an interim
7 classification that precludes, or designates as an incompatible use, mining, mineral
8 entry or location, mineral prospecting, [OR] mineral leasing, or harvesting of timber.

9 Within 10 days after the convening of each regular legislative session, the
10 commissioner shall transmit to the legislature for consideration all the interim
11 classification orders issued under this subsection during the preceding calendar year.
12 Unless the legislature approves by law an interim classification contained in an order
13 transmitted under this subsection, that order expires on the 90th day of that legislative
14 session or upon adjournment of that session, whichever occurs first. Approval by the
15 legislature of an interim classification satisfies the requirement of (a) of this section
16 for an act of the state legislature.

17 * Sec. 6. AS 41.17.060(b) is amended to read:

18 (b) With respect to state, municipal, and private forest land, the following
19 standards apply:

20 (1) to the maximum extent possible, all applicable data and information
21 of applicable disciplines shall be updated and used in making decisions relative to the
22 management of forest resources;

23 (2) environmentally sensitive areas shall be recognized in the
24 development of regulations and best management practices that are designed to
25 implement nonpoint source pollution control measures authorized under this chapter;

26 (3) administration of forest land shall consider marketing conditions and
27 other economic constraints affecting the forest landowner, timber owner, or the
28 operator;

29 (4) to the fullest extent practicable, harvested forest land shall be
30 reforested, naturally or artificially, with trees of a type expected to grow into [SO
31 AS TO RESULT IN A SUSTAINED YIELD OF] merchantable timber [FROM THAT

1 LAND]; if artificial planting is required, silviculturally acceptable seedlings must first
2 be available for planting at an economically fair price in the state; and

3 (5) significant adverse effects of soil erosion and mass wasting on
4 water quality and fish habitat shall be prevented or minimized.

5 * Sec. 7. AS 41.17.060(c) is amended to read:

6 (c) With respect to state and municipal forest land only, the following
7 standards also apply:

8 (1) forest land shall be administered for the multiple use of the
9 renewable and nonrenewable resources and for the sustained yield of the renewable
10 resources of the land in the manner that best provides for the present needs and
11 preserves the future options of the people of the state;

12 (2) a system of allocating predominant uses or values to particular units
13 within a contiguous area of land shall reflect in reasonable proportion the various
14 resources and values present in that area;

15 (3) to the extent its capacity permits, forest land shall be administered
16 so as to provide for the continuation and expansion of businesses [, ACTIVITIES,
17 AND LIFESTYLES] that are dependent upon or derived from forest resources;

18 (4) timber harvesting is limited to areas where data and information
19 demonstrate that natural or artificial reforestation techniques will result in the
20 production of a sustained yield of merchantable timber from that area;

21 (5) there may not be significant impairment of the productivity of the
22 land and water with respect to renewable resources;

23 (6) allowance shall be made for scenic quality in or adjacent to areas
24 of substantial importance to the tourism and recreation industry; and

25 (7) allowance shall be made for important fish and wildlife habitat.

26 * Sec. 8. AS 41.17.090(a) is amended to read:

27 (a) Operations on municipal or private forest land shall be reviewed under
28 this section for consistency with the policies and provisions of this chapter and
29 regulations adopted under this chapter.

30 * Sec. 9. AS 41.17.090(c) is amended to read:

31 (c) Before beginning operations on municipal or private forest land, the

1 operator shall provide the state forester with a detailed plan of operations. The detailed
2 plan of operations must include

3 (1) a description of the proposed operations, identifying the land
4 involved and the action proposed in sufficient detail to inform the public of the nature
5 and location of the proposed operations; the description must include a map and must
6 be in a form suitable for duplication;

7 (2) the name, address, and approving signature of the forest landowner,
8 timber owner, and operator; and

9 (3) other information required in the regulations adopted under this
10 chapter.

11 * Sec. 10. AS 41.17.118(b) is amended to read:

12 (b) The commissioner may impose additional riparian protection standards for
13 timber harvest operations through the adoption of land use plans under AS 38.04.065
14 and under forest management plans and reports under [AS 38.05.112 AND]
15 AS 41.17.230.

16 * Sec. 11. AS 41.17.200 is amended to read:

17 Sec. 41.17.200. STATE FOREST PURPOSES. The purpose of AS 41.17.200
18 - 41.17.230 is to permit the establishment of designated state-owned or acquired land
19 and water areas as state forests. The primary purpose in the establishment of state
20 forests is the development of commercial forest land under the principles of
21 sustained yield and multiple use while perpetuating [PERPETUATION OF]
22 personal, commercial, and other beneficial uses of resources through multiple-use
23 management.

24 * Sec. 12. AS 41.17.200 is amended by adding a new subsection to read:

25 (b) In managing a state forest the commissioner shall

26 (1) allow for the fullest possible access to, and use of, the natural
27 resources, including timber, game, and minerals;

28 (2) maintain forest growth at a high level of productivity; and

29 (3) restrict the public use of the land and its resources only when
30 necessary to carry out the purposes of this chapter.

31 * Sec. 13. AS 41.17.210(a) is amended to read:

1 (a) The governor may propose to the legislature the establishment of state
2 forests consisting primarily of commercially valuable forest land determined by the
3 governor to be necessary for retention in state ownership for management under the
4 principles of multiple use and sustained yield [AND CONSISTENT WITH
5 AS 38.04.005]. The proposal of the governor must include a report and
6 recommendations of the commissioner including

7 (1) a preliminary forest inventory;

8 (2) a summary of the testimony offered at public hearings held on the
9 management of the proposed state forest in communities proximately located to a
10 proposed state forest;

11 (3) [THE FINDINGS OF THE COMMISSIONER ON ANTICIPATED
12 INCOMPATIBILITIES OF USES DESCRIBED IN AS 38.05.112(c) UNDER
13 AS 38.05.112(d);

14 (4) WRITTEN COMMENTS FROM APPROPRIATE STATE
15 AGENCIES ON THE COMPATIBILITY OF THE USES DESCRIBED IN
16 AS 38.05.112(c) WITHIN THE PROPOSED STATE FOREST;

17 (5)] an estimate of the cost of a full implementation of an operational
18 level forest inventory and the management plan.

19 * Sec. 14. AS 41.17.400(c) is amended to read:

20 (c) The [IN ADDITION TO THE USES DESCRIBED IN AS 38.05.112(c),
21 THE] commissioner may establish transportation corridors within the Tanana Valley
22 State Forest.

23 * Sec. 15. AS 41.17 is amended by adding a new section to read:

24 Sec. 41.17.920. DETERMINATION OF SUSTAINED YIELD. In determining
25 sustained yield for forestry purposes, the department shall consider all relevant factors
26 that a prudent forester would use based on techniques known at the time of the
27 determination. The department shall consider the use of variable periodic output for
28 appropriate situations, including salvage cuts of killed or damaged trees, when the
29 particular timber unit is too small to be harvested economically in annual or frequent
30 entries over a rotation period, or to increase health, productivity, or timber yields.

31 * Sec. 16. AS 38.05.113(b) is repealed.

1 * Sec. 17. This Act takes effect immediately under AS 01.10.070(c).