

HOUSE CS FOR CS FOR SENATE BILL NO. 310(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/8/94
Referred: Today's Calendar

Sponsor(s): SENATORS FRANK, Taylor, Pearce, Sharp, Miller, Kelly, Halford
REPRESENTATIVE Olberg

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the management and sale of state timber and relating to the
2 administration of forest land."

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

4 * Section 1. AS 38.05.112 is amended to read:

5 Sec. 38.05.112. FOREST LAND USE PLANS. (a) The department may not
6 sell or harvest timber, except for timber that must be removed for the purpose of
7 a permit, right-of-way, or easement issued under AS 38.05.850 or isolated sales of
8 less than 50,000 board feet [PERSONAL USE TIMBER HARVEST], until a
9 site-specific forest land use plan has been adopted. A forest land use plan is required
10 whether or not a regional or area land use plan under AS 38.04.065(a) or a forest
11 management plan under AS 41.17.230 has been adopted.

12 (b) The commissioner shall base a forest land use plan on the best available
13 data, including information provided by other agencies [DESCRIBING THE
14 IMMEDIATE AND LONG-TERM EFFECTS OF INDIVIDUAL AND COLLECTIVE

1 FOREST ACTIVITIES ON THE TIMBER BASE AND ON OTHER RESOURCES
2 AND USES].

3 (c) A forest land use plan shall consider [IN ADDITION TO] the
4 requirements of AS 38.04.065(b) only for areas where a land use plan under
5 AS 38.04.065(a) or a forest management plan under AS 41.17.230 has not been
6 adopted. Regardless of whether there is a land use plan or a forest management
7 plan, each [, A] forest land use plan shall consider

8 (1) commercial timber harvesting, including related activities;

9 (2) harvesting of forest products for personal use;

10 (3) fish and wildlife habitat, including

11 (A) identification and protection of important wildlife habitat;

12 (B) retention of riparian, wetland, and ocean-shoreline
13 vegetation critical for fish and wildlife habitat; [AND]

14 (C) classification of water bodies according to physical
15 characteristics; and

16 (D) the use of silvicultural practices, commercial timber
17 harvest, and related activities to maintain and enhance the quantity and
18 quality of fish and wildlife habitat;

19 (4) uses of forest land for nontimber purposes, including

20 (A) recreation, tourism, and related activities;

21 (B) mining, mining claims, mineral leaseholds, and material
22 extraction;

23 (C) uses of fish and wildlife;

24 (D) agriculture, including grazing; and

25 (E) other resources and uses appropriate to the area, including
26 compatible traditional uses;

27 (5) soil characteristics and productivity;

28 (6) water quality; and

29 (7) watershed management.

30 (d) A management plan prepared by the commissioner under AS 41.17.230
31 or AS 38.04.065 must consider and permit the uses described in (c) of this section.

1 If the commissioner finds that a permitted use is incompatible with one or more other
2 uses in a portion of a state forest, the commissioner shall, consistent with
3 AS 41.17.200, affirmatively state in the management plan that finding of
4 incompatibility for the specific area where the incompatibility is anticipated to exist
5 and the time period when the incompatibility is anticipated to exist together with the
6 reasons for each finding. If the commissioner finds that the use described in (c)(1)
7 of this section is incompatible, or otherwise restricts that use, the commissioner
8 shall also describe the data used to justify the incompatibility and the benefits of
9 the restriction.

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

11 (c) Sales under 500,000 board feet [THE DEPARTMENT MAY ADOPT
12 REGULATIONS EXEMPTING SMALL] and emergency sales are exempt from the
13 requirements of this section if public notice of the proposed sale is provided in the
14 manner specified in AS 38.05.945(b). Exempt sales, other than emergency sales,
15 under this subsection may not exceed 1,000,000 board feet in a calendar year in
16 each region.

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

18 Sec. 38.05.122. FOREST MANAGEMENT AGREEMENTS. (a)
19 Notwithstanding the requirements of AS 38.05.110 - 38.05.120 or another provision
20 of this chapter, the commissioner, subject to the approval of the legislature under (i)
21 of this section and under the procedures set out in this section and if not inconsistent
22 with a land use plan then in effect, may enter into a forest management agreement
23 with a person to authorize the person to enter on the state forest land covered by the
24 agreement for the purposes of selecting, harvesting, and regenerating timber in a
25 manner consistent with sustained yield.

26 (b) At least once each calendar year, the commissioner shall, unless the
27 commissioner provides a written finding to the governor that market or other
28 conditions make it unlikely that such a solicitation will be accepted, solicit proposals
29 for forest management agreements on state forest land. The commissioner shall identify
30 the forest land included in the solicitation of proposals. The land identified may
31 include land covered by a cooperative resource management or development agreement

1 under AS 38.05.027 subject to the approval of the owner of any land other than state
2 land. The commissioner shall provide notice of the solicitation to all persons who
3 have requested notification and may provide for any additional notice that the
4 commissioner determines is appropriate. Regardless of whether the commissioner has
5 solicited proposals under this subsection, a person may submit a proposal for a forest
6 management agreement to the commissioner at any time for consideration. The
7 commissioner may not consider unsolicited proposals for a parcel of land covered by
8 a solicited proposal until the commissioner has completed the review and determination
9 required under this section concerning the solicited proposals.

10 (c) The commissioner shall solicit comments from the public and from state
11 agencies, including the commissioner of fish and game, for a proposed agreement
12 unless the evaluation under (d) of this section indicates it is unlikely that the proposed
13 agreement will be selected as a tentatively successful proposed agreement. The
14 comment period under this subsection may not be less than 30 days nor more than 60
15 days.

16 (d) The commissioner shall evaluate proposed agreements submitted under (b)
17 of this section. In evaluating a proposed agreement, the commissioner shall consider
18 the

- 19 (1) effect of the agreement on the following:
- 20 (A) commercial timber harvesting, including related activities;
 - 21 (B) harvesting of forest products for personal use;
 - 22 (C) fish and wildlife habitat, including
 - 23 (i) identification and protection of important wildlife
 - 24 habitat;
 - 25 (ii) retention of riparian, wetland, and ocean shoreline
 - 26 vegetation critical for fish and wildlife habitat;
 - 27 (iii) classification of water bodies according to physical
 - 28 characteristics; and
 - 29 (iv) the use of silvicultural practices, commercial timber
 - 30 harvest, and related activities to maintain and enhance the quantity and
 - 31 quality of fish and wildlife habitat;

- 1 (D) uses of forest land for nontimber purposes, including
2 (i) subsistence, personal, recreational, and commercial
3 uses of fish and wildlife;
4 (ii) recreation, tourism, and related activities;
5 (iii) mining, mining claims, mineral leaseholds, and
6 material extraction;
7 (iv) agriculture, including grazing; and
8 (v) other resources and uses appropriate to the area,
9 including compatible traditional uses;
10 (E) soil characteristics and productivity;
11 (F) water quality; and
12 (G) watershed management;
13 (2) value of the area for the long-term production of timber;
14 (3) commitments of the proposer to hire Alaskans;
15 (4) intent of the proposer to process a value added product within the
16 state;
17 (5) experience of the proposer in the forest products industry;
18 (6) necessary public access for uses described in (1) of this subsection;
19 (7) financial feasibility of the proposal;
20 (8) technical and financial qualifications of the proposer;
21 (9) stumpage payments offered to be paid;
22 (10) economic benefits and liabilities from the proposed agreement to
23 the region in which the land that is to be covered by the agreement is located;
24 (11) extent to which the proposed agreement provides for processing
25 in the state of the timber harvested, to the extent permitted by law;
26 (12) economic benefits and liabilities to the state and to the state forest
27 land under the proposed agreement;
28 (13) timber inventory; and
29 (14) other factors that the commissioner determines are relevant and
30 appropriate.
31 (e) After evaluating proposed agreements under (d) of this section, the

1 commissioner may designate a tentatively successful proposed agreement. A proposed
2 agreement may not be designated under this subsection until public comment has been
3 solicited and evaluated under (c) of this section. A tentatively successful proposed
4 agreement may not be designated unless the commissioner includes, and makes a
5 written finding that sets out facts and applicable law to support the commissioner's
6 conclusion, that

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

11 (2) the tentatively successful proposed agreement covers no more land
12 or timber than is necessary to make the proposed agreement economically sustainable
13 over the life of the proposed agreement;

14 (3) the revenue to be received from the tentatively successful proposed
15 agreement will exceed the direct costs of the proposed agreement to the state and that
16 the sale of timber under the proposed agreement is not for less than fair market value;
17 and

18 (4) the tentatively successful proposed agreement will best serve the
19 interests of the state and is consistent with applicable land use and management plans
20 then in effect.

21 (f) The commissioner shall provide notice under AS 38.05.945(b) and (c) of
22 a finding under (e) of this section and designation of a tentatively successful proposed
23 agreement at least 90 days prior to entering into a final agreement. The commissioner
24 shall solicit comments from the public and from state and local government agencies,
25 including the commissioner of fish and game, on a tentatively successful proposed
26 agreement for at least 90 days after the provision of notice under this section. The
27 tentatively successful proposed agreement for which the commissioner solicits
28 comments from the public under this subsection must contain the proposed terms,
29 conditions, limitations, and information that are required to be contained in the
30 proposed final agreement and the final agreement set out in (g) of this section. If a
31 tentatively successful proposed agreement includes land within a municipality, the

1 commissioner shall submit the tentatively successful proposed agreement to the
2 municipality to determine if the agreement is consistent with municipal land use plans.
3 The municipality shall make a consistency determination within 60 days of receipt of
4 the tentatively successful proposed agreement and, if the agreement is not consistent
5 with municipal land use plans, specifically set forth the provisions of the agreement
6 that are not consistent.

7 (g) If a tentatively successful proposed agreement is designated under (e) of
8 this section, the commissioner, after considering comments and recommendations
9 received under (f) of this section, may proceed to develop a proposed final agreement
10 between the proposer and the state. A tentatively successful proposed agreement, a
11 proposed final agreement, and the final agreement

12 (1) shall provide for terms, conditions, and limitations determined by
13 the commissioner to be in the public interest;

14 (2) must be consistent to the maximum extent practicable with
15 municipal land use plans if the agreement includes land within a municipality;

16 (3) must contain

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

19 (B) provisions requiring sale of the timber for at least fair
20 market value as evidenced by an appraisal and provisions requiring periodic
21 reappraisal of the value of the timber;

22 (C) provisions requiring the proposer to pay the full cost of the
23 state scaling services necessary to account for timber sold under the agreement;

24 (D) provisions requiring the proposer to pay for state services
25 necessary for permitting, planning, monitoring, administering, and
26 implementing the agreement;

27 (E) provisions requiring the proposer, at the discretion of the
28 state, to pay for the construction and maintenance of access roads necessary to
29 manage the land that is to be covered by the agreement;

30 (F) provisions guaranteeing necessary public access for uses
31 described in (d)(1) of this section;

- 1 (G) provisions requiring that, at the discretion of the state, the
2 surface of the access roads shall be removed and the access roads shall be
3 reforested, with the costs paid by the proposer;
- 4 (H) provisions for the location and construction standards of
5 necessary harvest access roads within the area covered by the agreement;
- 6 (I) provisions requiring the processing of the timber in the state
7 if that is the highest and best use of the timber as determined by the
8 commissioner and if permitted by law;
- 9 (J) provisions requiring the proposer, at the discretion of the
10 state, to pay for the purchase of material obtained from state land for the
11 construction of access roads on the land that is to be covered by the agreement;
- 12 (K) provisions requiring the proposer to perform reforestation
13 and silvicultural practices on state land that is to be covered by the agreement;
- 14 (L) a statement that activities under the agreement are governed
15 by the provisions of AS 41.17 and regulations adopted under AS 41.17
16 applicable to operations on state land;
- 17 (M) provisions requiring the submission and approval of
18 biennial operational plans for activities authorized or required by the
19 agreement;
- 20 (N) requirements for reports and submission of information to
21 the department regarding performance under the agreement;
- 22 (O) procedures for enforcement and termination of the
23 agreement;
- 24 (P) provisions requiring an operational level forest inventory
25 every two years; and
- 26 (Q) provisions requiring the proposer to reforest, stabilize,
27 monitor, and meet other obligations; these provisions shall include bonding,
28 letter of credit or standby letter of credit, or other security that the
29 commissioner determines to be adequate to protect the public interest.
- 30 (h) The commissioner shall solicit a final review of the proposed final
31 agreement from state agencies, including the commissioner of fish and game. State

1 agency review under this subsection to be considered by the commissioner must be
2 submitted within 10 days of receipt of the solicitation.

3 (i) Within 10 days of the convening of a regular legislative session, the
4 governor shall transmit to the president of the senate and the speaker of the house of
5 representatives any proposed final forest management agreements. If the legislature,
6 by joint resolution, fails to disapprove a final forest management agreement within 45
7 days, it is considered approved.

8 (j) The form of the proposed final agreement developed under (g) of this
9 section must be approved by the attorney general before the agreement is signed by
10 the commissioner. If the forest management agreement covers nonstate land under an
11 agreement authorized under AS 38.05.027, the owner of the land must approve the
12 agreement. After approval by the attorney general under this subsection and
13 consideration of the final agency review under (h) of this section, the commissioner
14 and the proposer may sign the proposed final agreement.

15 (k) When the commissioner solicits public comment under (c) of this section,
16 and at all times thereafter, the proposed agreements are public records and are open
17 to public inspection and disclosure under AS 09.25.120. Prior to solicitation of public
18 comment under (c) of this section, proposed agreements submitted under this section
19 are confidential and are not open to public inspection or disclosure under
20 AS 09.25.120.

21 (l) All right, title, and interest in or to timber or material in or on land covered
22 by a final forest management agreement remains with the state until the timber or
23 material has been cut or severed, determined as to volume, removed from the site, and
24 paid for in compliance with the agreement. Timber or material that is not removed
25 from land covered by a final forest management agreement within the period specified
26 by the agreement or by an extension of the agreement remains the property of the
27 state.

28 (m) An interest in a final forest management agreement may not be assigned
29 without the prior written consent of the commissioner. An assignment without the
30 prior written consent of the commissioner is void. The commissioner may not consent
31 under this subsection unless the assignment is of the entire interest in the final forest

1 management agreement. The commissioner shall consider all of the factors of this
2 section when making a determination concerning an assignment.

3 (n) The commissioner shall strictly enforce the provisions of the final
4 agreement. The commissioner shall perform a review of the operator's performance
5 under the agreement as part of the biennial operating plan approval process. Upon the
6 completion of three-quarters of the total term of the agreement, the commissioner shall
7 review the operation and performance of the agreement and determine whether it is in
8 the best interest of the state to renew the agreement. If the commissioner determines
9 that it is in the best interest of the state, the commissioner shall solicit and evaluate
10 proposals, as provided in this section, for renewal of the agreement, including a
11 proposal from the current operator.

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

15 (p) In this section,

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

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

19 (3) "sustained yield" has the meaning given in AS 38.04.910.

20 * Sec. 4. AS 41.17.060(c) is amended to read:

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

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

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

30 (3) to the extent its capacity permits, forest land shall be administered
31 so as to provide for the continuation and expansion of businesses, activities, and

1 lifestyles that are dependent upon or derived from forest resources;

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

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

7 (6) allowance shall be made for scenic quality in or adjacent to areas
8 of substantial importance to the tourism and recreation industry; [AND]

9 (7) allowance shall be made for important fish and wildlife habitat; and

10 (8) to the fullest extent practicable, harvested forest land shall be
11 reforested, naturally or artificially, so as to result in a sustained yield of
12 merchantable timber from that land; if artificial planting is required,
13 silviculturally acceptable seedlings must first be available for planting at an
14 economically fair price.

15 * Sec. 5. AS 41.17.060 is amended by adding a new subsection to read:

16 (d) With respect to private forest land only, to the fullest extent practicable,
17 harvested forest land shall be reforested, naturally or artificially. If artificial planting
18 is required, silviculturally acceptable seedlings must first be available for planting at
19 an economically fair price.

20 * Sec. 6. AS 41.17.200 is amended to read:

21 Sec. 41.17.200. STATE FOREST PURPOSES. The purpose of AS 41.17.200
22 - 41.17.230 is to permit the establishment of designated state-owned or acquired land
23 and water areas as state forests. The primary purpose in the establishment of state
24 forests is the perpetuation of personal, commercial, including encouraging the
25 development of commercial forest land under the principles of sustained and
26 multiple use, and other beneficial uses of resources through multiple-use management.

27 * Sec. 7. AS 41.17.200 is amended by adding a new subsection to read:

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

29 (1) allow for the fullest possible access to, and the multiple use of, the
30 natural resources, including timber, fish, game, and minerals; the allowance under this
31 paragraph shall take into account the interests of private landowners;

- 1 (2) maintain forest growth at a high level of productivity; and
- 2 (3) restrict the public use of the land and its resources only when
- 3 necessary to carry out the purposes of this chapter.
- 4 * Sec. 8. AS 41.17.060(b)(4) is repealed.