

ALASKA LEGISLATURE

1789

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

1 classified as agricultural land

2 (1) a perpetual covenant for the benefit of all Alaska residents and
3 running with the land that restricts or limits the use of the land for agricultural
4 purposes; and

5 (2) one of the following, as appropriate:

6 (A) a perpetual covenant for the benefit of all Alaska residents
7 and running with the land permitting the owner of land that had been obtained
8 under homestead entry to subdivide and convey the land in parcels of not less
9 than 40 acres each; or

10 (B) a perpetual covenant for the benefit of all Alaska residents
11 and running with the land permitting the owner of land that had been obtained
12 by purchase to subdivide and convey not more than four parcels of the land of
13 not less than 40 acres each, subject to the restriction that a subdivided parcel
14 may not be further subdivided.

15 * **Sec. 10.** AS 38.05.321(b) is amended to read:

16 (b) Subject to (a) of this section, state [STATE] land classified as agricultural
17 land that has been selected by a municipality under former AS 29.18.190 - 29.18.200
18 or former AS 29.18.205(e) may be approved by the director for patent under
19 AS 29.65.050(c) [; HOWEVER, ONLY RIGHTS IN THE LAND FOR
20 AGRICULTURAL PURPOSES MAY BE TRANSFERRED AND ALL OTHER
21 INTERESTS IN THE LAND WILL REMAIN WITH THE STATE]. Agricultural land
22 approved for patent to a municipality shall be credited, acre for acre, toward fulfillment
23 of that municipality's entitlement under AS 29.65.010 - 29.65.030 or former
24 AS 29.18.201 - 29.18.203. [IF THE DIRECTOR LATER DETERMINES IT TO BE
25 IN THE BEST INTERESTS OF THE STATE TO TRANSFER SOME OR ALL OF
26 THE ADDITIONAL RIGHTS IN THAT APPROVED OR PATENTED
27 AGRICULTURAL LAND, THOSE RIGHTS SHALL PASS WITHOUT
28 CONSIDERATION TO THE MUNICIPALITY IN WHICH THE LAND IS
29 LOCATED. THE NOTICE AND REVIEW PROVISIONS OF AS 38.05.945 ARE
30 APPLICABLE TO CONVEYANCE OF RIGHTS UNDER THIS SECTION.]

31 * **Sec. 11.** AS 38.05.321 is amended by adding new subsections to read:

1 (d) For state land classified as agricultural land that is conveyed under (a) of
2 this section,

3 (1) the commissioner may require the landowner to cooperate with the
4 appropriate soil and water conservation district under AS 41.10 in the development and
5 implementation of soil conservation plans as authorized by AS 41.10.110(6);

6 (2) as a condition of the conveyance, the commissioner may not require
7 preparation and implementation of a schedule of planned agricultural development or
8 a farm development plan specified in a land purchase contract unless the commissioner
9 permits modification of a plan in cases of economic hardship or other extenuating
10 circumstances;

11 (3) the commissioner may not

12 (A) limit the right of the landowner to use the land and
13 improvements for purposes that are incidental to and not inconsistent with the
14 primary use of the land for agricultural purposes;

15 (B) except as provided by (i) of this section, limit the right of
16 a landowner to construct housing for the landowner and farm laborers, to
17 construct improvements for animals, or to construct improvements that are
18 reasonably required for or related to agricultural use on the original parcel and
19 on additional subdivided parcels, not to exceed the limits and restrictions set
20 by (a)(2) of this section; and

21 (C) limit the right of the landowner to subdivide and convey
22 the land if the resulting parcels are not in violation of the limits and restrictions
23 set out in (a)(2) of this section.

24 (e) A landowner may subdivide land classified for agricultural use and for
25 which the landowner obtained a patent under a homestead entry permit issued under
26 AS 38.09 so long as the resulting parcels are not in violation of the minimum parcel
27 size set out in (a) of this section. A landowner may subdivide other land classified for
28 agricultural use as authorized under (d)(3)(C) of this section. If the subdivision
29 involves land classified for agricultural use and for which the landowner obtained a
30 patent under a homestead entry permit issued under AS 38.09, or if the subdivision of
31 land authorized under (d)(3)(C) of this section results only in parcels of 640 acres or

1 more, the landowner may subdivide without payment as required by this subsection.
2 If subdivision of land authorized by (d)(3)(C) of this section would result in one or
3 more parcels of less than 640 acres, the landowner may subdivide only if the
4 landowner first tenders payment to the department for the right to construct housing
5 in each subdivided parcel of less than 640 acres. For purposes of this subsection, the
6 right to construct housing in a subdivided parcel is \$4,000 for the parcel, subject to
7 adjustment under (h) of this section.

8 (f) Notwithstanding (e) of this section, the landowner is not required to pay
9 an amount due under (e) of this section until the subdivided parcel is conveyed by the
10 owner to a person not a member of the person's immediate family. The department
11 has a lien on the parcel as security for payment of the amount due. For purposes of
12 this subsection, "immediate family" means

13 (1) the spouse or spousal equivalent of the person; or

14 (2) a parent, child, including a stepchild and an adoptive child, or
15 sibling of the person if the parent, child, or sibling resides with the person, is
16 financially dependent on the person, or shares a substantial financial interest with the
17 person.

18 (g) A perpetual covenant described in (a) of this section may be enforced only
19 by a civil action brought by the state, a municipality, or a resident. If a municipality
20 or a resident brings an action under this subsection, the municipality or resident shall
21 also serve a copy of the summons and complaint on the state in the manner prescribed
22 by the Alaska Rules of Civil Procedure for service on the state. An action may be
23 maintained under this subsection only if

24 (1) commenced within six years after the cause of action has accrued;

25 and

26 (2) the plaintiff has first notified in writing the appropriate soil and
27 water conservation district under AS 41.10 of the violation of the covenant at least 90
28 days before the civil action is filed.

29 (h) The value of the right to construct housing determined under (e) of this
30 section shall be adjusted to correspond with the change in the consumer price index
31 for all urban consumers for the Anchorage Metropolitan Area compiled by the Bureau

1 of Labor Statistics, United States Department of Labor. The base year for the
2 computation shall be the calendar year in which the process of conveyance of state
3 land authorized by (a) of this section is initiated under this section.

4 (i) The authority given in (d)(3)(B) of this section to construct housing and the
5 payment required under (e) of this section for the right to construct housing do not
6 permit the landowner the right to construct condominiums under AS 34.07 or other
7 common interest ownership communities under AS 34.08.

8 (j) In this section, "agricultural purposes" means

9 (1) the production, for commercial or personal use, of useful plants and
10 animals;

11 (2) the construction of

12 (A) housing for landowners and farm laborers;

13 (B) improvements for animals; or

14 (C) improvements that are reasonably required for or related to
15 agricultural use;

16 (3) the use of gravel reasonably required or related to agricultural
17 production on the parcel conveyed; and

18 (4) removal and disposition of timber in order to bring agricultural land
19 into use.

20 * Sec. 12. CONVERSION OF DISPOSALS MADE UNDER AS 38.05.069(c) OR UNDER
21 FORMER AS 38.05.321(a). (a) The provisions of AS 38.05.321(a), as amended by sec. 9
22 of this Act, apply to state land classified as agricultural land that, under AS 38.05.069(c) or
23 under AS 38.05.321(a) before its amendment by sec. 9 of this Act, was subject to the
24 limitation of the conveyance of only the interest in the land that related to agricultural
25 purposes and that was sold, leased, or disposed of by the state after August 15, 1976, and
26 before the effective date of this Act.

27 (b) When the owner of the rights for agricultural purposes in land described in this
28 section applies to the Department of Natural Resources, the commissioner of natural resources
29 shall issue a patent or other instrument of conveyance for all remaining interests in the land.
30 The patent or other instrument of conveyance must conform to AS 38.05.321, as amended and
31 enacted by secs. 9 - 11 of this Act. The commissioner of natural resources shall issue a patent

1 or other instrument of conveyance under this section if the owner of the rights tenders an
2 affidavit of ownership accompanied by a limited liability report affirming ownership of the
3 rights for agricultural purposes in the person making application under this subsection and a
4 copy of the original patent showing recording information.

5 (c) Until the commissioner of natural resources issues a patent or other instrument of
6 conveyance under (b) of this section, when necessary to enforce a state interest in the land,
7 the state may enforce the interests in the land in the manner authorized by the instrument of
8 conveyance that transferred the rights for agricultural purposes.

9 * **Sec. 13. CONVERSION OF DISPOSALS MADE UNDER FORMER AS 38.05.321(b).**

10 (a) The provisions of AS 38.05.321(a), as amended by sec. 9 of this Act, apply to state land
11 classified as agricultural land that, under AS 38.05.321(b) before its amendment by sec. 10
12 of this Act, was subject to the limitation of the conveyance of only the interest in the land that
13 related to agricultural purposes and that was conveyed by the state to a municipality after
14 June 30, 1978, and before the effective date of this Act.

15 (b) When a municipality holding the rights for agricultural purposes in land described
16 in this section applies to the Department of Natural Resources, the commissioner of natural
17 resources shall issue a patent or other instrument of conveyance for all remaining interests in
18 the land. The patent or other instrument of conveyance must conform to AS 38.05.321, as
19 amended by secs. 9 - 11 of this Act. The commissioner of natural resources shall issue a
20 patent or other instrument of conveyance under this section if the municipality tenders an
21 affidavit of ownership accompanied by a title report affirming the municipality's ownership
22 of the rights for agricultural purposes.

23 (c) Until the commissioner of natural resources issues the patent or other instrument
24 of conveyance under (b) of this section, when necessary to enforce a state interest in the land,
25 the state may enforce the interests in the land in the manner authorized by the instrument of
26 conveyance that transferred the rights for agricultural purposes.

27 * **Sec. 14. APPLICABILITY TO PERSONS WHO HAVE ACQUIRED RIGHTS FOR**
28 **AGRICULTURAL PURPOSES AT POINT MCKENZIE.** (a) The provisions of

29 AS 38.05.321, as amended by secs. 9 - 11 of this Act, and sec. 12 of this Act apply to a
30 person who, on the effective date of this Act, holds agricultural rights in land classified for
31 agricultural use in the area described in (b) of this section. However, notwithstanding

1 AS 38.05.321(e), added by sec. 11 of this Act, the value of the landowner's right to construct
2 housing on that land shall be determined by an appraisal, completed by an appraiser under
3 contract to the landowner, of the value, determined as of the date of subdivision, of the
4 landowner's right to construct housing under AS 38.05.321(d)(3).

5 (b) The provisions of this section apply to land within tracts 1 - 19 and 21 - 30 of
6 Alaska state land survey no. 80-111, according to the amended survey plat filed in the Palmer
7 Recording District on July 26, 1982, as plat no. 82-80, concerning land described as follows:

- 8 (1) Township 14 North, Range 4 West, Seward Meridian
9 Sections 5 - 8
10 Section 18;
11 (2) Township 14 North, Range 5 West, Seward Meridian
12 Section 1
13 Section 12;
14 (3) Township 15 North, Range 4 West, Seward Meridian
15 Section 7
16 Sections 17 - 20
17 Sections 29 - 32;
18 (4) Township 15 North, Range 5 West, Seward Meridian
19 Section 1
20 Section 2
21 Sections 11 - 14
22 Sections 23 - 26
23 Section 36; and
24 (5) Township 16 North, Range 5 West, Seward Meridian
25 Section 26
26 Sections 35 - 36.

27 * **Sec. 15.** The following regulations are annulled: 11 AAC 67.154(1), 11 AAC 67.154(2),
28 11 AAC 67.154(3), 11 AAC 67.154(4), 11 AAC 67.154(5), 11 AAC 67.162, 11 AAC 67.165,
29 11 AAC 67.167(d), 11 AAC 67.170, 11 AAC 67.172, 11 AAC 67.175(1), 11 AAC 67.185,
30 11 AAC 67.187, 11 AAC 67.188(a)(3), 11 AAC 67.188(a)(4), 11 AAC 67.188(a)(5), 11 AAC
31 67.188(a)(6), 11 AAC 67.188(b), 11 AAC 67.188(c), 11 AAC 67.190(a), 11 AAC 67.192.

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another version
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HOUSE CS FOR CS FOR SENATE BILL NO. 109()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS GREEN, Pearce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to land used for agricultural purposes and to state land
2 classified for agricultural purposes or subject to the restriction of use for
3 agricultural purposes only; and annulling certain program regulations of the
4 Department of Natural Resources that relate to agricultural land and agricultural
5 homesteads."

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

7 * Section 1. LEGISLATIVE INTENT. It is the intent of the legislature in amending
8 AS 38.05.321(a) in sec. 9 of this Act that, for state land classified as agricultural land, the
9 state convey fee title subject to a perpetual covenant running with the land that restricts or
10 limits use of the land for agricultural purposes.

11 * Sec. 2. AS 38.04.045(b) is amended to read:

12 (b) Before the issuance of a long-term lease under AS 38.05.070 or of a patent
13 for state land, an official cadastral survey shall be accomplished, unless a comparable.

1 approved survey exists that has been conducted by the federal Bureau of Land
2 Management. Before land may be offered under [AS 38.05.055, 38.05.057,] AS 38.08
3 [,] or AS 38.09, or before land may be offered under AS 38.05.055 or 38.05.057.
4 except land that is classified for agricultural uses. an official rectangular survey grid
5 shall be established. The rectangular survey section corner positions shall be
6 monumented and shown on a cadastral survey plat approved by the state. For those
7 areas where the state may wish to convey surface estate outside of an official
8 rectangular survey grid, the commissioner may waive monumentation of individual
9 section corner positions and substitute an official control survey with control points
10 being monumented and shown on control survey plats approved by the state. The
11 commissioner may not issue more than one conveyance for each section within a
12 township outside of an official rectangular survey grid. Land [NO PORTION OF
13 LAND] to be conveyed may not be located more than two miles from an official
14 survey control monument except that the commissioner may waive this requirement
15 on a determination that a single purpose use does not justify the requirement if the
16 existing status of the land is known with reasonable certainty. The lots and tracts in
17 state subdivisions shall be monumented and the cadastral survey and plats for the
18 subdivision shall be approved by the state. Where land is located within a
19 municipality with planning, platting, and zoning powers, plats for state subdivisions
20 shall comply with local ordinances and regulations in the same manner and to the same
21 extent as plats for subdivisions by other landowners. State subdivisions shall be filed
22 and recorded in the district recorder's office. The requirements of this section do not
23 apply to land made available through a cabin permit system, for material sales, for
24 short-term leases, for parcels adjoining a surveyed right-of-way, or for land that has
25 been open to random staking under the remote parcel program or homestead program
26 in the past; however, for short-term leases, the lessee shall [MUST] comply with local
27 subdivision ordinances unless waived by the municipality under procedures specified
28 by ordinance. In this subsection, "a single purpose use" includes a communication site,
29 an aid to navigation, and a park site.

30 * Sec. 3. AS 38.04.065(h) is amended to read:

31 (h) Before the commissioner adopts a regional land use plan, a land

1 classification may be made on the basis of a site-specific land use plan, except a
2 classification for a land disposal under AS 38.05.057, AS 38.08, or AS 38.09 [, OR
3 A NEW COMMERCIAL AGRICULTURE PROJECT UNDER AS 38.05.020(b)(6)].
4 After adoption of a regional land use plan, land classifications shall be made under the
5 plan.

6 * Sec. 4. AS 38.05.020(b) is amended to read:

7 (b) The commissioner may

8 (1) establish reasonable procedures and adopt reasonable regulations
9 necessary to carry out this chapter and, whenever necessary, issue directives or orders
10 to the director to carry out specific functions and duties; regulations adopted by the
11 commissioner shall be adopted under AS 44.62 (Administrative Procedure Act); orders
12 by the commissioner classifying land, issued after January 3, 1959, are not required
13 to be adopted under AS 44.62 (Administrative Procedure Act);

14 (2) enter into agreements considered necessary to carry out the purposes
15 of this chapter, including agreements with federal and state agencies;

16 (3) review any order or action of the director;

17 (4) exercise the powers and do the acts necessary to carry out the
18 provisions and objectives of this chapter;

19 (5) notwithstanding the provisions of any other section of this chapter,
20 grant an extension of the time within which payments due on any exploration license,
21 lease, or sale of state land, minerals, or materials may be made, including payment of
22 rental and royalties, on a finding that compliance with the requirements is or was
23 prevented by reason of war, riots, or acts of God;

24 (6) classify tracts for agricultural uses [AND REQUIRE THE
25 PREQUALIFICATION, INCLUDING THE SUBMISSION OF CONSERVATION
26 PLANS, DEVELOPMENT PLANS, OR OTHER PLANS, SCHEDULES, OR
27 PROGRAMS, OF PERSONS WHO APPLY TO PARTICIPATE IN AN
28 AGRICULTURAL DEVELOPMENT PROJECT UNDER AS 44.33.475];

29 (7) waive, postpone, or otherwise modify the development requirements
30 of a contract for the sale of agricultural land if

31 (A) the land is inaccessible by road; or [AND]

1 (B) transportation, marketing, and development costs render the
2 required development uneconomic;

3 (8) reconvey or relinquish land or an interest in land to the federal
4 government if

5 (A) the land is described in an amended application for an
6 allotment under 43 U.S.C. 1617; and

7 (B) the reconveyance or relinquishment is

8 (i) for the purposes provided in 43 U.S.C. 1617; and

9 (ii) in the best interests of the state.

10 * Sec. 5. AS 38.05.057(j) is amended to read:

11 (j) The commissioner may require a participant in a lottery under this section
12 for the sale of land that is part of an agricultural development project under former
13 AS 44.33.475 to submit a single application for that land. Immediately following the
14 drawing of an applicant's name in the lottery, the applicant shall be given an
15 opportunity to select for purchase one parcel of the land that is offered in the lottery.
16 The names of alternate applicants shall be drawn after all parcels have been selected.
17 If the applicant who originally selected a parcel unequivocally rejects the offer to
18 purchase the parcel or fails to sign the contract of sale within the period of time
19 specified by the commissioner, the parcel shall be offered for sale to alternate
20 applicants in the order in which their names were drawn.

21 * Sec. 6. AS 38.05.059 is repealed and reenacted to read:

22 **Sec. 38.05.059. Sale of agricultural land.** The commissioner may provide
23 for the sale of land classified under AS 38.05.020(b)(6) for agricultural uses in parcels
24 or tracts described by aliquot parts. The parcels or tracts are subject to state
25 subdivision requirements and municipal ordinances.

26 * Sec. 7. AS 38.05.065(c) is amended to read:

27 (c) The director shall, for contracts under (a), [OR] (b), or (h) of this section,
28 set out in the contract for each sale the period for the payment of installments and the
29 total purchase price plus interest. The director, with the consent of the commissioner,
30 may also include in contracts under this section conditions, limitations, and terms
31 considered necessary and proper to protect the interest of the state. Violations of any

1 provision of this chapter or the terms of the contract of sale subject the purchaser to
 2 appropriate administrative and legal action, including but not limited to specific
 3 performance, foreclosure, ejectment, or other legal remedies in accordance with
 4 applicable state law.

5 * Sec. 8. AS 38.05.065(h) is amended to read:

6 (h) The commissioner
 7 (1) shall provide that, notwithstanding (a) and (b) of this section,
 8 in a contract for the sale of land classified under AS 38.05.020(b)(6) for
 9 agricultural uses, the interest rate to be charged on installment payments may not
 10 exceed 9.5 percent; and

11 (2) may declare a moratorium of up to five years on payments on land
 12 sold under this section for [A SALE OF AGRICULTURAL] land classified under
 13 AS 38.05.020(b)(6) for agricultural uses [UNDER THIS SECTION] if

14 (A) [(1)] the commissioner determines that the moratorium is
 15 in the best interest of the state;

16 (B) [(2)] the commissioner certifies and the contract purchaser
 17 agrees to perform farm development, crop production, and harvesting, not
 18 including land clearing or related activity, requiring the expenditure of amounts
 19 equivalent to the payments that would otherwise be made during the
 20 moratorium;

21 (C) [(3)] the sale of the agricultural land takes place after
 22 July 1, 1979; and

23 (D) [(4)] the contract purchaser is in compliance with the
 24 development plan specified in the purchase contract at the time the purchaser
 25 applies for a moratorium under this subsection and remains in compliance with
 26 the development plan during the moratorium; for the payments subject to the
 27 moratorium declared under this paragraph, interest [INTEREST]
 28 payments are subject to the moratorium but interest continues to accrue during
 29 the moratorium.

30 * Sec. 9. AS 38.05.321(a) is repealed and reenacted to read:

31 (a) The department shall include in a document that conveys state land

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classified as agricultural land

(1) a perpetual covenant for the benefit of all Alaska residents and running with the land that restricts or limits the use of the land for agricultural purposes; and

(2) one of the following, as appropriate:

(A) a perpetual covenant for the benefit of all Alaska residents and running with the land permitting the owner of land that had been obtained under homestead entry to subdivide and convey the land in parcels of not less than 40 acres each; or

(B) a perpetual covenant for the benefit of all Alaska residents and running with the land permitting the owner of land that had been obtained by purchase to subdivide and convey not more than four parcels of the land

* Sec. 10. AS 38.05.321(b) is amended to read:

of not less than 40 acres each, with no further subdivision of the subdivided parcel →

(b) Subject to (a) of this section, state [STATE] land classified as agricultural

land that has been selected by a municipality under former AS 29.18.190 - 29.18.200 or former AS 29.18.205(e) may be approved by the director for patent under AS 29.65.050(c) [; HOWEVER, ONLY RIGHTS IN THE LAND FOR AGRICULTURAL PURPOSES MAY BE TRANSFERRED AND ALL OTHER INTERESTS IN THE LAND WILL REMAIN WITH THE STATE]. Agricultural land approved for patent to a municipality shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.65.010 - 29.65.030 or former AS 29.18.201 - 29.18.203. [IF THE DIRECTOR LATER DETERMINES IT TO BE IN THE BEST INTERESTS OF THE STATE TO TRANSFER SOME OR ALL OF THE ADDITIONAL RIGHTS IN THAT APPROVED OR PATENTED AGRICULTURAL LAND, THOSE RIGHTS SHALL PASS WITHOUT CONSIDERATION TO THE MUNICIPALITY IN WHICH THE LAND IS LOCATED. THE NOTICE AND REVIEW PROVISIONS OF AS 38.05.945 ARE APPLICABLE TO CONVEYANCE OF RIGHTS UNDER THIS SECTION.]

* Sec. 11. AS 38.05.321 is amended by adding new subsections to read:

(d) For state land classified as agricultural land that is conveyed under (a) of this section,

1 (1) the commissioner may require the landowner to cooperate with the
2 appropriate soil and water conservation district under AS 41.10 in the development and
3 implementation of soil conservation plans as authorized by AS 41.10.110(6);

4 (2) as a condition of the conveyance, the commissioner may not require
5 preparation and implementation of a schedule of planned agricultural development or
6 a farm development plan specified in a land purchase contract unless the commissioner
7 permits modification of a plan in cases of economic hardship or other extenuating
8 circumstances;

9 (3) the commissioner may not

10 (A) limit the right of the landowner to use the land and
11 improvements for purposes that are incidental to and not inconsistent with the
12 primary use of the land for agricultural purposes;

13 (B) except as provided by (i) of this section, limit the right of
14 a landowner to construct housing for the landowner and farm laborers, to
15 construct improvements for animals, or to construct improvements that are
16 reasonably required for or related to agricultural use on the original parcel and
17 on additional subdivided parcels, not to exceed the limits set by (a)(2) of this
18 section; and

19 (C) limit the right of the landowner to subdivide and convey
20 the land if the number or minimum size, as applicable, of the resulting parcels
21 are not in violation of the limits set out in (a)(2) of this section.

22 (e) A landowner may subdivide land classified for agricultural use and for
23 which the landowner obtained a patent under a homestead entry permit issued under
24 AS 38.09 so long as the resulting parcels are not in violation of the minimum parcel
25 size set out in (a) of this section. A landowner may subdivide other land classified for
26 agricultural use as authorized under (d)(3)(C) of this section. If the subdivision
27 involves land classified for agricultural use and for which the landowner obtained a
28 patent under a homestead entry permit issued under AS 38.09, or if the subdivision of
29 land authorized under (d)(3)(C) of this section results only in parcels of 640 acres or
30 more, the landowner may subdivide without payment as required by this subsection.
31 If subdivision of land authorized by (d)(3)(C) of this section would result in one or

1 more parcels of less than 640 acres, the landowner may subdivide only if the
2 landowner first tenders payment to the department for the right to construct housing
3 in each subdivided parcel of less than 640 acres. For purposes of this subsection, the
4 right to construct housing in a subdivided parcel

5 (1) is \$6,000 for the parcel, subject to adjustment under (h) of this
6 section; or

7 (2) shall be determined by an appraisal by an appraiser under contract
8 to the landowner in the parcel; the appraisal must

9 (A) be based upon the value of the parcel at the time of the
10 original state conveyance of the agricultural rights, subject to adjustment under
11 (h) of this section; and

12 (B) include the value, determined as of the date of subdivision,
13 of the right to construct housing by the landowner under (d)(3) of this section.

14 (f) Notwithstanding (e) of this section, the landowner is not required to pay
15 an amount due under (e) of this section until the subdivided parcel is conveyed by the
16 owner to a person not a member of the person's immediate family. The department
17 has a lien on the parcel as security for payment of the amount due. For purposes of
18 this subsection, "immediate family" means

19 (1) the spouse or spousal equivalent of the person; or

20 (2) a parent, child, including a stepchild and an adoptive child, or
21 sibling of the person if the parent, child, or sibling resides with the person, is
22 financially dependent on the person, or shares a substantial financial interest with the
23 person.

24 (g) A perpetual covenant described in (a) of this section may be enforced only
25 by a civil action brought by the state, a municipality, or a resident. If a municipality
26 or a resident brings an action under this subsection, the municipality or resident shall
27 also serve a copy of the summons and complaint on the state in the manner prescribed
28 by the Alaska Rules of Civil Procedure for service on the state. An action may be
29 maintained under this subsection only if

30 (1) commenced within six years after the cause of action has accrued;

31 and

1 (2) the plaintiff has first notified in writing the appropriate soil and
2 water conservation district under AS 41.10 of the violation of the covenant at least 90
3 days before the civil action is filed.

4 (h) The value of the right to construct housing determined under (e)(1) or
5 (e)(2)(A) of this section shall be adjusted to correspond with the change in the
6 consumer price index for all urban consumers for the Anchorage Metropolitan Area
7 compiled by the Bureau of Labor Statistics, United States Department of Labor. The
8 base year for the computation shall be the calendar year in which the process of
9 conveyance of state land authorized by (a) of this section is initiated under this section.

10 (i) The authority given in (d)(3)(B) of this section to construct housing and the
11 payment required under (e) of this section for the right to construct housing do not
12 permit the landowner the right to construct condominiums under AS 34.07 or other
13 common interest ownership communities under AS 34.08.

14 (j) In this section, "agricultural purposes" means

15 (1) the production, for commercial or personal use, of useful plants and
16 animals;

17 (2) the construction of landowners

18 (A) housing for owners and farm laborers;

19 (B) improvements for animals; or

20 (C) improvements that are reasonably required for or related to
21 agricultural use;

22 (3) the use of gravel reasonably required or related to agricultural
23 production on the parcel conveyed; and

24 (4) removal and disposition of timber in order to bring agricultural land
25 into use.

26 * Sec. 12. CONVERSION OF DISPOSALS MADE UNDER AS 38.05.069(c) OR UNDER
27 FORMER AS 38.05.321(a). (a) The provisions of AS 38.05.321(a), as amended by sec. 9
28 of this Act, apply to state land classified as agricultural land that, under AS 38.05.069(c) or
29 under AS 38.05.321(a) before its amendment by sec. 9 of this Act, was subject to the
30 limitation of the conveyance of only the interest in the land that related to agricultural
31 purposes and that was sold, leased, or disposed of by the state after August 15, 1976, and

1 before the effective date of this Act.

2 (b) When the owner of the rights for agricultural purposes in land described in this
3 section applies to the Department of Natural Resources, the commissioner of natural resources
4 shall issue a patent or other instrument of conveyance for the ^{remaining interest in the land} ~~land~~ that conforms to ^{estate}
5 AS 38.05.321, as amended and enacted by secs. 9 - 11 of this Act. The commissioner of
6 natural resources ^{shall} ~~may~~ issue a patent or other instrument of conveyance under this section if
7 the owner of the rights tenders an affidavit of ownership accompanied by a limited liability
8 report affirming ownership of the rights for agricultural purposes in the person making
9 application under this subsection and a copy of the original patent showing recording
10 information.

11 (c) Until the commissioner of natural resources issues a patent or other instrument of
12 conveyance under (b) of this section, when necessary to enforce a state interest in the land,
13 the state may enforce the interests in the land in the manner authorized by the instrument of
14 conveyance that transferred the rights for agricultural purposes.

15 * Sec. 13. CONVERSION OF DISPOSALS MADE UNDER FORMER AS 38.05.321(b).

16 (a) The provisions of AS 38.05.321(a), as amended by sec. 9 of this Act, apply to state land
17 classified as agricultural land that, under AS 38.05.321(b) before its amendment by sec. 10
18 of this Act, was subject to the limitation of the conveyance of only the interest in the land that
19 related to agricultural purposes and that was conveyed by the state to a municipality after
20 June 30, 1978, and before the effective date of this Act.

21 (b) When a municipality holding the rights for agricultural purposes in land described
22 in this section applies to the Department of Natural Resources, the commissioner of natural
23 resources shall issue a patent or other instrument of conveyance for the land that conforms to
24 AS 38.05.321, as amended by secs. 9 - 11 of this Act. The commissioner of natural resources
25 may issue a patent or other instrument of conveyance under this section if the municipality
26 tenders an affidavit of ownership accompanied by a title report affirming the municipality's
27 ownership of the rights for agricultural purposes.

28 (c) Until the commissioner of natural resources issues the patent or other instrument
29 of conveyance under (b) of this section, when necessary to enforce a state interest in the land,
30 the state may enforce the interests in the land in the manner authorized by the instrument of
31 conveyance that transferred the rights for agricultural purposes.

delete

1 * ~~Sec. 14. APPLICABILITY TO PERSONS WHO HAVE ACQUIRED RIGHTS FOR~~
 2 ~~AGRICULTURAL PURPOSES IN A PREVIOUSLY SUBDIVIDED PARCEL. A person~~
 3 ~~who, before January 1, 1997, obtained rights in a parcel of land classified as agricultural land~~
 4 ~~that had been subdivided as allowed by the Department of Natural Resources may obtain title~~
 5 ~~to that parcel of land in the manner authorized by AS 38.05.321, except that the landowner~~
 6 ~~may not further subdivide the parcel. The commissioner of natural resources shall provide~~
 7 ~~with the patent or other appropriate instrument of conveyance a covenant running with the~~
 8 ~~land restricting the landowner from subdividing the parcel.~~

9 * **Sec. 15.** The following regulations are annulled: 11 AAC 67.154(1), 11 AAC 67.154(2),
 10 11 AAC 67.154(3), 11 AAC 67.154(4), 11 AAC 67.154(5), 11 AAC 67.162, 11 AAC 67.165,
 11 11 AAC 67.167(d), 11 AAC 67.170, 11 AAC 67.172, 11 AAC 67.175(1), 11 AAC 67.185,
 12 11 AAC 67.187, 11 AAC 67.188(a)(3), 11 AAC 67.188(a)(4), 11 AAC 67.188(a)(5), 11 AAC
 13 67.188(a)(6), 11 AAC 67.188(b), 11 AAC 67.188(c), 11 AAC 67.190(a), 11 AAC 67.192.

RECEIVED

MILFORD H. KNUTSON
4331 Gannett Circle
Anchorage, Alaska

APR 10 1997
ASD.....

March 28, 1997

Senator Lyda Green
State Capitol
Juneau, Alaska

Subj.: S.B. 109

Dear Sen. Green:

I strongly support Senate Bill 109 in its present form and urge its early adoption by the Legislature..

We own a 280 acre agriculture parcel near Trapper Creek (Rabideaux Ag. parcel). At present about 15-20 acres are cleared, with wood wasted and piled in old berms. We have a good stand of timothy/clover which is fertilized annually and baled by my neighbor. We've built a very small bunkhouse on the property and a pole hay barn for future operations.

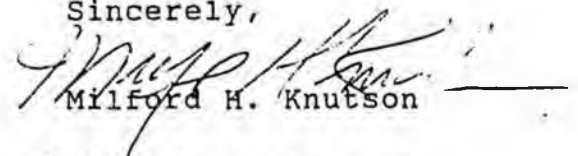
Clearing is very slow. We are trying now to utilize the wood, but the only market is firewood. We were originally over 1½ miles from any road. The state provided very little help with roads even though it has built numerous nice roads for recreational cabin users.

We have a clearing obligation of 120 acres over the next 6 years or so. With the market for wood as slow as it is, this is not economically feasible. Clearing should be stretched out at a pace supportible by the need for the wood removed, rather than pile it and burn it or let it rot. If the cleared wood can be sold, it helps support the clearing expense, provides jobs for woodsellors and aids the economy.

Section 4 of SB 109 giving the Commissioner authority to modify development schedules either where land is inaccessible or it is uneconomic, is very important. This does not eliminate clearing requirements or remove the agricultural purposes from the legislation. It merely frees the Commissioner's hands where landowners need equitable adjustments on a case by case basis. Before, the Commissioner believed the Legislature had mandated a clearing schedule with no discretion to alter or postpone. If SB 109 passes the Commissioner "may" waiver postpone or otherwise modify clearing requirements as economic requirements dictate.

I urge passage of SB 109 in its present form.

Sincerely,


Milford H. Knutson

Phone: 907-353-6634

March 23, 1997

RECEIVED
MAR 25 1997
Ans'd.....

Senator Lyda Green
State Capitol
Juneau, AK. 99801-1182

Dear Senator Green:

Thank you for your efforts to enhance and further agriculture in Alaska. I support SB109 and offer no changes to the bill. My partner, Richard Stillie, and I currently reside on 80 acres in the Tanana Loop Extension Road area near Delta Junction, AK. Last summer, we planted 60 acres of brome hay and intend to begin raising beef cattle in the near future. We also plant a substantial garden each year. This acreage is currently Ag Rights land and the accompanying restrictions have been a hindrance to our development of this property. We have lived on this property since 1981 and we were aided by the ARLF during the 1980's. Most recently, we have received guidance and help from Frederick Husby (UAF), Ken Krieg, and Don Quarberg(Extension Service) concerning grasses, weed control, and livestock raising. These men are nearing retirement age and I am concerned that if funds are further reduced, there will be no one to take their place.

Thank you for being a friend of the farmers of Alaska. We need the continued support of legislators like you as we slowly but surely develop agriculture in this state.

Respectfully yours,

Michael L. Bear

Michael L. Bear

Senator Lyda Green

In response to your info on S.B. 109,

My Family and I are currently Farming on 686 Acres of Ag rights only Land in Trapper Creek that we purchased from the state in 1986. To date we have cleared and into production approx 100 Acres. This we have done totally without borrowed money and would like to continue to do so. The problem we are running into is our clearing requirements are going to finally catch up with us. To date we have salvaged all timber on the cleared acres. I think this is a great way of using a valuable resource.

Over

Last year we tried running some hogs on the un-cleared portion of our farm and had great success with the experiment. According to Div of Ag this does not satisfy clearing requirements, which I can agree with but it sure is a cheap way to clear land, but would be impossible with the current time restraints on these Ag parcels. The clearing of the land is a very costly part of these farms and anything we can do to offset some of these costs and still farm the land should be a consideration.

Great work
SB 109 looks like it
might help.

Steve & Bonnie Strong
Box 13072
Trapper Creek, AK 99683



THE GRANGE

AMERICA'S FAMILY COMMUNITY FRATERNITY

RECEIVED
MAR 20 1997
AUS d.....

Northland Pioneer Grange No. 1
P.O. Box 2304
Palmer, Alaska

March 18, 1997

Lyda Green, Senator
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Senator Green:

The Northland Pioneer Grange No 1. appreciates the letter of March 6th to "Alaskans Interested in Agriculture" and the copy of your March 7th letter to the Governor.

The Grange met, discussed your correspondence, and I was asked to relay the results of our discussion. We have had the opportunity to discuss SB109 before and would like to share our feelings. The 40 acre ruling, if subdivisions are to be allowed, is too small 160 acres should be minimum. Alaska agriculture has been suffering from 40 acre tracks since 1935 when the Colony Project was established. They are not economic units, would very likely raise the per acre value of the property, and come closer to being land speculation than agricultural land management.

The policing of the ag covenant should be by a responsible body, not dependent on personal reports to the attorney generals office. We feel this process would be ineffective and of such low priority by the attorney general that it would not be acted upon in a timely manner. An agency that understands agricultural land use such as the Division of Ag or the Soil and Water Conversation Board might be considered, however, the SWCB is not usually considered a regulatory body.

There has to be ways of conveying ag land assets to relatives without subdividing. If you allow two parcels or four parcels. what about the family with six children?

Lyda Green
Page 2
March 18, 1997

If there is a change in land status that would change the property value, a provision for establishing that value and making sure the State is not giving away State assets must be established. Several years ago, when I personally exercised a purchase option on a state parcel, I was required to hire a private appraiser to establish value.

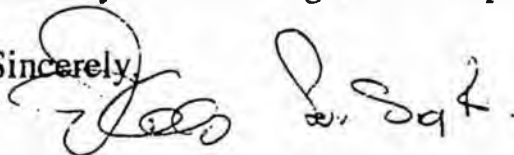
The Northland Pioneer Grange is very concerned about the funding and operation of the UAF Ag and Forestry Experiment Station and feel it should have high priority, along with a strong resolution recommending the UAF follow Land Grant College requirements regarding its program.

We have expressed our concern to the Governor's Loan Task Force that the Agricultural Revolving Loan Fund not fund general Division of Agriculture operations. That should be a general fund obligation.

The Northland Pioneer Grange No. 1 was established in 1934 in Palmer. It is an organization set up nationally to support agriculture and rural America. We presently have 48 members, of which many are longtime members of the community and three have been Grange members for over 50 years.

Thank you for asking for our input.

Sincerely,



Sigmund H. Rested, Master
Northland Pioneer Grange No. 1

RECEIVED
MAR 24 1997
Ans. SB109

To: Sen. Lyda Green and Alaskans who confuse ag. development as being farming.

From- Ray DeVilbiss family: Who bought fee-simple lands in a "free-market" after speculators have increased its price several times. Purchased 54 acres in 1962 with the help of my parents. I have farmed here consecutively since then and the land doesn't produce any more per acre today than in "62". Only the increase in population, development, and land prices have increased the taxes and controls.

Date- March 14, 1997

RE.-SB 109-The Great Republican Land disposal of "97"

I am apposed to this bill and after a year of listening and hearing motives behind this bill; I am even less inclined to any compromises now than I was last year. There has been too much compromise of the ag. rights in the last 20 years.

Allowing "ag. rights" only tracts to change their usage and be subdivided is surely short-sighted and suicidal to long-term agricultural productivity. What farmer could succeed by selling off his 'seed corn'? This is shooting yourself in the foot. Selling off the farm land isn't what makes a farm sustainable, or self-supporting. This is "devouring its primary reason for being". If these owners of "ag. rights" parcels can farm more prosperously by selling part of the farm; it seems obvious to me that they "bit off more than they can chew". Why not advise them to turn their large parcel of "ag. rights" back to the state and exchange it for a smaller, fee-simple one. There has been a large investment in the past in order to create these "ag. rights" tracts and it seems foolish to be destroying these ag. tracts when you could be selling other fee-simple land. If the population is demanding 40 acre mini-farms, ranchettes; there are lands available that D.N.R. could be selling for subdividing. These changes to ag. rights lands will double, triple, maybe quadruple the price of the ag. rights lands and that cannot be beneficial to those seeking to get into and to stay in farming; only beneficial to those getting "out of farming" and to developers and borough assessors.

I see nothing in this bill that deals with the projected value increase this new title and regulation change gives to this ag. land. Last year D.N.R. projected a possible 90% increase in land value and you called that "minimal and insignificant". I call it another one time welfare program to a select group of "ag. rights only" owners. Instead of dipping into the general fund and handing out money; this bill opens up the ag. land bank and hands out real-estate resources; and they are off-budget assets. Why should you be rewarding and perpetuating the welfare, entitlement mentality under the pretext of free-market.

I have been familiar with the sale of "ag. rights only" land from the beginning and I haven't seen or heard of anyone being drug in screaming and forced to buy this land. They voluntarily bought it in as much a free-market situation as when I bought my fee-simple land. If they now don't want those terms and conditions of contract then turn the parcel back and let it get re-bid. These

owners of the existing ag. rights land should be as "free to fail" as anyone else. Today's philosophy is that people are only entitled to succeed, prosper and achieve their "quality of life" and everyone else owes it to them; that's what the state and politics are for. I say no to this philosophy!

Haven't you in the legislature learned anything from the latest B.P. re-negotiated contract and the ensuing legal battle because of not re-bidding? When the "end justifies the means" for one group; every special interest group will want the law and regulations changed to their liking and benefit. At some point you have to just say no!

My input to the four areas you mention would be: 1. A new category of land ownership for this old ag. rights ownership is at least deceitful, if not criminal. Be honest and propose a fee-simple with no restrictions. The covenant is worthless in my opinion. Consider where farming would be without consumers. "If you eat you're involved in agriculture". Why wouldn't shopping malls and hotels be "incidental and not inconsistent with agriculture"?

2. There are plenty of possibilities through leasing and family farm trusts to allow children, relatives, friends to have land to farm. There is no need to be subdividing into separate smaller farms. They will only demand further subdividing in the future!

3. I think that civil enforcement will be as meaningless as present day subdivision covenants get enforced. The only incentive to pursue in civil action would be personal grudges. I haven't heard of anyone getting removed by Division of Ag. because of violating farm use regulation as they are now. Where is the problem?

4. I haven't seen any serious action by those who propose and support the bill to even admit that this change would increase the value of this land so any agreement on how to evaluate and compensate surely would be futile. The right way would be to re-bid the parcels in a free-market. Selling off some other land with the new title and making retroactive compensation that the present owners would pay the increase is also a possibility. I believe that the increases in prices of the ag. rights land sales in the last several years is already in anticipation of this bill.

You mention that there is "no intention to weaken ag. land." The effect of this legislation on ag. rights land will be controlled by the market place not by invisible intentions. Further more if the intentions were so honorable by those pressing for these changes; why isn't there the integrity and commitment to live up to the terms they bought into in the beginning or else the honor to get out and let someone else try!

The simplest thing is to say no to this bill S.B. 109.

An Active Farmer



Ray DeVilbiss
HC04, Box 9190
Palmer, Alaska 99645
745-4102

ALASKA STATE LEGISLATURE

Interim:

600 East Railroad Avenue
Wasilla, Alaska 99654
(907) 376-3370
(907) 376-3157 Fax



Session:

State Capitol
Juneau, Alaska 99801-1182
(907) 465-6600
Fax (907) 465-3805

SENATOR LYDA GREEN SENATE DISTRICT N

SPONSOR STATEMENT SB109, Rights to Agricultural Land

SB109 is similar to legislation passed last year as SB162. Last session the reform measure passed by huge majorities, was vetoed by the Governor and then the Governor's veto was overridden. However, the override vote, according to Judge Larry Weeks of Juneau, came a day late.

This session SB109 has been heard in Senate Finance and was amended in an effort to accommodate some concerns of the Department of Natural Resources. While there is not total agreement on the bill with the Administration, we are working together to promote more freedom for farmers, encourage the creation and preservation of the family farm, and to allow private financing for agricultural land while maintaining a restriction for agricultural use.

The key provisions are:

(1) The State of Alaska will be taken off the title to the land. This is absolutely essential if farmers with agricultural land are to have an opportunity to finance their operations with private financing.

(2) Numerous regulations are repealed that provided for micro-management of private farms by the state. It is our understanding that the Department of Natural Resources has no objection to repealing this regulations.

(3) An original agricultural parcel can now be subdivided into any number of parcels as long as they are no smaller than 40 acres. The subdivisions do not include the ability to build a home on the property. However, current law provides for a home site to go along with any subdivision of an original parcel as long as the parcel is at least 640 acres.

SB109 would allow an original parcel to be subdivided into no more than four parcels of at least 40 acres that could include home sites.

(4) For a subdivided parcel that includes a home site, is under 640 acres, and is conveyed to someone outside the owner's immediate family, there are two options. Option 1 provides an increased value fee of \$6,000 that is payable to the state. Option 2 allows the owner to do an appraisal and pay the difference in the increased value, if any, from agricultural land with a home site and agricultural land without a home site.

(5) Agricultural use would be protected by a perpetual covenant running with the land. Any citizen, municipality or the State could bring suit in civil court to enforce the covenant. However, a 90 day cooling off period is mandated by requiring that the complaint first be presented in writing to the local Soil and Water Conservation Board. This process should reduce or eliminate frivolous suits.

(6) A limited liability report is required to indemnify the State during the transfer of title.

(7) Existing requirements for a cadastral survey before the state can offer agricultural land are amended to allow the Commissioner of the Department of Natural Resources to waive that expensive process.

This legislation will remove unnecessary regulations, promote family farming, allow farmers the option of private financing, promote more offering of agricultural land, allow a limited number additional home sites on agricultural land and guarantee continued agricultural use of the land.

WRITTEN PUBLIC TESTIMONY ON SB-109

I WANT TO FIRST THANK THE COMMITTEE FOR HAVING THIS PUBLIC HEARING AND OPPORTUNITY FOR TESTIMONY ON THIS IMPORTANT BILL.

MY NAME IS JOHN CRAMER AND UNFORTUNATELY I AM UNABLE TO JOIN YOU IN PERSON TODAY MY OTHER DUTIES REQUIRE MY ATTENDANCE. I WAS THE DIRECTOR OF AGRICULTURE FOR THE STATE FROM 1991-1995 AND HAVE BEEN INVOLVED IN AGRICULTURE IN ALASKA SINCE 1981.

MANY OF YOU MAY REMEMBER THE STATES ATTEMPT TO STIMULATE GROWTH IN THE AGRICULTURE INDUSTRY DURING THE LATE 70'S AND THROUGH THE MID 80'S BY DISPOSING OF STATE LAND. THE LARGER DISPOSALS OF DELTA 1 AND 2, POINT MACKENZIE AND THE EIELSON PROJECT ALL TOOK PLACE DURING THIS TIME FRAME. THE TITLE TO THE STATE LAND WHICH WAS EITHER AUCTIONED OR ACQUIRED THROUGH LOTTERY WAS THOUGHT AT THAT TIME TO BE SUFFICIENT FOR THE NEEDS OF THE FARMERS AND LENDERS. TIME HAS PROVEN THAT THE MORE INVOLVED WITH THE GOVERNMENT AND ENTANGLED IN THE BEAURACRACY THE PRIVATE PERSON IS THE LESS LIKELY FOR THE FAMILY TO SURVIVE. THE PRIVATE BANKING INSTITUTIONS, REFUSED TO LEND TO FARMERS WHO PURCHASED THESE TYPES OF STATE LAND PRIMARILY BECAUSE OF THE TITLE. THEREBY FORCING THE BORROWERS TO COME BACK TO THE GOVERNMENT FOR FINANCING.

THE FARMERS THEN WERE UNABLE TO REFINANCE THERE LAND SALE CONTRACTS, WHICH THE STATE HELD, WHEN THE MARKETS SOFTENED AND INTEREST RATES FELL BECAUSE LENDERS DID NOT FEEL THERE WAS ENOUGH SECURITY IN THE STATE TRANSFERED TITLE. CREATEING A GREATER DEPENDENCE ON THE STATE.

THE MAJORITY OF THE ALASKA AGRICULTURE PRODUCTS SOLD ARE PRODUCED ON FARMS WHICH ARE APPROXIMATELY 160 ACRES IN SIZE OR LESS. THAT DOES NOT MEAN THAT WE DO NOT NEED NOR WANT FARMS OF LARGER SIZE WE DO. WE ALSO SEE THE INDUSTRY SLOWLY DECREASEING IN NUMBERS PARTILY BECAUSE OF THE INITIAL START-UP COSTS AND THE UNAVAILABILITY OF AGRICULTURE LANDS. THIS BILL WOULD ALLOW THE FARMER OF THESE LARGER PARCELS THE OPPORTUNITY TO CARVE OUT A PORTION OF THEIR PROPERTY AND ALLOW THEIR CHILDREN TO LIVE ON THE FAMILY FARM IN A HOUSE OF THEIR OWN, IT ALLOWS THE FARMER TO RECEIVE A TITLE WHICH

PRIVATE LENDERS WILL RECOGNIZE AND FEEL SECURE ENOUGH TO BORROW MONEY ON, IT ALLOWS THE OPPORTUNITY FOR THIS RENEWABLE RESOURCE INDUSTRY TO EXPAND WITHOUT LOOKING TO THE GOVERNMENT FOR LAND DISPOSALS, IT ALLOWS US THE OPPORTUNITY TO RECOGNIZE THAT IN THE PAST WE MADE SOME MISTAKES AND WE ARE WILLING TO MAKE THE CHANGES NECESSARY TO HOPEFULLY CURE SOME OF THEM.

THE PEOPLE WHOM ARE NOT IN AGREEMENT WITH WHAT THIS BILL WILL DO FOR THE INDUSTRY AND THE STATE I FEAR ARE LIVING IN THE PAST. THEIR CLAIMS THAT THIS WILL WEAKEN THE AGRICULTURE COVENANT TITLE AND THEREFORE TAKE LAND OUT OF PRODUCTION IS NOT TRUE, IN FACT I BELIEVE WHAT YOU WILL SEE IN A VERY SHORT PERIOD OF TIME IS AN INCREASE IN THE NUMBER OF FARMS AND THE NUMBER OF ACRES IN ACTIVE PRODUCTION INSTEAD OF SITTING IDLE AND GROWING OVER WITH REGROWTH.

THERE IS OVERWHELMING SUPPORT IN THE AGRICULTURE COMMUNITY AND FROM THE STATE FARM BUREAU'S TO SEE THE PASSAGE OF THIS BILL. AS ELECTED OFFICIALS YOU HEAR FROM THE PEOPLE AND ONE OF THE MANDATES THAT CITIZENS ARE WANTING IS LESS GOVERNMENT INVOLVMENT IN THEIR LIVES. I WOULD LIKE TO STRONGLY URGE THE COMMITTEE TO SWIFTLY ACT ON APPROVAL OF THIS BILL AND PRAY THAT THE GOVERNOR WILL ALSO DO WHAT IS RIGHT FOR ONE OF OUR ENDANGERED RENEWABLE RESOURCE INDUSTRIES THE FARM FAMILY.

AGAIN I WISH TO THANK THE COMMITTEE FOR THEIR DIFFICULT AND TEDIOUS WORK AND APPLAUD THE ACTIONS YOU HAVE TAKEN TO DATE AND KNOW IN CONFIDENCE THAT YOU WILL DO WHAT IS RIGHT WITH REGARD TO SB-109.

Post-it* Fax Note	7671	Date	4/15	# of pages	2
To	HARISU BASKIN	From	JOHN		
Co./Dept		Co			
Phone #		Phone #			
Fax #	376-6180	Fax #			

SB

109

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT OF
SFC MAR 26 1997

DATE: 2/27/97

FURTHER:

DATE TURNED
IN TO OFFICE: 4-2-97

Finance Committee considered SENATE BILL NO. 109

AGRICULTURAL LAND

and recommends:

- be replaced with CS SB 109 (FIN)
- adopt previous CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical change
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Roll E. Allen</i>	✓	<i>Donnell Duley</i>	✓		
<i>John Ferguson</i>	✓				
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
(SB) LAW	3/19		138.5
(SB) DNR - Support Svcs.	3/21		25.0
(SB) DNR - AGRICULTURE	3/21		28.5
(SB) DNR - LAND	3/21		131.3
FORTHCOMING FN'S for CSSB 109 (FW):			

- LAW
- DNR

fiscal note

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB109

RECORDED COPY OF
 MAR 26 1997

Revision Date: _____ Dept Affected: Natural Resources
 Title: "An Act relating to Land Used for Agricultural BRU: Management and Administration
 Purposes and to State Land Classified for Agricultural Purposes....." Component: Information Resource Management
 Sponsor: Green, Pearce
 Requestor: (S)FIN Component Serial No. 427

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	25.0	10.0	10.0	10.0	10.0	10.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	25.0	10.0	10.0	10.0	10.0	10.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY98	FY99	FY00	FY01	FY02	FY03
1002 Federal Receipts						
1003 GF Match						
1004 GF	25.0	10.0	10.0	10.0	10.0	10.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	25.0	10.0	10.0	10.0	10.0	10.0

Estimate of any current year (FY97) cost: \$ None

POSITIONS

POSITIONS	FY98	FY99	FY00	FY01	FY02	FY03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

SB 109 proposes to convey fee title to state land classified as agricultural land, subject to a covenant limiting the use to agricultural purposes. Former disposals of agricultural land are to be converted to fee title with the restrictive covenant. The current owners of agricultural rights only land may apply for fee title if they convey their interest in the land back to the state. These conveyances will require new transactions in the Land Administration System, and notation of the deeds back to the state and the new fee title patents to the Land Status GIS system (status plats).

Prepared by: Carol Carroll, Director *Carol Carroll* Phone: 465-4730
 Division: Support Services Date: 20-Mar-97
 Approved by Commissioner: *Carol Carroll Sr* Date: 3/21/97
 Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB109(FIN)

Revision Date: 3-Apr-97 Dept Affected: Natural Resources
 Title: "An Act relating to Land Used for Agricultural BRU: Management and Administration
 Purposes and to State Land Classified for Agricultural Purposes....." Component: Information Resource Management
 Sponsor: Green, Pearce
 Requestor: (S) RLS Component Serial No. 427

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	25.0	10.0	10.0	10.0	10.0	10.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	25.0	10.0	10.0	10.0	10.0	10.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	25.0	10.0	10.0	10.0	10.0	10.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	25.0	10.0	10.0	10.0	10.0	10.0

Estimate of any current year (FY97) cost: \$ None

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS:

(Attach a separate page if necessary)

SB 109 proposes to convey fee title to state land classified as agricultural land, subject to a covenant limiting the use to agricultural purposes. Former disposals of agricultural land are to be converted to fee title with the restrictive covenant. The current owners of agricultural rights only land may apply for fee title if they convey their interest in the land back to the state. These conveyances will require new transactions in the Land Administration System, and notation of the deeds back to the state and the new fee title patents to the Land Status GIS system (status plats).

Prepared by: Carol Carroll, Director *Carol Carroll* Phone: 465-4730
 Division: Support Services Date: 3-Apr-97
 Approved by Commissioner: *W. Green* Date: 4-3-97
 Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSSB109(FIN)

1997 LEGISLATIVE SESSION

Revision Date: 3-Apr-97 Dept Affected: Natural Resources
 Title: An Act relating to land used for agricultural BRU: Resource Development
purposes and to be classified for agricultural purposes.... Component: Land Development
 Sponsor: Senator Green
 Requestor: (S) RLS Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	75.0	148.6	21.1	26.4	31.7	37.0
TRAVEL	0.7	0.8	0.9	1.0	1.1	1.2
CONTRACTUAL	9.5	6.0	6.6	7.2	8.0	8.8
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	85.2	155.4	28.6	34.6	40.8	47.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (1005)	90.0	108.0	126.0	144.0	162.0	180.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	85.2	155.4	28.6	34.6	40.8	47.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	85.2	155.4	28.6	34.6	40.8	47.0

Estimate of any current year (FY97) cost: \$ None

POSITIONS

FULL-TIME	1.6	3.4	0.4	0.5	0.6	0.7
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

Conversion of existing patents: Assumes 230 existing agricultural patents are eligible and that conversion can be completed in first two years. Process begins by setting up data base, then giving public notice of conversion opportunity by mailout to patentee's last known address and by ads in five Alaska newspapers. This first-year phase would require 4 person-months' work by an NRO II and an Admin Clerk II, total \$14.4, plus contractual costs of \$4.1 for certified mail and publication twice in five newspapers. Next phase is accepting deeds from patentees and adjudicating title conflicts: 12 person-months in the first year (6 mos. each for NRO II and Admin Clerk II), \$43.2, plus 24 person-months in the second year (12 mos. each for NRO II and Admin Clerk II), \$86.4. Final phase, in second year, is issuing patent if title conflicts resolved: 12 person-months (6 each of NRO II and Admin Clerk II), \$43.2. Cost would be lower if Secs. 12-13 are amended as recommended in DNR's letter to Sen. Green dated March 19, 1997. **Total for conversion: \$61.7 FY98, \$129.6 FY99, grand total \$191.3.**

Prepared by: Jane Angvik, Director Phone: 269-8503
 Division: Land Date: 3-Apr-97
 Approved by Commissioner: [Signature] Date: 4-3-97
 Agency: Natural Resources

ANALYSIS SB109 (cont.)

Monitoring/enforcement of agricultural covenant: Analysis assumes that municipalities and private parties will aid in enforcing the covenant (enforcement is necessary so that the courts do not deem the covenant "waived or abandoned"), and that the state's share of the workload can drop to one-third of the total with parcels being monitored every three years rather than annually. Monitoring would be done mostly by surface transportation, with 10% by air charter for landowners whose improvements cannot be seen by road, at an average of one per day (including time needed for follow-up on apparent violations: document on film, research current owner at Recorder's Office, correspond with landowner and the local Soil and Water Conservation Subdistrict, refer unresolved violations to Dept. of Law for prosecution, and provide litigation support). Enforcement officer would be an NRO II. 75 farms out of a total of 230 existing patents would be monitored first year, with numbers increasing by 10% every year as new patents are issued (183 parcels are currently under sale contract) and as patentees subdivide their parcels. 0.33 of an NRO II full-time equivalent first year (\$17.4); then .36 (\$19.0), .4 (\$21.1), .5 (\$26.4), .6 (\$31.7), .7 (\$37.0). Travel costs assume seven days' per diem payments averaging \$75/day for multi-day inspection trips, plus seven days' meal allowance at \$21/day for day trips exceeding 10 hours, for first-year costs of \$0.7, increasing annually. Travel-related contractual: Each air charter is estimated at 2 hrs. @ \$225/hr.; eight charters in first year for a total of \$3.6, increasing to \$4.0; \$4.4; \$4.8; \$5.3, \$5.8 by last year. 67 inspections by road require one 4WD car, four months in first year, at \$447.00 rental per vehicle-month or \$1.8; then \$2.0; \$2.2; \$2.4; \$2.7; \$3.0. **Total for monitoring: \$23.5 first year, increasing annually.**

Change in revenues as a result of conversion: Analysis assumes that five owners will each subdivide their tracts into four parcels the first year, creating 15 additional parcels that need to purchase the right to a new dwelling site at \$6,000 each (count is 15 instead of 20 because each original parcel included a dwelling right). New subdivisions are assumed to increase by one owner per year, drawing from the pool of 358 agricultural parcels that have already been patented or are currently under contract that will lead to patent. (Agricultural homesteads are not included in this count because they already include the right of subdivision into 40-acre parcels that all have a dwelling site.) **Total revenue change +90.0 first year, increasing annually.**

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

REPORTED OUT OF
SFC MAR 26 1997

BILL NO. SB109

Revision Date: _____ Dept Affected: Natural Resources
 Title: An Act relating to land used for agricultural purposes BRU: Resource Development
and to state lan classified for agricultural purposes.... Component: Land Development
 Sponsor: GREEN
 Requestor: (S)FIN Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	110.4	187.7	63.4	69.7	79.2	84.5
TRAVEL	1.9	2.1	2.3	2.5	2.8	3.1
CONTRACTUAL	19.0	16.3	18.0	19.6	21.9	23.9
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRAFFITS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	131.3	206.1	83.7	91.8	103.9	111.5

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (1005)	(3,200.0)	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	131.3	206.1	83.7	91.8	103.9	111.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	131.3	206.1	83.7	91.8	103.9	111.5

Estimate of any current year (FY97) cost: \$ None

POSITIONS

FULL-TIME	2.3	4.1	1.2	1.3	1.5	1.6
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

Conversion of existing patents: Assumes 230 existing ag patents are eligible and that conversion can be completed in first two years. Process begins by setting up data base, then giving public notice of conversion opportunity by mailout to last known address and by ads in five Alaska newspapers. This first-year phase would require 4 person-months' work by an NRO II and an Admin Clerk II, total \$14.4, plus contractual costs of \$4.1 for certified mail and publication twice in five newspapers. Next phase is accepting deeds from patentees and adjudicating title conflicts: 12 person-months in the first year (6 mos. each for NRO II and Admin Clerk II), \$43.2, plus 24 person-months in the second year (12 mos. each for NRO II and Admin Clerk II), \$86.4. Final phase in second year, is issuing patent if title conflicts resolved: 12 person-months (6 each of NRO II and Admin Clerk II), \$43.2. Cost would be lower if Secs. 12-13 are amended as recommended in DNR's letter to Sen. Green dated March 19, 1997. **Total for conversion: \$61.7 FY98, \$129.6 FY99, grand total \$191.3.**

Prepared by: Jane Angvik *[Signature]* Phone: 269-8503
 Division: Land Date: 20-Mar-97
 Approved by Commissioner: *[Signature]* Date: 3/21/97
 Agency: Natural Resources

ANALYSIS (cont.)

Monitoring/enforcement of agricultural covenant: Analysis assumes that only the state can enforce the covenant and that annual monitoring of each parcel is needed so that the courts do not deem the covenant "waived or abandoned." (These figures would be lower if DNR's recommendations to the sponsor in its letter dated March 19, 1997 are accepted.) Monitoring would be done mostly by surface transportation, with 10% by air charter for landowners who are uncooperative and whose improvements cannot be seen by road, at average of one per day (including time needed for follow-up on apparent violations: document on film, research current owner at Recorder's Office, correspond with landowner, refer unresolved violations to Dept. of Law for prosecution, and provide litigation support). Enforcement officer would be an NRO II. 230 farms would be monitored first year, with numbers increasing by 10% every year as new patents are issued (183 parcels are currently under contract) and as patentees subdivide their parcels. 1.0 full-time equivalent first year @ \$52.8; then 1.1 (\$58.1), 1.2 (\$63.4), 1.3 (\$69.7), 1.5 (\$79.2), 1.6 (\$84.5). Travel costs assume 20 days' per diem payments averaging \$75/day for multi-day inspection trips, plus 20 days' meal allowance at \$21/day for day trips exceeding 10 hours, for first-year costs of \$1.9, increasing annually. Each air charter is estimated at 2 hrs. @ \$225/hr.; 23 in first year for a total of \$10.4, increasing to \$11.4; \$12.6; \$13.8, \$15.2, \$16.7 by last year. 207 inspections by road require two 4WD cars, five months each in first year, at \$447.00 rental per vehicle-month or \$4.5; then \$4.9; \$5.4; \$5.8; \$6.7; \$7.2. **Total for monitoring: \$69.6 first year, increasing annually.**

Change in revenues as a result of conversion: The sales price of parcels that have already been patented or are currently under contract was based on the original rights conveyed. Their fair market value rises if additional rights are conveyed, particularly the right to subdivide into four residence sites instead of one. 358 parcels were originally or are presently being conveyed on a one-homesite-per-parcel basis (agricultural homesteads are not included in these totals, as they have always allowed subdivision into four residence sites if the original parcel was a full 160 acres). Change in value would vary by region because of differing real estate values. The figures include "raw" value only, not the "retail" cost, because the latter includes the subdivider's costs of additional survey, platting, amenities such as roads, and marketing. For Delta parcels, the raw value of each additional residence site is zero to \$4,000 (local real estate values are depressed due to military base closure); Nenana-North Pole, \$1,000 to \$5,000; Matanuska Valley and Kenai Peninsula, \$2,000 to \$6,000. An unweighted average of \$3,000 is used for this estimate: 358 parcels times three extra residence sites per parcel times \$3,000 for a total of \$3.2 million. Revenue change is attributed to first year only, though it would actually be spread over a longer period as new patents are issued. Analysis assumes this value is lost to the state, thus a negative impact on revenues. If Secs. 11-12 are changed as recommended in DNR's letter to the sponsor dated March 19, 1997, revenue would instead be gained by the state. **Total revenue change (-\$3,200.0) first year only.**

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 109 (FIN)

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to land used for agricultural BRU: Civil Division
purposes . . . annulling certain program regulations . . . Component: General Legal Services
 Sponsor: Senator Green
 Requester: Senate Finance Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	107.5	107.5	107.5	107.5	107.5	107.5
TRAVEL	2.9	2.9	2.9	2.9	2.9	2.9
CONTRACTUAL	19.5	19.5	19.5	19.5	19.5	19.5
SUPPLIES	2.1	2.1	2.1	2.1	2.1	2.1
EQUIPMENT	6.5	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	138.5	132.0	132.0	132.0	132.0	132.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	138.5	132.0	132.0	132.0	132.0	132.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	138.5	132.0	132.0	132.0	132.0	132.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

CSSB 109 (FIN) requires the Department of Natural Resources to make conveyances of land used for agricultural purposes.

The bill would increase the burden on the state to enforce covenants requiring that grantees under CSSB 109 (FIN) use conveyed parcels only for agricultural purposes. Under existing law, the state conveys only agricultural rights in land, while retaining the underlying fee title, subject to a reversionary interest triggered if the grantee uses the land for non-agricultural purposes. The state can enforce its rights through an administrative proceeding to terminate the grantee's rights, with the grantee having the right to judicial review.

CSSB 109 (FIN) would require the state bring a civil action in state court to enforce the agriculture-only covenants. Under the bill, the state would no longer retain a reversionary interest in the land, and its remedies would be restricted to damages or injunctive relief for specific performance. Because the state would have significantly less leverage in terms of its remedies, the potential for litigation would increase. In addition,

Prepared by: Joan M. Kasson
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-5370
 Date: 4/3/97
 Date: 4/3/97

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ANALYSIS CONTINUATION:

because the courts have found restrictive covenants waived for non-enforcement, the state would be under pressure to strictly monitor parcels for compliance with the covenants and bring timely legal actions, rather than risk waiving our rights.

The Division of Agriculture estimates that there are currently 475 agricultural-use parcels, of which 250 are in the Kenai Peninsula and Mat-Su Boroughs, and in the Fairbanks area. The parcels average 215 acres in size. CSSB 109 (FIN) permits subdividing the parcels into not more than four parcels of not less than 40 acres each. This could triple the number of parcels that should be monitored for covenant violations. In addition, the legislation proposes to make the terms for acquiring a parcel more attractive than current law. This could also have the effect of increasing the number of agricultural-use parcels.

The Finance Committee Substitute requires payment to the state for the non-agricultural value of a parcel as a prerequisite to subdivision and sale. The owner is exempted from this requirement, however, if the subdivided parcel is conveyed to an immediate family member. Therefore, parcels will need to be monitored to ensure that the state receives any payments due. The committee substitute also creates a private cause of action to enforce the agricultural use covenants. This may arguably reduce the potential for future enforcement actions brought directly by the state, but the state will still be required to monitor any private or municipal enforcement actions brought under the proposed statute.

The department does not anticipate the changes made to SB 109 by the Senate Finance Committee will materially change the anticipated workload and estimates the need for one full-time equivalent attorney position to handle the increased workload that would result. The full-time equivalent cost estimate is based on the department's standard attorney cost schedule (\$127,000) and includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Case specific costs and one-time equipment purchases are not included in the rate, and so are added separately (direct case costs, \$5,000; one-time equipment purchases, \$6,500).

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

REPORTED OUT OF
SFC MAR 25 1997

BILL NO. SB 109 |

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to land used for agricultural
purposes . . . annulling certain program regulations . . . BRU: Civil Division
 Sponsor: Senator Green Component: General Legal Services
 Requester: Senate Finance COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	107.5	107.5	107.5	107.5	107.5	107.5
TRAVEL	2.9	2.9	2.9	2.9	2.9	2.9
CONTRACTUAL	19.5	19.5	19.5	19.5	19.5	19.5
SUPPLIES	2.1	2.1	2.1	2.1	2.1	2.1
EQUIPMENT	6.5	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	138.5	132.0	132.0	132.0	132.0	132.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF	138.5	132.0	132.0	132.0	132.0	132.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	138.5	132.0	132.0	132.0	132.0	132.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SB 109 requires the Department of Natural Resources to make conveyances of land used for agricultural purposes.

The bill would increase the burden on the state to enforce covenants requiring that grantees under SB 109 use conveyed parcels only for agricultural purposes. Under existing law, the state conveys only agricultural rights in land, while retaining the underlying fee title, subject to a reversionary interest triggered if the grantee uses the land for non-agricultural purposes. The state can enforce its rights through an administrative proceeding to terminate the grantee's rights, with the grantee having the right to judicial review.

SB 109 would require the state bring a civil action in state court to enforce the agriculture-only covenants. Under the bill, the state would no longer retain a reversionary interest in the land, and its remedies would be restricted to damages or injunctive relief for specific performance. Because the state would have significantly less leverage in terms of its remedies, the potential for litigation would increase. In addition, because the courts

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 3/19/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 3/19/97
 Agency: Department of Law

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ANALYSIS CONTINUATION:

have found restrictive covenants waived for non-enforcement, the state would be under pressure to strictly monitor parcels for compliance with the covenants and bring timely legal actions, rather than risk waiving our rights.

The Division of Agriculture estimates that there are currently 475 agricultural-use parcels, of which 250 are in the Kenai Peninsula and Mat-Su Boroughs, and in the Fairbanks area. The parcels average 215 acres in size. SB 109 permits subdividing the parcels into not more than four parcels of not less than 40 acres each. This could triple the number of parcels that should be monitored for covenant violations. In addition, the legislation proposes to make the terms for acquiring a parcel more attractive than current law. This could also have the effect of increasing the number of agricultural-use parcels.

The department anticipates needing one full-time equivalent attorney position to handle the increased workload that would result for SB 109. The full-time equivalent cost estimate is based on the department's standard attorney cost schedule (\$127,000) and includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Case specific costs and one-time equipment purchases are not included in the rate, and so are added separately (direct case costs, \$5,000; one-time equipment purchases, \$6,500).

STATE FINANCE
COMMITTEE

Amendment Number: 5

Bill Number: SB 109

Sponsor: _____ Date: 3-21-97

Logged In By: pg

0-LS0690.A.3

Chenoweth

3/21/97

AMENDMENT

OFFERED IN THE SENATE

TO: SB 109

1 Page 1, lines 4 - 5:

2 Delete "are inconsistent with the amendments made by this Act"

3 Insert "relate to agricultural land and agricultural homesteads"

4 Page 9, line 2, following "annulled:"

5 Insert "11 AAC 67.149(b), 11 AAC 67.154, 11 AAC 67.155,"

SENATE FINANCE
COMMITTEE

0-LS0690A.5
Chenoweth
3/21/97

Amendment Number: 4

Bill Number: SB 109

Sponsor: _____ Date: 3-21-97

~~A MEMORANDUM~~ DV
10

OFFERED IN THE SENATE

TO: SB 109

W/d #4

Green

- 1 Page 1, line 8:
- 2 Delete "sec. 9"
- 3 Insert "sec. 8"

- 4 Page 1, line 11, through page 2, line 29:
- 5 Delete all material.

- 6 Renumber the following bill sections accordingly.

- 7 Page 4, line 24:
- 8 Delete "described by aliquot parts"

- 9 Page 7, line 27:
- 10 Delete "sec. 9"
- 11 Insert "sec. 8"

- 12 Page 7, line 29:
- 13 Delete "sec. 9"
- 14 Insert "sec. 8"

- 15 Page 8, line 5:
- 16 Delete "secs. 9 and 11"
- 17 Insert "secs. 8 and 10"

- 18 Page 8, line 16:

1 Delete "sec. 9"

2 Insert "sec. 8"

3 Page 8, line 17:

4 Delete "sec. 10"

5 Insert "sec. 9"

6 Page 8, line 24:

7 Delete "secs. 9 - 11"

8 Insert "secs. 8 - 10"

SENATE FINANCE
COMMITTEE

Amendment Number: 3

Bill Number: SB 109

Sponsor: _____ Date: 3-21-97

Logged In By: Dy

0-LS0690A.4

Chenoweth

3/21/97

AMENDMENT

OFFERED IN THE SENATE

TO: SB 109

- 1 Page 3, line 7:
- 2 Delete "may"
- 3 Insert "[MAY]"

- 4 Page 3, line 8, following "(1)":
- 5 Insert "may"

- 6 Page 3, line 14, following "(2)":
- 7 Insert "may"

- 8 Page 3, line 16, following "(3)":
- 9 Insert "may"

- 10 Page 3, line 17, following "(4)":
- 11 Insert "may"

- 12 Page 3, line 19, following "(5)":
- 13 Insert "may"

- 14 Page 3, line 24, following "(6)":
- 15 Insert "may"

- 16 Page 3, line 29, through page 4, line 2:
- 17 Delete
- 18 "(7) waive, postpone, or otherwise modify the development

1 requirements of a contract for the sale of agricultural land if

2 (A) the land is inaccessible by road; or [AND]

3 (B) transportation, marketing, and development costs render the
4 required development uneconomic;"

5 Insert new material to read:

6 "(7) with reference to [WAIVE, POSTPONE, OR OTHERWISE
7 MODIFY] the development requirements of a contract for the sale of agricultural land,
8 [IF]

9 (A) shall waive, postpone, or otherwise modify the
10 requirements if the estimated cost of construction of a year-round road
11 access exceeds 50 percent of the assessed value of the parcel that is the
12 subject of the land sale contract; or [THE LAND IS INACCESSIBLE BY
13 ROAD; AND]

14 (B) may waive, postpone, or otherwise modify the
15 requirements if transportation, marketing, and development costs render the
16 required development uneconomic;"

17 Page 4, line 3, following "(8)":

18 Insert "may"

SENATE FINANCE
COMMITTEE

Amendment Number: 2

Bill Number: SB 109

Sponsor: _____ Date: 3-21-97

Logged In By: PJ

0-LS0690A.1

Chenoweth

3/21/97

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 109

1 Page 6, lines 2 - 7:

2 Delete all material and insert:

3 "(1) a perpetual covenant for the benefit of all Alaska residents and
4 running with the land that restricts or limits the use of the land for agricultural
5 purposes; and

6 (2) a perpetual covenant for the benefit of all Alaska residents and
7 running with the land permitting the owner of the land to subdivide and convey the
8 land in four parcels of not less than 40 acres each."

9 Page 7, lines 3 - 25:

10 Delete all material and insert:

11 "(3) the commissioner may not limit the right of a landowner to

12 (A) construct housing and improvements related to agricultural
13 use on the original parcel and on additional subdivided parcels authorized
14 under (a)(2) of this section;

15 (B) use the land and improvements for purposes that are
16 incidental to and not inconsistent with the primary use of the land for
17 agricultural purposes; and

18 (C) subdivide and convey the land if the resulting parcels are
19 not in violation of the minimum parcel size set out in (a)(2) of this section.

20 (e) A perpetual covenant described in (a) of this section may be enforced only
21 by a civil action brought by the state, a municipality, or a resident. If a municipality
22 or a resident brings an action under this subsection, the municipality or resident shall
23 also serve a copy of the summons and complaint on the state in the manner prescribed
24 by the Alaska Rules of Civil Procedure for service on the state. An action may be

- 1 maintained under this subsection only if
- 2 (1) commenced within 10 years after the cause of action has accrued;
- 3 and
- 4 (2) the plaintiff has first notified in writing the appropriate soil and
- 5 water conservation district under AS 41.10 of the violation of the covenant at least 90
- 6 days before the civil action is filed.
- 7 (f) In this section, "agricultural purposes" means
- 8 (1) the production, for commercial or personal use, of useful plants
- 9 and animals;
- 10 (2) the construction of housing or improvements reasonably required
- 11 for or related to agricultural use;
- 12 (3) the use of gravel reasonably required or related to agricultural
- 13 production on the parcel conveyed; and
- 14 (4) removal and disposition of timber in order to bring agricultural
- 15 land into use."

AMENDMENT

OFFERED IN THE SENATE
TO: SB 109

1 Page 8, line 6, following "only if":

2 Insert new material to read:

3 "(1) subject to (d) of this section, the owner of the rights tenders payment to
4 the department for the fair market value of the interest in the land exclusive of the value of
5 the rights for agricultural purposes; for purposes of this paragraph,

6 (A) for a parcel of land that does not exceed 640 acres, fair market
7 value of the interest in the land exclusive of the value of the rights for agricultural
8 purposes may not exceed the lesser of \$150 per acre or \$6,000 for the parcel;

9 (B) except for land described in (A) of this paragraph, fair market
10 value of the interest in land exclusive of the value of the rights for agricultural
11 purposes shall be determined by an appraisal by an appraiser under contract to the
12 owner of the rights for agricultural purposes in the land; the appraisal must be based
13 upon the value of the land at the time of the original state conveyance of the
14 agricultural rights; and

15 (2)"

16 Page 8, following line 14:

17 Insert a new subsection to read:

18 "(d) Notwithstanding (b)(1) of this section, the owner of the rights to agricultural land
19 who applies to the Department of Natural Resources is not required to pay an amount due
20 under (b)(1)(A) or (B) until the land for which application was made is conveyed by the
21 owner to a person not a member of the person's immediate family. For purposes of this
22 subsection, "immediate family" means

23 (1) the spouse or spousal equivalent of the person; or

24 (2) a parent, child, including a stepchild and an adoptive child, or sibling of

1 the person if the parent, child, or sibling resides with the person, is financially dependent on
2 the person, or shares a substantial financial interest with the person."

3 Page 8, line 25, following "only if":

4 Insert new material to read:

5 "(1) subject to (d) of this section, the owner of the rights tenders payment to
6 the department for the fair market value of the interest in the land exclusive of the value of
7 the rights for agricultural purposes; for purposes of this paragraph,

8 (A) for a parcel of land that does not exceed 640 acres, fair market
9 value of the interest in the land exclusive of the value of the rights for agricultural
10 purposes may not exceed the lesser of \$150 per acre or \$6,000 for the parcel;

11 (B) except for land described in (A) of this paragraph, fair market
12 value of the interest in land exclusive of the value of the rights for agricultural
13 purposes shall be determined by an appraisal by an appraiser under contract to the
14 owner of the rights for agricultural purposes in the land; the appraisal must be based
15 upon the value of the land at the time of the original state conveyance of the
16 agricultural rights; and

17 (2)"

18 Page 9, following line 1:

19 Insert a new subsection to read:

20 "(d) Notwithstanding (b)(1) of this section, the owner of the rights to agricultural land
21 who applies to the Department of Natural Resources is not required to pay an amount due
22 under (b)(1)(A) or (B) until the land for which application was made is conveyed by the
23 owner to a person not a member of the person's immediate family. For purposes of this
24 subsection, "immediate family" means

25 (1) the spouse or spousal equivalent of the person; or

26 (2) a parent, child, including a stepchild and an adoptive child, or sibling of
27 the person if the parent, child, or sibling resides with the person, is financially dependent on
28 the person, or shares a substantial financial interest with the person."

Farmland protection: Plan sparks hot debate

Western Washington officials set to vote on proposed tax to fund farm conservation plan

By COOKSON BEECHER
Capital Press Staff Writer

MOUNT VERNON, Wash. — Skagit County is wrestling with the challenge of protecting its farmland from development, and almost everyone here has an opinion about it.

After a lively packed-house public hearing this week about a proposed ordinance designed to preserve farmland, the Skagit County Commissioners decided to vote on the proposal next week.

The vote will take place during a public meeting scheduled from 1:30 to 2 p.m., Monday, Dec. 2, in the commissioners' office in the Administration Building in Mount Vernon, Wash.

If the ordinance is adopted, citizens would pay 6 1/4 cents per thousand dollars of assessed value each year. Using money collected under the ordinance, the county would create a Conservation Futures Fund to purchase development rights on farmland.

The goal is to allow farmers to realize the difference in value between their property as agricultural land and developed land, yet continue to own and farm it. For farmers, it's a voluntary program. And since there's only so much money available, a committee would be set up to prioritize the farmland to be preserved.

This is a hot issue, as the public hearing, which drew about 200 citizens, quickly proved. The 41 citizens who went to the podium made impassioned pleas either for or against the proposed ordinance, with audience members who agreed with them clapping loudly after their comments.

Many of those pleading their case before the commissioners were farmers — some of them saying they didn't need to be taxed to be saved from themselves and emphasizing that it's the farmer, not the farmland, that needs to be protected.

Other farmers, however, warned that the county's agricultural land base needs to be preserved in order for farming to continue in the valley.

"What bothers me about this program is that it's an involuntary tax, but it's voluntary participation — but a very limited voluntary participation," said Bow area farmer Annie Lohman.

Emphasizing the importance of creating the right economic climate for ag-related industries, she told the audience how they could do this: "If you want to preserve the farmer, preserve the economics of farming, encourage processors, encourage another seed company to come to the area. Try to diversify the agricultural base, but keep it agriculture. Don't make us your pet farmers, because we can't farm if we're just a pet."

Ken Christianson of Alf Christianson Seed Co.

(See DEBATE on Page 2)

FOR INFORMATION

Those who would like more information about the proposed ordinance are encouraged to call the Skagit County Commissioners' office at (360) 333-1111. Please refer to Proposition 1 to Preserve Farmland at (360) 486-2584.

Debate

(Continued from Page 1)

agreed that buying development rights on farmland is not the one and only answer. But he emphasized how important farmland in Skagit County is to his company.

"We depend on local growers in Western Washington to produce our vegetable seed crop, which we market worldwide," he said.

"I favor the tax. We're concerned about encroachment in the ag areas, and for the farmers who choose to avail themselves of this (the purchase of development rights), we'd like to see it available. We hope this will be one tool of management that growers in the area can employ to give them options."

Wilbur Anderson, manager of the Washington State University Research and Extension Unit in Mount Vernon, supplied some fig-

ures to show the critical importance of working toward a solution.

In 1940, the farmland base in Skagit County was nearly 153,000 acres, although some of it was not prime agricultural land. By the 1990s, the farmed acreage had dropped to about 90,000 acres.

"There has been a straight-line loss of farmland acreage since the 1960s," he said referring to the growth of Burlington and Mount Vernon, two of the largest cities in the county.

"There is no indication the loss is slowing down," Anderson said. "Additional strategies must be implemented. We need to put another tool in the county's tool box of conservation futures that will help encourage the protection of our farmland base."

Use of Hawaii ag land under fire

HILO, Hawaii (AP) — Plans for a members-only, 50-unit lodge in North Kona is being challenged by two West Hawaii women who contend it's an urban project being forced onto an agricultural area.

Agricultural consultant Sally Rice and Debralee Kailiwai-Ray said allowing the lodge at Puuanahulu would set a precedent that could open the door to other commercial development on agricultural land.

They also said the developer is trying to subvert the process by going through the county Planning Commission for approval rather than the state Land Use Com-

mission.

But the attorney for developer Big Island Country Club and Estates, Sandra Pechter Schutte, said that won't be the case because the law requires the county to evaluate every application separately.

Work has already begun on a 27-hole golf course and clubhouse at the site, which is 15 miles north of Kailua-Kona.

Rice and Kailiwai-Ray have filed a court-like contested case against the lodge with the county Planning Commission and have asked the state Land Use Commission for a ruling.

Members of FARM believe there health impact of farm animals.

buy land rights

By DON RICHARDSON
Capital Press Staff Writer

OLYMPIA — Thurston County commissioners decided this week they will offer to buy development rights from farmers in the Nisqually Valley in an effort to save the scenic valley from subdividers.

The valley, one of the few remaining large tracts of level undeveloped land in the county, is located on Interstate 5 about 15 miles east of Olympia. It is bordered on the north by the Nisqually Wildlife Refuge.

Owners of more than 900 acres in the valley, if they choose to take part in the program, could still live on the land and continue to farm it or sell it to another farmer. But if they sell their development rights the county would take an irrevocable conservation easement on the land and it could only be used for agriculture from then on.

The land will be appraised and farmers will be offered the difference between the land's value for farming and what it would bring if sold for development.

If every owner participated, the program would cost about \$2.5 million, said county planner Steve Morrison.

Money for development right purchases would come from a conservation futures fund that levies 6 1/4 cents per \$1,000 valuation on all property in the county.

Commissioners said Monday that a previous commission promised property owners in the valley a development right purchase program would be offered if they would agree to restrictions on zoning in the area.

Fred Schilter, whose father purchased about 100 acres of land in the valley in 1940, said he and his son, Jeff, want to see how much they would get for the land before they decide whether to participate. The Schilters operate a 170-cow dairy on their Nisqually area property.

Cap. - Press - May 24-96

Borders, homes devour farmland

SALEM (AP) — Cities' growth boundaries creep outward, ordinary residences sprout on agricultural land. The threat of encroaching development is the bane of farmers, some say.

"To me if it's high value farmland, it's sacred," said **POUL OLSON**, a farmer worried about development even in Jefferson County's open spaces in north-central Oregon.

"I've lived here since 1950, and it's frightening, is what it is."

Olson raises grass seed, garlic and other crops north of Medford. He is in a group of farmers from around the state who have joined forces with 1000 Friends of Oregon to recommend added protection of agricultural land.

1000 Friends was formed by the late Gov. Tom McCall and other backers of the state land-use planning law passed in 1973. Preserving prime farmland was a key aim of the law.

1000 Friends says the law has slowed, but not stopped, the crawl of urban development onto farmland.

Urban expansion was gobbling about 30,000 acres of agricultural land a year when the law passed.

By comparison, the city of Medford covers about 15,000 acres. The rate had slowed to about 10,000 acres a year by the early 1990s. Most of that expansion was onto land inside city urban growth boundaries.

Expansion of urban growth bor-

ders and rezoning is eating up about 3,000 acres of farmland annually outside of the cities.

"The way Oregon is growing, I think you can only expect to see more of that," said Kevin Kasowski, spokesman for 1000 Friends.

1000 Friends has created a farmer advisory committee to recommend land-use planning changes to the state Land Conservation and Development Commission.

The major proposals include banning urban growth boundary expansions onto land zoned for exclusive farm use, tighter restrictions against having non-farm dwellings on farmland and rules against carving land zoned exclusively for farming into smaller units.

Urban growth boundaries are supposed to be the edge of expansion of city-type densities. But they are moving too easily sometimes, Kasowski said.

Farmers also are worried about increasing numbers of non-farm homes put on agricultural lands, and non-farm uses of the lands, he said.

1000 Friends said loopholes are allowing almost 1,000 home sites a year to be approved in farm zones. Olson said the laws and regulations were not adequate.

In one case, he said, a landowner was denied permission to put a non-farm dwelling on farmland. The owner's renter then applied and authorities could not find any way in the law to reject the request.

Food prices sure to rise as farming becomes harder

The radio announcer the other day said: "Food inflation is continuing as a concern for consumers."

Well, it should be a concern, thank you.

And no wonder.

As an ever-more-urban society, we have spent the past 50 years taking fertile land near cities out of cultivation and planting houses on it. We have spent the last 25 years cross-fencing our remaining agricultural landscape with often-specious bureaucratic barbed wire. We have spent the last 15 years taking apart federal farm programs that in many ways assured a relatively inexpensive supply of food. We have spent the last 20 years being bombarded by the works of well-meaning but ill-informed activists who see modern farming as a plot to kill the population.

Throughout all this, though, farmers have persisted. They continue to feed and clothe us in spite of ourselves.

But the relentless attack on the farming way of life continues.

The result is bound to be not only higher food prices, but in our paying a greater share of our incomes for food than we do now.

Take Jay's cows, for example.

Jay is a friend of mine, the third generation of his family to be part of a wide-ranging farming concern with interests in three states. And, he's the second generation to run a 6,000-acre ranch. Jay's ranch is large by most standards, and his 600 Hereford and mixed brood cows are paid for. His ranch is in a high desert, which means cows have to walk a ways between blades of grass. But he has a few hundred acres of irrigated pasture, which yields feed through grazing and hay. He isn't hurting, at least not as much as some in these times of lousy beef prices.

But, he has a problem. The face



of that problem belongs to a woman nicknamed Goldie, but she isn't really the difficulty. She represents a much larger entity, which is something I'll call the urban point of view.

Goldie is a bright, well-educated and decorated environmental activist. She believes all cattle grazing in national forests should be banned. Her belief comes from damage she has seen when hiking in riparian areas — areas near streams, creeks, ponds and other natural waterways. Evidence tells her this damage has been done by cattle, and she is right.

The damage includes pollution, destruction of plant life, destruction of habitat for small animals.

She is an owner of the national forests, and like any well-meaning landholder she wants destructive tenants out. To her, cattle are destructive tenants.

A lot of people agree with her.

And that affects Jay.

Never mind that Jay's cattle never have been responsible for any of the damage Goldie has seen.

In fact, as near as anybody can tell, the owner of the miscreant cattle is a dentist in New York who has never seen his spread — which consists of federal-lands grazing rights and a small homestead adjacent to the forest. For the dentist, the spread is a tax dodge. He hires the work done.

True, Jay grazes cattle on national forest lands. He has a fair-sized leasehold. But unlike the dentist, he's on hand every day to make

sure his cattle stay where they're supposed to. He has fenced off the riparian areas on his leasehold. He had wells drilled, and he put in windmills, so cattle and wild animals can drink. He rotates grazing so vegetation isn't destroyed.

And he's happy to do all this, because it's good farming practice.

And yet, Goldie, who leads a group of vocal citizens who want the feds to be even more restrictive of grazing than they have been, wants to kick Jay off this leasehold, along with the dentist.

"Cattle have no business grazing in forests," she often is quoted as saying. "The forests should be preserved for the people."

Now, Jay will be able to adjust if he can't graze his animals on federal land. He'll cut his herd size, or buy more feed from outside sources.

Many others like Jay will adjust or they will go out of business.

At the very least, thousands of cattle simply won't be raised, or will be raised at greater cost.

And in the end, it's those who eat beef who will pay those higher costs.

That reality will be true along many links of the food chain.

Almost every area of agriculture's endeavor is under some sort of pressure from urban political interests to make changes.

As richly blessed as we are with agricultural resources, we've been able to absorb a lot of attacks by urbanites on farmers and the way farmers do business without appreciable increases in food costs.

But those days are fast fading. Food inflation? You haven't seen anything yet.

Chuck Doud is general manager of the Capital Press.

Seattle Times

5/19/96

Worried Oregon farmers organize

BY CHARLES E. BEGGS
Associated Press

SALEM, Ore. — Cities' growth boundaries creep outward, ordinary residences sprout on agricultural land. The threat of encroaching development is the bane of farmers, some say.

"To me if it's high-value farmland, it's sacred," said Ron Olson, a farmer worried about development even in Jefferson County's open spaces in north-central Oregon.

"I've lived here since 1950, and it's frightening, is what it is."

Olson raises grass seed, garlic and other crops north of Madras. He is in a group of farmers from around the state who have joined forces with 1000 Friends of Oregon to recommend added protection of agricultural land.

1000 Friends was formed by the late Gov. Tom McCall and other backers of the state land-use-planning law passed in 1973. Preserving prime farmland was a key aim of the law. The organization says the law has slowed, but not stopped, the crawl of urban development onto

farmland.

Urban expansion was gobbling 30,000 acres of agricultural land a year when the law passed.

By comparison, the city of Medford covers 15,000 acres.

The rate had slowed to 10,000 acres a year by the early 1990s. Most of that expansion was onto land inside city urban-growth boundaries.

Expansion of urban-growth borders and rezoning is eating up 3,000 acres of farmland annually outside of the cities.

"The way Oregon is growing, I

Problem; this is nationwide

to keep the developers at bay

think you can only expect to see more of that," said Kevin Kasowski, spokesman for 1000 Friends.

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The major proposals include banning urban-growth-boundary expansions onto land zoned for exclusive farm use, tighter restrictions against having nonfarm dwellings on farmland and rules against carving land zoned exclusively for farming into

smaller units.

Urban-growth boundaries are supposed to be the edge of expansion of city-type densities. But they are moving too easily sometimes, Kasowski said.

Farmers also are worried about increasing numbers of nonfarm homes on agricultural lands, and nonfarm uses of the lands, he said. 1000 Friends said loopholes are allowing almost 1,000 home sites a year to be approved in farm zones.

"We haven't planned rural areas at all," said Larry George, executive

director of Oregonians in Action, a property-right organization. "Out people are trying to build a house on a piece of land in a rural area, and we have massive restrictions in rural areas."

Local governments designated 97 percent of the state land for exclusive farm or forest use without refining the categories, he said.

George, who said his family had a long history of farming, said residential growth should be directed to less productive lands, probably easing some restrictions on them.

seed potatoes, which are used as seed to grow potatoes for food consumption.

Further, perpetuation of cultivar stocks in British Columbia, Canada, is being phased out, and Kerttula sees Alaska as a natural successor. The plant material center in Palmer already has 120 varieties there.

level with crops for such a small time each year.

"You've got to really hustle them," Kerttula said. "We haven't really broken into that market."

"I think our goals should be modest," added Kerttula, who noted at present Alaskan farmers meet 2 percent of the state's need for food. "I say, let's try for 5 percent by the year 2000."

Mat-Su Valley losing farm lands

By VICKI NAEGELE

Frontiersman; managing editor

Despite a successful state program to keep Valley land under agricultural production, Alaska's premier growing area is losing ground.

Between the 1987 and 1992 censuses, the Matanuska Valley lost one-quarter of its land in farms, according to statistics compiled by the Alaska Agricultural Statistic Service.

Legislation to preserve farmland came too late to make much of an impact in the Mat-Su Valley area, according to Jay Kerttula, director of the state's Division of Agriculture.

Since 1972, there has been a state law in effect that gives farmers a tax break.

Under the current version of the law, if 10 percent of a family's gross income comes from farming the borough places a maximum value on farm land of \$250 an acre, depending on the quality of the soils.

That could compare to a \$1,500-1,800 an acre assessment for a large parcel of non-agricultural land.

"That's a conservative price for agricultural land," commented Rita Loyer, senior appraiser for the borough.

This year, there are 11,534 acres within the borough enrolled in the program, resulting in \$263,540 in taxes being deferred — perhaps indefinitely.

Farmers say the program is important.

"For private ownership, the tax program has worked really well," said Jay Dearborn, who farms about 50 acres in the Valley.

"Our taxes were getting pretty high. We could see we could not go on that way."

Leonard Moffitt, who has been farming here since 1946, agreed. "It has really helped."

If the farmer converts the land to another use — like a subdivision — he must pay the tax difference back seven years, at 8-percent interest.

"So it's a carrot and a stick," Kerttula, a former state senator,

'Point MacKenzie was our hope and aspiration. We are fighting now to re-establish agriculture in the new lands districts in Delta and Point MacKenzie.'

— Jay Kerttula, director
Division of Agriculture

explained.

But the carrot and the stick come after the horse is out of the barn in the Valley, Kerttula said.

Even with the program in place, the rapidly growing Matanuska Valley lost 28 farms and 12,151 acres of farmland between the US Department of Commerce's agricultural 1987 and 1994 censuses.

Moffitt pointed to the failure of farms in the Point MacKenzie area. Dearborn, who is also president of the Alaska Seed Growers Association, said one cause is likely the retirement of farmers who have no one to take over the family business.

"That's a situation where we probably lose farmland," Dearborn said.

With more and more Valley acreage going under homes instead of under the plow, state agricultural officials are looking toward Point MacKenzie and Delta Junction as the future for

agriculture in Alaska.

"Point MacKenzie was our hope and aspiration," Kerttula said. "We're fighting now to re-establish agriculture in the new lands districts in Delta and Point MacKenzie."

In Delta this year, farmers are growing some 9,000 acres of barley, 2,000 acres of other grains, and 400-500 acres of potatoes.

"It looks like a little Kansas," said Kerttula, smiling.

In the new lands areas, 500,000 acres of these new lands cannot be converted to real estate because of state regulations. Legislation has made it so only the agricultural rights are conveyed to farmers, not actual property rights.

According to statistics from the Alaska Agriculture Statistic Service, in 1994 some 7,900 acres in the Matanuska Valley were harvested for hay.

The 9,900 acres of grass hay harvested in the Valley represented 48 percent of the hay grown in Alaska. The Tanana Valley grew 7,600 tons.

The second-highest number of acreage in the Matanuska Valley was devoted to silage production, at 700 acres. Potatoes were third, with 510 acres, followed by barley and oats for grain at 200 and 100 acres, respectively.

Also tallied were 50 acres of lettuce, 44 acres of carrots and 25 acres of cabbage.

Eighty-three percent of the potatoes grown in Alaska in 1994 were grown in the Matanuska Valley.

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➤ Paving Over a Farming Paradise

New planning laws are needed to curb Central Valley urbanization

California's Central Valley is at once the world's richest farm belt and one of America's fastest-growing new urban regions. Each year more than 20,000 acres of fertile ground are gobbled up by real estate development. From Bakersfield to Redding, suburbs are sprouting on land that once produced more milk, tomatoes, grapes, almonds, peaches, apricots, figs, pistachios and cantaloupes than any other part of the world. A recent report by Times staff writer Mark Arax points out the problems of this pattern: The time to change the state's urban planning laws has arrived.

Whether it takes place in Kern, Calaveras or Shasta counties, urban sprawl is no longer a local issue. Agriculture remains such a crucial part of California's economy that state government planners need to step in to slow housing growth that comes at the expense of orchards, vineyards and other agricultural production. Statute reform is needed to make it easier to preserve farmland and limit urbanization.

This task can be accomplished only through the combined efforts of the Legislature and the governor's office. Central Valley land speculators, city councils and county boards, in their eagerness for expansion, have paved over 12% of the valley's original cropland. If the trend

continues at the same pace, in half a lifetime the number of valley residents will triple to 16 million.

Unless the state makes a workable urban management plan, there will be more conversions for the entire nation which has spent billions transforming the valley from desert and marsh into an agricultural oasis that provides 25% of America's table food.

This urban development has a negative impact on city dwellers as well as farmers. New housing tracts and commercial enterprises cost much more in services (like sewers, streets, police and fire protection) than what they fetch in property and sales taxes. The environmental building has hurt the state's economy.

A bill out of the Legislature sponsored by Pete Wilson promises to curb the rampant urban sprawl. It is a good policy, but it is not a cure for all the state's resource and preservation problems. Unfortunately, the bill has little on the issue. It is time to act.

California as a whole should challenge itself to stabilize the Central Valley by the year 2010. To meet the test, our urban planners will have to provide the best information available on the trends and the consequences of this explosion in the heart of the state.

'Tis the Season to Fund Campaigns

Bill would curtail rock mining

Farm Bureau makes latest move to protect prime farmland

By ED MERRIMAN
Capital Press staff writer

SALEM — Oregon's largest farm organization plans to introduce legislation this month aimed at protecting prime farmland from urban growth boundary expansions and from gravel companies.

The Oregon Farm Bureau is proposing legislation to stop gravel companies from digging up some of the Willamette Valley's richest farmland to mine rocks used to make gravel for roads and other construction projects.

The bill would require the Oregon Department of Transportation to use gravel made from quarry rock, which comes from rock hillsides and other areas poorly suited for farming, instead of using alluvial rock, typically found under river bottomland.

Don Schellenberg, farm bureau lobbyist, said the legislation targets the Oregon Department of Transportation, which is the state's biggest user of gravel made from alluvial rock.

"We've tried every other approach to keep these gravel companies from digging up prime bot-

tomland farms to get their rock and nothing we've tried in the past has worked," Schellenberg said.

He worked with Department of Land Conservation and Development for more than a year to tighten land use rules aimed at limiting conversion of prime farmland to gravel pits, but rules adopted last fall left a loophole big enough to drive a dump truck through.

That rule simply says that exclusive farm land can't be converted to a gravel pit unless the property contains a "significant" amount of alluvial rock.

The trouble is, there's all kinds of such rock located under prime Willamette Valley farmland, Schellenberg said.

One reason that approach hasn't been effective is because Oregon's statewide land use planning Goal 5 specifically protects gravel mines as an allowed land use, even in exclusive farm use zones.

Schellenberg said it's ironic that a farmer can't get a permit to build a dwelling on his own farm because of DLCD restrictions on home building in EFU zones, but a gravel pit is perfectly fine.

The farm bureau's proposed legislation says that when selecting materials for construction, or

maintenance of state highways, "the department shall not select alluvial rock for use as a fill or any other application where dirt or crushed quarry rock would approximate the same result" regardless of the cost difference between the products.

In addition, the proposal directs the Transportation Department when contracting to purchase rock to provide incentives that will encourage providers of rock to obtain their supply from locations that do not disturb prime, unique, irrigated or non-irrigated Class I or Class II soil or irrigated Class III soils.

Schellenberg said the farm bureau also will propose legislation to eliminate land use rules requiring cities to identify a 20-year buildable inventory of land within their urban growth boundaries. The goal is to prevent urban growth boundary expansions from taking prime farmland out of production.

The legislation also stipulates that when cities appear to be running out of buildable land within their urban growth boundaries, the cities must find ways to increase housing densities on land within those boundaries, Schel-

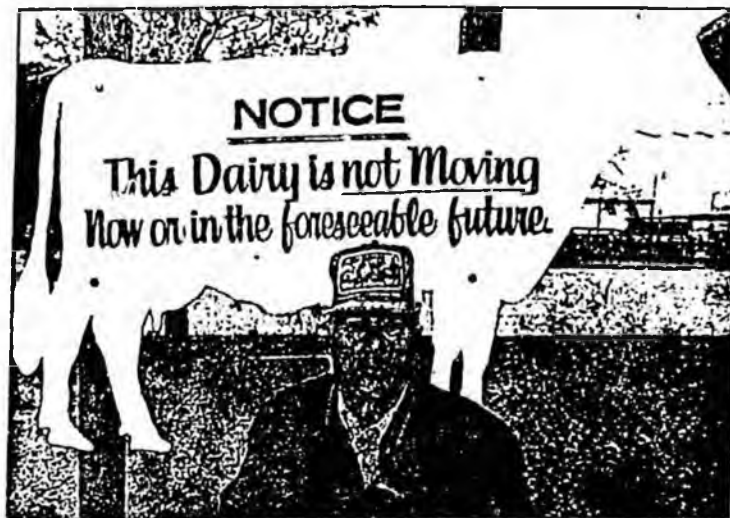
lenberg said.

It also limits expansion of urban growth boundaries to non-resource lands or marginal land poorly suited for agricultural production.

"We're not saying cities should never expand their urban growth boundaries, but if they do, stay off good land," Schellenberg said. "We ought to be directing our growth as much as possible to areas where they don't have the best farm-

The proposed legislation prohibits expansion of urban growth boundaries on high priority lands, including nonirrigated lands with Class I and Class II soils, irrigated land with Class I, II, III or IIII soils, or on land that if irrigated is capable of producing at least the average volume of crops of other irrigated farmland in the area.

There also are rules to protect Eastern Oregon wheat land from development. The rules stipulate that urban growth boundaries may not be expanded on soils capable of producing at least the average non-irrigated wheat yield for the county or on tracts that the county determines to be necessary to permit farm practices to be undertaken on adjacent or nearby lands, Schellenberg said.



Mark Henle/The Arizona Republic

Richard Dugan, a former mayor of Chandler, gives fair warning to anyone considering the purchase of a home in the nearby subdivision.

Dairy farmer refuses to yield to subdivisions

By Kathleen Inley
The Arizona Republic

On one side of the road, cows are placidly munching hay. Across the way, construction workers are furiously hoisting beams, pounding nails and hanging drywall as house after house goes up on what used to be fields.

Dairy meets development — it happens time after time, and the farmer pulls up stakes.

Not Richard Dugan.

Subdivisions are growing closer every day to his dairy

An acre an hour
The price of sprawl

on Dobson Road in Chandler. The Motorola plant lies within sight of his herd.

But a sign warns anyone who might become his neighbor that this is a working farm: "Notice home buyers: Agricultural fragrance, insect pest and dust possible within 1 mile of dairy."

Dugan, 49, works his own 25-acre dairy and his retired father's 75-acre spread as one unit with 1,300 cows. His five brothers, who used to

— See DAIRY, page A6

Dairy farmer refuses to yield to subdivisions



Mark Henle/The Arizona Republic

Some of Richard Dugan's herd of 1,300 dairy cows go about their business with a subdivision looming in the background. The cows look harmless enough, but agents for the subdivision say they have killed some sales to potential home buyers. However, one neighbor points out that the dairy was there first.

— DAIRY, from page A1

have dairies on surrounding land, have all sold out and moved to Casa Grande or Maricopa. They all wanted to expand, and there just wasn't any room.

Why has Dugan stayed?

"The facility is still economically viable," he explained. And his 77-year-old father doesn't want to sell out.

Back in the 1980s, Chandler's rapid growth worried Dugan so much that he ran for City Council. He was mayor from 1988 to 1990. But the houses just kept going up, and the farmland kept going under.

"I couldn't come up with a solution," he said. "The compromise was to get as much open space as we can."

The pungent smell of the dairy drifts over to the neighborhood where Beth Stewart's family lives.

"I'm from Kansas," she said. "You're not going to get a complaint from me." And not from her sons, 6 and 4, who love seeing the cows.

Among her neighbors however, "everyone else complains," she

conceded.

The dairy was there first, her husband, John, pointed out indignantly.

"Did they not see the cows when they bought the house?" he asked.

Indeed, sales agents for the subdivision say some potential home buyers back off once they realize there's a dairy close by.

For those who wonder, Dugan has another sign: "Notice: This dairy is not moving now or in the foreseeable future."

His office at the farm has floor-to-ceiling shelves displaying a collection of miniature tractors and farm equipment.

A clock with the slogan "Any time is milk time" has cows instead of numbers on the quarter-hours.

Despite his bravado, Dugan realizes that time eventually will run out on the dairy.

He figures that the facility has another two decades left. But once it isn't economical, he said, "What are you going to do? You've got to move on."

About that time is when he expects his prediction for Chandler to come true: It will be a small town with no agriculture.

SB

110

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: February 12, 1998

FURTHER REFERRALS:

Date of Committee Action: 4/23/98

The FINANCE Committee considered:

CSSB 110(L&C) am

CS FOR SENATE BILL NO. 110(L&C) am

LICENSING OF LANDSCAPE ARCHITECTS

“An Act relating to licensure of landscape architects; relating to exemptions from laws regulating the practice of architecture, engineering, and land surveying; and relating to fees collected by the Board of Registration for Architects, Engineers, and Land Surveyors.”

recommends it be replaced with the following committee substitute HCS CSSB 110 (FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____

fiscal note(s) DCED 1/21/98

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Cam Therriault</i>	Therriault			X	
<i>Eldon Mulder</i>	MULDER	X			
<i>Terry Martin</i>	MARTIN			X	
<i>Viggo Kohring</i>	Kohring				X
<i>John Davis</i>	J. DAVIS	X			
<i>Ben Grussendorf</i>	Grussendorf	X			
<i>Charles Moses</i>	Moses	X			
<i>John G. Davis</i>	J. DAVIS			X	
<i>John Kelly</i>	Kelly				
<i>John Foster</i>	Foster	X			

CO CHAIR'S SIGNATURE *Cam Therriault*
Therriault

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 2
Bill Version: CSSB110(L4C)
(S) Publish Date: 1/21/98

Revision Date: January 20, 1998
Title: An Act relating to licensure of landscape architects.
Sponsor: Senator Mackie
Requestor: Senate Finance

Department: Commerce and Economic Development
BRU: Occupational Licensing
Component: Operations

COMPONENT SERIAL NO. 1844

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	5.4	5.4	4.6	4.6	4.6	4.6
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	6.4	6.4	5.6	5.6	5.6	5.6

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES	12.8	0.0	11.2	0.0	11.2	0.0
--------------------	------	-----	------	-----	------	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	6.4	6.4	5.6	5.6	5.6	5.6
1006 GF/MHTIA						
Other 1091 Designated PR						
TOTAL	6.4	6.4	5.6	5.6	5.6	5.6

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This fiscal note assumes that registration of landscape architects will be accomplished by adding one non-voting member to the Board of Registration for Architects, Engineers and Land Surveyors (AELS); and that examination for landscape architects will be administered once annually by a testing agency. Additionally, no out-of-state travel is included in this fiscal note, and no funding for investigative services. However, if numerous complaints are received and investigative services become necessary, additional funding will be required at such time. An explanation of the costs identified above are attached.

Prepared by: Jennifer Strickler, Administrative Manager
Division: Occupational Licensing
Approved by Commissioner: Deborah B. Sedwick
Agency: Commerce and Economic Development

Phone: 465-2144
Date: 1/20/98
Date:

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB 110(L&C)

ANALYSIS: (Continued)

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FISCAL NOTE CALCULATIONS

PERSONAL SERVICES **\$ 0.0**

TRAVEL **\$ 0.0**

No travel is anticipated.

CONTRACTUAL SERVICES **\$ 5.4**

Contractual Services are based on the following (underlined) costs-

Proctor Fees:

One three-day exam, 8 hours per day. The proctor fee is \$10 per hour x 8 hours = \$80 x 3 days = \$240;

Regulations:

- One public notice printed in three newspapers, estimated at \$200 per paper x 3 = \$600;
- Printing of regulations consisting of 6 pages, back-to-back, at \$12 per 100 x 6 pages = \$72 x 3.5 (to produce 350 copies) = \$252;
- Postage for 350 pieces x .32 = \$112;

Daily communication costs = \$1,000;

Room rental for three days of examinations at \$600 per day x 3 days = \$1,800;

Membership fees = \$1,400.

After the first two years, it is anticipated that costs associated with public noticing and printing of regulations will cease.

SUPPLIES **\$ 1.0**

TOTAL: **\$ 6.4**

CSSB 110(L&C), continued

REVENUE: In accordance with AS 08.01.065, all licensees are required to pay the costs of regulating their profession. In accordance with Section 3 of the bill, licensees under the Board of Architects, Engineers, Land Surveyors, and Landscape Architects will pay fees to cover the costs identified in this fiscal note.

This program is intended to be funded entirely by *General Fund/Program Receipts* from licensing fees.

amended

HOUSE CS FOR CS FOR SENATE BILL NO. 110(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 2/12/98

Referred: Finance

Sponsor(s): SENATORS MACKIE, Kelly, Taylor

REPRESENTATIVE Mulder

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to licensure of landscape architects; relating to exemptions from
 2 laws regulating the practice of architecture, engineering, and land surveying; and
 3 relating to fees collected by the Board of Registration for Architects, Engineers,
 4 and Land Surveyors."

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

6 * Section 1. AS 08.01.065(c) is amended to read:

7 (c) Except as provided in (f) of this section, the [THE] department shall
 8 establish fee levels under (a) of this section so that the total amount of fees collected
 9 for an occupation approximately equals the actual regulatory costs for the occupation.
 10 The department shall annually review each fee level to determine whether the
 11 regulatory costs of each occupation are approximately equal to fee collections related
 12 to that occupation. If the review indicates that an occupation's fee collections and
 13 regulatory costs are not approximately equal, the department shall calculate fee
 14 adjustments and adopt regulations under (a) of this section to implement the

1 adjustments. In January of each year, the department shall report on all fee levels and
 2 revisions for the previous year under this subsection to the office of management and
 3 budget. If a board regulates an occupation covered by this chapter, the department
 4 shall consider the board's recommendations concerning the occupation's fee levels and
 5 regulatory costs before revising fee schedules to comply with this subsection. In this
 6 subsection, "regulatory costs" means costs of the department that are attributable to
 7 regulation of an occupation plus

8 (1) all expenses of the board that regulates the occupation if the board
 9 regulates only one occupation;

10 (2) the expenses of a board that are attributable to the occupation if the
 11 board regulates more than one occupation.

12 * Sec. 2. AS 08.01.065 is amended by adding a new subsection to read:

13 (f) Notwithstanding (c) of this section, the department shall establish fee levels
 14 under (a) of this section so that the total amount of fees collected by the State Board
 15 of Registration for Architects, Engineers, and Land Surveyors approximately equals the
 16 total regulatory costs of the department and the board for all occupations regulated by
 17 the board. The department shall set the fee levels for the issuance and renewal of a
 18 certificate of registration issued under AS 08.48.211 so that the fee levels are the same
 19 for all occupations regulated by the board.

20 * Sec. 3. AS 08.48.061(c) is amended to read:

21 (c) The board may make expenditures from appropriated funds for any purpose
 22 that is reasonably necessary for the proper performance of its duties under this chapter.
 23 This may include the expenses of the board delegates to meetings of councils of
 24 architect examiners, engineering examiners, [OR] land surveyor examiners, or
 25 landscape architect examiners, or any of their subdivisions. The total amount of
 26 warrants issued in payment of the expenses incurred under this chapter may not exceed
 27 the amount of money appropriated by the legislature.

28 * Sec. 4. AS 08.48.071(f) is amended to read:

29 (f) The Department of Commerce and Economic Development shall assemble
 30 statistics relating to the performance of its staff and the performance of the board,
 31 including but not limited to,

SENATE DISTRICT C
KODIAK ISLAND
SOUTHEAST ISLANDS

Amendment # 1

4/23/98

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(907) 465-3517 (FAX)
Senator_Jerry_Mackie@legis.state.ak.us

SENATOR JERRY MACKIE

ALASKA STATE LEGISLATURE

MEMORANDUM

Date: March 5, 1998

To: Representative Mark Hanley, Co-Chair
Representative Gene Therriault, Co-Chair
House Finance Committee

From: Senator Jerry Mackie, Chair
Senate Community and Regional Affairs Committee

Subject: SB 110 - proposed amendment

Attached is a letter dated February 17, 1998, from D. Lance Mearig, P.E. Chair, Board of Registration for Architects, Engineers and Land Surveyors, explaining the reasoning behind the proposed amendment.

The proposed amendment would delete AS 08.48.331 (13) which was added to SB 110 in the House Labor and Commerce Committee Substitute:

Paragraph **Proposed amendment to CS CS SB 110 (L&C):**
Section 13, located on Page 12, Lines 11 - 12
[delete section in its entirety]

The remaining exemptions provide adequate scope for exemptions related to architectural landscaping. We have discussed this change with the original sponsor of Section 13, Representative Norm Rokeberg, Chair, House Labor and Commerce Committee and he has indicated that he is satisfied with this deletion.

Thank you for your consideration.

Attachment (1)

cc: Representative Norm Rokeberg, Chair, House Labor and Commerce Committee
D. Lance Mearig, P.E., Chair, Board of Registration for Architects, Engineers and Land Surveyors
Catherine Reardon, Director, Division of Occupational Licensing

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

TONY KNOWLES, GOVERNOR

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JUNEAU, ALASKA 99811-0806
PHONE: (907) 465-2534
FAX: (907) 465-2874
TDD: (907) 465-5437

E-mail address:
License@commerce.state.ak.us

February 17, 1998

The Honorable Jerry Mackie
Alaska State Legislature
State Capitol
Juneau, AK 99801

Dear Senator Mackie:

Re: "Landscape Architect Licensure Amendment"
House CS for CS for Senate Bill 110 (L&C)

At its February 13, 1998 board meeting, the AELS Board recommended deletion of AS 08.48.331(13) contained in the above-referenced proposed legislation. This provision exempts the following activities from the licensing laws:

"(13) a person designing or preparing plans and specifications for the person's own use with respect to property owned by the person."

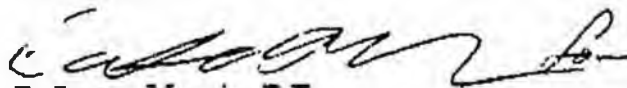
This exemption is too broad in that it would exempt a business' preparation of structural engineering and architectural plans and specifications for that business' retail or commercial building provided it was located on the business' real property. The exemption, thus, is not restricted to landscaping plans. Such an exemption would expose the public to serious health and safety risks. We do not believe this was the intended purpose of this exemption.

It is important to note that the exemption set forth in AS 08.48.331(10) covers "business owned" property and activities and it expressly prohibits exemption where "buildings or structures whose primary use is public occupancy" are involved. The proposed exemption (13) is not similarly limited.

We propose that exemption (13) be deleted in its entirety. We believe that the other exemptions provide adequate scope for exemptions related to architectural landscaping.

Thank you for your consideration of our concerns.

Sincerely,



D. Lance Mearig, P.E.
Chair
Board of Registration for Architects,
Engineers and Land Surveyors

DLM/CR/dgl/2514cr.doc
021798a
cc: AELS Board Members

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Senator_Jerry_Mackie@legis.state.ak.us

SENATOR JERRY MACKIE

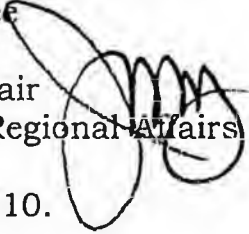
ALASKA STATE LEGISLATURE

MEMORANDUM

February 17, 1998

To: Representative Gene Therriault, Co-Chair
House Finance Committee 

Representative Mark Hanley, Co-Chair
House Finance Committee

From: Senator Jerry Mackie, Chair
Senate Community and Regional Affairs Committee 

Subject: Request to schedule SB 110.

I would appreciate your consideration in scheduling SB 110, relating to the licensure of landscape architects, before the House Labor and Commerce Committee. I have attached a packet of information which includes a brief sponsor statement, fiscal note and many letters of support.

In order for Alaskan landscape architects to secure federal projects the state must provide landscape architect licensing capabilities. Alaskan landscape architects are currently excluded from participating in securing these federal jobs and these moneys are going to companies located outside of this state. For example, two recent lucrative projects not available to Alaskans were the redesign of the Starrigavan Campground outside Sitka and the redesign of the Mendenhall Lake Campground out of Juneau. This legislation will provide the state with another tool to support the hire of Alaskan workers and companies.

Licensed landscape architects require minimum standards for protection in the design of playgrounds for our children, design of pedestrian paths and bridges and in all types of site development. By combining development projects with health, safety and environmental design, landscape architecture is instrumental in eliminating the negative aspects of potential development projects.

The fiscal note indicates that in accordance with AS 08.01.065, all licensees are required to pay the costs of regulating their profession; Section 3 (included in Page 2) of the L&C CS provides that the Board of Registration for Architects, Engineers and Land Surveyors will pay fees to cover the costs identified in the fiscal note. This program will be paid entirely by General Fund - Designated Program Receipts. *Your consideration of this request for scheduling SB 110 would be greatly appreciated.*

BILL: SB 110 SHORT TITLE: LICENSING OF LANDSCAPE ARCHITECTS
BILL VERSION: CSSB 110(L&C) AM
SPONSOR(S): SENATOR(S) MACKIE, Kelly, Taylor; REPRESENTATIVE(S) Mulder

CURRENT STATUS: (H) FIN

STATUS DATE: 02/12/98

TITLE: "An Act relating to licensure of landscape architects; relating to exemptions from laws regulating the practice of architecture, engineering, and land surveying; and relating to fees collected by the Board of Registration for Architects, Engineers, and Land Surveyors."

02/27/97	538	(S)	READ THE FIRST TIME - REFERRAL(S)
02/27/97	538	(S)	L&C, FIN
04/17/97	1236	(S)	L&C RPT CS 2DP 1NR NEW TITLE
04/17/97	1236	(S)	DP: KELLY, MACKIE; NR: LEMAN
04/17/97	1236	(S)	FISCAL NOTE TO SB & CS (DCED)
01/21/98	2249	(S)	FIN RPT (L&C)CS 2DP 2NR
01/21/98	2249	(S)	DP: SHARP, DONLEY
01/21/98	2249	(S)	NR: PHILLIPS, TORGERSON
01/21/98	2249	(S)	FN TO CS (DCED)
01/21/98	2253	(S)	COSPONSOR(S): KELLY, TAYLOR
01/22/98	2260	(S)	RULES TO CALENDAR 1/22/98
01/22/98	2264	(S)	READ THE SECOND TIME
01/22/98	2265	(S)	L&C CS ADOPTED UNAN CONSENT
01/22/98	2265	(S)	ADVANCED TO THIRD READING UNAN CONSENT
01/22/98	2265	(S)	READ THE THIRD TIME CSSB 110(L&C)
01/22/98	2265	(S)	PASSED Y16 N3 A1
01/22/98	2266	(S)	TAYLOR NOTICE OF RECONSIDERATION
01/23/98	2281	(S)	RECON TAKEN UP - IN THIRD READING
01/23/98	2281	(S)	RETURN TO SECOND FOR AM 1 UNAN CONSENT
01/23/98	2282	(S)	AM NO 1 ADOPTED UNAN CONSENT
01/23/98	2282	(S)	AUTOMATICALLY IN THIRD READING
01/23/98	2282	(S)	PASSED ON RECONSIDERATION Y18 N- E2
01/23/98	2283	(S)	TRANSMITTED TO (H)
01/26/98	2131	(H)	READ THE FIRST TIME - REFERRAL(S)
01/26/98	2131	(H)	LABOR & COMMERCE, FINANCE
01/30/98	2190	(H)	CROSS SPONSOR(S): MULDER
02/12/98	2302	(H)	L&C RPT HCS(L&C) 2DP 4NR
02/12/98	2303	(H)	DP: HUDSON, ROKEBERG; NR: COWDERY,
02/12/98	2303	(H)	SANDERS, BRICE, RYAN
02/12/98	2303	(H)	SENATE FISCAL NOTE (DCED) 1/21/98
02/12/98	2303	(H)	REFERRED TO FINANCE

SPONSOR STATEMENT- SENATOR MACKIE
SB 110 - "AN ACT RELATING TO LICENSURE OF LANDSCAPE ARCHITECTS."

SB 110 proposes to amend AS 08.48.011(a) by adding landscape architects to the current State Board of Registration for Architects, Engineers, and Land Surveyors; landscape architects work professionally side by side with these other state registered design disciplines on a daily basis.

Although 45 states currently require such licensing, there are no licensure requirements in the State of Alaska. Similar to architects and engineers, landscape architects must attend accredited universities which are accredited by their national organization (American Society of Landscape Architects) which has rigid accreditation criteria.

Landscape architects provide for the design for improvements of major public facilities, in all types of site development, commercial development and housing. Licensed landscape architects require minimum standards for the protection of public health and safety in the design of playgrounds where safety of children must be guaranteed, the design of bike trails that recognize frozen soil considerations that meet codes for accessibility and safety, the design of landscapes along roadways where roadside safety of motorists must be assured in the advent of an accident and also the design of wetland treatments of storm water runoff.

In order for Alaskan landscape architects to secure federal projects, the state must provide landscape architect licensing capabilities. Alaskan landscape architects are currently excluded from participating in securing these federal jobs and these moneys are going to companies located outside of the state. SB 110 would level the playing field for Alaskans competing for federal work performed in this state, thus helping to ensure that moneys spent for design of Alaskan facilities will be utilized by businesses and professionals who reside in our state.

Licensing requirements would ensure that individuals providing these professional services are licensed by the State of Alaska and would give landscape architects their due recognition as qualified professionals for the design and development of the outdoor environment. By combining development projects with health, safety, and environmental design, landscape architecture is instrumental in eliminating the negative aspects of potential development projects.

The new 1998 fiscal note reflects that all licensees are required to pay the costs of regulating their profession; Section 3 provides that the Board of Registration for Architects, Engineers and Land Surveyors will pay fees to cover costs in this fiscal note. This legislation does not add a permanent, voting landscape architect to the board and will meet our intent to have a landscape architect as a resource person during the initial regulations process, but not on a permanent basis.

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SOUTHEAST ISLANDS



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SENATOR JERRY MACKIE

ALASKA STATE LEGISLATURE

2/11/98

Changes made to The Senate Passed version of CSSB 110(L&C)am

Currently reflected in HCS CS SB 110(L&C)

Page 10, Line 26 following "crafts",
ADDED: earthwork, grounds keeping, or nursery operations, and

Page 11, Line 16 following "high"
ADDED: and the grounds of the building;

Page 11, Line 20 following "purpose"
ADDED: and the grounds of the building;

Page 11, Line 26 following "building"
ADDED: or its grounds

Page 12, line 4, following "occupancy":
Insert:
(11) a person while involved in revegetation, restoration, reclamation, rehabilitation, or erosion control for disturbed land;
(12) a person while maintaining or directing the placement of plant material;
(13) a person, designing or preparing plans and specifications for the person's own use with respect to property owned by the person.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

02-04-98P03:03 RCV

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 4, 1998

SUBJECT: Landscape Architecture (CSSB 110(L&C) am)

TO: Representative Norman Rokeberg
Attn: Shirley Armstrong

FROM: Terri Lauterbach
Legislative Counsel 

You have asked how users of landscape architectural services would be affected by CSSB 110(L&C)am and whether individuals or small businesses who have "landscaping businesses" would have to be registered if the bill is enacted into law.

In answer to the first part of your question, I do not see anything in the bill that relates to the users of landscape architectural services. Only the provider of the service has the duty to register and would be in violation of the law if not registered (and not exempt).

In answer to the second part of your question, an individual or business that practices landscape architecture would have to become registered if the law passes and the board determines that the individual's or business' practice includes aspects of landscape architecture that affect the public health or safety. I do not understand the statement in your memo that says "it is not [the sponsor's] intention to prevent homeowners gardening [sic] or small businesses from continuing the status quo [of not being registered]." Maybe I'm missing something in the definition of "practice of landscape architecture" or maybe the definition is missing something, but if individuals and businesses that practice aspects of landscape architecture are not covered by this bill, then I guess I don't know who is. The "public health or safety" provision in AS 08.48.331(b) will cover only some people, but it is not clear who will be covered.

It could be the definition that needs work, rather than the list of exemptions.

TML:jdr
98-063.jdr

LEGAL SERVICES

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Juneau, Alaska 99801-2105

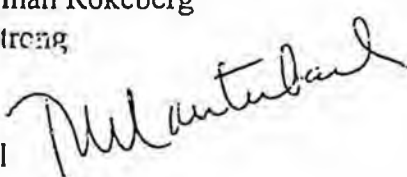
02-04-98P03:03 RCVD

MEMORANDUM

February 4, 1998

SUBJECT: Sec. 26 of CSSB 110(L&C) am (Landscape Architecture)

TO: Representative Norman Rokeberg
Attn: Shirley Armstrong

FROM: Terri Lauterbach
Legislative Counsel 

You have requested a legal analysis of the effect of the change made in sec. 26 of SB 110 by the Senate floor amendment, which replaced the old language with the following:

The requirement to be registered as a landscape architect under this chapter only applies to a person who practices an aspect of landscape architecture that the board has determined affects the public health or safety.

The "old language" was as follows:

The requirement to be registered as a landscape architect under this chapter does not apply to a person who practices only an aspect of landscape architecture that the board has determined does not affect the public health, safety, or welfare.

There are two changes of note: (1) deletion of the word "welfare," and (2) reversal of the process for determining whether a person must register or not.

The deletion of the term "welfare" may or may not have a significant practical effect, depending on how the board would have chosen to interpret the term. Arguably, the public welfare is fairly synonymous with health and safety concerns. But, to the extent that "welfare" implies improvement rather than just prevention of problems, "welfare" was, arguably, broader than "health and safety", so the deletion of "welfare" may have affected the size of the category being described. That is, there may have been practices of landscape architecture that would have been regulated under the old sec. 26 because of their effect on public welfare that will not be regulated under the new sec. 26 because the board will decide that a health or safety concern is not involved.

Representative Norman Rokeberg

February 4, 1998

Page 2

The second change is probably the more significant of the two. In reversing the language from "does not apply [if] does not affect" to "only applies [if does] affect," the language creates a situation where no registration will be required for landscape architecture until the board determines that there's an effect on public health or safety. The old language required everyone practicing landscape architecture, as defined in the bill, to register unless exempted by the board. Under the new language, the board will have to act (presumably by regulations, or will it be ad hoc case-by-case?) in order for there to be any registration requirement for anyone. Under the old language, the law set the registration requirement, and the board would have had to act to delineate exemption categories. Essentially, the new language leaves it up to the board to decide whether SB 110 will have any effect in this area and who it will affect.

I have some doubts about whether a court will find that there has been sufficient legislative guidance to the board under the new language so as to avoid improper delegation of legislative power. Under the new language, the board must act to give the law any meaning at all. Without action by the board, the legislature's apparent intent to require at least someone to be registered can be totally thwarted.

Additionally, under the new language, there may be public confusion about whether registration is necessary or not. The law will be on the books indicating a registration requirement, but, since sec. 26 makes that requirement dependent on board action, people will be needing to check regularly as to whether the board has determined that any aspects of landscape architecture are actually subject to the registration requirement.

Let me know if you have further questions about this issue.

TML:glc

98-049.glc

ALASKA STATE LEGISLATURE House of Representatives

COMMITTEE MEMBERS:

REPRESENTATIVE NORMAN ROKEBERG, CHAIRMAN
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Labor and Commerce Committee

MEMORANDUM

TO: Legislative Legal Services
Attn: Terri Lauterbach

FROM: Representative Norman Rokeberg

DATE: February 3, 1998

SUBJECT: SB 110 - Licensing of Landscape Architects

Norman Rokeberg
Legal Response to this memo follows.

Yesterday the House Labor and Commerce Committee took up CSSB110(L&C) am, Version 0-LS0634V.a committee members raised a number of concerns that need to be analyzed and resolved.

Based on your conversation with Shirley Armstrong on 2/2/98, you indicated that the Halford Senate floor amendment changed more than just changing Section 26 on page 12, from a negative to a positive statement and that a substantive change had been made with regard to the total exemption from registration except in cases of public health or safety to a board decision.

The committee members have requested a legal opinion on what Section 26 actually does now that it has been amended and what it did before the amendment. A discussion of who is not required to register would be helpful. Additionally, Representative Hudson has requested that the opinion also include a discussion of how users of landscape services will be impacted and under what circumstances will they be required to use registered landscape architects.

In addition the committee wants to make absolutely sure that individuals or small businesses who have landscaping businesses do not have to register for a license and are not prevented from continuing their businesses. For example many nurseries provide a number of services contained in the definition of landscape architect i.e. advice, consultation, design, etc. to members of the public on landscaping problems and design, the sponsor of the legislation has indicated it is not his intention to prevent homeowners gardening or small businesses from continuing the status quo.

Please prepare an amendment for the Labor and Commerce Committee, the bill will be up again 2/4/98:

1. Clarification language stating who is exempted by Section 26.
2. A definition of the term "affects public health or safety" used by the State of Alaska.
3. Addition of an exemption (11) revegetation, restoration, reclamation, rehabilitation or erosion control for disturbed land.
4. Addition of an exemption (12) for maintaining and directing the placement plant material.
5. Addition of an exemption (13) for property owners who design, prepare plans and specifications for their own use.

LEGAL SERVICES

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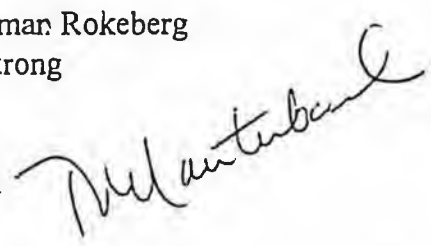
MEMORANDUM

February 4, 1998

SUBJECT: Amendments for CSSB 110(L&C)am

TO: Representative Norman Rokeberg
Attn: Shirley Armstrong

FROM: Terri Lauterbach
Legislative Counsel



Enclosed is an amendment you requested for SB 110. It addresses items 3 - 5 at the bottom of your memorandum.

The language in paragraph (11), added by the amendment, is problematical. What is "disturbed land?" Without further definition, it could be argued that any land that a person digs in or walks on is disturbed. This exemption seems to vitiate most of the aspects of the definition of landscape architecture identified in (17)(A), (C) and (D) on page 12 of the bill.

The language in paragraph (12), added by the amendment, is also problematical. The definition of landscape architecture specifically includes "maintaining...plantings." If you do not wish for this activity to be covered, why not remove the term from the definition on page 12?

The language of paragraph (13), added by the amendment, overlaps with the exemption already provided in paragraph (6)(A) on page 11 of the bill. Maybe the language in (6)(A) should be expanded to property owned by a person rather than occupied by the person, and include more than single-family residences. Is paragraph (13) supposed to be limited to landscaping or should it be general (as is)?

I have not included item 1 from the bottom of your memo in the enclosed amendment because I do not know how you wish to clarify section 26. I need further instructions.

I have not included item 2 in the amendment because I have not found any definition "used by the State of Alaska" for the term "affects public health or safety." The phrase "public health or safety" occurs twice in the Alaska Statutes (AS 27.21.240 and AS 39.90.140), in both places undefined. I also looked for separate definitions of "public health" and "public safety" and found none.

Representative Norman Rokeberg

February 4, 1998

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Please let me know how you wish to proceed on these matters.

TML:jdr

98-064

Enclosure