

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES OFFICE OF THE COMMISSIONER

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January 19, 2010

Representative Paul Seaton, Chair
House Education Committee
State Capitol, Rm 102
Juneau, Alaska 99801

Re: House Bill 295 – University Land Grant

Dear Representative Seaton:

Please accept this request for your consideration to schedule HB 295 before the House Education Committee at your earliest convenience.

This bill would convey approximately 199,838 acres of state land to the University of Alaska, and specify that revenue generated by the University of Alaska's management of the land be subject to appropriation each year by the legislature.

Legislation passed in 2000 and 2005 made certain land grants to the University of Alaska and specified that the revenue generated from those lands would be deposited into the University endowment trust fund. In March 2009 the Alaska Supreme Court found these statutes to violate the dedicated funds section of the Alaska Constitution, art. IX, sec. 7.

This bill seeks to remedy those issues identified by the Court by specifying that the revenue generated from the land is to be accounted for as university receipts and therefore subject to appropriation each year by the legislature. It also ratifies and reauthorizes the land conveyances authorized in the previously enacted legislation.

The land to be conveyed under this bill is the same as what was to be conveyed to the University of Alaska in the final 2005 legislation (ch. 8, FSSLA 2005), with the exception of two parcels that were conveyed under separate statutory authority and the university research forest.

If you have any questions regarding the bill, feel free to contact Heather Brakes, Department of Natural Resources Special Assistant and Legislative Liaison at 465-4730, or Dick Mylius, Director of Division of Mining, Land, and Water at 269-8625.

Sincerely,



Thomas E. Irwin
Commissioner

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Governor Sean Parnell
STATE OF ALASKA

January 15, 2010

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear President Stevens,

Under the authority of Art. III, Sec. 18, of the Alaska Constitution, I am transmitting a bill relating to: the grant of certain State lands to the University of Alaska; the duties of the Board of Regents; the deposits made to the Alaska Permanent Fund received from lands conveyed to the University of Alaska; ratifying and reauthorizing certain prior conveyances of land to the University of Alaska; and making conforming amendments.

This bill will fulfill a promise made at the turn of the 20th century, when Congress promised 350,000 acres of land to the former Alaska Territorial College and School of Mines. However, since Statehood in 1959, most of this promised land has never materialized. Today, at 140,000 acres, the University of Alaska has one of the smallest land grants in the United States. Even Rhode Island's university land grant is larger. The intent of the land grants is to provide the university with a portfolio of land that will enhance its financial position and further its educational mission. Land grant colleges and universities are common throughout the United States.

Final resolution to this much overdue commitment is something I have and continue to strongly support. During my tenure in the Legislature I advocated for, and the Legislature passed, several pieces of University Land Grant legislation. By introducing this legislation I've committed to the purpose of the legislation passed in 2005 and removed constitutional issues created by that legislation.

The bill will convey approximately 199,838 acres of State land to the University of Alaska. The Legislature will specify revenue generated by the University of Alaska's management of the land be managed as university receipts, subject to appropriation each year by the Legislature. This bill ratifies and reauthorizes the land conveyances in legislation enacted in 2000 (ch. 136, SLA 2000) and 2005 (ch. 8, FSSLA 2005). These statutes were found by the Alaska Supreme Court, in *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162 (Alaska 2009) to violate Art. IX, Sec. 7 (the dedicated funds section) of the Constitution of the State of Alaska, because the statutes specified that revenue generated from the University of Alaska's management of the land was to be deposited in the University of Alaska's endowment trust fund.

The Alaska Supreme Court found that the dedication provisions of the statutes could not be severed from the land conveyance provisions, rendering the entirety of the legislation unconstitutional, except for the provisions pertaining to the university research forest. The bill explicitly states the intent to convey the land to the University of Alaska, notwithstanding that revenue generated from the land may not be dedicated to

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the University of Alaska's endowment trust. The bill addresses the constitutional infirmity by specifying that revenue generated from the University of Alaska's management of the land is to be managed as university receipts, subject to appropriation each year by the Legislature.

The land to be conveyed in this bill to the University of Alaska will be the land originally designated in the final 2005 legislation (ch. 8, FSSLA 2005), with the exception of two parcels that were conveyed under separate statutory authority and the university research forest. The bill refers to the land identified in the document titled, "University of Alaska Land Grant List 2005," dated January 12, 2005. This land list was arrived at after more than a year of intense work by the Department of Natural Resources (department) and the University of Alaska to identify land that may be conveyed to the University of Alaska without unreasonably conflicting with programs associated with, and uses of, State land managed by the department.

The land list in the bill reflects changes made by the Legislature during the 2005 session, including the Legislature's decision to drop certain parcels that were on the original list provided in January 2005. The bill will also include language added by the Legislature to protect land for possible municipal entitlement selections by the City and Borough of Wrangell and possible borough in the Petersburg area. Before the Alaska Supreme Court declared the prior land conveyance statutes unconstitutional (ch. 136, SLA 2000 and ch. 8, FSSLA 2005), the department had completed conveyance of 31 of the 52 available parcels identified in the land list. The bill ratifies and reauthorizes these conveyances, as well as provides authority for conveyance of the remaining 21 parcels.

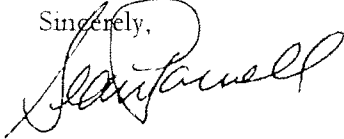
The bill also includes requirements for management of university land, such as public notice and comment opportunities on proposals for land development, exchange, or sale. Additionally, the bill exempts certain sensitive business and economic information regarding sale, lease, or development of university land from the public records production requirements of AS 40.25.100 - 40.25.295 (Alaska Public Records Act). These provisions reflect the 2005 legislation.

The prior land conveyance statutes included a provision for establishment of a university research forest. This provision is not included in this bill since the Alaska Supreme Court found that the provision in the prior legislation could be severed from the unconstitutional dedication provisions, and it was therefore upheld as constitutional.

The bill also contains a provision authorizing the deposit to the Alaska Permanent Fund of 25 percent of receipts from certain lands conveyed to the University of Alaska. A copy of the "University of Alaska Land Grant List 2005" has been provided to the Legislature and is available upon request from the Department of Natural Resources.

I urge your prompt and favorable action on this measure, which will complete the State's efforts to provide a beneficial educational and income-producing land base to the University of Alaska, while complying with the dedicated funds section of the Constitution of the State of Alaska.

Sincerely,



Sean Parnell
Governor

Enclosure

2010 Legislation: Grant of State Land to the University of Alaska

Prepared by Department of Natural Resources, January 2010

Summary of Bill: Transfers 199,838 acres of state land to the University of Alaska and addresses the March 2009 Alaska Supreme Court ruling that struck down previous university land grant legislation (2005 HB 130 and 2000 SB 7), which dedicated land revenue to the University Endowment Trust. This bill conveys the entire HB 130 land list as amended by the legislature, ratifies conveyances already in place, and directs land revenue to the General Fund instead of the university's endowment trust.

The land to be conveyed includes:

- 29 parcels located throughout SE Alaska
- 5 parcels in Southcentral, including tract at McCarthy in Wrangell St Elias National Park
- 18 parcels in Interior – including tracts along the Dalton Highway, the 90,000 acre Nenena oil/gas tract, and numerous educational properties.

The bill also:

- Excludes from transfer 9 parcels in SE that were withdrawn by the legislature in 2005 due to public opposition;
- Identifies 9 parcels in SE that would go to UA only if not selected by new Boroughs as part of municipal entitlements;
- Includes specific language addressing the March 2009 Supreme Court ruling and a one-year statute of limitations period.

The March 13, 2009 Supreme Court Decision

- The Alaska Supreme Court in *S.E. Alaska Conserv'n Council v. State*, 202 P.3d 1162 (Alaska 2009) held that 2000 SB 7 and 2005 HB 130 violated the dedicated funds clause of the Alaska Constitution by dedicating land revenue to the University's endowment trust
- The Court held that the trust provisions of the legislation reflected the key intent of the legislature to enhance the University's permanent endowment and therefore were not severable from the land conveyance provisions.
- The Court upheld provisions of the legislation that conveys a research forest (near Tanana) to the University because the research forest is not income property and was addressed independently in the legislation. The Court declined to address the other non-income properties on the conveyance list (which included miscellaneous educational and infrastructure properties).

Related Legislation

- House Bill 234 would convey 12 of the approximately 50 parcels on the HB 130 land list, including the noncontroversial educational properties and the Nenana oil and gas tract.

For more information contact:

Dick Mylius, DNR, Director of Division of Mining, Land and Water - 269-8600;

dick.mylius@alaska.gov

Heather Brakes, DNR Legislative Liaison, 465-4730, heather.brakes@alaska.gov

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DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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Sectional Analysis

House Bill 295 – “An Act relating to the grant of certain state land to the University of Alaska; relating to the duties of the Board of Regents; relating to deposits made to the Alaska permanent fund received from certain lands conveyed to the University of Alaska; ratifying and reauthorizing certain prior conveyances of land to the University of Alaska; making conforming amendments; and providing for an effective date.”

Section 1 – Findings and Purpose – Explains why legislation is necessary. Paragraphs (7) – (10) specifically address issues raised by Alaska Supreme Court regarding previous legislation.

Section 2 – Legislative Intent – Clarifies the intent of the Legislature to:

- respond to the Alaska Supreme Court decision in *S.E. Alaska Conserv’n Council v. State*, 202 P.3d 1162 (2009).
- convey state land to the University even though revenue from the land will be deposited in the general fund and be subject to annual appropriation by the Legislature.
- ratify conveyances that occurred under authority of SB 7 and HB 130.
- that the land should proceed even if any other provision in the bill is found to violate the dedicated funds clause of the Alaska Constitution.

Section 3 – Amends AS 14.40.170(a) by deleting the phrase “THE BOARD OF REGENTS IN TRUST FOR” before “the University” specifying the land conveyed under this legislation cannot be considered trust land managed by the Board of Regents.

Section 4 – Amends AS 14.40.291(a) similar to Section 3.

Section 5 – Creates a new AS 14.40.365 to replace the statute the Supreme Court found to be unconstitutional in its ruling in *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162 (Alaska 2009). Subsectional analysis of new AS 14.40.365 follows:

- (a) Provides that DNR will convey land to University of Alaska by quitclaim deed within two years. Conveyance by quitclaim deed eliminates expensive land survey requirements. The two-year period should not be difficult for DNR to meet because most of the work to issue the deeds was already completed after the 2005 legislation.
- (b) Defers conveyance of the University Research Forest in Tanana Valley State Forest until 2055 (50 years from passage of 2005 legislation). This deferral was requested by the University as it allows the continued use of this area as Research Forest by University while at the same time allowing continued small timber sales and forestry management activities by DNR Division of Forestry.
- (c) Allows that when federal mining claims that currently exist as inholdings to parcels conveyed by the state to the University are terminated and the land

- subsequently conveyed to the state (DNR), that DNR will in turn convey this land to the University.
- (d) Ensures that the mineral estate is also conveyed to the University. This is an exception to AS 38.05.125 which requires, for most conveyances, DNR retain the mineral rights in state ownership due to provisions in Section 6(i) in the Alaska Statehood Act. Since the University is a state entity, transfer of mineral estate to the University does not violate the 6(i) provision.
 - (e) Requires that conveyances to the University recognize and protect all valid existing rights.
 - (f) Requires that DNR reserve access to and along navigable and public waters as required in AS 38.05.127, but limits the width of these easements on parcels along tidewater to a maximum of 25 feet (a provision specifically inserted by the legislature in the 2005 bill). These easements by regulation would otherwise have a 50-foot minimum width. This subsection also specifies that other provisions of AS 38.04 and AS 38.05 do not apply to these conveyances to the University.
 - (g) Sets out additional limitations or requirements regarding the land conveyed to the University, including Section 6(i) of the statehood act that prohibits the state's alienation of mineral estate; makes conveyance subject to RS 2477 and Omnibus Act rights of way; and excludes from the conveyance to the University any valid existing state mining claims.
 - (h) Requires that upon the termination of a state mining claim located within a parcel conveyed to the University under this bill, DNR will transfer that land to the University
 - (i) Establishes the date of the recording of a parcel as the time when the University takes over management responsibility for land transferred under this act.
 - (j) Establishes that upon conveyance to the University, all revenue and receipts accrue to the University as University receipts;
 - (k) Allows the University to return land to DNR up to ten years after conveyance if it contains hazardous waste; is located on a historic or archeological site; or the University and DNR agree to the re-conveyance.
 - (l) Requires University concurrence with any DNR conveyance of an irrevocable interest in a parcel to be conveyed to the University.
 - (m) Allows the Commissioner of DNR to make minor boundary adjustments to correct omissions and errors.
 - (n) Removes nine (9) parcels from the land list originally agreed to by DNR and the University. These 9 parcels were included in the original land list submitted to the legislature in 2005. They were removed by the legislature during committee review of the bill based upon public and community concerns.
 - (o) Defers conveyance of five parcels located within the potential boundaries of a Petersburg Borough so that if a Borough forms before July 1, 2012 (two years), these parcels could be selected by a future Borough as part of its municipal entitlement under AS 29.65. If a borough does not form or the land is not selected by a future Borough, the land will be conveyed to the University. This provision was inserted in the 2005 legislation to specifically address this concern raised by the Cities of Wrangell and Petersburg during the 2005 legislative hearings.
 - (p) Defers conveyance of three parcels located within the City and Borough of Wrangell pending possible selection by the new borough under its municipal entitlement (AS 29.65). Provides the Borough until December 1, 2011 to select the land, which is the deadline for Borough selections under AS 29.65.040(d). A provision to defer these selections was inserted in the 2005 legislation to specifically address potential borough formation, a concern raised by the cities of Wrangell and Petersburg during the 2005 legislative hearings. Wrangell

formed a borough after the 2005 legislation, but has not yet filed its land selections with DNR.

- (q) Defers conveyance of one parcel located within the potential boundary of a Northern Chichagof Island Borough so that if a Borough forms before July 1, 2012 (two years), this parcel could be selected by a future Borough as part of its municipal entitlement under AS 29.65. If a borough does not form or the land is not selected by a future Borough, the land will be conveyed to the University. This provision was inserted in the 2005 legislation to specifically address this concern raised during the 2005 legislative hearings.

Section 6 – Repeals and reenacts AS 14.40.366 as passed in 2005. Sets forth management requirements for university land, including preservation of historic recent public uses, public notice and comment opportunities for land development or disposal plans, and right of first refusal to closest municipality.

Section 7 – Repeals and reenacts AS 14.40.367 as passed in 2005. Exempts certain proprietary and business sensitive information related to university land disposals from the Alaska Public Records Act.

Section 8 – Establishes a one-year statute of limitations for parties wishing to bring a lawsuit regarding this legislation.

Section 9 – Requires that revenue generated from the conveyed land be handled as University receipts subject to annual appropriation by the Legislature. This section deletes the provision in HB 130 that required revenue from the conveyed land be deposited in the University Endowment Trust, thereby correcting the dedicated funds violation found by the Alaska Supreme Court in *S.E. Alaska Conserv'n Council v. State*, 202 P.3d 1162 (2009).

Section 10 – Defines University receipts to include land transferred under this new legislation.

Section 11 – Specifies that University land conveyed under this bill is exempt from general taxation.

Section 12 – Ensures that a municipal entitlement of a future city or borough is not reduced by the conveyance of land to the University under this legislation.

Section 13 – Requires that 25% of mineral revenue from University lands granted under this legislation be deposited into the Permanent Fund.

Section 14 – Restores the repeal of AS 14.40.368 regarding encumbrances and trespasses on land to be conveyed. This statute was enacted by SB 7 and repealed by HB 130. This section confirms that AS 14.40.368 is to remain repealed.

Section 15 – Ratifies conveyances made to the University under the 2005 legislation, so that DNR does not have to re-issue deeds.

Section 16 – Adds a severability clause.

Section 17 – Establishes an immediate effective date.

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JUN 19 2009

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June 15, 2009

Dear Governor Palin and State of Alaska Legislators,

The united leadership of the University of Alaska system seeks your assistance to remedy the financial injury caused to the State of Alaska's University system by the recent Alaska Supreme Court March 13, 2009, decision, *Southeast Alaska Conservation Council v State of Alaska and University of Alaska*. In this decision, the Alaska Supreme Court voided the Alaska Legislature's action in passing the 2005 University Land Grant Bill. The court held unconstitutional the restriction that any proceeds of the land must be placed into the University Endowment Trust Fund, and surmised that the legislature would not have intended to grant the land without that restriction. The court, therefore, invalidated the whole act except for the part establishing a research forest.

A great state needs a great university system. A great university system must have adequate resources sufficient to meet its responsibilities. A more woeful history of a land-grant college could hardly be found. The University of Alaska is a land-grant college without the land.

The State of Alaska's University system has been waiting almost 100 years with no appreciable land. For an interesting and concise account of this baneful history we would direct you to "A Land Grant College Without the Land: A History of the University of Alaska's Federal Land Grant"; a brief 20 page report by Terrence M. Cole, which we can provide to you upon request.

The united leadership of the University of Alaska system is requesting that in your capacity as the governing leadership of the State of Alaska, as Governor and Legislators, that you correct the court's conjecture that the legislature would not want the University to have the land that the legislature granted to it. We respectfully request your support for advancing higher education in the State of Alaska by reconveying these lands to the University of Alaska at the earliest possible opportunity without the dedicated funds clause that the Alaska Supreme Court found to be offensive to our State Constitution.

We the undersigned, the leadership of the University of Alaska system, thank you for your support of higher education in the State of Alaska.

Cynthia Henry, Chair
Board of Regents

Mark Hamilton, President
University of Alaska