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[Home](#) > Alaska House brushes off constitutional claims, 'orders' massive federal land transfer

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Rejecting the advice of its legal staff, the Alaska House of Representatives approved a bill Monday ordering the federal government to hand over most federal land in Alaska to the state by Dec. 31, 2016.

House lawmakers said the federal government would be allowed to keep national parks, such as Denali, but not national monuments, preserves and areas such as the Arctic National Wildlife Refuge and the Izembek National Wildlife Refuge.

Democratic critics said the plan introduced by House Speaker Mike Chenault, a Nikiski Republican, was a waste of time and a guaranteed loser in court.

"We don't have the money to litigate a bill that is 100 percent unconstitutional," said Anchorage Democratic Rep. Les Gara.

Fellow Anchorage Democratic Rep. Andy Josephson said he would be violating his oath of office if he backed the bill.

"The Constitution says it's illegal. The Supreme Court reading the Constitution says it's illegal. The lawyers we pay in the Terry Miller Building say it's illegal. And our past attorney general says it's illegal," he said. "So there's not much left here."

Legislative lawyers also told Chenault it was unconstitutional but he said in February it was justified because the federal government has yet to transfer about 5 million acres of the land promised Alaska under the Alaska Statehood Act in 1958. The federal government has transferred about 100 million acres to the state, which is a land grant about the size of California.

"I believe there is a breach of contract as well as a breach of good faith," Chenault said in a statement about the 5 million acres that remains to be transferred.

The state Department of Natural Resources has said that one reason the transfers have yet to be finished is that the state has slowed it down because it wants the federal government to make more lands available for selection. A section of Chenault's bill orders the federal government to lift the public land orders that have given state officials heartburn.

The bill does not order the transfer of the remaining statehood entitlement. But it lays claim to about 166 million acres, according to a DNR estimate, an area that exceeds the combined territory of Montana and Idaho. The measure, House Bill 115, was approved on a 27-11 vote, drawing support from members of the ruling majority led by Chenault.

Responding to the vote, Lois Epstein, a program director for the Wilderness Society in Anchorage, said, "I'm shocked that the House ignored the U.S. Constitution and its legal advisers by passing this bill."

To a large degree, the bill mimics an existing 33-year-old state law that has never been enforced because of a legal consensus that it is unconstitutional.

That law, approved by the so-called 1982 Tundra Rebellion voters' initiative, says the state owns most federal property in Alaska, down to post offices and federal buildings. The old law also makes it a felony for federal officials to enforce federal land laws in Alaska and it gives the state the power to sell federal land but these provisions were never put into practice.

In 1983, in an opinion that has never been reversed, the state attorney general said the law is "clearly unconstitutional" and that Alaskans should ignore it. Attorney General Norman Gorsuch said that "no good faith argument could be made to support" the claim that the state owned almost all the federal land within its borders. Katmai, Glacier Bay and part of what is now Denali National Park are among the exceptions not claimed under the law.

At the time, Rep. Don Young was among those who introduced bills to transfer lands to the states.

"There have been hearings on these bills, but it is not expected that Congress will act favorably on them or similar measures," Gorsuch wrote in 1983.

Legislative lawyers told Chenault in February that his bill is unconstitutional and mentioned the 1983 legal review.

In the debate Monday, some lawmakers said if enough Western states would claim federal land within their borders, they think the federal government would succumb to the pressure.

Anchorage Republican Rep. Gabrielle LeDoux compared it to the marijuana initiative approved by voters last fall and similar actions in Colorado and elsewhere: "Guess what? The federal government blinks. If enough states do it, if enough states say what they want and say we're going to take it, we just might get what we want."

Chenault has said he wants to follow the example of Utah, which demanded that all federal land be handed over by the end of 2014, though that has not happened.

Other Alaska legislators said broken promises by Washington are a justification for taking land, though they did not say how much it might cost the state or allocate funds for legal expenses. Allies of Chenault said that they didn't want to get too hung up on the legal questions but that the bill has plenty of political merit.

Rep. Kurt Olson, R-Kenai, said he has heard about a half dozen times in the past that bills he backed were illegal.

"That has not stopped me, and I would like to add that we never saw any suits out of any of the previous legislation that was unconstitutional," he said.

It would take a state action, however, not a federal lawsuit, to try to get the federal government to turn over its land and comply with the House order.

Rep. Steve Thompson, R-Fairbanks, linked it to a non-binding amendment in the U.S. Senate by Sens. Lisa Murkowski and Dan Sullivan. That amendment, approved March 26 on a 51-49 vote, puts the Senate on record as favoring the sale or transfer of federal land to the states for economic development.

But the federal measure differs in a key way from the state claim that federal lands have to be handed over to Alaska by the end of 2016.

"Nothing in the language that we have included in this amendment actually sells, transfers or exchanges a specifically identified piece of property," Murkowski told the Senate on March 26

about her amendment.

But, she added, “this language would provide balance by enabling the types of exchanges, sales or transfers with states or local governments that are often used to craft balanced, comprehensive land policies.”

The Murkowski-Sullivan plan would exclude transferring national parks, monuments or preserves to states, while allowing all other types of land to be disposed.

Sen. Martin Heinrich, a New Mexico Democrat, said the Murkowski-Sullivan plan would damage the legacy of public lands in the U.S. and lead to more locked gates and “no trespassing” signs.

“This amendment would make it easier to turn our public lands over to state land commissioners and eventually to sell them outright,” he said.

A spokesman for Murkowski said there was no connection between her amendment and the Chenault bill.

The original version of the Chenault plan said that the federal government would get half of the money from lands that would be sold by the state. But that was removed from the bill in committee, with all of the money going to Alaska.

Rep. Craig Johnson, an Anchorage Republican, said bureaucrats in Washington “steal our gold” and “steal our oil.”

“When are we going to start fighting back?” he said.

Wasilla Republican Rep. Wes Keller said national parks are one example of a legitimate federal interest but other lands should be given to the state.

“We have a lot of federal, national interest in our lands and we acknowledge that in our national parks, that’s a given,” he said. “But the point is there’s a lot of land up here and the state has an undefined right to a lot of that land and I wouldn’t give a number.”

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