

SENATE BILL NO. 191

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY SENATOR MACKIE

Introduced: 4/29/97

Referred: CRA, Resources

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the exchange of state tide and submerged land to protect
2 municipal watersheds and provide for airports and marine transportation facilities;
3 and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** LEGISLATIVE FINDINGS. The legislature finds that

6 (1) protecting municipal watersheds and providing land for airports and marine
7 transportation facilities needed in municipalities are critical to the state's economy and the
8 well-being of its citizens;

9 (2) land needed for these essential municipal purposes may be in private
10 ownership, and public acquisition of that land by eminent domain or purchase may not be
11 feasible or may be contrary to the public policy of encouraging private land ownership in the
12 state;

13 (3) because eminent domain proceedings are often costly and prolonged and
14 may materially delay essential public projects, the consensual acquisition of private land

1 through the exchange of state land is the preferred alternative for meeting these municipal
2 needs;

3 (4) state tide and submerged land is owned in trust for certain purposes,
4 including the promotion of maritime commerce and navigation;

5 (5) if state tide and submerged land is conveyed to private landowners for
6 maritime commerce or navigation purposes, private use of that land would be subject to
7 extensive, already existing state and federal regulatory programs designed to protect the public
8 interest in that land and the waters that it borders or underlies; and

9 (6) it is in the best interest of the state to exchange suitable tide or submerged
10 land for the land needed to protect a municipal watershed or to provide for an airport or
11 marine transportation facility needed by a municipality when the

12 (A) land is privately owned;

13 (B) private owner has the interest and capability to use state tide or
14 submerged land to enhance maritime commerce or navigation; and

15 (C) use of the tide or submerged land will not unreasonably impair
16 other uses of the land that are protected under the public trust doctrine.

17 * **Sec. 2.** AS 38.50 is amended by adding a new section to read:

18 **Sec. 38.50.045. Exchanges of tide or submerged land.** (a) The director, on
19 the director's initiative or at the request of a municipality or state agency and with the
20 concurrence of the commissioner, shall exchange state tide or submerged land for
21 privately owned land if

22 (1) the governing body of a municipality determines that the privately
23 owned land is needed to protect the watershed of the municipality or for construction
24 or expansion of an airport or marine transportation facility necessary to transport
25 goods, services, or passengers to or from the municipality;

26 (2) the private owner agrees to the exchange and the private owner
27 proposes to use the exchanged tide or submerged land in a manner that will promote
28 maritime commerce or navigation, which includes the use of the land for docks,
29 wharfs, resource transfer facilities, or other improvements to transport goods, services,
30 or passengers to and from vessels, barges, rafts, or other means of water transport, and
31 for the propagation of aquatic resources;

1 (3) the tide or submerged land to be exchanged is not
2 (A) classified under AS 38.05.300 for uses that preclude the
3 private owner's proposed use of the tide or submerged land; or

4 (B) within the boundaries of a state park established under
5 AS 41.21 or a refuge, sanctuary, state range area, or critical habitat area
6 designated under AS 16.20.

7 (b) AS 38.50.020 applies to an exchange under this section. The municipality
8 or a state agency that requests an exchange may submit to the director an appraisal,
9 conducted by a real estate appraiser certified under AS 08.87.110(a), of some or all of
10 the land to be exchanged. Except for land included in an appraisal submitted under
11 this subsection, the director shall have the state and private land to be exchanged
12 appraised within 90 days after the commissioner concurs in the exchange. The
13 municipality or state agency that requests an exchange shall pay for the appraisal. If
14 an exchange is initiated by the director, the municipality that benefits from the
15 exchange as determined by its governing body under (a)(1) of this section shall pay
16 for the appraisal.

17 (c) An exchange under this section is not subject to AS 38.50.100. The
18 exchange is subject to AS 38.05.127 only to the extent that the provision of public
19 access is reasonably compatible with public safety and with the use that the private
20 owner proposes under (a)(2) of this section to make of the tide or submerged land.

21 * **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).