

Original sponsors: Parr, Brown
and Cowper

Offered: 5/4/77
Referred: Finance

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2

CS FOR HOUSE BILL NO. 133

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to selection and transfer of state

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land to municipalities; and providing for an effective

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date."

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

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* Section 1. STATEMENT OF PURPOSE. The purposes of this Act are to

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remove uncertainties in the existing municipal land selection law of the

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state; to provide for an immediate, final determination and settlement of

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municipal land entitlement; to provide for the completion of rational owner-

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ship patterns for sound land management; and to provide for timely patent of

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land to municipalities to fulfill their respective entitlements.

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* Sec. 2. AS 29.18 is amended by adding new sections to read:

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ARTICLE 3A. GENERAL GRANT LAND.

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Sec. 29.18.202. DETERMINATION OF ENTITLEMENT. (a) The general

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grant land entitlement of each of the municipalities in this subsection

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is the amount set out opposite each:

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(1) Municipality of Anchorage -- 20,865 acres;

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(2) City and Borough of Juneau -- 13,600 acres;

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(3) City and Borough of Sitka -- 9,200 acres;

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(4) Bristol Bay Borough -- 1,940 acres;

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(5) Fairbanks-North Star Borough -- 112,000 acres;

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(6) Haines Borough -- 1,080 acres;

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(7) Kenai Peninsula Borough -- 155,780 acres;

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(8) Ketchikan Gateway Borough -- 9,200 acres;

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(9) Kodiak Island Borough -- 45,200 acres;

1 (10) Matanuska-Susitna Borough -- 355,210 acres;

2 (11) North Slope Borough -- 645 acres.

3 (b) The general grant land entitlement of a city eligible to
4 receive general grant land under the former provisions of secs. 190 -
5 200 of this chapter repealed by this Act is 10 per cent of the maximum
6 total acreage of vacant, unappropriated, unreserved land within the
7 boundaries of each city at any time between the initial date of eligi-
8 bility under former secs. 190 - 200 of this chapter and the effective
9 date of this Act.

10 (c) Within six months of the effective date of this Act, the
11 director shall determine the entitlement for each city eligible to
12 receive general grant land under (b) of this section and certify that
13 entitlement to the city.

14 (d) General grant land entitlements provided in this section consti-
15 tute vested property rights which shall be fulfilled as provided in sec.
16 204 or sec. 208 of this chapter, but no municipal selection vests any
17 interest in or right to receive a particular tract of land except as
18 provided by sec. 204 of this chapter.

19 (e) General grant land entitlements vested under this section
20 may be exercised at any time before the date which is two years after
21 the expiration of the state's right to make selections under secs. 6(a)
22 or (b) of the Alaska Statehood Act (P.L. 85-508); however, the time
23 limitation imposed by this subsection does not apply to payments in lieu
24 of land under sec. 208 of this chapter.

25 Sec. 29.18.204. FULFILLMENT OF LAND ENTITLEMENTS. (a) The acre-
26 age of each municipality's land selections under former secs. 190 - 200
27 of this chapter for which patent has been issued before the effective
28 date of this Act shall be credited toward fulfillment of the entitlement
29 of that municipality.

1 (b) All approved selections under former secs. 190 - 200 of this
2 chapter for which patent has not been issued to a municipality on the
3 effective date of this Act shall be reviewed by the director within nine
4 months of the effective date of this Act. Any approved selection of land
5 which was vacant, unappropriated or unreserved on the date of selection
6 is valid as of the date of the approval under the former secs. 190 -
7 200 of this chapter, and a patent shall be issued to the municipality
8 within three months after approval by the director of a plat of survey.
9 The acreage shall be credited toward fulfillment of the municipality's
10 entitlement. No municipality is entitled to receive patent under this
11 chapter to more than its entitlement determined under sec. 202 of this
12 chapter. Any prior approval by the director of municipal selections for
13 land which was not vacant, unappropriated or unreserved on the date of
14 selection shall be rescinded, and patent may not be issued except when
15 disposal to a third party by sale or lease has occurred. Transfers of
16 general grant land to municipalities under this chapter are subject to
17 AS 38.05.321. Classification actions as reflected upon the land status
18 records of the Department of Natural Resources are determinative of land
19 classification status for purposes of this chapter.

20 (c) All municipal land selections under former secs. 190 - 200 of
21 this chapter not approved as of the effective date of this Act shall be
22 recognized by the director as representing the priority interests of the
23 municipalities, and the selections shall be given first consideration
24 under (e) of this section unless the municipality indicates different
25 priorities.

26 (d) On the effective date of this Act and for five years thereafter,
27 no classification of a parcel of general grant land in excess of 3,200
28 acres under AS 38.05.300 shall be effective, unless otherwise required
29 by law, if the municipality in which the parcel is located, within 30

1 days after receipt of notice of the proposed classification, advises
2 the director in writing that it does not consent to the classification
3 and indicates the reasons for its nonconsent.

4 (e) Each eligible municipality and the director shall jointly
5 consider which vacant, unappropriated, unreserved land, including federal
6 land of interest to a municipality which may be selected by the state as
7 general grant land, located within the boundaries of the municipality is
8 appropriate for municipal selection and approval by the director to ful-
9 fill any remaining municipal general grant land entitlement. The joint
10 consideration made by the parties shall include a cooperative land
11 planning process which will, in addition to the normal objectives of
12 such a process, seek to identify both local and state interests in
13 tracts of vacant, unappropriated and unreserved land remaining within
14 the municipality. Adjacent tracts shall be considered simultaneously
15 except when such simultaneous consideration would cause significant delay
16 or expense. Once a tract has been jointly considered, it may be selected
17 by a municipality. Each selection must be approved or disapproved for
18 patent by the director under (f) of this section within nine months of
19 its selection by a municipality, and a patent shall be issued to the
20 municipality within three months after approval by the director of a plat
21 of survey.

22 (f) In reviewing a municipal selection, the director shall consider
23 the state's responsibilities for developing and protecting values which
24 are of greater than local concern, including development which will have
25 statewide impact, and critical environmental concerns. Specific state
26 responsibilities to be considered, if such responsibilities have not
27 been authorized or delegated by the state to a municipality, include air
28 quality; water; minerals and energy; timber; agriculture; grazing; fish
29 and wildlife and their habitat; public recreation, natural, historical,

1 and archaeological areas of greater than local concern; access to public
2 land and water; transportation; communications; and public safety.
3 Specific municipal responsibilities to be considered include residential,
4 commercial and industrial needs; support of municipal services; educa-
5 tion; local transportation; private recreation; public recreation,
6 natural, historical and archaeological areas of local concern; and other
7 responsibilities authorized or delegated by the state to a municipality.
8 A selection by a municipality of land which is primarily of local concern
9 shall be approved. When the interests of the state may be protected
10 through the conveyance of title that is less than a fee title, the
11 municipality, at its option, may accept the title in acre-for-acre
12 fulfillment of its entitlement.

13 (g) Every decision of approval or disapproval of a municipal
14 selection by the director under (f) of this section shall include a
15 written explanation of the decision based upon the criteria of that
16 subsection. Before issuing any decision to disapprove a selection, the
17 director shall notify the affected municipality in writing, by certified
18 mail, of his reasons for the proposed decision. The municipality shall
19 have 30 days from receipt of the proposed decision to respond to the
20 director in writing enumerating the reasons for which the municipality
21 believes the proposed decision to be in error. After receipt of the
22 municipality's statement of reasons, or after expiration of the period
23 in which the municipality may respond to the proposed decision, the
24 director shall, within 30 days, affirm, modify or reverse his proposed
25 decision in writing and give written notice of his decision to the
26 municipality. The decision of the director constitutes final adminis-
27 trative action in the matter. A municipality may appeal an adverse
28 decision by the director to the superior court under AS 44.62.560 -
29 44.62.570.

1 (h) Within 30 days after convening of the first regular session of
2 the Eleventh Alaska Legislature and the first and second regular sessions
3 of the Twelfth Alaska Legislature, the director shall report to the
4 legislature on the implementation of secs. 202 - 218 of this chapter.

5 Sec. 29.18.206. SELECTION AND CONVEYANCE PROCEDURE. (a) All
6 municipal selections shall be made in reasonably compact tracts, taking
7 into account the use capabilities of a tract and its relationship to
8 surrounding land uses. A selection filed by a municipality which has
9 not been approved by the director may be relinquished at any time. An
10 approved selection may be relinquished by a municipality if the relin-
11 quishment is approved by the director. An approved selection relin-
12 quished by a municipality increases the remaining entitlement of the
13 municipality on an acre-for-acre basis.

14 (b) A municipality may maintain selections for not more than 110
15 per cent of its remaining entitlement. Municipal selections for general
16 grant land which is withdrawn under sec. 11(a)(2) of the Alaska Native
17 Claims Settlement Act (43 U.S.C. 1601 et seq., P.L. 92-203) is not
18 included in the limitation of this subsection.

19 (c) If land selected by a municipality is unsurveyed at the time
20 of approval, the director shall survey, or may approve the municipality's
21 survey of, the exterior boundaries of an approved selection without
22 interior subdivision, and shall issue patent in terms of the exterior
23 boundary survey. The cost of the survey shall be borne by the munici-
24 pality. If land selected by a municipality has been surveyed at the
25 time of its selection, the boundaries shall conform to the public land
26 subdivisions established by the approved survey.

27 (d) The director may approve municipal selections of land which
28 has been tentatively approved or patented to the state by the federal
29 government, but he may not issue patent to a municipality until the land

1 has first been patented to the state. After approval of a selection by
2 the director, but before patent to a municipality, the municipality may
3 execute conditional leases and make conditional sales only with the con-
4 sent of the director. Conditional sales and conditional leases made
5 before the effective date of the Act do not require the consent of the
6 director.

7 (e) Nothing in this chapter affects a valid existing claim, loca-
8 tion or entry under the laws of the state or the United States whether
9 for homestead, mineral, right-of-way or other purposes. Nothing in this
10 chapter affects the rights of an owner, claimant, locater or entryman to
11 the full use and enjoyment of the land so occupied.

12 Sec. 29.18.208. PAYMENT IN LIEU OF LAND. (a) There is estab-
13 lished within the general fund the Alaska municipal land account for the
14 purpose of allowing eligible municipalities to receive payment in lieu
15 of land entitlements provided in sec. 202 of this chapter.

16 (b) By August 1 of each year the director shall certify to each
17 municipality having an entitlement under sec. 202 of this chapter the
18 acreage of patented selections, approved selections not yet patented,
19 pending municipal land selections neither approved nor disapproved by
20 the director, and the remaining entitlement of the municipality. If at
21 the time of certification the ratio of the remaining entitlement of the
22 municipality to the vacant, unappropriated, unreserved land within the
23 municipality is greater than two to one, or if there are less than 1,000
24 acres of vacant, unappropriated, unreserved land within the municipality,
25 the municipality may, at its option, request payment in lieu of land from
26 the account established in (a) of this section; however, no payment may
27 be made to the City and Borough of Juneau, the City and Borough of Sitka
28 or the Ketchikan Gateway Borough under this subsection until the fiscal
29 year after cumulative appropriations to the account exceed \$12,000,000

1 or until the fiscal year beginning July 1, 1984, whichever occurs first.

2 (c) A municipality eligible for payment under this section may,
3 by October 1 of each fiscal year of eligibility, notify the director
4 of its election to accept payment in lieu of land from the account.
5 A municipality may accept payment for not more than 15 per cent of its
6 entitlement under sec. 202 of this chapter, to a maximum of 10,000 acres,
7 in each fiscal year. A municipality which chooses to accept payment in
8 lieu of land shall be entitled to an amount based on the cumulative total
9 number of acres of remaining entitlement which it relinquishes according
10 to the following schedule:

- 11 (1) 10,000 acres or less -- \$1,500 per acre;
- 12 (2) 10,001 to 20,000 acres -- \$750 per acre; and
- 13 (3) more than 20,000 acres -- \$350 per acre.

14 (d) The governor shall annually submit to the legislature a request
15 for an appropriation to the account for the municipalities which have
16 elected to receive payment in lieu of land under this section.

17 (e) If the total appropriation is not sufficient to meet the amount
18 due to all municipalities which have elected to accept payment in lieu
19 of land under (c) of this section, the governor shall apportion the
20 appropriation among the municipalities in proportion to the payment
21 calculated for each municipality for that year. When a distribution of
22 payments is made under this subsection, the remaining entitlement of a
23 municipality to which payment is made shall be reduced in an amount
24 equal to the number of acres for which payment was received. An appor-
25 tionment may increase the acreage for which a municipality may request
26 payment in a succeeding year, but this increase in acreage does not
27 authorize a municipality to request payment in lieu of land of more than
28 10,000 acres in any one year.

29 Sec. 29.18.210. AUTHORIZATION FOR LAND EXCHANGES. The director,

1 with the concurrence of the commissioner, and any municipality are
2 authorized to exchange land or interests in land when it is in the
3 public interest. Land or interests in land exchanged under this section
4 must be of approximately equal value, including the non-monetary value
5 of public benefits. Exchange procedures shall comply with applicable
6 law and municipal ordinances. The notice and review provisions of AS
7 38.05.305 and 38.05.345 are applicable to exchanges of land under this
8 section. The provisions of AS 38.50 do not apply to exchanges of land
9 under this section.

10 Sec. 29.18.212. PUBLIC PURPOSE AND EXPANSION NEEDS. (a) Consis-
11 tent with the best interests of the state, if a municipality does not
12 contain and cannot reasonably acquire sufficient nonfederal land within
13 its boundaries to meet its legitimate needs for public or private settle-
14 ment or development, it shall be the policy of the state to select
15 federal land reasonably necessary to meet the needs of the municipality
16 and to make the land selected available to the municipality under AS
17 38.05.315 or (b) of this section.

18 (b) Where state land is the most logical location for demonstrated
19 municipal expansion for nonpublic settlement and development purposes,
20 and when an exchange of land under sec. 210 of this chapter is not
21 possible or is not in the public interest, it is the policy of the state
22 to sell or lease the land at public auction. The state may contract
23 with a municipality to act as its agent in an auction of state land
24 under applicable statutes. When a municipality acts as the agent of the
25 state in an auction, the municipality may retain from the proceeds of
26 the auction the expenses which the director determines to be necessary
27 and reasonable.

28 (c) Nothing in this chapter limits or impairs the authority of the
29 director to transfer land to municipalities, without limit or considera-

1 tion, for public purposes in accordance with AS 38.05.315. If there is
2 a remaining entitlement of the municipality, land transferred under AS
3 38.05.315 shall be credited toward fulfillment of the entitlement;
4 however, land conveyed to the state under sec. 12(d)(2) of Public Law
5 94-204 and subsequently conveyed by the state to a municipality under
6 secs. 202 - 218 of this chapter or AS 38.05.315 may not be credited
7 against the municipality's remaining entitlement.

8 Sec. 29.18.214. ELECTION OF BENEFITS. (a) A municipality which
9 on the effective date of this Act is engaged in litigation, or which
10 becomes engaged in litigation, regarding a claim to state land under
11 former secs. 190 - 200 of this chapter shall elect either to obtain the
12 benefits provided in secs. 202 - 218 of this chapter or to pursue the
13 litigation and thereby waive any claim to entitlement under secs. 202 -
14 218 of this chapter. An election shall be made by filing a motion for
15 dismissal with prejudice in the court in which the litigation is pending.
16 If the claim involves a municipality identified in sec. 202(a) of this
17 chapter, the municipality shall file its motion for dismissal within 60
18 days of the effective date of this Act. If the claim involves a muni-
19 cipality not listed in sec. 202(a) of this chapter, the municipality
20 shall file its motion for dismissal within 60 days after receiving the
21 certificate of entitlement provided by the director under sec. 202(c) of
22 this chapter. Failure of the municipality to file a motion for dis-
23 missal during the time period provided in this subsection shall be
24 considered a waiver of entitlement under secs. 202 - 218 of this chapter.

25 (b) A municipality which was eligible to file land selections under
26 the former secs. 190 - 200 of this chapter and which does not enter into
27 litigation over a claim to rights under those sections before the expira-
28 tion of the time period within which it could make an election under (a)
29 of this section shall be considered to have elected to receive benefits

1 under secs. 202 - 218 of this chapter and to have waived any claim which
2 might have been raised under former secs. 190 - 200 of this chapter.

3 Sec. 29.18.216. ADMINISTRATION. The commissioner may adopt regula-
4 tions in accordance with the Administrative Procedure Act (AS 44.62)
5 necessary to carry out the purposes of secs. 202 - 218 of this chapter.

6 Sec. 29.18.218. DEFINITIONS. In secs. 202 - 218 of this chapter,
7 unless the context otherwise requires,

8 (1) "approved selection" means a municipal land selection
9 which has been approved in writing by the director for transfer by patent
10 to a municipality;

11 (2) "director" means the director of the division of lands,
12 Department of Natural Resources, or his designee;

13 (3) "general grant land" means land patented or tentatively
14 approved to the state from the United States under secs. 6(a) or (b)
15 of the Alaska Statehood Act;

16 (4) "municipal land selection" means a request by a munici-
17 pality, filed in writing with the director under authority of secs.
18 190 - 200 of this chapter repealed by this Act or under secs. 202 - 218
19 of this chapter for vacant, unappropriated, unreserved general grant
20 land within its municipal boundaries in partial fulfillment of its
21 municipal entitlement;

22 (5) "municipality" means a home rule or general law city
23 or organized borough of any class, and includes third class boroughs and
24 unified municipalities established under AS 29.68.240 - 29.68.440;

25 (6) "patent" means a document, issued by the director to a
26 municipality for a previously approved selection, which conveys and
27 quitclaims all the right, title and interest of the state without reser-
28 vation or condition except as may be required by law;

29 (7) "remaining entitlement" means the general grant land

1 entitlement determined in accordance with sec. 202 of this chapter, re-
2 duced by the total acreage of approved selections, including both
3 patented and unpatented parcels;

4 (8) "vacant, unappropriated, unreserved land" means general
5 grant land as defined in (3) of this section, excluding minerals as
6 required by sec. 6(i) of the Alaska Statehood Act, which

7 (A) has not been set aside by statute for one or more
8 particular uses or purposes;

9 (B) has not been approved for patent to a municipality
10 under secs. 202 - 218 of this chapter or former secs. 190 - 200 of
11 this chapter repealed by this Act; or

12 (C) is unclassified or, if classified under AS 38.05.300,
13 is classified for agricultural, grazing, commercial, industrial,
14 private recreational, residential, utility or open-to-entry pur-
15 poses.

16 * Sec. 3. AS 38.05.321 is repealed and re-enacted to read:

17 Sec. 38.05.321. RESTRICTION ON SALE, LEASE OR OTHER DISPOSAL OF
18 AGRICULTURAL AND GRAZING LAND. (a) The sale, lease or other disposal
19 of state land classified as agricultural or grazing land transfers only
20 rights for agricultural and grazing purposes, and all other interests
21 in the land remain with the state unless otherwise required by law.

22 (b) State land classified as agricultural or grazing land which
23 has been selected by a municipality under AS 29.18.190 - 29.18.200 or
24 29.18.204(e) may be approved by the director for patent under AS 29.-
25 18.204(f); however, only rights in the land for agricultural or grazing
26 purposes may be transferred and all other interests in the land will
27 remain with the state. Agricultural or grazing land approved for patent
28 to a municipality under AS 29.18.204(f) shall be credited, acre for acre,
29 toward fulfillment of that municipality's entitlement under AS 29.18.202.

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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 or grazing land, those rights shall pass without consideration to the municipality in which the land is located.

(c) The provisions of this section do not apply to state land classified as agricultural or grazing land which has been selected by a municipality under the provisions of AS 29.18.190 - 29.18.200 if the selection is an approved selection valid under AS 29.18.204(b).

* Sec. 4. AS 38.05.290 is amended by adding a new subsection to read:

(b) Consistent with the best interests of the state, in the selection of general grant land it is the policy of the state to make available the maximum land area from which municipalities may fulfill land entitlements under AS 29.18.202 - 29.18.218.

* Sec. 5. AS 29.18.190, 29.18.200, and 29.18.420 are repealed.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

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