

HOUSE CS FOR CS FOR SENATE BILL NO. 217(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 5/9/94

Referred: Finance

Sponsor(s): SENATORS FRANK, Kerttula, Miller, Rieger, Taylor, Sharp

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the University of Alaska and university land, authorizing the
2 University of Alaska to select additional state public domain land, and defining
3 net income from the University of Alaska's endowment trust fund as 'university
4 receipts' subject to prior legislative appropriation; and providing for an effective
5 date."

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

7 * Section 1. FINDINGS AND PURPOSE. The legislature finds that

8 (1) as the beneficiary under the provisions of the Acts of August 30, 1890, and
9 March 4, 1907, designating the Alaska Agricultural College and School of Mines as
10 beneficiary, and of March 4, 1915, 38 Stat. 1214, transferring certain land for its location and
11 support, the University of Alaska is a land grant university;

12 (2) under the Acts of March 4, 1915, 38 Stat. 1214, and January 21, 1929, 45
13 Stat. 1091, the Congress of the United States granted to the Territory of Alaska certain federal

1 land to be held in trust for the benefit of the predecessor of the University of Alaska;

2 (3) the Territory was unable to receive most of the land conveyed by the Act
3 of March 4, 1915, before repeal of that Act by Sec. 6(k) of the Alaska Statehood Act (P.L.
4 85-508, 72 Stat. 339);

5 (4) the Congress of the United States granted the State of Alaska the right to
6 select 102,500,000 acres of federal land under Sec. 6(b) of the Alaska Statehood Act;

7 (5) the land selection rights embodied in the Alaska Statehood Act reflect in
8 part congressional recognition that the state would need the land to support its government and
9 programs, and the Congress assumed that the State of Alaska would in turn devote some of
10 the land or the income from it for the use and benefit of the University of Alaska;

11 (6) most land grant colleges in the western United States have obtained a larger
12 land grant from the federal government than the University of Alaska has received;

13 (7) an academically strong and financially secure state university system is a
14 cornerstone to the long-term development of a stable population and to a healthy, diverse
15 economy in the state; and

16 (8) it is in the best interests of the state and the University of Alaska that the
17 university take ownership of a significant and substantial portfolio of income producing land
18 in order to provide income for the support of public higher education in the state.

19 * Sec. 2. AS 14.40.170(a) is amended to read:

20 (a) The Board of Regents shall

21 (1) appoint the president of the university by a majority vote of the
22 whole board, and the president may attend meetings of the board;

23 (2) fix the compensation of the president of the university, all heads of
24 departments, professors, teachers, instructors, and other officers;

25 (3) confer such appropriate degrees as it may determine and prescribe;

26 (4) have the care, control, and management of

27 (A) all the real and personal property of the university; and

28 (B) land

29 (i) conveyed to the Board of Regents by the
30 commissioner of natural resources in the settlement of the claim of the
31 University of Alaska to land granted to the state in accordance with the

1 Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance
2 with the Act of January 21, 1929 (45 Stat. 1091), as amended; and
3 (ii) selected by the University of Alaska and conveyed
4 to it by the commissioner of natural resources under AS 14.40.365,
5 except as provided in AS 14.40.368(2);

6 (5) keep a correct and easily understood record of the minutes of every
7 meeting and all acts done by it in pursuance of its duties;

8 (6) under procedures to be established by the commissioner of
9 administration, and in accordance with existing procedures for other state agencies,
10 have the care, control, and management of all money of the university and keep a
11 complete record of all money received and disbursed;

12 (7) adopt reasonable rules for the prudent trust management and the
13 long-term financial benefit to the university of the land of the university;

14 (8) provide public notice of sales, leases, exchanges, and transfers of
15 the land of the university or of interests in land of the university;

16 (9) report each year within the first 10 days of the convening of a
17 regular session of the legislature on the expenditures made during the preceding fiscal
18 year from the funds of the University of Alaska that are derived from sales, leases,
19 exchanges, or transfers of the land of the university or of interests in land of the
20 university

21 (A) that were conveyed to the University of Alaska in
22 settlement of the claim of the University of Alaska to land granted to the state
23 in accordance with the Act of March 4, 1915 (38 Stat. 1214), as amended, and
24 in accordance with the Act of January 21, 1929 (45 Stat. 1091), as amended;
25 and

26 (B) that were selected by and conveyed to the University of
27 Alaska under AS 14.40.365.

28 * Sec. 3. AS 14.40.291 is amended to read:

29 Sec. 14.40.291. LAND OF THE UNIVERSITY OF ALASKA NOT PUBLIC
30 DOMAIN LAND. Notwithstanding any other provision of law, university-grant land,
31 state replacement land that becomes university-grant land on conveyance to the

1 university, land selected by and conveyed to the University of Alaska under
2 AS 14.40.365, and any other land owned by the University of Alaska is not and may
3 not be treated as state public domain land. Title to or interest in [TO] land described
4 in this section may not be acquired by adverse possession, prescription, or in any other
5 manner except by conveyance from the university. The land is subject to
6 condemnation for public purpose in accordance with law.

7 * Sec. 4. AS 14.40 is amended by adding a new section to read:

8 Sec. 14.40.365. UNIVERSITY LAND FROM STATEHOOD ACT LAND
9 SELECTION CONVEYANCES. (a) The University of Alaska may select and is
10 entitled to receive the conveyance of 500,000 acres of land conveyed to the state under
11 Sec. 6(b) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339) that, on the date of
12 its selection by the university,

13 (1) has not been conveyed by the state;

14 (2) has not been reserved by law from the public domain;

15 (3) is not land

16 (A) included in a five-year proposed oil and gas leasing
17 program under AS 38.05.180(b); or

18 (B) leased under, or for which a lease application is pending
19 under, AS 38.05.180(d);

20 (4) is not subject to a possessory interest or encumbrance other than

21 (A) a lease that is not an oil or gas lease;

22 (B) a timber contract;

23 (C) a mining claim;

24 (D) a sale of materials under AS 38.05.110 - 38.05.120;

25 (E) a land use permit or right-of-way issued by the Department
26 of Natural Resources under AS 38.05;

27 (5) is not necessary to carry out the purpose of an interagency land
28 management agreement; or

29 (6) is not subject to conveyance under a land exchange or land
30 settlement agreement.

31 (b) Notwithstanding AS 38.05.125(a), the transfer of ownership and

1 management of land from the Department of Natural Resources to the Board of
2 Regents of the University of Alaska under this section includes

3 (1) the interest of the state in the coal, ores, minerals, fissionable
4 materials, geothermal resources, and fossils that may be in or on the land; and

5 (2) the interest of the state in the oil and gas that may be in or on the
6 land, but only as to land that is selected by the University of Alaska under this section
7 on and after the date that is the fifth anniversary of the effective date of this section.

8 (c) When the University of Alaska selects the land to which it is entitled under
9 this section, unless the commissioner of natural resources determines under (e) of this
10 section that title to the land should not be conveyed, the commissioner of natural
11 resources shall convey, subject to divestiture under (n) of this section, a document of
12 interim conveyance under (k) of this section or a patent to land.

13 (d) When a selection has been made by the University of Alaska under (c) of
14 this section, the land selected is closed to entry until the land selected has been
15 conveyed or the selection has been rejected by the commissioner of natural resources.

16 (e) The commissioner of natural resources may not convey title to any land
17 selection made by the University of Alaska under this section if the commissioner
18 determines that the proposed selection

19 (1) includes land for which, at the time of its selection under this
20 section,

21 (A) a municipality has made a selection under AS 29.65, unless
22 the land selection is, at a later date, rejected by the commissioner of natural
23 resources or relinquished by the municipality; or

24 (B) the commissioner reasonably believes may be selected by
25 a municipality under AS 29.65.030, but the commissioner may not withhold
26 under this subparagraph the conveyance of title to land selected by the
27 University of Alaska for more than three years after the date of the
28 municipality's incorporation;

29 (2) is not in the best interests of the state; in making a determination
30 under this paragraph as to whether a selection by the University of Alaska is in the
31 best interests of the state, the commissioner shall consider

- 1 (A) the interest of the general public in retention of the land in
- 2 state ownership, including the interest in maintaining and protecting customary
- 3 and traditional uses of the resources of the land;
- 4 (B) ensuring an appropriate diversity in the character of land
- 5 owned by the state and by the University of Alaska;
- 6 (C) the public benefits achieved by conveyance of the land to
- 7 the University of Alaska;
- 8 (D) the probable potential for the development of the land and
- 9 its resources and the probable income to the University of Alaska from the
- 10 conveyance of the land;
- 11 (E) benefits to the University of Alaska from the conveyance
- 12 of the land to it; and
- 13 (F) the efficiency of the management of the land resulting from
- 14 the conveyance of the land.
- 15 (f) If the Board of Regents of the University of Alaska disagrees with a
- 16 decision of the commissioner of natural resources not to convey to the University of
- 17 Alaska land selected by it under this section, the Board of Regents and the
- 18 commissioner of natural resources shall submit the matter to the governor, who shall
- 19 make the decision. The decision of the governor is final.
- 20 (g) When land is conveyed to the University of Alaska under this section, the
- 21 University of Alaska takes the land subject to any possessory interest held by another
- 22 person on the effective date of the conveyance. Except as provided in
- 23 AS 14.40.368(1), the University of Alaska is entitled to receive the consideration due
- 24 under that interest for the duration of the interest.
- 25 (h) In conveying land to the University of Alaska under this section, the
- 26 commissioner of natural resources shall give public notice under AS 38.05.945(b) and
- 27 (c) and provide for access under AS 38.05.127, but other provisions of AS 38.04 and
- 28 AS 38.05 do not apply.
- 29 (i) Land transferred or conveyed to the University of Alaska under this section
- 30 (1) is subject to
- 31 (A) section 6(i) of the Alaska Statehood Act (P.L. 85-508, 72

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Stat. 339);

(B) art. IX of the state constitution;

(C) AS 19.10.010; and

(D) the rights of the state under former 43 U.S.C. 932 (sec. 8,

Act of July 26, 1866, 14 Stat. 253);

(2) excludes any interest transferred to the state by quit claim deed dated June 30, 1959, under authority of the Alaska Omnibus Act, P.L. 86-70, 73 Stat. 141;

(3) based on a land selection filed by the University of Alaska on or after the effective date of this section and until the day before the day that is the fifth anniversary of the effective date of this section is subject to reservation by the state in perpetuity of all oil and gas that may be in or on the land, together with the right to explore the land for oil and gas and to remove from the land all oil and gas located in and on it.

(j) The University of Alaska shall bear all costs of selection, platting, surveying, and conveyance of the land that it selects under this section and, subject to appropriation, shall reimburse the Department of Natural Resources for the reasonable costs incurred by that department relating to that selection, platting, surveying, and conveyance. As to land due the University of Alaska under (c) of this section because it has not been disapproved under (e) of this section,

(1) if the land has been surveyed, the boundaries of the land conveyed must conform to the public land subdivisions established by the approved survey;

(2) if the land is unsurveyed, the commissioner shall survey the exterior boundaries of the land to be conveyed without interior subdivision, and shall issue patent in terms of the exterior boundary survey.

(k) For land due the University of Alaska under (c) of this section that is unsurveyed, pending the survey of exterior boundaries and issuance of patent, the commissioner of natural resources shall prepare and provide to the University of Alaska a document of interim conveyance for the land to be conveyed.

(l) Except as provided in AS 14.40.368(2), management of land conveyed to the University of Alaska by patent or by a document of interim conveyance vests with

1 the University of Alaska from the date of execution of the patent or document of
2 interim conveyance.

3 (m) The University of Alaska may not make a land selection under this section
4 after December 31, 2009.

5 (n) When the commissioner of natural resources issues a document of interim
6 conveyance under (k) of this section or a patent for land selected and held by the
7 University of Alaska, the commissioner of natural resources shall retain the right to
8 reenter the land conveyed and recover title to it. The commissioner of natural
9 resources shall reenter and recover title if, on the 10th anniversary of the execution of
10 the conveyance, the commissioner finds that the University of Alaska is not actively
11 managing the land to provide income for the support of its education programs.
12 However, if at any time during the 10-year period, litigation, including any appeal, has
13 prevented the University of Alaska from actively managing the land to provide income,
14 the date on which the commissioner of natural resources shall make the finding
15 required by this subsection is extended by a period equal to the period attributable to
16 the litigation during which the University of Alaska was prevented from actively
17 managing the land to provide income. For purposes of this subsection, "actively
18 managing the land to provide income" means that the University of Alaska is deriving
19 revenue from the land selection.

20 * Sec. 5. AS 14.40.365(e) is repealed and reenacted to read:

21 (e) The commissioner of natural resources may not convey title to any land
22 selection made by the University of Alaska under this section if the commissioner
23 determines that the proposed selection

24 (1) includes land for which, at the time of its selection under this
25 section,

26 (A) a municipality has made a selection under AS 29.65, unless
27 the land selection is, at a later date, rejected by the commissioner of natural
28 resources or relinquished by the municipality; or

29 (B) the commissioner reasonably believes the land may be
30 selected by a municipality under AS 29.65.030, but the commissioner may not
31 withhold under this subparagraph the conveyance of title to land selected by the

1 university longer than three years after the date of the municipality's
2 incorporation;

3 (2) includes land that, at the time of its selection under this section,
4 (A) is subject to an oil and gas exploration license; or
5 (B) the commissioner reasonably believes will be made part of,
6 an oil and gas exploration license issued under AS 38.05.131 - 38.05.134; the
7 commissioner may not refuse to convey title to land to the University of Alaska
8 under this subparagraph for more than three years after its first selection by the
9 University of Alaska;

10 (3) is not in the best interests of the state; in making a determination
11 under this paragraph as to whether a selection by the University of Alaska is in the
12 best interests of the state, the commissioner shall consider

13 (A) the interest of the general public in retention of the land in
14 state ownership;

15 (B) ensuring an appropriate diversity in the character of land
16 owned by the state and by the University of Alaska;

17 (C) the public benefits achieved by conveyance of the land to
18 the University of Alaska;

19 (D) the probable potential for the development of the land and
20 its resources and the probable income to the University of Alaska from the
21 conveyance of the land;

22 (E) benefits to the University of Alaska from the conveyance
23 of the land to it; and

24 (F) the efficiency of the management of the land resulting from
25 the conveyance of the land.

26 * Sec. 6. AS 14.40 is amended by adding new sections to read:

27 Sec. 14.40.366. **MANAGEMENT AND DISPOSITION OF UNIVERSITY**
28 **LAND.** (a) The Board of Regents shall, by rule or regulation, establish procedures
29 for mineral entry or location and mineral leasing on university land selections made
30 under AS 14.40.365 that are substantially similar to mineral entry, location, and leasing
31 procedures for state land under AS 38.05.185 - 38.05.275.

1 (b) Notwithstanding other provisions of law, the University of Alaska shall
2 seek public comment on proposals for development or sale of university selections
3 made under AS 14.40.365. The Board of Regents shall adopt policies which provide
4 that the university shall prepare an annual plan for management and disposition of
5 university land under this section and shall, not less than 30 days prior to scheduled
6 approval by the Board of Regents of the plan

7 (1) make copies of the plan available at all legislative information
8 offices and at such other locations as the university may designate;

9 (2) publish a notice in newspapers of general circulation in the state
10 which provides the public with information on the locations where the plan is available
11 for public inspection;

12 (3) give notice to all legislators and to local governments with
13 jurisdiction over the land affected by the proposal; and

14 (4) seek public comment on the annual plan prior to action by the
15 Board of Regents approving the plan.

16 Sec. 14.40.368. MANAGEMENT AND DISPOSITION OF INCOME FROM
17 EXISTING ENCUMBRANCES. For the land selected by and conveyed to the
18 University of Alaska under AS 14.40.365 that is subject to a lease, contract, claim,
19 sale, permit, or right-of-way identified in AS 14.40.365(a)(4)

20 (1) the state is entitled to receive the income obtained from the lease,
21 contract, claim, sale, permit, or right-of-way for the duration of the term of the lease,
22 contract, claim, sale, permit, or right-of-way, and during any renewal of it that is
23 authorized by the lease, contract, claim, sale, permit, or right-of-way, or by law;

24 (2) the responsibility for the management of the land vests with the
25 University of Alaska only upon conclusion of the term of the lease, contract, claim,
26 sale, permit, or right-of-way, and any renewal authorized by the lease, contract, claim,
27 sale, permit, or right-of-way, by law.

28 Sec. 14.40.369. CUSTOMARY AND TRADITIONAL USES TO BE
29 CONTINUED. When land selected by the University of Alaska under AS 14.40.365
30 has been conveyed to it, the University of Alaska shall manage the land in a manner
31 that permits customary and traditional uses of the resources of that land to the

2 * Sec. 7. AS 14.40.400(a) is amended to read:

3 (a) The Department of Revenue shall establish a separate endowment trust
4 fund in which all net income derived from the sale or lease of the land granted under
5 the Act of Congress approved January 21, 1929, and the land selected by and
6 conveyed to the University of Alaska under AS 14.40.365, and in which all
7 monetary gifts, bequests, or endowments made to the University of Alaska for the
8 purpose of the fund, shall be held in trust.

9 * Sec. 8. AS 14.40.400(e) is amended to read:

10 (e) Subject to legislative appropriation, the [THE] Department of
11 Administration shall disburse the net income from the trust fund upon vouchers
12 approved by the president and treasurer of the University of Alaska specifying the
13 purpose for which the money is to be used and showing it is to be used in conformity
14 with this section.

15 * Sec. 9. AS 14.40.491 is amended to read:

16 Sec. 14.40.491. DEFINITION OF UNIVERSITY RECEIPTS. In
17 AS 14.40.120 - 14.40.491, "university receipts" includes

- 18 (1) student fees, including tuition;
19 (2) receipts from university auxiliary services;
20 (3) recovery of indirect costs of university activities;
21 (4) the net income of the trust fund established in AS 14.40.400 and
22 receipts from sales and rentals of university property;
23 (5) federal receipts;
24 (6) gifts, grants, and contracts; and
25 (7) receipts from sales, rentals, and the provision of services of
26 educational activities.

27 * Sec. 10. AS 29.45.030(a) is amended to read:

- 28 (a) The following property is exempt from general taxation:
29 (1) municipal property, including property held by a public corporation
30 of a municipality, or state property, except that
31 (A) a private leasehold, contract, or other interest in the

- 1 property is taxable to the extent of the interest;
- 2 (B) notwithstanding any other provision of law, property
3 acquired by an agency, corporation, or other entity of the state through
4 foreclosure or deed in lieu of foreclosure and retained as an investment of a
5 state entity is taxable; this subparagraph does not apply to federal land granted
6 to the University of Alaska under AS 14.40.380 or 14.40.390, or to other land
7 granted to the university by the state to replace land that had been granted
8 under AS 14.40.380 or 14.40.390, or to land conveyed by the state to the
9 University of Alaska under AS 14.40.365:
- 10 (C) an ownership interest of a municipality in real property
11 located outside the municipality acquired after December 31, 1990, is taxable
12 by another municipality; however, a borough may not tax an interest in real
13 property located in the borough and owned by a city in that borough;
- 14 (2) household furniture and personal effects of members of a
15 household;
- 16 (3) property used exclusively for nonprofit religious, charitable,
17 cemetery, hospital, or educational purposes;
- 18 (4) property of a nonbusiness organization composed entirely of persons
19 with 90 days or more of active service in the armed forces of the United States whose
20 conditions of service and separation were other than dishonorable, or the property of
21 an auxiliary of that organization;
- 22 (5) money on deposit;
- 23 (6) the real property of certain residents of the state to the extent and
24 subject to the conditions provided in (e) of this section;
- 25 (7) real property or an interest in real property that is exempt from
26 taxation under 43 U.S.C. 1620(d), as amended;
- 27 (8) property of a political subdivision, agency, corporation, or other
28 entity of the United States to the extent required by federal law; except that a private
29 leasehold, contract, or other interest in the property is taxable to the extent of that
30 interest;
- 31 (9) natural resources in place including coal, ore bodies, mineral

1 deposits, and other proven and unproven deposits of valuable materials laid down by
2 natural processes, unharvested aquatic plants and animals, and timber.

3 * Sec. 11. APPLICABILITY OF UNIVERSITY SELECTION RIGHTS UNDER
4 AS 14.40.365 TO LAND. In addition to the land that, under AS 14.40.365(e), the
5 commissioner of natural resources may not convey to the University of Alaska, the
6 commissioner of natural resources may not convey land that, at the time of its selection by
7 the university,

8 (1) is subject to designation for conveyance or conveyance to the Alaska
9 Mental Health Trust Authority under sec. 54, ch. 66, SLA 1991;

10 (2) is land that the commissioner of natural resources reasonably believes
11 should be designated for conveyance or conveyed to the Alaska Mental Health Trust Authority
12 under sec. 55, ch. 66, SLA 1991, as compensation to that trust for original mental health trust
13 land not available for return to the corpus of the trust; or

14 (3) is land described in sec. 56, ch. 66, SLA 1991, as listed in "Lands
15 Hypothecated to the Mental Health Trust, May 1991" located in the office of the director of
16 the division of lands, Department of Natural Resources, in Anchorage, Alaska, that has been
17 hypothecated to secure reconstitution of the mental health trust; however, as the reconstitution
18 of the mental health trust is accomplished and the hypothecated land is released on a pro rata
19 basis, the University of Alaska may select the land and the commissioner may convey it.

20 * Sec. 12. LEGISLATIVE INTENT. It is the intent of the legislature that, if sec. 11 of
21 this Act has not taken effect on or before the effective date of secs. 1 - 4 and 6 - 10 of this
22 Act, the commissioner of natural resources reject, as inconsistent with the best interests of the
23 state, selections of land by the University of Alaska under AS 14.40.365, added by sec. 4 of
24 this Act, of land described in sec. 11 of this Act.

25 * Sec. 13. Section 5 of this Act takes effect on the effective date of a version of House Bill
26 199 or Senate Bill 150 of the Eighteenth Alaska State Legislature authorizing oil and gas
27 exploration licensing on state land that is passed by the Eighteenth Alaska State Legislature.

28 * Sec. 14. Section 11 of this Act takes effect on the effective date of ch. 66, SLA 1991.