

SB

726

COMMITTEE REPORT

4/30/76

HOUSE

FINANCE

Mr. Speaker:

Date 5-17-76

The Committee on RESOURCES has had CSSE 726

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR CSSE 726 AND THAT
CS FOR CSSE 726 DO PASS

"and" recommends it BE REFERRED TO THE _____
COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

<u>[Signature]</u>	_____	_____
<u>[Signature]</u>	_____	_____
<u>[Signature]</u>	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[Signature] Chairman

Nels

Thanks for taking the time to talk with Sam and me this morning. I would suggest the language on the attached page for the committee report regarding C.S. S.B. 726 when it reaches the House. If for some reason the language of C.S. S.B. 726 is going to be changed by the House or if hearings are going to be held, I would appreciate it if someone would call me so we would have a chance to offer our thoughts.

DAVID WOLF
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Anch.
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home 349 1926

SAM DEMMERT
YAKUTAT
784 3335

Although A.S.38.95.060 is repealed by this new statute, it is not intended that this new statute affect the recent land trade in yakutat between the State and Yak-tat Kwaan, Inc. which was authorized under A.S.38.95.060.

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

April 20, 1976

Honorable Nels A. Anderson, Jr.
Chairman
House Resources Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Anderson:

As promised in earlier correspondence to the Committee, we are writing to communicate the Commission's views respecting the principal elements which should be included in any new legislation enacted by the Legislature to govern land exchanges involving the State.

The concepts discussed in this letter were considered by the Commission at a meeting held on April 20, 1976. The Commission elected not to put its recommendations into legislative form.

1. Valuation of Properties.

The Commission believes that any new State legislation should emphasize the consummation of land exchanges based on the equal fair market value of the properties to be exchanged. However, we also recommend that in situations where the properties involved are not equal in appraised fair market value or where such value cannot be ascertained with reasonable certainty, the director be authorized to enter into an exchange if he finds that the appraised fair market value of the properties to be received by the State, together with the nonmonetary value of other public benefits, equals or exceeds the value of the properties which the State will relinquish.

The criterion of equal fair market value has traditionally been included in Federal and State exchange statutes, and this standard works well

where land values can be readily determined through appraisal. The equal monetary value standard breaks down in the Alaska context, however, because the paucity of comparable land sales in many rural areas, the vast acreages involved, and other factors often vitiate the accuracy of the appraisal method. In recognition of this fact, Congress recently authorized Federal involvement in exchanges which are premised on other than appraised value. We believe that a similar approach, with proper procedural and other safeguards, should be incorporated into State legislation. Such safeguards should include, among other things, public notice and hearings, legislative review, and a carefully documented statement of the nonmonetary values involved. In our opinion, passage of legislation of this sort would help consolidate State land holdings and lead to more effective administration of the State public domain. At the same time, appropriate procedural safeguards and the emphasis on the consummation of equal appraised value trades, where possible, should insure adequate protection of the public interest.

2. Exchanges Involving Mineral Rights.

The Commission recommends that any new exchange legislation authorize the Director of the Division of Lands or other appropriate official to convey mineral rights in State lands to the extent that such a conveyance is permitted by the Alaska Constitution and applicable Federal law. The Commission further recommends that except where special circumstances dictate, the Director be precluded from conveying or receiving either the surface estate or the mineral rights therein, one without the other.

Previous experience in other parts of the country demonstrates the adverse economic, environmental, and social consequences which can result from separating ownership of the surface estate and the mineral rights located therein. While Section 6(i) of the Alaska Statehood Act does preclude the State from disposing of mineral rights generally, a recent amendment to the Settlement Act explicitly waives this constraint with respect to exchanges involving the Federal government. (This waiver is presently being challenged in the courts.) Other Federal statutes pursuant to which the State has previously selected mental health, university, and school lands do not contain a prohibition against the disposal of mineral rights. In view of this and the improved land management and use which usually results from a conveyance of full fee title, the Commission believes that new exchange legislation should authorize the State to convey mineral rights to the extent authorized by applicable law, and that the appropriate official be required to convey or receive full fee title except where special circumstances pertain.

3. Legislative Review.

The Commission recommends that subsequent legislation provide an opportunity for legislative review of proposed exchanges based on other than equal appraised fair market value. However, the Commission believes

that affirmative approval should not be required. Rather, the Legislature should be afforded an opportunity to review a proposed exchange within a reasonable period, and if the Legislature does not act to disapprove the exchange within that period, the appropriate State official would be empowered to execute it in behalf of the State.

Historically, the requirement of equal fair market value has been included in exchange statutes as legislative protection against arbitrary action and other abuse by those empowered to execute an exchange. This standard has worked well in protecting the public interest with respect to exchanges involving equal appraised value, and we see no reason to impose the additional requirement of legislative approval, which possesses certain infirmities of its own. The situation is different with respect to proposed exchanges premised on other than equal appraised value. Here, there is no objective standard against which to test a proposed exchange. In view of this, we believe that exchanges for other than equal appraised value should be viewed as resource allocation decisions concerning which the people's elected representative should have an opportunity to express their views. We do not think, however, that the means of expression should be affirmative legislative approval. Experience on the Federal level indicates that the review approach which the Commission is suggesting provides ample opportunity for legislative bodies to participate meaningfully in the decisionmaking process. At the same time, this means of review helps to avoid political logrolling and other undesirable activity.

In making the recommendations discussed in this section, we are aware that some persons believe that the separation of powers doctrine and other constitutional constraints preclude any sort of legislative review of proposed land exchanges. The research which has been conducted by our legal staff indicates that there is currently no definitive judicial decision or other opinion on this point. There are cases, constitutional provisions, and other considerations which can be used by either side of the issue to support its contention. Our staff does believe, however, that the better reasoned opinion would support legislative review in the form which we are suggesting here. (Because the criterion of equal appraised value does provide an objective standard against which to test proposed exchanges based on this standard, legislative review of such exchanges would appear less supportable.) Since there is no definitive answer at the present time, we suggest that the Legislature adopt that review procedure which it deems best from a policy point of view, and then if necessary, that decision can be tested in the courts.

4. Prohibition Against Exchanges Requiring Subsequent Identification of the Consideration Involved.

The Commission recommends that any legislation should specifically prohibit the Director of the Division of Lands or other appropriate State official from negotiating or entering into any land exchange which

requires the identification of lands or interests in land at some time after the exchange is initially executed. The Commission further recommends that such officials be precluded from alienating or agreeing not to exercise selection rights granted in the Alaska Statehood Act.

We believe that the best way to insure proper analysis of a proposed exchange is to require that all lands and other consideration which will be involved therein be clearly identified at the time when public notice is circulated. If such properties are not so identified, the public and others desiring to analyze a proposed exchange will be compelled to speculate on how the selection procedures contained in the proposed agreement will be implemented. In such instances, executory selection and exchange procedures often could be implemented in a number of ways, with varying consequences resulting from each scenario. To avoid uncertainty in a matter so important as the disposition of the State public domain, and to provide meaning to the public and other review processes provided in proposed legislation, we believe that the prohibition recommended here is necessary. For the same reasons, and in recognition of certain constraints contained in Section 6(g) of the Statehood Act, we also recommend that appropriate State officials be precluded from alienating or agreeing not to exercise State selection rights as part of the consideration for an exchange.

5. Statement of Basis for an Exchange.

We recommend that the Director or other appropriate State official be required to prepare and distribute a report which objectively analyzes a proposed exchange in a clear and concise format which is designed to facilitate public understanding of the issues involved. Among other things, the report should include a discussion of the monetary and non-monetary values of the properties involved, including surface and mineral resources, the benefits and detriments which can be expected to accrue, and possible alternatives. Preparation and circulation of a report of this type should promote informed public dialogue and lead to a better ultimate decision concerning the proposed exchange.

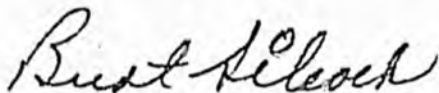
6. Other Elements.

We have dealt in this correspondence with the principal elements which, in the opinion of the Commission, should be included in any new legislation governing land exchanges. In so doing, we do not mean to minimize the importance of other necessary elements, such as provisions concerning authorization, parties to an exchange, reservations and covenants, agency coordination, public notice and hearings, protection of valid existing rights, and so forth. We believe, however, that there is general agreement about how to handle these matters, and so we have not considered them here.

In closing, we want to express the Commission's strong support for needed revisions, such as those which we have discussed here, in State land exchange authority. The land ownership pattern in Alaska is growing ever more complex as a consequence of the implementation of the selection provisions of the Alaska Statehood Act and the Alaska Native Claims Settlement Act. Lands owned by the Federal government, the State, Native corporations, and others lie adjacent to each other in tracts which do not necessarily follow rational boundary lines. This intermixture of land ownership often jeopardizes prudent management and use. To rectify this situation, certain refinements in existing authority and new innovations appear necessary. In our opinion, the enactment into law of the elements referred to above would facilitate the types of land adjustments needed to establish more rational patterns of land ownership in Alaska.

Thank you for your consideration of this correspondence. If we can be of any further assistance in the Committee's consideration of the matters discussed here, please let us know.

Sincerely,



Burton W. Silcock
Federal Co-Chairman

Sincerely,



Walter B. Parker
State Co-Chairman

cc: Representative Theodore G. Smith, House Resources Committee
Representative Fred E. Brown, House Resources Committee
Representative Richard I. Eliason, House Resources Committee
Representative H.M. Hershberger, House Resources Committee
Representative James H. Huntington, House Resources Committee
Representative Alvin Osterback, House Resources Committee
✓ Representative Leo Rhode, House Resources Committee
Representative Leslie E. Swanson, House Resources Committee