

HB

477

COMMITTEE REPORT

SENATE

5/28/77

4/19 Date

Mr. President:

The Committee on Resources has had CSHB 477 an
sale of state land
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 CS HB 477 and that
CS for CS HB 477 do pass
- (and) recommends it be referred to the _____
committee
- reports it back without recommendation
- AND attaches a report of its intent
- (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

[Handwritten Signature] _____ [Handwritten Signature] _____

[Handwritten Signature] _____ [Handwritten Signature] _____

[Handwritten Signature] _____ [Handwritten Signature] _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

[Handwritten Signature]
Chairman

Read in 6/17

CONFERENCE COMMITTEE REPORT

5/31/78

DATE: June 9, 1978

Mr. President:
Mr. Speaker:

The FREE Conference Committee which has had _____
CSHB 477 am (sale of state land; effective date)
&
SCS CSHB 477 (same title)

*adopted
6-9*

under consideration, recommends that _____

FCCS SCS CSHB 477

"An Act relating to the sale of State land; and providing for
an effective date."

be adopted.

Senate Members:

K. Poland
Senator Poland, Chairman
J. Orsini
Senator Orsini
Butrovich
Senator Butrovich

House Members:

Hayes
Representative Hayes, Chairman
Bradley
Representative Bradley
Freeman
Representative Freeman

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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

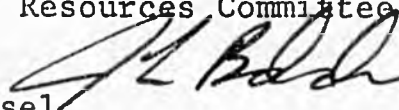
LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 17, 1978

SUBJECT: Proposed SCS CS for HB 477

TO: Senator Kay Poland
Chairman, Senate Resources Committee

FROM: James L. Baldwin 
Legislative Counsel

I have been directed to present a memorandum discussing the constitutionality of legislation suggested by the Joint Federal - State Land Use Planning Commission for Alaska. The Commission would permit the director of the division of lands to grant a preference to local residents to purchase state land by lottery when land located near their residence is offered for sale.

A local preference right establishes a classification among state residents. The classification discriminates against non-local residents to the extent local residents do not compete for state land equally with non-local residents.

Traditionally, whenever a statute's constitutionality has been challenged, the courts test the validity of the statute under either the "rational basis standard" or the "compelling state interest standard." The United States Supreme Court announced the rational basis standard in F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415. The Court explained that for a statute to survive judicial scrutiny under the rational basis test:

[It must] be reasonable not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

While under the "compelling state interest standard," the classification will withstand constitutional scrutiny only upon a clear showing that "the burden imposed is necessary to protect a compelling and substantial state interest." Oregon v. Mitchell, 400 U.S. 112, 238 (1970). The courts determine which standard of review to apply according to the type of personal right that is being invaded by the statute under review. If the right is characterized as "fundamental", the compelling state interest standard of review is applicable, while invasions of other non-fundamental rights of citizenship are reviewed under the rational basis standard of review.

The Alaska Supreme Court has further refined the rational basis standard by demanding that the legislature create classes that logically relate to the object of the legislation. Isakson v. Rickey, 550 P.2d 359 (Alaska 1976). This approach was presumably adopted out of frustration with the present system of characterizing the rights affected and then applying either of two standards of review - one that is nearly impossible to satisfy (compelling state interests standard) and the other that is easily satisfied (rational basis standard).

In addition to the standards judicially imposed, the Alaska State Constitution contains general requirements specifically applicable to the disposal of natural resources of the state.

These requirements are:

- (1) Article VIII, Section 2 which directs the legislature to provide for:

"... the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people." (emphasis added); and

- (2) Article VIII, Section 17 which provides:

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

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THE COMMISSION'S PROPOSAL

The proposal presented by the Commission amends AS 38.05.055 by adding a new subsection to read:

"The director may limit qualified applicants in a sale of land by lottery to residents of the local area."

The commission urged the following justification in support of its proposal:

"This authority would be useful in cases where there was an identified need in the area for additional lands for homes and cabin sites for local people. By limiting qualified purchasers to local residents, the director could prevent the sale offering from being preempted by speculative purchasers from outside the local area."

The proposal was submitted in conjunction with another proposal to reduce the durational residency requirement contained in HB 477. After receiving advice from legislative counsel that all durational residency requirements are constitutionally suspect, the committee has indicated unwillingness to support a durational residency requirement of less than three years as presently contained in HB 477. The Commission's proposal as drafted lacks specificity since no boundaries for the local area are set, nor is there a durational residency requirement in the local area as a precondition for qualifying for a local preference. The Research Division of the Legislative Affairs Agency was requested to develop a factual survey of the distribution of state land in different localities of the state; that report is attached for your review. The purpose of this survey is to determine the extent to which residents currently residing in different regions of the state would be affected by granting preference rights for local land offerings. It was felt that the distribution of available state land may cause inequality in opportunity for the purchase of state lands for residents residing in a locality where state land is in limited supply. The survey seems to support the contention that the Commission's proposal creates a class of state residents who would always have a second priority preference right or at least have less opportunity to exercise a first priority preference right than other state residents who reside in areas of the state where there is an abundant supply of available state land.

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LOCAL RESIDENCY REQUIREMENTS AND THE DISPOSAL OF STATE LAND

The U.S. Supreme Court has long recognized that the freedom to travel throughout the United States "uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement" is a right of national citizenship but that right is not a fundamental right unless a right to receive a basic necessity of life is also impaired. Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974). It could be argued that there also exists a right to freedom of travel or migration within a state without undue discrimination between rights and remedies available to state residents who choose to do so. The pivotal issue which determines the standard of judicial review is whether or not the right to purchase state land by state residents is a "basic necessity of life" to justify the characterization of that right as a fundamental right of citizenship. The Alaska Supreme Court has in three out of four cases struck down durational residency requirements and has done so by analyzing the invasion of personal rights on the basis of the right to travel and has not imposed the additional stipulation that the residency requirement also cause persons a denial of the necessities of life. The necessities of life referred to by the Court in Maricopa was the right to receive welfare payments or the right to obtain medical care after changing state residence. The basic necessities of life considered by the United States Supreme Court are more closely related to personal well-being than the right to purchase state land at a lottery sale. I conclude that a court would review a local preference that is not determined by a lengthy durational requirement by applying the less stringent "rational basis standard."

SUMMARY

In summary, past cases indicate that the Alaska Supreme Court has reviewed residency requirements strictly and characterizes the right to travel as a fundamental right; while the U.S. Supreme Court has indicated that it will apply the compelling state interest standard of review to legislation which infringes the right to travel only if the legislation also infringes upon a right to receive a basic necessity of life offered by the state to others similarly situated. Whether the Alaska Supreme Court will depart from its stricter standard and embrace the United States Supreme Court's position is unclear. The position of the United States Supreme Court regarding residency requirements for the purpose

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of controlling utilization of natural resources is currently being considered by that court in Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977). That case involves a test of the constitutionality of the Alaska local hire law (AS 38.40).

In its brief, the state has argued that the state's right to control its land resources outweighs an individual's basic right to travel. Whether the outcome of Hicklin will cause the Alaska Supreme Court to review residency requirements under a less strict standard for review is unknown. What is readily ascertainable is that due to the unequal distribution of state land in localities of the state certain residents will be discriminated against in fact under the Commission's proposal. A local preference may not be justified under the Alaska Supreme Court's stricter rational basis standard of review. The requirement contained in Article VIII, section 17 of the Alaska State Constitution, set out above also causes me to question the legality of establishing discriminatory classifications based upon local residency for the disposal of state land.

JLB:jpd/hjd

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 7, 1978

SUBJECT: Regional Resident Preference Rights
TO: The Honorable Kay Poland
FROM: George Utermohle
Research Analyst *GU*.

In response to a request from Legislative Affairs Agency, Legal Division, we have reviewed the subject of regional resident preference rights for disposals of state land. In the following discussion, the number of persons who would receive a preference right to state land based upon residence in the region of the disposal is compared with the apparent amount of state land present in that region. The regions used in this discussion are based upon: (1) 1974 state house election districts; (2) existing state senate election districts; and (3) current state judicial districts.

The information which is necessary for a thorough analysis of the need for and subsequent impact of a regionalized resident preference system is not readily available or does not exist. In order to complete a thorough analysis of such a system we must know how much state land in each region is suitable for each type of use (residential, industrial, agricultural, etc.), what the demand is for each type, and what the state's schedule of land disposals is or might be. The cursory discussion which follows is intended as illustrative of what lands could be disposed by the state in each district and how many persons would receive a preference right to those lands.

1974 House Election Districts

There were twenty-two house election districts in 1974. If these districts were used as a basis for granting regional resident preference rights when state land is disposed, this would create 22 sub-groups within Alaska's population, each with a preference right to lands within their region.

The population and an estimate of the state land present within each house election district are listed in Table 1. For an explanation of how the amount of state land present in each district was estimated, see the section on Methodology.

The population of these districts ranges from 6,500 to 180,700 and the amount of state land present within each district varies from almost zero to 657 townships. There is no correlation between the population of a district and the amount of state land present. Many rural districts have relatively small populations but contain disproportionately large shares of state land. Likewise, the urbanized districts have little state land present relative to their population.

Senate Election Districts

There are 11 senate districts. These districts generally encompass two or more house districts and, thus, have larger populations and larger areas of state land within their boundaries. The population and the amount of state land present within each district are shown in Table II. For an explanation of how the amount of state land present within each district was determined, see the section on Methodology.

The population of the senate districts ranges from 13,300 to 180,700. The amount of land within these districts ranges from .5 to 1,092 townships. Since the senate districts are amalgamations of house districts, the relationships between population and the amount of state land present are similar for the two kinds of districts. Rural districts in Interior Alaska have much more state land present relative to their population. The urban districts, Anchorage and Fairbanks, have much less land present relative to their populations. Districts in Southeast Alaska have very little state land present.

Judicial Districts

There are four judicial districts in Alaska. These districts coincide with the major geographic regions of Alaska: Southeast, Southcentral and Southwest, Interior and Northeast, and the Northwest. The judicial districts were established for administrative purposes and are not related to population, which is the basis for election districts. The population and amount of state land present within each judicial district are listed in Table III. For an explanation of how the amount of state land present in each district was estimated, see the section on Methodology.

The population within the judicial districts ranges from 25,200 to 251,500. The amount of state land present within the districts ranges from 20 to 1,279 townships. The use of judicial districts has eliminated some of the variation that was found to exist between rural and urban election districts. However, the relative shortage of land in Southeast Alaska is unaffected by the use of judicial districts.

Methodology

The population of each district was established by using data supplied by the state revenue sharing program for fiscal year 1978 and currently available census data. The total state population is estimated to be 411,000. These figures include all civilians regardless of age residing in the state.

The amount of state land present in each district was established by counting the number of state selected, tentatively approved, and patented townships within each district as shown on the Bureau of Land Management land status map dated March, 1974. The amount of state land present within each district is all state land present without regard to suitability for settlement, present dedications as parks and refuges, existing disposals, and proposed disposals such as municipal land grants. It is important to note that the amounts of land listed as present in each district are merely indicative of the amount of state land present and does not represent a true and accurate accounting of the distribution of state land. These data are most valuable for comparative purposes.

The low amounts of land present in House Districts 1 and 2 are partly due to the methodology of this study. There is certainly some state land within House Election District 2 (Petersburg, Icy Strait), but there is not enough land in a sufficiently compact area to be represented on the land status map. Similar conditions exist in other parts of the state.

Discussion

As the size and number of districts increase, the number of persons eligible for preference rights within each district and the amount of land within each district decreases. However, it depends upon the system of establishing these districts as to whether the population and amount of state land involved decrease at the same rate. In the case of election districts, which are based upon population, the area of the district will decrease as the density of the population increases. This will result in more people exercising a preference right to a decreasing amount of state land. This is particularly true within those election districts which comprise Anchorage.

Judicial districts are established without much regard for land area or population. Also, there are only four judicial districts, which means that each district must contain more population and more area than would the more numerous election districts. The advantage of the judicial districts over the election districts as a basis for granting preference rights is that each person would be able to select from a greater variety of land types and locations. This would be a benefit to the resident of Anchorage or Kodiak who does not have large acreages of state land available due to competition for land and existing withdrawals of state land.

In all of the three districting proposals presented, there is little that can be done to increase the relative amount of state land present in Southeast Alaska. The current state tentative selections within the National Forests (400,000 acres) would, at best, increase the amount of state land in Southeast by 75 percent. This land may be suitable for settlement and may be enough to more than satisfy the demand for land

for decades, but the amount of state land present will never be comparable to other areas of the state.

There is no mechanism for determining what the demand is for land in each region of the state and how suitable the land in that region is to satisfy that demand. Without that kind of information on the demand for land and the suitability of the land, there is no way to know what effect preference rights will have on the ability of people to obtain the land that they need or want, when and where they desire.

Small districts such as the house election districts may limit the preference rights to smaller areas, but it ensures that a local resident will have the first opportunity to obtain land near his present home. For example, there may or may not be sufficient state land within the Anchorage house election districts to satisfy the demand, but limitation of the preference rights to small districts would assure that an Anchorage resident would have the first opportunity to obtain state land sold or leased within that district. Under the judicial district system, a resident of Cordova would have the same opportunity to obtain scarce land around Anchorage as would the resident of Anchorage.

However preferable it may be to limit preference rights to small districts such as house election districts in order to assure preference rights to local residents, it will do them no good if the state never disposes of land within that district. If the state seldom disposes of land within a particular house district, it would benefit the residents of that district to have preference rights to a larger area such as a senate or judicial district.

It is our hope that the brief foregoing discussion will aid you in identifying some of the factual issues inherent in the subject of regional preference rights.

GU:jm
Attachments

TABLE I. DISTRIBUTION OF STATE LAND AND POPULATION BY 1974 HOUSE ELECTION DISTRICTS

<u>District</u>	<u>Location</u>	<u>Population 1/</u>	<u>State Land 2/ (Townships)</u>
1	Ketchikan Area	14,600	.5
2	Petersburg, Icy Strait	7,600	0
3	Sitka, Yakutat	8,300	2
4	Juneau, Haines	23,300	17
5	Valdez, Cordova, Seward	15,600	79
6	Matanuska-Susitna	16,700	400
7-12	Anchorage Municipality 3/	180,700	32
13	Kenai	20,500	87
14	Kodiak, Ouzinkie	6,700	12
15	Aleutians, Kodiak Island	6,600	66
16	Dillingham, Eek, Port Heiden	6,800	387
17	Bethel, Aniak, Mekoryuk	7,900	31
18	Hooper Bay, Mt. Village, McGrath, Galena, Allakaket	8,400	657
19	Tanana, Ft. Yukon, Tok, Nenana	6,700	453
20	Fairbanks North Star Borough	60,200	81
21	North Slope Borough, Kotzebue, Kobuk	13,900	155
22	Nome, Unalakleet, Savoonga	6,500	62
	Total	411,000	2,522

1/ Estimated 1978 civilian population based upon FY 78 state revenue sharing program data.

2/ Estimated state land present (measured in townships). See text for further explanation.

3/ All districts within the city of Anchorage are combined.

Prepared by:
Legislative Affairs Agency
Research Division
17 April 1978

TABLE II. DISTRIBUTION OF STATE LAND AND POPULATION BY SENATORIAL DISTRICT

<u>District</u>	<u>Location</u>	<u>Population 1/</u>	<u>State Land 2/ (Townships)</u>
A	Ketchikan	14,600	.5
B	Sitka, Wrangell, Petersburg, Yakutat	15,900	2
C	Juneau, Haines, Skagway	23,300	17
D	Mat-Su Borough, Valdez, Cordova	32,000	479
E-J	Anchorage Borough <u>3/</u>	180,700	32
K	Kenai-Cook Inlet	20,500	87
L	Kodiak Island, Aleutian Islands	13,300	78
M	Bristol Bay, Bethel, Dillingham	14,700	418
N	Upper Yukon, Lower Yukon	14,900	1,092
O	Fairbanks, North Star Borough	60,300	99
P	North Slope, Nome, Kotzebue	<u>20,800</u>	<u>217</u>
	Total	411,000	2,522

1/ Estimated 1978 civilian population based upon FY 78 state revenue sharing program data.

2/ Estimated state land present (measured in townships). See text for further explanation.

3/ All districts within the Municipality of Anchorage are combined.

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 Legislative Affairs Agency
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 17 April 1978

TABLE III. DISTRIBUTION OF STATE LAND AND POPULATION BY ALASKA JUDICIAL DISTRICT

<u>District</u>	<u>Location</u>	<u>Population</u> ^{1/}	<u>State Land</u> ^{2/} <u>(Townships)</u>
1st	Southeast Alaska	53,800	20
2nd	Northwest Alaska	25,200	160
3rd	Southcentral Alaska	251,500	1,063
4th	Interior Alaska	<u>80,500</u>	<u>1,279</u>
	Total	411,000	2,522

^{1/} Estimated 1978 civilian population based upon FY 78 state revenue sharing program data.

^{2/} Estimated state land present (measured in townships). See text for further explanation.

Prepared by:
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 17 April 1978